

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndra Gist Benjamin, Fifth Circuit Judge

Appellant Case No. 2018-001536

Palmetto Wildlife Extractors, LLC
And Patrick Charping,

Respondents,

v.

Justin Ludy and First Community Bank Corporation d/b/a
First Community Bank,

Appellants,

Of whom Justin Ludy is the Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Palmetto Wildlife Extractors, LLC and)
Patrick Charping,)

Plaintiffs,)
v.)

Justin Ludy and First Community Bank)
Corporation d/b/a First Community)
Bank,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL
CIRCUIT

C/A No. 2017-CP-40-2822

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
JUSTIN LUDY'S MOTION TO
DISMISS OR STAY AND COMPEL
ARBITRATION**

This Court heard Defendant Justin Ludy's Motion to Dismiss or Stay and Compel Arbitration on March 1, 2018 in the Court of Common Pleas for Richland County, South Carolina. This Court issues the following order to grant in part and deny in part Defendant Ludy's motion.

First, this Court finds that Defendant Ludy did not waive the right to arbitrate. *See generally, Rich v. Walsh*, 357 S.C. 64, 590 S.E.2d 506 (Ct. App. 2003); *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007). Generally, the courts in South Carolina consider three factors to determine if a party waived its right to compel arbitration:

- (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay seeking arbitration.

Rhodes, 374 S.C. at 126, 647 S.E.2d at 250. To establish prejudice, the non-moving party must show something more than mere inconvenience. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250.

Further, neither delay nor the filing of pleadings by the party seeking a stay will suffice, without

much more, to establish waiver of arbitration. *Rich*, 357 S.C. at 71, 590 S.E.2d at 510. Material factors to consider when determining whether the non-moving party was prejudiced, are delay and whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250; *Rich*, 357 S.C. at 71, 590 S.E.2d at 510.

Defendant Ludy does not waive the right to arbitrate. Although Defendant Ludy filed a Complaint against Plaintiff Charping on April 25, 2017 in the Court of Common Pleas for Lexington County, South Carolina, this act in and of itself, is insufficient to waive Defendant Ludy's right to compel arbitration. On May 10, 2017, in response to Defendant Ludy's Lexington County Complaint, Plaintiffs initiated the instant action in the Court of Common Pleas for Richland County, South Carolina. On June 6, 2017, Defendant Ludy dismissed the Lexington County Complaint and responded to Plaintiffs' Richland County Complaint by filing a Motion to Dismiss or Stay and Compel Arbitration. In an abundance of caution, Defendant Ludy filed an Answer and Counterclaim, on July 14, 2017 and noted in the pleading that the Court must decide his Motion to Dismiss or Stay and Compel Arbitration before considering his Answer and Counterclaim.

The Court considered many factors to determine Defendant Ludy has not waived the right to compel arbitration. This lawsuit commenced in May 2017 and Defendant Ludy filed the motion to compel arbitration on June 6, 2017. Between the commencement of the lawsuit and the request for arbitration, the parties engaged in minimal discovery. Further, Defendant Ludy has not utilized the judicial system to his advantage by filing extensive discovery requests or by engaging in discovery. On the contrary, Defendant Ludy filed a Motion to Limit and Stop Discovery on May 30, 2018, so that the Court may first determine whether this case is subject to arbitration. Such a filing is consistent with his request to compel arbitration. Last, Plaintiffs present no arguments as

to how Defendant Ludy's motion to compel arbitration prejudices them. Taken as a whole, the actions of Defendant Ludy do not prejudice Plaintiffs and are consistent with the request to compel arbitration.

Second, this Court finds that Plaintiffs' causes of action numbers one and two are subject to arbitration. The Plaintiffs' first cause of action is Palmetto Wildlife Extractors' Derivative Claim for Breach of Fiduciary Duty. The Plaintiffs' second cause of action is Palmetto Wildlife Extractors' Derivative Claim for Aiding and Abetting Breach of Fiduciary Duty. With regard to Plaintiffs' first two causes of action, Plaintiffs claim that Defendant Ludy misappropriated company funds in a manner inconsistent with the best interests of the company and utilized company funds for personal use. Plaintiffs additionally claim that Defendants removed Plaintiffs from the company's bank accounts. Plaintiffs and Defendant Justin Ludy entered into an Amended Operating Agreement for Palmetto Wildlife Extractor's, LLC. By virtue of the contract, the Plaintiffs and Justin Ludy are ascribed certain fiduciary duties. An alleged violation of a fiduciary duty falls under the scope of the parties' operating agreement, which requires that disputes relating to, or arising out of the contract, are subject to arbitration.

Third, this Court finds that Plaintiffs' causes of action numbers three through five are not subject to arbitration. The Plaintiffs' third cause of action is for Civil Conspiracy. The Plaintiffs' fourth cause of action is for Defamation. The Plaintiffs' fifth cause of action is for Appointment of Receiver, Accounting, and Judicial Dissolution. Plaintiffs' claims for civil conspiracy and defamation are tort claims that do not implicate the parties' contractual agreement and are not subject to arbitration. According to Section 11.1.3 of the parties' agreement, a court must enter a judicial decree dissolving the company pursuant to S.C. Code Ann. § 33-44-801. Thus, Plaintiffs'

claim for appointment of receiver, accounting, and judicial dissolution is not subject to arbitration as Section 11.1.3 specifically requires a finding by a court.

IT IS HEREBY ORDERED

Defendant Ludy's motion is GRANTED as to Plaintiffs' causes of action for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Those causes of action are dismissed and subject to arbitration. Defendant First Community Bank Corporation will follow the parties to arbitration.

Defendant Ludy's motion is DENIED as to Plaintiffs' claims for civil conspiracy; defamation; and appointment of receiver, accounting, and judicial dissolution. These causes of action are stayed.

The Honorable DeAndrea G. Benjamin
Judge of the Fifth Judicial Circuit

June _____, 2018
Columbia, South Carolina



Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-06-21 11:40:19 page 5 of 5

ELECTRONICALLY FILED - 2018 Jun 21 11:59 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4002822

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4002822

Palmetto Wildlife Extractors LLC et al
PLAINTIFF(S)

Justin Ludy et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The Defendants' Motion to Reconsider 59(e) is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/23/2018.

First Community Corporation
Patrick Charping

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

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ORIGINAL

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2017 APR 25 PM 3:10 ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2017-CP-32-

Justin R. Ludy,

Plaintiff,

v.

W. Patrick Charping,

Defendant.

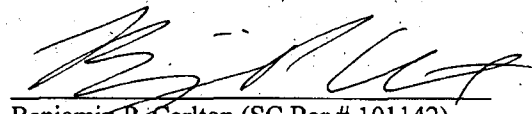
SUMMONS

2017CP3201416

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at his offices located at 1900 Barnwell Street, Post Office Drawer 7788, Columbia, South Carolina 29202, within thirty (30) days after the date of such service, exclusive of the day of such service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

RICHARDSON PLOWDEN & ROBINSON, P.A.



Benjamin P. Carlton (SC Bar # 101142)

P.O. Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
April 25, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON 2017 APR 25 PM 3:10

Justin R. Ludy,

Plaintiff,

v.

W. Patrick Charping,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2017-CP-32-

VERIFIED COMPLAINT
(Non-Jury)

2017CP3201416

Plaintiff Justin R. Ludy ("Ludy") brings this Complaint against Defendant W. Patrick Charping ("Charping") and alleges as follows:

PARTIES

1. Plaintiff Ludy is a resident of Lexington, Lexington County, South Carolina, and is subject to the jurisdiction of this Court.

2. Upon information and belief, Defendant Charping is a resident of West Columbia, Lexington County, South Carolina, and is subject to the jurisdiction of this Court.

3. Plaintiff Ludy and Defendant Charping, collectively, are the sole Members of Palmetto Wildlife Extractors LLC (the "LLC"), pursuant to the terms of that certain Amended and Restated Operating Agreement, dated October 13, 2014, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference (the "Operating Agreement").

JURISDICTION, VENUE, & GOVERNING LAW

4. Jurisdiction and venue in this action are proper pursuant to the applicable provisions of the South Carolina Constitution and Title 15 of the South Carolina Code.

RELEVANT OPERATING AGREEMENT PROVISIONS

5. The Recitals of the Operating Agreement state, in pertinent part:

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that *Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charping will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions.*

(Emphasis added).

6. Section 3.1 ("Percentages") of the Operating Agreement states:

Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

7. In turn, Exhibit A to the Operating Agreement provides that while both Plaintiff Ludy and Defendant Charping have a 50% Financial Interest, Plaintiff Ludy has a 51% Governance Interest and Defendant Charping has a 49% Governance Interest.

8. Section 3.7 ("Withdrawals") the Operating Agreement states:

A Member *may not withdraw* his Capital Account except as expressly authorized in this Agreement.

(Emphasis added).

9. Section 5.1 ("Management") of the Operating Agreement states, in pertinent part:

The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties.

3 BX

10. Section 5.2 ("Voting") of the Operating Agreement states:

Each Member shall be entitled to *vote in accordance with his respective percentage of Governance Interest*. Unless otherwise provided by law or this Agreement, *all actions of the LLC must be approved by a Majority Vote*.

(Emphasis added).

11. Section 12.4 ("Good Faith") of the Operating Agreement states, in pertinent part:

The performance of any act or the failure to do any act by a Member or the LLC . . . shall not subject such Member or the LLC to any liability, *if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests*.

(Emphasis added).

12. Section 12.7 ("Other Activities") of the Operating Agreement states:

A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided *such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the [South Carolina Uniform Limited Liability Company Act of 1996 (the "Act")]*.

(Emphasis added).

13. Section 13.8 defines the term "Governance Interests" to mean "*all a Member's rights as a Member in the Company, other than financial rights* and the right to assign financial rights." (Emphasis added).

14. Section 13.10 defines the term "Majority Vote" to mean "*an affirmative vote of the Members holding more than fifty (50%) of the Governance Interests*." (Emphasis added).

FACTS

15. By virtue of his fifty-one (51%) percent Governance Interest and pursuant to the voting requirements of Section 5.2 and the definition of "Majority Vote" (Section 13.10), Plaintiff Ludy has the sole and exclusive authority to take an action on behalf of the LLC, except where a

greater vote is expressly required in the Operating Agreement. Stated differently, Defendant Charping has no authority to take an action on behalf of the LLC unless it is approved by Plaintiff Ludy.

16. On or about March 30, 2017, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping had a cashier's check issued to himself, from the LLC's operating bank account, in the amount of Six Thousand Nine Hundred Eighty-Five and 58/100 (\$6,985.58) Dollars.

17. On or about March 31, 2017, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping withdrew approximately Thirty-Two Thousand Two Hundred Eighty-Six and No/100 (\$32,286.00) Dollars from the LLC's bank account.

18. Due to Defendant Charping's refusal to provide Plaintiff Ludy with information concerning these unauthorized withdrawals, in response to Plaintiff Ludy's demands, the purpose of the withdrawals is believed to be unrelated to the LLC's business and not in the LLC's best interests.

19. Upon information and belief, Defendant Charping has taken from the LLC or has otherwise removed, without permission, an external hard drive containing back-ups of the LLC's insurance files and other confidential information.

20. Additionally, Defendant Charping has forwarded the LLC's client list to his personal email address.

21. Again, due to Defendant Charping's refusal to provide Plaintiff Ludy with information concerning these unauthorized actions related to the LLC's confidential information, in response to Plaintiff Ludy's demands, the purpose of such actions is believed to be unrelated to the LLC's business and not in the LLC's best interests.

22. Upon information and belief, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping has paid for personal expenses—including, but not limited to, a plane ticket—from the LLC's bank account(s), for non-LLC business and/or purposes.

23. Upon information and belief, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping paid a Seven Hundred (\$700.00) fee to a local law firm, from the LLC's account, for legal fees and/or expenses unrelated to the LLC's business and not in the LLC's best interests.

24. Upon information and belief, on at least two occasions, clients of the LLC have paid Defendant Charping monies for completed LLC projects; however, Defendant Charping has failed to deposit such monies, belonging to the LLC, which are believed to be in the approximate total amount of Three Thousand Four Hundred Forty-Seven and 50/100 (\$3,447.50) Dollars.

FIRST CAUSE OF ACTION
(Accounting—S.C. Code Ann. § 33-44-409(b)(1))

25. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

26. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Defendant Charping—as part of the duty of loyalty that he owes the LLC and Plaintiff Ludy—is required to account for “any property, profit, or benefit derived by the [M]ember in the conduct . . . of the [LLC's] business or derived from a use by the [M]ember of the [LLC's] property.”

27. As such, based upon the allegations set forth herein and the fact that Plaintiff Ludy's demands for information have been ignored, Plaintiff Ludy hereby respectfully requests an Order requiring Defendant Charping to fully account for all property, profit or benefit derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies,

6 BAC

all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof.

SECOND CAUSE OF ACTION
(Constructive Trust—S.C. Code Ann. § 33-44-409(b)(1))

28. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

29. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Defendant Charping—as part of the duty of loyalty that he owes the LLC and Plaintiff Ludy—is required to “hold as trustee . . . any property, profit, or benefit derived by the [M]ember in the conduct . . . of the [LLC's] business or derived from a use by the [M]ember of the [LLC's] property.”

30. As such, Plaintiff Ludy hereby respectfully requests an Order imposing a constructive trust on “any property, profit or benefit” derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof.

THIRD CAUSE OF ACTION
**(Breach of Duty of Loyalty—S.C. Code Ann. § 33-44-409(b)(2) &
Operating Agreement Section 12.7)**

31. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

32. Defendant Charping owes a duty of loyalty to the LLC and Plaintiff Ludy “to refrain from dealing with the [LLC] in the conduct . . . of the [LLC's] business as . . . a party having an interest adverse to the [LLC].”

7 BPC

33. Defendant Charping has breached this duty of loyalty owed to the LLC and Plaintiff Ludy by acting as a party having an interest adverse to the LLC by withdrawing funds from the LLC's bank accounts for non-LLC purposes; by paying personal expenses with LLC funds; by taking or otherwise removing LLC property and confidential information; and by failing to deposit LLC monies, among other actions.

34. Defendant Charping's breach of the duty of loyalty owed to Plaintiff Ludy has directly and proximately caused Plaintiff Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this Court.

35. Additionally, based upon Defendant Charping's willful, wanton, and/or reckless breach of the duty of loyalty, Plaintiff Ludy is informed and believes that he is entitled to punitive damages, in an amount to be determined by this Court.

FOURTH CAUSE OF ACTION

(Breach of Obligation of Good Faith and Fair Dealing—S.C. Code Ann. § 33-44-409(d) & Operating Agreement Section 12.4)

36. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

37. Defendant Charping owes an obligation of good faith and fair dealing to the LLC and Plaintiff Ludy.

38. Defendant Charping has breached this obligation of good faith and fair dealing by withdrawing funds from the LLC's bank accounts for non-LLC purposes; by paying personal expenses with LLC funds; by taking or otherwise removing LLC property and confidential information; by failing to deposit LLC monies; and by not acting in the LLC's best interests.

39. Defendant Charping's breach of the obligation of good faith and fair dealing owed to Plaintiff Ludy has directly and proximately caused Plaintiff Ludy, as a Member and holder of a 51%

Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this Court.

40. Additionally, based upon Defendant Charping's willful, wanton, and/or reckless breach of this obligation of good faith and fair dealing, Plaintiff Ludy is informed and believes that he is entitled to punitive damages, in an amount to be determined by this Court.

FIFTH CAUSE OF ACTION
(Injunction—Temporary and Permanent—Rule 65, SCRPC)

41. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

42. Plaintiff Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, will suffer immediate and irreparable injury, loss, or damage (the "Injury") if Defendant Charping continues to (A) withdraw funds from the LLC's bank accounts, without Plaintiff Ludy's approval; (B) pay personal expenses with LLC funds; (C) take, remove, or otherwise convert LLC property and confidential information; (D) hold and fail to promptly deposit LLC monies; and/or (E) act adverse to the best interests of the LLC (collectively, the "Actions").

43. Plaintiff Ludy does not have an adequate remedy at law to prevent or otherwise compensate him for such immediate and irreparable Injury.

44. Therefore, based on the above, Plaintiff Ludy requests the assistance of this Court to prevent such immediate and irreparable Injury, for which Plaintiff Ludy does not have an adequate remedy at law.

45. As such, Plaintiff Ludy is informed and believes that, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, he is entitled to the issuance of a temporary and a permanent injunction, enjoining, restraining, and prohibiting Defendant Charping from participating in any of the Actions.

SIXTH CAUSE OF ACTION
(Judicial Expulsion & Dissociation—S.C. Code Ann. § 33-44-601(6))

46. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

47. Based upon the foregoing allegations, Plaintiff Ludy, as a Member of the LLC, hereby applies for the judicial expulsion and dissociation of Defendant Charping, pursuant to S.C. Code Ann. § 33-44-601(6), as Defendant Charping has: (A) engaged in wrongful conduct that has adversely and materially affected the LLC's business; (B) willfully and persistently committed material breaches of the Operating Agreement and the duties he owes the LLC and Plaintiff Ludy under S.C. Code Ann. § 33-44-409; and (C) engaged in conduct related to the LLC's business which makes it not reasonably practicable for Plaintiff Ludy to carry on the LLC's business with Defendant Charping.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ludy requests that this Court:

A. Issue an Order requiring Defendant Charping to fully account for all "property, profit or benefit" derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof;

B. Issue an Order imposing a constructive trust on "any property, profit or benefit" derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property

currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof;

C. Award Plaintiff Ludy damages, both actual and punitive, in an amount to be determined by this Court;

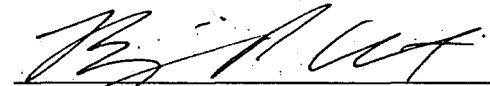
D. Issue a temporary and permanent injunction, enjoining, restraining, and prohibiting Defendant Charping from participating in any of the Actions;

E. Expel and dissociate Defendant Charping from the LLC; and

F. Order such other and further relief as this Court deems just, equitable, and proper.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Benjamin P. Carlton (SC Bar # 101142)

P.O. Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

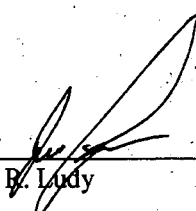
ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
April 25, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

VERIFICATION

PERSONALLY appeared before me, **Justin R. Ludy**, who, being duly sworn, says that: he has read the foregoing Complaint; that the facts alleged therein are true to the best of his knowledge, except as to those matters stated upon information and belief, and as to those, he believes them to be true.


Justin R. Ludy

SWORN to before me this
25th day of April, 2017.

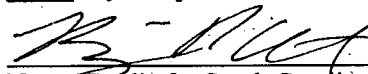
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/22/23

EXHIBIT A

**THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT
(SOUTH CAROLINA CODE SECTIONS 15-48-10, ET. SEQ.)**

**PALMETTO WILDLIFE EXTRACTORS LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

This Amended and Restated Operating Agreement (the "**Agreement**") for Palmetto Wildlife Extractors LLC, a South Carolina limited liability company (the "**LLC**"), is made and entered into and shall be effective as of October 13, 2014, by and between Justin R. Ludy and W. Patrick Charping (the "**Members**"). This Agreement is intended to supersede any and all prior agreements between the Members.

RECITALS

WHEREAS, on April 6, 2012, the LLC was organized by the filing of Articles of Organization with the South Carolina Secretary of State;

WHEREAS, the Members desire that W. Patrick Charping join the LLC as a member in exchange for capital contributions to the LLC in the amount of approximately \$49,000, including \$40,000 cash and a \$9,000 2006 Toyota Tacoma; and

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charping will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions.

NOW, THEREFORE, the Members agree as follows:

**SECTION 1
Name and Term**

- 1.1. Name. The LLC's name is Palmetto Wildlife Extractors LLC.
- 1.2. At-Will Company. The LLC shall be an at-will Company, as that term is defined in the South Carolina Limited Liability Company Act of 1996 (the "Act").

**SECTION 2
Nature of Business, Designated Office, and Agent**

- 2.1. Business. The LLC is formed to transact business related to a wildlife removal business, and to make such other investments and transact such other related business as the Members may deem appropriate for the LLC.
- 2.2. Designated Office. The LLC's Designated Office is at 959 East Main Street, Lexington, SC 29072, although the Members may change the LLC's Designated Office to another

location and add additional places of business.

2.3. Agent. The LLC's agent for service of process shall be Justin R. Ludy at 209 Sandy Valley Court, Gaston, SC 29053.

2.4. Principal Place of Business. The LLC's Designated Office shall be its principal place of business.

2.5. Income Tax Election. The LLC shall be taxed as a partnership for state and federal income tax purposes, and the LLC shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the LLC and the Members.

2.6. Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

SECTION 3

Capital and LLC Interests

3.1. Percentages. Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

3.2. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the LLC (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective shares of Financial Interest, upon dissolution of the LLC such deficit shall not be an asset of the LLC and such Members shall not be obligated to contribute such amount to the LLC to bring the balance of such Member's capital account to zero.

3.3. Adjustments. Each Member's Capital Account shall be adjusted as necessary to reflect the economic conditions of the Financial Interests. These adjustments shall include, but are not limited to, the following:

3.3.1. Adjustments to reflect each Member's distributive share of LLC profits and losses, including capital gains and losses, and tax-exempt income;

3.3.2. Adjustments to reflect each Member's additional contributions to the LLC;

3.3.3. Adjustments to reflect distributions made by the LLC to each Member;

3.3.4. Tax-Sensitive Adjustments (as defined below).

3.4. Loans. A Member's loans to the LLC shall not be added to his Capital Account.

3.5. Amount of Contributions. The amount of a Member's contributions of property to the LLC and of the LLC's distributions of property to a Member, shall be reflected in the Member's Capital Account at the fair market value of the property on the date of the contribution or distribution, reduced by any liabilities secured by that property, if those liabilities are treated under applicable federal income tax laws as being assumed by or taken subject to by the transferee.

3.6. No Interest Paid. A Member shall receive no interest on his capital contributions or Financial Interest.

3.7. Withdrawals. A Member may not withdraw his Capital Account except as expressly authorized in this Agreement.

SECTION 4 **Profits, Losses, and Cash Flow**

4.1. Profits and Losses. The LLC's net profits and losses (and each item of income, deduction, gain, loss, and credit that makes up net profits and losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting used by the LLC, and shall be allocated among the Members solely according to their respective percentage of Financial Interests. Notwithstanding this general rule, any income, gain, loss, and deduction with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis and the fair market value of the contributed property at the time of the contribution, in accordance with any applicable U.S. Treasury regulations.

4.2. Consent to Maintenance of Working Capital Reserve. The Members hereby authorize the establishment and continued maintenance of a working capital reserve in the amount of twenty percent (20%) of the LLC's annual net income after payment of the LLC's accrued and unpaid debts and expenses. Such reserve shall be kept in the LLC's bank accounts, funded with cash flows prior to any distributions to Members.

4.3. Assignment or Death. When a Member dies, retires, or assigns his Membership Interest, profits and losses shall be allocated based on the number of days in that year during which each Member owned a Financial Interest, or on any other reasonable basis selected by the remaining Members, as long as it is consistent with applicable United States tax laws and regulations.

4.4. Cash Flow. The Members shall cause the LLC to distribute its Net Cash Flow to the Members annually, in proportion to their respective percentage of Financial Interest.

SECTION 5 Management

5.1. Management. The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.1. The Members may sell real or personal property to any person, giving any warranties or assurances deemed appropriate;

5.1.2. The Members may buy, lease, or otherwise acquire real or personal property to carry on and conduct the LLC's business;

5.1.3. The Members may borrow money for the LLC's business;

5.1.4. The Members may issue promissory notes and other debt instruments (negotiable or nonnegotiable), in any amounts and secured by any encumbrance on all or any part of the LLC's assets;

5.1.5. The Members may assign any debts owing to the LLC;

5.1.6. The Members may engage in any other means of financing;

5.1.7. The Members may enter into any agreement for sharing of profits and any joint venture agreement with any person or entity engaging in any business or venture in which the LLC may engage;

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties;

5.1.9. The Members may execute any type of agreement or instrument in connection with any other LLC power;

5.1.10. The Members may employ all types of agents and employees (including lawyers and accountants), even if they are related to the Members by blood, marriage, or business relationship, and pay them reasonable compensation;

5.1.11. The Members may buy or otherwise obtain the use of any type of equipment or other property that may be convenient or advisable in connection with any LLC business;

5.1.12. The Members may incur any reasonable expense for travel, telephone, telegraph, insurance, taxes, and such other things in carrying on the LLC's business;

5.1.13. The Members may sue and be sued, complain, and defend in the name of and on behalf of the LLC; and

5.1.14. The Members may quitclaim, release, or abandon any LLC assets with or without consideration.

5.2. Voting. Each Member shall be entitled to vote in accordance with his respective percentage of Governance Interest. Unless otherwise provided by law or this Agreement, all actions of the LLC must be approved by a Majority Vote.

5.3. Tax Matters Partner. W. Patrick Charping shall be the "Tax Matters Partner," as defined for federal income tax purposes, and shall be solely responsible for representing the LLC in all dealings with the U.S. Internal Revenue Service and any state, local, and foreign tax authorities. The Tax Matters Partner shall keep the other Members reasonably informed of any LLC dealings with any tax agency.

SECTION 6

Financial Reports

Within a reasonable period after the close of each fiscal year, the Tax Matters Partner shall, at the LLC's expense, give a written report to each Member who requests it, indicating that Member's share of the LLC income or loss and any changes in that Member's Capital Account. This requirement may be satisfied by giving each Member a copy of any tax form that includes such information.

SECTION 7

Banking

All LLC funds shall be deposited in the LLC's name in such accounts as the Members may designate. The Members may authorize other persons to draw checks on LLC bank accounts, but such authority must be in writing. Each bank in which an LLC account is maintained is relieved of any responsibility to inquire into a Member's authority to deal with such funds.

SECTION 8

Transfer of Membership Interests

8.1. Limitations on Transfer. A Member shall not Transfer any Membership Interest except in accordance with the terms of this Section 8 or with the prior written consent of all of the other Members. An attempted Transfer of Membership Interest not in accordance with the terms of this Section shall not be valid and shall not be reflected on the LLC's books.

8.2. Right of First Refusal. A Member who wishes to Transfer any Membership Interest, or who has reason to believe that an involuntary Transfer or a Transfer by operation of law is reasonably foreseeable (an "Offering Member"), shall first give each other Member written notice of

the intent to Transfer such Membership Interest (the "Offered Interest") or of the knowledge that an Involuntary Transfer or Transfer by operation of law is reasonably foreseeable. This notice must contain a description of the portion of Membership Interest to be Transferred, the consideration (if any) to be paid, the terms of Transfer and of the payment of consideration (including but not limited to the relative percentages of cash and debt, and the terms of any debt instruments), and the name, address (both home and office), and business or occupation of the person to whom the Membership Interest would be transferred, and any other facts which are or would reasonably be deemed material to the proposed Transfer.

8.2.1. Upon the receipt of such notice, each other Member shall have a right to buy that share of the Offered Interest having the same proportion to all of the Offering Member's Membership Interest as the buying Member's Membership Interest bears to the Membership Interests of all Members (except the Offering Member).

8.2.2. Each Member may exercise this purchase option by giving the Offering Member written notice within thirty (30) days after receipt of the latter's notice.

8.2.3. If the Members do not agree to buy all of the Offered Interest, the Offering Member may complete the intended Transfer. If this Transfer is not completed within thirty (30) days after expiration of the option period, any attempted Transfer shall be deemed made under a new offer and this section shall again apply.

8.3. Agreement Price. The purchase price that the Members must pay for the Offered Interest under this Section 8 shall be the Lesser of (a) that of any proposed Transfer if the proposed Transfer for which notice was given is to be made for any valuable consideration in money or money's worth of property, or (b) an amount equal to the proportion that the Offered Interest bears to all outstanding Membership Interests, multiplied by the fair market value of the LLC's assets reduced by any liabilities of the LLC. The fair market value of the LLC's assets shall be determined by an independent appraisal performed by a professional appraiser selected by the unanimous consent of the Members. The LLC and the Offering Member shall share the cost of the appraisal.

8.4. Agreement Terms. Ten percent (10%) of the purchase price shall be paid in cash or by good personal check at the closing for the sale of such Membership Interest, and the balance shall be paid in twelve (12) equal quarterly principal payments beginning three (3) months after the date of such closing. Simple interest shall be added to each installment, computed against the outstanding principal balance at the Applicable Federal Rate determined for federal income tax purposes on the date of the closing. The buyer shall give the Offering Member a promissory note as evidence of this debt, and the buyer may prepay all or any part of the principal balance of the note at any time without penalty or premium.

8.5. The Closing. The purchase of a Membership Interest under this Section shall take place at a closing to be held not later than the thirtieth (30th) day after the earlier of the date on which the Members' purchase options have all expired, or the earliest date on which the Members in the

aggregate exercise their purchase options, if any, to buy all of the Offered Interest. The closing shall be held during normal business hours at the LLC's principal business office, or at any other place to which the parties agree. If the Offering Member is not present at the closing, then the buyer shall deposit the purchase price by check, note, or both, as this section requires, with any state or federally chartered bank with which the LLC has an account, as escrow agent, to be paid to the Offering Member as soon as is reasonably practicable; less an appropriate fee to the LLC (not to exceed one thousand dollars (\$1,000.00)) to cover additional administrative costs, and the LLC shall adjust its books to reflect the transfer of these Membership Interests.

8.6. Family Transfers. Notwithstanding any other provision herein to the contrary, a Member may make a Family Transfer of a Financial Interest. The transferee of any such Family Transfer shall be accepted as a substitute member of the LLC without the approval of the other Members and the Financial Interest shall remain subject to all the terms and conditions of this Agreement, including the transfer restrictions contained herein, in the hands of the transferee. A Member may not make a Family Transfer of a Governance Interest.

SECTION 9

Amendments

This Agreement shall be amended automatically to reflect any valid Transfers of Membership Interests. Otherwise, this Agreement shall be amended only with the unanimous vote of the Members owning a Governance Interest.

SECTION 10

Admission, Retirement, and Resignation of Members

10.1. Admission. A person may be admitted as an additional Member by the unanimous consent of the Members owning a Governance Interest (excluding any Member transferring a Membership Interest to the prospective new Member).

10.1.1. A Member need give no reason for voting not to admit an applicant as a new Member, and a Member may unreasonably withhold his agreement to such admission.

10.1.2. In no event may any person be admitted as a new Member unless that person consents in writing to be bound by this Agreement and pays the LLC a fee not to exceed one thousand dollars (\$1,000.00) to cover costs of preparing, executing, and recording all pertinent documents. Absent such unanimous consent, the individual to whom the Membership Interest was Transferred shall be an assignee and shall be entitled to share in the profits, losses and distributions to which the assigning Member would have been entitled, but not to participate in the management and affairs of the LLC.

10.2. Retirement and Resignation. A Member may resign, withdraw, dissociate, or retire from the LLC only with the unanimous consent of the Members.

SECTION 11
Dissolution

11.1. Causes. The LLC shall be dissolved only upon the occurrence of one of the following "Dissolution Events":

11.1.1. The affirmative vote of all of the Members owning a Governance Interest;

11.1.2. Any event occurs that makes it unlawful for all or substantially all of the business of the LLC to be continued, but any cure of illegality within ninety (90) days after notice to the LLC of the event is effective retroactively to the date of the event for purposes of this section;

11.1.3. On application by a Member or a dissociated Member, upon entry of a judicial decree as provided by Section 33-44-801(5) of the Act; or

11.1.4. The filing by the Secretary of State of a certificate administratively dissolving the LLC pursuant to Section 33-44-810 of the Act.

11.2. Upon Dissolution. Upon its dissolution, the LLC shall end and commence to wind up its affairs. The Members shall continue to share in profits and losses during liquidation as they did before dissolution. The LLC's assets may be sold, if a price deemed reasonable by the Members can be obtained. The proceeds from liquidation of LLC assets shall be applied as follows:

11.2.1. First, all of the LLC's debts and liabilities to persons other than Members shall be paid and discharged in the order of priority as provided by law;

11.2.2. Second, all debts and liabilities to Members shall be paid and discharged in the order of priority as provided by law;

11.2.3. Third, all remaining assets shall be distributed proportionately among the Members based on their respective positive Capital Accounts.

11.3. Gain or Loss. Any gain or loss on the disposition of LLC properties in the process of liquidation shall be credited or charged to the Members in proportion to their respective percentages of Financial Interests, except that gain or loss with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable U.S. Treasury regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on the sale of property, and shall be credited or charged to the Members accordingly.

11.4. LLC Assets Sole Source. The Members shall look solely to the LLC's assets for the payment of any debts or liabilities owed by the LLC to the Members and for the return of their capital contributions and liquidation amounts. If the LLC property remaining after the payment or discharge of all of its debts and liabilities to persons other than Members is insufficient to return the Members' capital contributions, they shall have no recourse therefor against the LLC or any other Members, except to the extent that such other Members may have outstanding debts or obligations owing to the LLC.

SECTION 12

Miscellaneous

12.1. Notices. Any notice under this Agreement shall be given and served either by personal delivery to the party to whom it is directed, or by registered or certified mail, postage and charges prepaid, and if it is sent to a Member, it shall be addressed with his address as it appears on the records of the LLC.

12.1.1. Any notice shall be deemed given when it is personally delivered, or, if mailed, on the date it is postmarked by the United States Postal Service, if it was addressed as required in this Section 12.1.

12.1.2. Any Member may change his address for purposes of this Agreement by written notice to the other Members, stating his new address. A change of address shall be effective fifteen (15) days after the notice is received by the other Members.

12.2. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation.

12.3. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity shall not affect the validity of the remainder of the Agreement.

12.4. Good Faith. The performance of any act or the failure to do any act by a Member or the LLC, the effect of which causes any loss or damage to the LLC, shall not subject such Member or the LLC to any liability, if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests.

12.5. Governing Law. This Agreement is to be construed according to the laws of South Carolina.

12.6. Cumulative Rights. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit a party's right to use any or all other

remedies. All rights and remedies in this Agreement are in addition to any other legal rights the parties may have.

12.7. Other Activities. A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the Act.

12.8. Confidentiality. No Member may, without every Member's express written consent, divulge to others any information not already known to the public pertinent to the services, clients, customers, or operations of the LLC, whether before or after the LLC's dissolution.

12.9. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

12.10. Waiver of Partition. Each Member waives any right to maintain any action for partition with respect to the LLC's property or assets during its term.

12.11. Binding Terms. The terms of this Agreement are binding upon and inure to the benefit of the parties and, to the extent permitted by this Agreement, their heirs, executors, administrators, legal representatives, successors, and assigns.

12.12. Personal Property. The interests of each Member in the LLC are personal property.

12.13. Gender and Number. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, et. seq. and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

SECTION 13

Definitions

13.1. Act. "Act" shall mean the South Carolina Uniform Limited Liability Company Act

of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

13.2. Agreement. The "Agreement" is the Palmetto Wildlife Extractors LLC Amended and Restated Operating Agreement, as amended from time to time. The Agreement shall include all exhibits, as they may be amended from time to time.

13.3. Articles. The "Articles" means the Articles of Organization filed on behalf of Palmetto Wildlife Extractors LLC, as may be amended from time to time.

13.4. Capital Accounts. The "Capital Accounts" or "LLC Capital" is the total of the Members' capital contributions.

13.5. Days and Months. "Day," "days," "month," and "months" refer to calendar days and months, including any days which fall on legal holidays or weekends.

13.6. Family Transfer. A "Family Transfer" is any transfer of Financial Interests to a spouse or a lineal descendant of a Member or to a trust for the benefit of a spouse or lineal descendant of a Member and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Financial Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

13.7. Financial Interests. "Financial Interests" means a Member's rights to share in profits and losses, a Member's rights to receive distributions and a Member's Capital Interest.

13.8. Governance Interests. "Governance Interests" means all a Member's rights as a Member in the Company, other than financial rights and the right to assign financial rights.

13.9. LLC. The "LLC" is Palmetto Wildlife Extractors LLC.

13.10. Majority Vote. "Majority Vote" means an affirmative vote of the Members holding more than fifty percent (50%) of the Governance Interests.

13.11. Members. The "Members" shall refer to Justin R. Ludy, W. Patrick Charing, and any persons who later become Members.

13.12. Membership Interests. The "Membership Interests" are the aggregate of Governance Interests and Financial Interests owned by the individual Members in the LLC as listed in Exhibit A or set forth in such Member's Contribution Agreement.

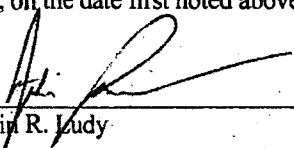
13.13. Net Cash Flow. Net Cash Flow is the LLC's total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital contributions).

and the proceeds of any LLC borrowing), and reduced by any principal payments on any LLC debts, expenditures to acquire or improve LLC assets, any proceeds from the sale or exchange of LLC assets, and such reasonable reserves and additions thereto as the Members shall determine to be advisable and in the best interests of the LLC.

13.14. Tax-Sensitive Adjustments. The "Tax-Sensitive Adjustments" are all adjustments to a Member's Capital Account that are not specifically required under the terms of this Agreement, but that are required by U.S. Treasury Regulations § 1.704-1(b)(2)(iv) ("Maintenance of Capital Accounts"), as amended. These adjustments shall be made annually, unless applicable regulations require a more frequent adjustment.

13.15. Transfer. A "Transfer" of a Member's interest includes any sale, pledge, encumbrance, gift, bequest, or other transfer or disposition of the Membership Interest, or permitting it to be sold, encumbered, attached, or otherwise disposed of, or changing its ownership in any manner, whether voluntarily, involuntarily, or by operation of law. "Transfer" shall not include any assignment of any Membership Interest to another Member or to any trust that is entirely revocable by the assignor, and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Membership Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement, under seal, on the date first noted above.


Justin R. Ludy


W. Patrick Charing

Exhibit A
Membership Interests

Member	Contribution	Financial Interest	Governance Interest
Justin R. Ludy	Continuing Interest	50%	51%
W. Patrick Charping	\$49,000 (Cash and Vehicle)	50%	49%

Exhibit B
Regulatory Allocations

The following Regulatory Allocations shall be made in the following order:

- 1. Minimum Gain Chargeback.** Except as otherwise provided in Treas. Reg. § 1.704-2(f), if there is a net decrease in Company Minimum Gain during any fiscal year, each member shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such member's share of the net decrease in Company Minimum Gain, determined in accordance with Treas. Reg. § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. § 1.704-2(f)(6) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(f) and shall be interpreted consistently therewith.
- 2. Member Minimum Gain Chargeback.** Except as otherwise provided in Treas. Reg. § 1.704-2(i)(4), notwithstanding any other provision in this Exhibit or the, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(i)(4) and shall be interpreted consistently therewith.
- 3. Qualified Income Offset.** In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Regs. § 1.704(b)(2)(ii)(d)(4), (5), or (6), items of LLC income and gain shall be specially allocated to such member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the member as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that the member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Exhibit or the Operating Agreement have been tentatively made as if this Paragraph were not in this Operating Agreement.
- 4. Gross Income Allocation.** In the event any member has an Adjusted Capital Account Deficit at the end of any fiscal year, such member shall be specially allocated items of LLC income and gain in the amount of such deficit as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that such member would have an Adjusted Capital

Account Deficit after all other allocations provided for in this Exhibit and the Operating Agreement have been made as if this Paragraph and Paragraph (3) were not in this Operating Agreement.

5. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated to the members in proportion to their share of profits and losses.

6. Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i)(1).

7. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any LLC asset pursuant to I.R.C. § 734(b) or I.R.C. § 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) or (m)(4), to be taken into account in determining capital accounts as a result of a distribution to a member in complete liquidation of such member's interest in the LLC, the amount of such adjustment to capital accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the members in accordance with their interests in the LLC in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the member to whom such distribution was made in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) applies.

8. Definitions. The following terms shall for purposes of this Exhibit and elsewhere in this Operating Agreement have the following definitions:

(A) "Adjusted Capital Account Deficit" means with respect to any member (or assignee), the deficit balance, if any, in such member's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (i) Credit to such capital account any amount which such member is deemed to be obligated to restore pursuant to the next to the last sentences in Treas. Regs. § 1.704-2(g)(1) and § 1.704-2(i)(5); and
- (ii) Debit to such capital account the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(B) "Company Minimum Gain" shall have the same meaning as "partnership minimum gain" as set forth in Treas. Reg. § 1.704-2(b)(2).

(C) "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" as set forth in Treas. Reg. § 1.704-2(b)(4).

(D) "Member Nonrecourse Debt Minimum Gain" has the same meaning as "partner nonrecourse debt minimum gain" as set forth in Treas. Reg. § 1.704-2(i)(2).

(E) "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" as set forth in Treas. Reg. § 1.704-2(i)(1).

(F) "Nonrecourse Deductions" has the same meaning as is set forth in Treas. Reg. § 1.704-2(b)(1).

(G) "Nonrecourse Liability" has the same meaning set forth in Treas. Reg. § 1.704-2(b)(3).

STATE OF SOUTH CAROLINA

- COUNTY OF LEXINGTONJustin R. Ludy

vs.

W. Patrick Charing

Defendant(s)

Submitted By: Benjamin P. Carlton
 Address: Richardson Plowden & Robinson, P.A.
P.O. Drawer 7788
Columbia, SC 29202

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

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ORIGINAL

SC Bar #: 101142
 Telephone #: (803) 771-4400
 Fax #: (803) 779-0016
 Other: _____
 E-mail: bcarlton@richardsonplowden.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
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☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☒ Other (199) <u>Breach of Fiduciary Duties</u> | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case # <u>20 -NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
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☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
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☐ Other (399) _____ | Real Property
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☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: [Signature]Date: 4/25/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous SCCA / 234 (03/2016)

Page 1 of 2

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Wildlife Extractors, LLC and Patrick Charing,

Plaintiff(s)

vs.

Justin Ludy and First Community Corporation d/b/a First Community Bank,

Defendant(s)

Submitted By: Margaret N. Fox

Address: 1116 Blanding Street
Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017CP4002822

-CP-

SC Bar #: 76228
Telephone #: 10576
Fax #: 803-744-0800
Other: 803-744-0805
E-mail: mfox@griffindavislaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

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Submitting Party Signature:

Date: May 10, 2017

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STATE OF SOUTH CAROLINA,)

COUNTY OF RICHLAND)

Palmetto Wildlife Extractors, LLC and
Patrick Charming,)

Plaintiff,)

vs.)

Justin Ludy and First Community
Corporation d/b/a First Community Bank,)

Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

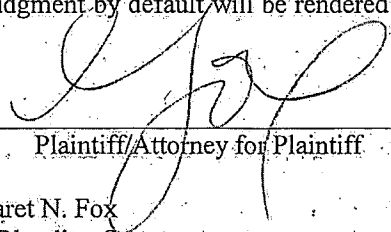
FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: May 10, 2017



Plaintiff/Attorney for Plaintiff

Address: Margaret N. Fox
1116 Blanding Street
Columbia, SC 29201

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Wildlife Extractors, LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No. _____

**VERIFIED
COMPLAINT
(JURY TRIAL DEMANDED)**

RICHLAND COUNTY
FILED
2017 MAY 10 PM 2:16
JANETTE W. MCBRIDE
Clerk, C.P. & S.

Introduction

In October 2014, Patrick Charping (Charping) acquired a 50% interest in Palmetto Wildlife Extractors, LLC (Palmetto Wildlife Extractors) from Justin Ludy (Ludy) in exchange for a capital contribution of \$49,000. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife Extractors. Ludy was granted a 51% governance interest, which is defined as "all of a Member's rights as a Member in the Company, other than financial rights." Despite agreeing to share 50% of all profits from Palmetto Wildlife Extractors, since 2015 Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife Extractors. In fact, Ludy has used Palmetto Wildlife Extractors' bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for non-business expenses. These personal expenditures include dues payments to Swinger lifestyle websites, attorneys' fees payments for Ludy's girlfriend's divorce lawyer, payments to Ludy's girlfriend, and payments to start a new business with Ludy's girlfriend.

By the end of 2015, Charping had enough. As a result, Charping and Ludy amended the Operating Agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping. Nevertheless, Ludy continued using the

business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017. In addition, Ludy withdrew \$33,747.30 more than Charping withdrew for tax payments in 2016.

Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational. In April 2017, Charping took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife Extractors' tax accountant. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife Extractors' accounting software and social media sites. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information. Since removing Charping from Palmetto Wildlife Extractors, Ludy has failed to make loan payments on loans that Charping has personally guaranteed, thereby harming Charping's credit and exposing him to personal liability.

Charping therefore brings this derivative lawsuit on behalf of Palmetto Wildlife Extractors against Ludy for freezing Charping out of the business operations and financial accounts of Palmetto Wildlife Extractors, for misappropriating the funds of Palmetto Wildlife Extractors, and against First Community Bank for aiding and abetting Ludy's breach of his fiduciary duties owed to Palmetto Wildlife Extractors. Charping also sues Ludy and First Community Bank for civil conspiracy and brings an additional claim of defamation against Ludy. Lastly, Charping also seeks an accounting, judicial dissolution of Palmetto Wildlife Extractors and requests the appointment of a receiver to supervise the winding up of the affairs of Palmetto Wildlife Extractors.

Parties

1. Plaintiff Palmetto Wildlife Extractors is a South Carolina limited liability corporation with its principal place of business located in Richland County, South Carolina.

2. Plaintiff Patrick Charping is a 50% owner of Palmetto Wildlife Extractors and is a citizen and resident of Lexington County, South Carolina.

3. Defendant Justin Ludy is a 50% owner of Palmetto Wildlife Extractors and is a citizen and resident of Lexington County, South Carolina.

4. Defendant First Community Corporation, d/b/a First Community Bank is a South Carolina corporation with its principal place of business in Lexington County. First Community Bank has a branch office in Columbia, South Carolina.

Jurisdiction and Venue

5. Jurisdiction is appropriate in this Court because all of the Defendants reside in South Carolina and conduct business in Richland County, South Carolina.

6. Venue is appropriate in Richland County, because Palmetto Wildlife Extractors has its headquarters in Richland County and the most substantial acts giving rise to the claims in this lawsuit occurred at either the Palmetto Wildlife Extractors office in Columbia or the First Community Bank Columbia branch.

Factual Allegations Common to All Causes of Action

7. In October 2014, Charping acquired a 50% interest in Palmetto Wildlife Extractors from Ludy in exchange for a capital contribution of \$49,000.

8. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife Extractors.

9. Ludy was granted a 51% governance interest, which is defined as "all of a Member's rights as a Member in the Company, other than financial rights."

10. Despite being entitled to a 50% share of all profits from Palmetto Wildlife Extractors, Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife Extractors since 2015.

11. In fact, Ludy has used Palmetto Wildlife Extractors' bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for personal, non-business related expenses.

12. For example, since 2014, Ludy has been withdrawing Palmetto Wildlife Extractors funds to pay membership dues to SDC Media Inc. According to its website, SDC Media Inc. is the "official app for SDC-Swingers Date Club." These payments were made during multiple months in 2015, 2016 and 2017, including payments of \$22.95 in January, February and March of 2017.

13. In 2015, Ludy wrote the below checks to his girlfriend Megan Thomas totaling \$11,028:

- a. 4/03/15 Check No. 1003 in the amount of \$1,074.
- b. 4/07/15 Check No. 1009 in the amount of \$220.00.
- c. 4/22/15 Check No. 1016 in the amount of \$780.00.
- d. 5/06/15 Check No. 1025 in the amount of \$1,270.00.
- e. 5/22/15 Check No. 1029 in the amount of \$804.00.
- f. 6/04/15 Check No. 1031 in the amount of \$2,155.00.
- g. 7/02/15 Check No. 1042 in the amount of \$2,225.00.
- h. 9/02/15 Check No. 1069 in the amount of \$2,500.00.

14. In addition to checks written directly to Ms. Thomas, Ludy also wrote twelve (12) separate checks totaling \$8,030.96 for the startup of a fashion apparel business by Ms. Thomas.

15. On October 28, 2015, Ludy wrote a check for \$1,800 to Kennard & Jones, LLC, who were Ms. Thomas' divorce attorneys, for fees she incurred during her divorce proceeding.

16. In October 2015, Charping and Ludy amended the Operating Agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping.

17. Despite this agreement, Ludy continued using the business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017.

18. In addition, Ludy withdrew \$57,944.92 for tax payments in 2016, whereas Charping only withdrew \$24,197.62 – a difference of \$33,747.30.

19. Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational.

20. In April 2017, Charping took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife Extractors' tax accountant.

21. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife Extractors' accounting software and social media sites.

22. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information.

23. Since removing Charping from Palmetto Wildlife Extractors, Ludy has failed to make loan payments on loans that Charping has personally guaranteed, thereby harming Charping's credit and exposing him to personal liability.

First Cause of Action

(Palmetto Wildlife Extractors' Derivate Claim for Breach of Fiduciary Duty)

24. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

25. Plaintiff Charping brings this derivative action on behalf of Palmetto Wildlife Extractors pursuant S.C. Code Ann. § 33-44-1101 on the grounds that an effort to cause the remaining member of Palmetto Wildlife Extractors to initiate this action is not likely to succeed for the following reasons:

- a. The claim is against Defendant Ludy, who has 51% governing interest in Palmetto Wildlife Extractors and is not likely to sue himself.
- b. Plaintiff Charping has requested on numerous occasions that Ludy stop withdrawing funds from Palmetto Wildlife Extractors' accounts and to retain more funds in Palmetto Wildlife Extractors' accounts; Defendant Ludy, in response, has ousted Charping from Palmetto Wildlife Extractors; blocking his access to the financial and business records of Palmetto Wildlife Extractors.
- c. Defendant Ludy has falsely accused Charping of theft.
- d. Defendant Ludy also filed suit against Charping in the Lexington County Court of Common Pleas accusing Charping of misconduct.

26. Defendant Ludy owes a fiduciary duty to both Palmetto Wildlife Extractors and Charping to refrain from misappropriating the funds of Palmetto Wildlife Extractors for personal

use; not to use funds of Palmetto Wildlife Extractors for the creation of a new business; not to place his self-interest above the interest of Palmetto Wildlife Extractors; and to avoid actions that are harmful to the operations of the business.

27. Defendant Ludy has breached his fiduciary duty by misappropriating the funds of Palmetto Wildlife Extractors for personal use, using funds of Palmetto Wildlife Extractors for the creation of a new business, placing his self-interest above the interests of Palmetto Wildlife Extractors, and otherwise taking actions that are harmful to the operations of the business.

28. Defendant Ludy is therefore liable to Palmetto Wildlife Extractors for actual and punitive damages.

29. Plaintiff Charping is also entitled to an award of attorneys' fees and reimbursement of costs from any award to Palmetto Wildlife Extractors.

Second Cause of Action

(Palmetto Wildlife Extractors' Derivate Claim for Aiding & Abetting Breach of Fiduciary Duty)

30. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

31. On the evening of April 4, 2017, Plaintiff Charping received an email from Ludy notifying him that his access to the Palmetto Wildlife Extractors accounts at First Community Bank had been blocked.

32. At 9:15 a.m. on April 5, 2017, Plaintiff Charping met with First Community Bank's Vice President Harry Jeffcoat and Drew Painter, Regional President to advise First Community Bank that he was improperly removed from the account.

33. During this meeting, Plaintiff Charping provided First Community Bank a copy of the operating agreement which specifically provides that Charping is entitled to equal access to the financial accounts of Palmetto Wildlife Extractors.

34. Plaintiff Charping demanded that First Community Bank provide him access to the account.

35. Messrs. Jeffcoat and Painter informed Plaintiff Charping that they would look into the matter, but needed some time to "fix it."

36. Later in the day on April 5, 2017, however, Vice President Jeffcoat sent an email to Plaintiff Charping and Defendant Ludy, with copies to other branch personnel, stating that First Community Bank would not reinstate Charping on the account.

37. As a result, Defendant Ludy, as aided and abetted by First Community Bank, has completely locked Charping out of the financial affairs of Palmetto Wildlife Extractors in violation of his fiduciary duty to Palmetto Wildlife Extractors and Charping.

38. Defendant First Community Bank knowingly participated in Defendant Ludy's breach of his fiduciary duty.

39. Palmetto Wildlife Extractors has suffered damages as a result of this breach for which Defendant First Community Bank is jointly and severally liable with Defendant Ludy.

40. Palmetto Wildlife Extractors is therefore entitled to an award of actual and punitive damages.

41. Plaintiff Charping is also entitled to an award of attorneys' fees and reimbursement of costs from any award to Palmetto Wildlife Extractors.

Third Cause of Action

(Plaintiff Charping's Claim for Civil Conspiracy)

42. Plaintiff Charping hereby incorporates the above allegations as fully and effectually as if re-stated herein verbatim.

43. Defendants Ludy and First Community Bank have conspired and joined together for the purpose of injuring Plaintiff Charping.

44. The actions undertaken jointly by Defendants have resulted in Charping's ouster from Palmetto Wildlife Extractors, thereby causing the dissolution of Palmetto Wildlife Extractors.

45. Plaintiff Charping has suffered special damages resulting from such ouster and dissolution, including but not limited to the loss of value to Charping's ownership interest in Palmetto Wildlife Extractors and the costs of dissolution of Palmetto Wildlife Extractors.

46. Defendants Ludy and First Community Bank are therefore jointly and severally liable to Charping for all special damages resulting from the Defendants' jointly undertaken actions.

47. Plaintiff Charping is also entitled to a separate award of punitive damages against Defendants Ludy and First Community Bank.

Fourth Cause of Action
(Plaintiff Charping's Claim for Defamation Against Ludy)

48. Plaintiff Charping hereby incorporates the above allegations as fully and effectually as if re-stated herein verbatim:

49. Defendant Ludy has falsely stated that Plaintiff Charping stole funds from Palmetto Wildlife Extractors and otherwise engaged in criminal actions that required he be removed from the financial affairs of the business.

50. These statements were made orally and in writing via text message and postings on social media.

51. Specifically, on April 5, 2017, Ludy sent a text message stating that Charping "has embezzled over \$50,000 from the company he used to be a part of. It's a criminal offense and action is already taken." This statement is libelous and therefore actionable per se.

52. That same day, shortly after removing Plaintiff Charping from Palmetto Wildlife Extractors, Defendant Ludy posted the following on social media: "Three ways to be removed

from my life: 1. Steal from me; 2. Lie to Me; 3. Gossip about me." This statement is defamatory per quod; is libelous, and therefore, actionable per se.

53. Defendant Ludy has also made slanderous statements falsely accusing Plaintiff Charping with the commission of a crime of moral turpitude, which are also actionable per se.

54. Defendant Ludy's defamatory statements are all actionable per se and damages are presumed as a matter of law.

55. Plaintiff Charping is therefore entitled to an award of actual and punitive damages against Defendant Ludy.

Fifth Cause of Action
(Appointment of Receiver, Accounting and Judicial Dissolution)

56. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

57. Plaintiffs Charping and Palmetto Wildlife Extractors seek an order pursuant to S.C. Code Ann. § 33-44-801 dissolving Palmetto Wildlife Extractors on one or more of the following grounds:

- a. another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
- b. it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; and
- c. the member in control of the company has acted, is acting, or will continue to act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to Plaintiff Charping.

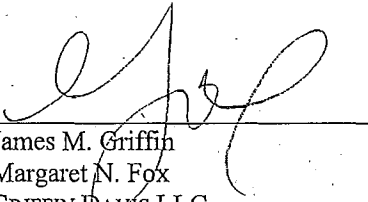
58. Plaintiffs Charping and Palmetto Wildlife Extractors further seek an order pursuant to S.C. Code 33-44-803(a) for the appointment of a receiver to take custody and control of the

financial accounts and all assets of Palmetto Wildlife Extractors and wind up the affairs of the business.

59. Plaintiffs Charming and Palmetto Wildlife Extractors further seek an order for an accounting requiring Defendant Ludy to account for and return all moneys that he has withdrawn to which he is not entitled to receive under the terms of the Operating Agreement, and Addendum thereto, and to reimburse Palmetto Wildlife Extractors for all personal expenses paid by Palmetto Wildlife Extractors on Defendant Ludy's behalf.

60. Plaintiffs Charming and Palmetto Wildlife Extractors seek any other equitable relief that the Court deems just and proper.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL NON-EQUITABLE CLAIMS

By: 

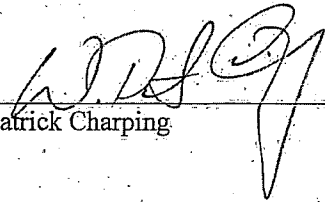
James M. Griffin
Margaret N. Fox
GRIFFIN DAVIS LLC
1116 Blanding Street
Columbia, South Carolina 29201
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Attorneys for Plaintiffs

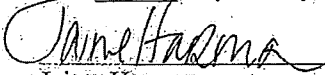
May 10, 2017
Columbia, South Carolina

VERIFICATION

I do hereby verify that the allegations contained the foregoing Complaint are true and correct to the best of my knowledge.


Patrick Charing

Sworn to and subscribed before me
This 10th Day of May, 2017


Jaime Harmon
Notary Public, State of South Carolina
My Commission Expires: September 1, 2019

RICHLAND COUNTY
FILED
2017 MAY 10 PM 2:16
JANETTE W. ANDERSON
C.C.P. & S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charing,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

Civil Case No. 2017-CP-40-02822

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO
DEFENDANT LUDY

TO: DEFENDANT JUSTIN LUDY

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiffs, by and through their attorneys, hereby propound and serve Defendant Justin Ludy with Plaintiffs' First Set of Interrogatories and request Defendant Justin Ludy submitted verified written answers to the same, in writing and under oath, within forty-five (45) days from the date of service hereof.

INSTRUCTIONS

(A) Every interrogatory herein shall be deemed a continuing interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such interrogatory, in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure.

(B) Should privilege be claimed with regard to any information requested herein, the answer must in each instance state specifically the information sought, the privilege claimed, and the ground on which the claim of such privilege is based. Should you be unable for reasons other than privilege to provide any information requested herein, the answer must in each such instance indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which such information will be presented to the undersigned.

(C) If you object to any portion of an interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

(D) If you object to an interrogatory on the ground that it is too broad (i.e., that it calls for information which is relevant to the subject matter of the action and information which is not), provide such information which is concededly relevant. If you object to an interrogatory on

the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking an undue burden. For those portions of any interrogatory to which you object to or otherwise decline to answer, state the reason for such objection or declination.

(E) When an interrogatory requests the identity of a natural person, the answer thereto should contain the following: (1) the full name of such person; (2) the employer and job title of such person at the time of the event, transaction, or occurrence to which the interrogatory is related; (3) the present employer and job title of such person, if known, and (4) the last known residential address and telephone number of such person. When an interrogatory requests the identity of a corporation, partnership, association, or other entity, the answer thereto should contain the following: (1) the full legal name of such entity; (2) all names by or under which such entity operates or otherwise conducts business; (3) the address of the principal place of business of such entity; (4) the State in which the organizational documents for such entity were filed or registered; (5) the name and address of the entity's agent for service of process, if known, and (6) the name of all persons who acted on behalf of such entity with respect to the subject matter of this interrogatory.

(F) When an interrogatory asks for the identity of or a description of a document, the answer thereto should contain the following: (1) the title, heading, or caption of such document; (2) identifying numbers or letters or combination thereof, if any, and an explanation of the significance of such numbers, letters or combination thereof; (3) all dates appearing on such document as dates that such document was dictated, prepared, mailed, received, or any combination thereof or, if no such date or dates appears thereon, the answer should so state and should give the exact or approximate date that such document was prepared; (4) a description of the general nature of the document and the number of pages of which it consists; (5) the name of each person known to have participated in the preparation thereof; (6) the names and addressee of the document and the names of all persons to whom such document or copy thereof was sent; (7) the name of the person who has custody of the original of such document and the name of each person with custody of a copy thereof. The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the interrogatory. The document itself may be produced as an alternative to providing such description.

DEFINITIONS

When used in the following interrogatories, the following definitions apply:

- And/Or: As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted to exclude any information otherwise within the scope of a request;
- Any: As used herein, the term "any" means one, some, or all of whatever quantity;

- Communication: The term "communication" means all written, oral, telephonic or other inquiries, dialogues, discussions, conversations, interviews, correspondence, consultations, negotiations, agreements, understandings, meetings, letters, notes, telegrams, advertisements, e-mail and all other documents evidencing any verbal or nonverbal interaction between or among persons and/or entities;

- Concerning or Relating To: As used herein, the terms "concerning" and "relating to" shall be construed in the broadest possible sense, and shall mean without limitation and whether in whole or in part: referring to, constituting, bearing upon, commenting upon, reflecting, evidencing, pertaining to, describing, depicting, consisting of, containing, comprising, embodying, identifying, stating, discussing, analyzing, studying, summarizing, dealing with, relating to, or having any logical or factual connection whatsoever with the subject addressed, regardless whether the factual connection is favorable to or adverse to you;

- Date: As used herein "date" shall mean the exact day, month and year if so ascertainable or, if not, the best approximation (including relationship to seasons and other events);

- Defendant or Justin Ludy or Ludy: As used herein, the terms "Defendant" and Justin Ludy and Ludy refer to Defendant Justin Ludy;

- Document or Documents: The terms "document" and "documents" are used in their broadest possible sense and refer, without limitation, to all written, printed, typed, photostatic, photographed, recorded, or otherwise reproduced communications or records of every kind and description, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, whether prepared by hand or by mechanical, electronic, magnetic, photographic, or other means, and including audio or video recordings of communications, occurrences or events. This definition includes, but is not limited to, any and all of the following: correspondence, notes, laboratory notebooks, research materials, minutes, records, messages, memoranda, telephone memoranda, diaries, contracts, agreements, invoices, orders, acknowledgements, receipts, bills, statements, checks, check registers, financial statements, journals, ledgers, appraisals, reports, forecasts, compilations, schedules, studies, summaries, analyses, pamphlets, brochures, advertisements, newspaper clippings, tables, tabulations, financial packaging, plans, photographs, pictures, film, microfilm, microfiche, computer-stored or computer-readable data, computer programs, computer printouts, e-mails, telegrams, telexes, telefacsimiles, tapes, transcripts, recordings, and all other sources or formats from which data, information, or communications can be obtained. The terms "document" and "documents" shall include all preliminary versions, drafts or revisions of the foregoing, and all copies of a document shall be produced to the extent that the copies differ from the document produced due to notations, additions, insertions, comments, enclosures, attachments or markings of any kind. Further, the terms "document" and "documents" shall include, without limitation, those categories as set forth in Rule 34(a) of the South Carolina Rules of Civil Procedure, specifically, writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form;

- Identify: As used herein, "identify" shall mean:

- (a) in connection with natural persons, see Instruction E above.
- (b) in connection with firms, partnerships, corporations, proprietorships, associations or other entities, see Instruction E above.
- (c) in connection with documents, see Instruction F above.
- (d) in connection with oral statements and communications: (i) the date and location where they were made; (ii) the identity of each of the participants and witnesses thereto, and all others present; (iii) the medium of communication; and (iv) their substance;

- PWE: As used herein, the term "PWE" shall mean Palmetto Wildlife Extractors LLC, and its officers, agents and employees.

- Plaintiffs: As used herein, the term "Plaintiffs" means Patrick Sharping and Palmetto Wildlife Extractors LLC.

- Relevant Time Period: shall mean the time period spanning from October 13, 2014 until the present.

- You or Your: The terms "you" and/or "your" shall refer to the Defendant as defined herein.

INTERROGATORIES

1. Identify all persons known to you or counsel to be witnesses concerning the facts of the case, indicating whether or not written or recorded statements have been taken from the witnesses, indicate who has possession of such statements, and providing a summary sufficient to inform the other party of the important facts known to or observed by such witness.

2. List the name and address of any expert witnesses who you propose to use as a witness at the trial of this case.

3. Identify all written agreements and contracts between Plaintiffs and Defendant Ludy.

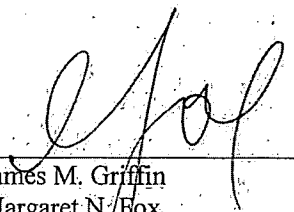
4. Identify all written agreements and contracts between Plaintiff Patrick Sharping and Defendant Ludy.

5. Identify all documents, emails, text messages, and social media posts written by

Defendant Ludy since April 1, 2017 that in any way reference Plaintiff Patrick Charping.

6. For each statement made by Defendant Ludy to any third person, other than counsel, discussing Plaintiff Patrick Charping's withdrawal of funds from PWE provide the following:

- (a) The identity of the person to whom the communication was made or delivered;
- (b) State whether the communication was written or oral;
- (c) The date of the communication; and
- (d) The verbatim content of the communication.

By: 

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mfox@griffindavislaw.com

ATTORNEYS FOR PLAINTIFFS

May 10, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

Civil Case No. 2017-CP-40-02822

PLAINTIFFS' FIRST SET OF REQUEST
FOR DOCUMENTS TO
DEFENDANT LUDY

TO: DEFENDANT JUSTIN LUDY

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiffs, by and through their attorneys, hereby serve Defendant Justin Ludy with Plaintiffs' First Set of Requests for Production and requests Defendant Ludy submit verified written responses and documents to the same within 45 days from service hereof on Plaintiffs' counsel of record.

INSTRUCTIONS

A. Every request herein shall be deemed a continuing request, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to, or in any way inconsistent with, your initial answer to any such request, in accordance with the South Carolina Rules of Civil Procedure.

B. Each document produced shall be specifically labeled or identified with the specific request made herein to which it is responsive, and shall be produced in a form which renders the document susceptible to copying. Any and all data or information which is in electronic or magnetic form should be produced in a reasonable manner.

C. Should privilege be claimed with regard to any information requested herein, the answer must in each instance state:

- i. The date of the document;
- ii. Its author;
- iii. The person receiving the document;
- iv. All persons to whom such information has been disclosed;
- v. The nature of the document (i.e., letter, memorandum, etc.);
- vi. The number of pages of such document and any attachment thereto; and
- vii. The specific privilege claimed or other reason the document is asserted to be non-discoverable.

D. Should you be unable for reasons other than privilege to provide any information requested herein, the answer must in each such instance indicate specifically the information sought, the reason such information is presently unavailable, persons with access to or in control of the information, and if applicable, an estimate of the time within which such information will be presented to the undersigned.

E. If you object to a request on the ground that it is too broad (i.e., that it calls for information which is relevant to the subject matter of the action and information which is not), provide such information which is concededly relevant. If you object to a request on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking an undue burden. For those portions of any request to which you object to or otherwise decline to answer, state the reason for such objection or declination.

F. To ensure efficient processing, production and review of all electronically stored information (ESI), the same should be produced in both native form and as single-paged tagged image file format (i.e., .tiff or .tif) files with an assigned bates number. A placeholder should be assigned for files provided in native format only, providing the bates number, filename and file path of the document on the placeholder. A separate document-level text file (i.e. .txt) file should be provided for each document produced. Standard load files including .DAT, .LFP or .OPT should be provided. The .DAT file should include standard metadata fields for documents,

but must include: begdoc, enddoc, begatt, endatt, parentid, attchids, author, to, from, cc, bcc, date and time specific fields for both e-mail and other document types, custodian, subject, application, MD5HASH, file name, doc link, folder and page-count. It is imperative that parent-child relationships for e-mail and their attachments in maintained and provided. If you have any further questions about this instruction, please contact the undersigned counsel.

DEFINITIONS

The following definitions apply to each Request set forth herein and are deemed to be incorporated in each Request:

- The terms “all” and “each” should be construed as “all and each.” The word “all” means “any and all,” and the word “any” means “any and all.” The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The term “including” means “including but not limited to.” The use of the singular form of any word includes the plural and vice versa. The use of any tense of any verb shall also include within its meaning all other tenses of that verb.

- “Between” shall encompass persons carbon-copied or blind-copied on any document or communication as defined herein.

- “Complaint” shall refer to Plaintiff’s Verified Complaint filed May 9, 2017 in the above-referenced matter, and any subsequent amended versions of the Verified Complaint in this matter.

- “Communications” refers to any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda,

conversations, dialogues, discussions, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and Company intranet, electronic bulletin board or Internet site posting), transcriptions of voice messages, memoranda, and notes, and other understandings between two or more Persons. The term "communications" specifically includes, but is not limited to, any exchange of information by any means of transmission, including, but not limited to, face-to-face conversations, mail, electronic mail, telegram, overnight delivery, telephone, facsimile or telex.

- "Concerning" means referring to, describing, evidencing, or constituting and includes any documents relating to, regarding, substantiating, purporting, embodying, establishing, identifying, listing, comprising, connected with, memorializing, recording, commenting upon, responding to, with respect to, showing, describing, analyzing, reflecting, representing, supporting, contradicting, or explaining, whether in whole or in part, a particular subject matter. Requests for documents "concerning" any subject matter include communications concerning that subject matter.

- "Defendant" or "Justin Ludy" or "Ludy" shall refer to Defendant Justin Ludy and any third party acting on his behalf.

- "Documents" means documents whether fixed in tangible medium or electronically stored on disk or tape. The word "documents" shall include, by way of example and not by way of limitation, all of the following: papers, correspondence, trade letters, envelopes, memoranda, telegrams, cables, notes, messages, electronic-mails ("e-mails"), text messages, instant electronic messages, reports, studies, press releases, comparison, books, accounts, checks, audio and video recordings, pleadings, testimony, articles, bulletins, pamphlets, brochures, magazines, questionnaires, surveys, charts, newspapers, calendars, desk

calendars, pocket calendars, lists, logs, publications, notices, diagrams, instructions, diaries, minutes of meetings, corporate minutes, orders, resolutions, agendas, memorials or notes of oral communications, whether by telephone or face-to-face, contracts, agreements, drafts of or proposed contracts or agreements, memoranda of understanding, letters of intent, deal memoranda, transcriptions of audio or video recordings, computer tapes, computer diskettes or disks, or any other tangible thing on which any handwriting, typing, printing, photostatic, electronic or other form of communication or information is recorded or reproduced, together with all notations on any of the foregoing, all originals, file copies or other unique copies of the foregoing and all versions of drafts thereof, whether used or not, contracts, time sheets, time cards, time records, cash register/computer records, payroll records, payroll summaries, server tip sheets, server checkouts, and checkout reports. This term also includes *electronically stored information*.

▪ “Electronically Stored Information” or “ESI” means all potentially discoverable electronically stored information and refers to ESI that contains or potentially contains information relating to facts at issue in this litigation. ESI includes, but is not limited to, all electronically stored documents and “electronically stored information” as that term is used in South Rules of Civil Procedure. ESI further includes, without limitation, the following:

- information or data that is generated, received, processed, and recorded by computers and other electronic devices, including metadata (e.g., author, recipient, file creation date, file modification date, etc.);
- files, information, or data saved on backup tapes or hard drives;
- internal or external web sites;
- output resulting from the use of any software program, including without limitation, word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, BlackBerry Messenger, AOL Instant Messenger (or similar programs or files), smartphone applications, bulletin

board programs, operating systems, source code of all types, Outlook Profile Files or PRF files, Palm Resource Code or PRC files, batch files, ASCII files, and all miscellaneous media on which they reside regardless of whether said electronic data exists in an active file, a deleted file, or file fragment;

- activity listings of electronic mail receipts and/or transmittals; and
 - any and all items stored on computer memories, hard disks, floppy disks, CDROM, magnetic tape, microfiche, DVDs, CDs, external hard drives, flash drives, memory cards or on any other media for digital data storage or transmittal, such as, but not limited to, personal digital assistants (e.g., Palm Pilots), hand-held wireless devices (e.g., BlackBerrys, iPhones), cell phones, iPods, or similar devices, and file folder tabs, or containers and labels appended to, or relating to, any physical storage device associated with each original or copy of all documents requested herein.
- “PWE” shall mean Palmetto Wildlife Extractors LLC, and its officers, agents and employees.
 - “Plaintiffs” shall refer to Patrick Sharping and Palmetto Wildlife Extractors, LLC.
 - “Relevant Time Period” shall mean the time period spanning from October 13, 2014 until the present.
 - The term “relating to,” “with respect to,” and “refer to” shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing, or otherwise pertaining to.
 - “Statement” includes, but is not limited to, each recordation of any interview or conversation with a witness, whether by a signed or unsigned writing, recording, court reported statement, or otherwise.
 - “You” or “Your” shall refer to Defendant as defined herein and anyone acting on his behalf.

REQUESTS

1. All documents utilized and referenced by Defendant in connection with answering Plaintiffs' Interrogatories.
2. Except as already identified in response to Request #1, produce all videotapes, photographs, plats, sketches, and recordings in your possession or control that relate to any of the claims or defenses in this case.
3. All documents identified in response to Plaintiffs' First Set of Interrogatories.
4. All emails, reports, notes, communications, opinions, memoranda, or other documentation provided to Defendant or his attorneys from any expert consulted by or retained by Defendant in this litigation.
5. All communications between Defendant Justin Ludy and any officer or employee of First Community Bank regarding or relating in any way to Plaintiff Patrick Charping.
6. All communications between Defendant Justin Ludy and any person regarding Plaintiff Patrick Charping's alleged embezzlement of funds from PWE.
7. All photographs, invitations, communications and other data downloaded onto any computer, cell phone, or other electronic device from the Swingers Dating Club App.
8. All QuickBook TM files of PWE during the relevant time period.
9. All cancelled checks written on any account in the name of or for the benefit of PWE during the relevant time period.
10. Record of all deposits into any business account of PWE during the relevant time period.
11. Record of all deposits into any personal account of Defendant Ludy during the relevant time period.

12. Record of all cash received by Defendant Ludy from customers of PWE for services performed during the relevant time period.

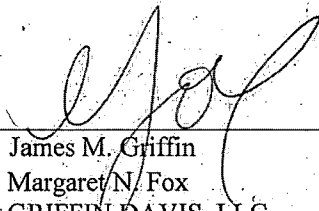
13. All credit charge statements for credit cards issued to PWE. Copies of all loan documents relating to any loan or extension of credit provided to PWE.

14. All resumes, curricula vitae, notes, emails, reports, opinions, photographs, documents, or communications made by or furnished to any expert witness that Defendant Ludy or his counsel expects to testify at trial.

15. All documents received by Defendant from a third party in response to a subpoena issued in this action.

16. All documents that Defendant relies on as a defense.

17. All documents that Defendant intends to use at trial for any purpose.

By: 

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ATTORNEYS FOR PLAINTIFFS

May 10, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Wildlife Extractors, LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No. 2017-CP-40-02822

PLAINTIFFS' FIRST REQUESTS FOR
ADMISSIONS TO
DEFENDANT LUDY

TO: DEFENDANT JUSTIN LUDY

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiffs, by and through their attorneys, hereby serve Defendant Justin Ludy with Plaintiffs' First Set of Requests for Admit and requests Defendant Justin Ludy submit verified written responses to the same within forty-five (45) days from service hereof on Plaintiffs' counsel of record.

INSTRUCTIONS

Written responses are required to the following requests for admission. "If objection is made, the reasons therefor shall be stated." S.C.R.Civ.P. 36(a). "The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." Id. "A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of a matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder." Id. "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny." Id. "A party who considers that a matter of which an admission has been requested presents a

genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it." Id.

Objections on account of vagueness should specifically explain why you believe the request is vague and should state your understanding of the information being sought along with a response consistent with your understanding.

DEFINITIONS

Unless a specific definition is provided below, the words and phrases contained in this request should be given their ordinary, dictionary, common sense definition. Unless specifically stated to the contrary, and unless another meaning is obvious from the context, the terms used herein shall have the same meaning as they have in the Verified Complaint, and Plaintiffs' Interrogatories and Requests for Production to Defendant Ludy in this action.

REQUESTS FOR ADMISSION

1. The document attached as Exhibit 1 hereto is a true and accurate statement of the amount of money withdrawn and the personal expenses paid for the benefit of each member of Palmetto Wildlife Extractors, LLC from January 1, 2015 through March 31, 2017.

Admit _____

Deny _____

2. The document attached as Exhibit 2 hereto is a true and accurate statement of payments made by Palmetto Wildlife Extractors, LLC for charges incurred by Justin Ludy for membership fees to SDC Media Inc., which is an online Swingers Date Club.

Admit _____

Deny _____

3. The document attached as Exhibit 3 hereto is a true and accurate statement of payments made to Ms. Megan Thomas from the account of Palmetto Wildlife Extractors, LLC.

Admit _____

Deny _____

4. The payments made to Ms. Megan Thomas reflected in Exhibit 3 were not for services she provided to or on behalf of Palmetto Wildlife Extractors, LLC.

Admit _____

Deny _____

5. The document attached as Exhibit 4 hereto is a true and accurate statement of payments made to Kinard & Jones, LLC from the account of Palmetto Wildlife Extractors, LLC.

Admit _____

Deny _____

6. The payments made to Kinard & Jones LLC reflected in Exhibit 4 were for legal services provided to Ms. Megan Thomas involving divorce and family court matters unrelated to the business of Palmetto Wildlife Extractors, LLC.

Admit _____

Deny _____

7. The document attached as Exhibit 5 hereto is a true and accurate statement of payments made from the account of Palmetto Wildlife Extractors, LLC for the start-up of a new business involving Justin Ludy and Ms. Megan Thomas.

Admit _____

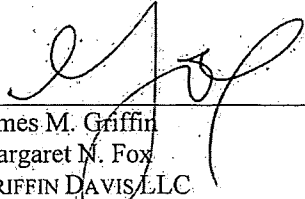
Deny _____

8. The document attached as Exhibit 6 hereto is a true and accurate copy of a text message sent by Justin Ludy stating in part "I hope you know what your husband is doing. He has embezzled over \$50,000 from the company he use to be a part of."

Admit _____

Deny _____

By:



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Margaret N. Fox
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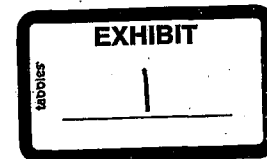
ATTORNEYS FOR PLAINTIFFS

May 10, 2017
Columbia, South Carolina

Analysis of Financial Benefit - January 1, 2015 to March 31, 2017

	31101 Draw J. Ludy	31150 Addt'l Draw J. Ludy	95100 Expense J. Ludy	95101 Tax Dist. J. Ludy	32101 Draw P. Charping	32150 Addt'l Draw P. Charping	20810 Payable to P. Charping	95200 Expense P. Charping	95201 Tax Dist. P. Charping
2015 YEAR									
Disbursed to (or on behalf of) member	161,984.73	-	-	-	69,797.00	-	-	-	-
Transfer from draw to expense	(92,187.73)	-	92,187.73	-	-	-	-	-	-
TOTAL FOR 2015	69,797.00	-	92,187.73	-	69,797.00	-	-	-	-
2016 YEAR									
Disbursed to (or on behalf of) member	80,800.00	19,347.39	9,600.00	-	80,800.00	690.49	10,621.78	-	-
Noncash distributions to member (to balance equity)*	-	-	-	-	-	18,656.90	(18,656.90)	-	-
TOTAL FOR 2016	80,800.00	19,347.39	9,600.00	-	80,800.00	19,347.39	(8,035.12)	-	-
2017 YEAR									
Disbursed to (or on behalf of) member	22,200.00	3,729.76	2,400.00	57,944.92	22,200.00	9,466.09	16,342.57	2,400.00	24,197.62
Noncash distributions to member (to balance equity)*	-	-	-	-	-	-	(2,400.00)	-	-
Loaned to business by member	-	-	-	-	-	-	(2,249.44)	-	-
Reclass - Draw/Liab	-	-	-	-	-	(4,594.38)	4,594.38	-	-
TOTAL FOR Q1 2017	22,200.00	3,729.76	2,400.00	57,944.92	22,200.00	4,871.71	16,287.51	2,400.00	24,197.62
	172,797.00	23,077.15	104,187.73	57,944.92	172,797.00	24,219.10	8,252.39	2,400.00	24,197.62
TOTAL FINANCIAL BENEFIT			J. Ludy	358,006.80			P. Charping	231,866.11	
		J. Ludy Excess over P. Charping		126,140.69			P. Charping Deficit relative to J. Ludy	(126,140.69)	

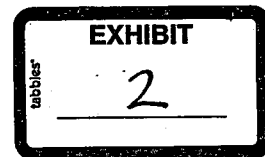
* Reflects adjustment to book a liability owed partner in order to bring equity to 50/50 with second partner.

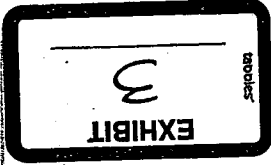


**Palmetto Wildlife Extractors
General Ledger**

January 1, 2014 - April 2, 2017

Date	Transaction Type	Num	Name	Memo/Description	Split	Amount	Balance
04/27/2015	Journal Entry	2052		60102 Purchase 04/24 SDC.COM MEMBERSHIPS-Split		14,366.97	X
10/28/2016	Journal Entry	5682		Purchase 10/25 SDC MEDIA INC 919 283 4414 NC-Split		20,784.97	X
11/28/2016	Journal Entry	6241		Purchase 11/25 SDC MEDIA INC 919 283 4414 NC-Split		307.39	X
01/03/2017	Journal Entry	7022		Purchase 01/01 SDC MEDIA INC 919 283 4414 NC-Split		-125.18	X
02/01/2017	Journal Entry	7123		Purchase 01/01 SDC MEDIA INC 919 283 4414 NC-Split		353.79	X
03/03/2017	Journal Entry	7356		Purchase 03/02 SDC MEDIA INC 919 283 4414 NC-Split		195.88	X
05/03/2014	Expense	Debit	Sdc Media	60190 Advertising & Marketing - Other		3,820.19	X
06/30/2014	Expense	Debit	Sdc Media	60190 Advertising & Marketing - Other		6,973.27	X
07/29/2014	Expense	Debit	Sdc Media	60190 Advertising & Marketing - Other		11,113.17	X
08/27/2014	Expense	Debit	Sdc Media	60190 Advertising & Marketing - Other		1,847.82	X
09/29/2014	Expense	Debit	Sdc Media	60190 Advertising & Marketing - Other		11,025.09	X
03/03/2017	Journal Entry	7356		Purchase 03/02 SDC MEDIA INC 919 283 4414 NC-Split		-22,607.15	X
04/27/2015	Journal Entry	2052		10115 Purchase 04/24 SDC.COM MEMBERSHIPS-Split		3,078.45	X
05/30/2014	Expense	Debit	Sdc Media	10200 WF - BUS CHECKING (x06484)		13,414.76	X
05/30/2014	Expense	Debit	Sdc Media	10200 WF - BUS CHECKING (x06484)		19,588.65	X
07/29/2014	Expense	Debit	Sdc Media	10200 WF - BUS CHECKING (x06484)		21,533.88	X
08/27/2014	Expense	Debit	Sdc Media	10200 WF - BUS CHECKING (x06484)		25,531.53	X
09/29/2014	Expense	Debit	Sdc Media	10200 WF - BUS CHECKING (x06484)		28,156.06	X
01/03/2017	Journal Entry	7022		Purchase 01/01 SDC MEDIA INC 919 283 4414 NC-Split		120,129.33	X
02/01/2017	Journal Entry	7123		Purchase 01/01 SDC MEDIA INC 919 283 4414 NC-Split		121,210.22	X
11/28/2016	Journal Entry	6241		Purchase 11/25 SDC MEDIA INC 919 283 4414 NC-Split		33,683.43	X
10/28/2016	Journal Entry	5682		Purchase 10/25 SDC MEDIA INC 919 283 4414 NC-Split		1,182.79	X





04/03/2015	Check	1003	Megan Thomas	10115 F	-1,074.00
04/07/2015	Check	1009	Megan Thomas	10115 F	-220.00
04/22/2015	Check	1016	Megan Thomas	10115 F	-780.00
05/06/2015	Check	1025	Megan Thomas	10115 F	-1,270.00
05/22/2015	Check	1029	Megan Thomas	10115 F	-804.00
06/04/2015	Check	1031	Megan Thomas	10115 F	-2,165.00
07/02/2015	Check	1042	Megan Thomas	10115 F	-2,225.00
09/02/2015	Check	1069	Megan Thomas	10115 F	-2,500.00
Mega Check to Megan Thomas					11,028

Payment to for Megan Thomas personal Divorce

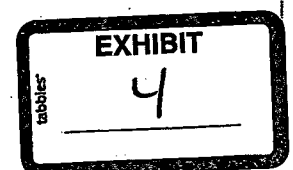
10/28/2015 Journal Entry JE 3118

JONES, KATHLEEN J. 10/27/2015 JONES, KATHLEEN J. 803-358-0003 803-7408

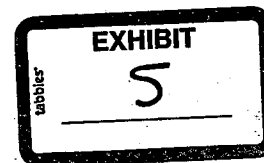
Split-

-1,800.00

1800



03/02/2015	Check	Fascination Apparel	10200 WF - BUS	-215.00
03/04/2015	Check	Love Tree fashion	10200 WF - BUS	-256.01
03/04/2015	Check	Fascination Apparel	10200 WF - BUS	-1,059.48
03/06/2015	Check	Pay Pal	10200 WF - BUS	-800.00
03/10/2015	Check	Fashionomics	10200 WF - BUS	-547.00
03/16/2015	Check	Fascination Apparel	10200 WF - BUS	-1,064.30
03/23/2015	Check	Fascination Apparel	10200 WF - BUS	-1,552.88
04/02/2015	Check	Fascination Apparel	10200 WF - BUS	-70.36
04/06/2015	Check	Fascination Apparel	10200 WF - BUS	-213.57
04/10/2015	Check	Fascination Apparel	10200 WF - BUS	-131.28
04/13/2015	Check	Fascination Apparel	10200 WF - BUS	-1,040.03
04/15/2015	Check	Fascination Apparel	10200 WF - BUS	-1,081.05
				-8,030.96



Verizon LTE

9:22 AM

74%

Done

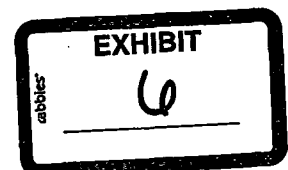
4 of 4

(415) 853-2321

Text Message
Today 8:35 AM

I hope you know what your husband is doing. He has embezzled over \$50,000 from the company he use to be a part of. It's a criminal offense and action is already taken. I'm sure he's told you none of this. He's good at keeping things from you.

about:blank



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT

PALMETTO WILDLIFE
EXTRACTORS, LLC, AND PATRICK
CHARPING,

C.A. No.: 2017-CP-40-00176

PLAINTIFFS,

ANSWER AND
COUNTERCLAIM

V.

JUSTIN LUDY AND FIRST
COMMUNITY CORPORATION,
D/B/A FIRST COMMUNITY BANK,

DEFENDANTS.

RICHLAND COUNTY
FILED
2017 JUL 14 AM 10:36
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

COMES NOW THE DEFENDANT, JUSTIN LUDY (hereafter "Ludy" or "Defendant")
answering the Complaint of the Plaintiff Charping¹ herein (hereafter "Complaint"), and would
respectfully show unto the appropriate tribunal as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation set forth in the Complaint which is
not hereinafter specifically admitted or to which a response is not otherwise provided.

FOR A SECOND DEFENSE

2. Answering Plaintiff's Introduction Paragraph on pages 1 and 2 of the Complaint,
Defendant responds and states that this Paragraph sets forth legal conclusions for
which no response is required. Defendant would further objects to the allegations in
this Paragraph in view of Rule 8's requirement that a pleading set forth a "short and

¹ Defendant files this Answer and Counterclaim in this Court in an abundance of caution in view of and subject to the pending motion to dismiss and compel arbitration, filed June 6, 2017. As set forth in that motion, this action by Charping should have been brought in arbitration, in accordance with the parties' Operating Agreement.

plain statement of the facts showing that the pleader is entitled to relief." Further subject to these objections, Defendant would respond and craves reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith, and specifically deny Charping's self-serving characterizations and commentary. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.

3. Answering Paragraph 1 of the Complaint, Defendant would admit only so much as alleges that Palmetto Wildlife Extractors, LLC ("PWE") is a South Carolina limited liability company with offices in Richland County. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.
4. Answering Paragraphs 2 and 3 of the Complaint, Defendant responds and admits only so much as alleges Defendant is a resident of Lexington County, and, on information and belief, that Charping is a resident of Lexington County, and would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith. The remaining allegations of this Paragraph set forth legal conclusions for which no response is required. To the extent any response if required to the remaining allegations of this Paragraph, Defendant denies.
5. Answering Paragraph 4 of the Complaint, Defendant responds and admits only so much as alleges the Paragraph identifies the bank that PWE has a banking relationship. Defendant is without information sufficient to admit or deny the remaining allegations of this Paragraph and therefore denies.
6. Answering Paragraphs 5 and 6 of the Complaint, Defendant responds and states the allegations of this Paragraph set forth legal conclusions for which no response is

required. To the extent any response is required to the remaining allegations of this Paragraph, Defendant denies.

7. Answering Paragraphs 7 to 23 of the Complaint, Defendant would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith, and specifically denies Charming's self-serving characterizations and commentary. To the extent any response is required to any remaining allegations of these Paragraphs, Defendant denies.
8. Answering paragraph 24 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.
9. Answering Paragraphs 25 to 29 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.
10. Answering paragraph 30 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.
11. Answering Paragraph 31 of the Complaint, Defendant would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.
12. Answering Paragraphs 32 to 36 of the Complaint, Defendant is without information sufficient to admit or deny the allegations of these Paragraphs and therefore denies.
13. Answering Paragraphs 37 to 41 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the

extent any response is required to the allegations of these Paragraphs, Defendant denies.

14. Answering paragraph 42 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

15. Answering Paragraphs 43 to 47 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

16. Answering paragraph 48 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

17. Answering Paragraphs 49 to 55 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

18. Answering paragraph 56 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

19. Answering Paragraphs 57 to 60 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

FOR A THIRD DEFENSE

20. Plaintiff's claims must be dismissed for failure to state a claim.

FOR A FOURTH DEFENSE

21. One or more of the Plaintiff's claims must be dismissed in accordance with the Business Judgment Rule.

FOR A FIFTH DEFENSE

22. One or more of Plaintiff's claims must be dismissed for failure to plead in accordance with Rule 9.

FOR A SIXTH DEFENSE

23. One or more of the Plaintiff's claims must be dismissed because those claims are pre-empted by other laws.

FOR A SEVENTH DEFENSE

24. One or more of the Plaintiff's claims must be dismissed due to the doctrines of estoppel, consent and waiver.

FOR A EIGHTH DEFENSE

25. The Plaintiff's claims fail because the Plaintiff has no damages, and also due to his failure to properly plead or prove damages.

FOR A NINTH DEFENSE

26. One of more of the Plaintiff's claims must be dismissed based upon the doctrine of privilege.

FOR A TENTH DEFENSE

27. One of more of the Plaintiff's claims must be dismissed based upon the First Amendment privilege of truth.

FOR A ELEVENTH DEFENSE

28. Defendant reserves the right to plead additional defenses or counterclaims as may arise in discovery in this action.

FOR A TWELFTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Fiduciary Duty)

29. Ludy herein asserts one or more of these claims on behalf of himself and the company / PWE as against Charping.

30. Prior to Charping's involvement in the company, Ludy had built the company and had acquired unique and valuable experience in the industry, which Charping did not possess.

31. Ludy's unique experience and work ethic make Ludy an invaluable asset to the company.

32. Ludy was at all times acting in accordance with his experience and judgment to protect the company, PWE, and his actions have in fact saved the company great expense, as well as other damages being caused to the company by the actions of Charping.

33. Charping took unauthorized expenditures for his own personal use, including specifically one unauthorized withdrawal in excess of \$32,000 in 2017.

34. Charping additionally refused to provide justification or any response to Ludy's inquiries regarding numerous other expenditures as was set forth in that certain civil action known as 2017-CP32-01416.

35. Charping additionally was not working and when he was allegedly at work for the company. His performance was that of an employee tempting his employer to be terminated for insubordination and gross negligence, such that Ludy had no choice

but to terminate Charping to protect the company and its reputation in the community in June of 2017, as set forth in a letter providing some of the reasons for the termination.

36. As will be shown at any arbitration trial or other adjudication of this matter, Charping's actions as set forth herein harmed the company and has caused it to lose revenue that cannot be recouped, despite the herculean and time consuming efforts of Ludy to maintain morale and revenue to the company.

37. As a result of Charping's breach of his duties to the company, the Company and Ludy have been damaged and are entitled to recover those actual and punitive damages from Ludy.

FOR A THIRTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Contract)

38. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

39. Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.

40. Plaintiff's neglect of his promises to fulfill his obligations to the company are a breach of contract.

41. Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.

42. Ludy is entitled to actual damages in an amount sufficient to compensate him for the loss of value of his interest in the company, the loss of his status as an effective fifty-one percent owner of the company, lost profits resulting from Plaintiff's failure and refusal to perform as promised, and such other relief as the appropriate tribunal may determine.

FOR A FOURTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Contract Accompanied by Fraudulent Act)

43. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

44. Charping, among other things, has filed a fraudulent insurance claim and, as such, has jeopardized the company's credit rating and standing in the community, as well as its ability to obtain insurance for certain of its vehicles associated with Charping.

45. These actions constitute a breach of Charping's contractual duties to the company.

46. Charping's other actions as identified herein also constitute a continues to refuses to meaningfully respond or justify his actions in taking said monies.

47. fraud on the company as he has refused to and have breached Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.

48. Ludy is entitled to actual damages in an amount sufficient to compensate him for the loss of value of his interest in the company, the loss of his status as an effective fifty-one percent owner of the company, lost profits resulting from Plaintiff's failure and refusal to perform as promised, and such other relief as the appropriate tribunal may determine.

FOR A FIFTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Constructive Trust - S.C. Code Ann. § 33-44-409(b)(1))

49. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

50. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Charping as part of the duty of loyalty that he owes the company and Ludy was required to "hold as trustee ... any property, profit, or benefit derived by the [M]ember in the conduct ... of the [company's] business or derived from a use by the [M]ember of the [company's] property."

51. Charping has failed to communicate with Ludy regarding his expenditures and activities for the company as set forth and referenced herein.

52. As such, Ludy respectfully requests an Order imposing a constructive trust on "any property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but not be limited to, all withdrawals from the company bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof.

FOR A SIXTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Duty of Loyalty S.C. Code § 33-44-409(b)(2) & Operating Agreement § 12.7)

53. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

54. Charping owes a duty of loyalty to the company and Ludy "to refrain from dealing with the [company] in the conduct ... of the [company's] business as ... a party having an interest adverse to the [company]."

55. Charping has breached this duty of loyalty owed to the company and Ludy by acting as a party having an interest adverse to the company by withdrawing funds from the company's bank accounts for non-company purposes; by paying personal expenses with company funds; by taking or otherwise removing company property and confidential information; and by failing to deposit company monies, among other actions.

56. Charping's breach of the duty of loyalty owed to Ludy has directly and proximately caused Ludy, as a Member and holder of a 51% Governance Interest and a 50%

Financial Interest, damages in an amount to be determined by this appropriate tribunal.

57. Additionally, based upon Charping's willful, wanton, and / or reckless breach of the duty of loyalty, Ludy is entitled to punitive damages, in an amount to be determined by the appropriate tribunal.

FOR A SEVENTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Duty of Good Faith and Fair Dealing, S.C. Code § 33-44-409(d) & Op. Agr. § 12.4)

58. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.
59. Charping owes an obligation of good faith and fair dealing to the company and Ludy.
60. Charping has breached this obligation of good faith and fair dealing by withdrawing funds from the company's bank accounts for non-company purposes, by paying personal expenses with company funds without explanation or accounting for same, and by taking or otherwise removing company property and confidential information, by failing to deposit company monies, and by not acting in the company's best interests.
61. Charping's breach of the obligation of good faith and fair dealing owed to Ludy has directly and proximately caused Ludy, as a Member and holder of a 51% damages Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this appropriate tribunal.
62. Additionally, based upon Charping's willful, wanton, and/or reckless breach of this obligation of good faith and fair dealing, Ludy is entitled to punitive damages, in an amount to be determined by the appropriate tribunal.

FOR AN EIGHTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Injunction – Temporary Restraining Order Rule 65)

63. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.
64. Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, will suffer immediate and irreparable injury, loss, or damage (the "Injury") if Charping continues to (i) withdraw funds from the LLC's bank accounts, without Ludy's approval, (ii) pay personal expenses with LLC funds, (iii) take, remove, or otherwise convert company property and confidential information, (iv) hold and fail to promptly deposit company monies, and / or (v) act adverse to the best interests of the LLC (collectively, the "Actions").
65. Absent Charping ceasing or being prevented from ceasing these Actions detrimental to the company and Ludy, Ludy does not have an adequate remedy at law to prevent or otherwise compensate him for such immediate and irreparable injury.
66. Therefore, based on the above, Ludy requests the assistance of the tribunal to prevent such immediate and irreparable injury, for which Ludy does not have an adequate remedy at law.
67. As such, Ludy is informed and believes that, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, he is entitled to the issuance of a temporary and a permanent injunction, enjoining, restraining, and prohibiting Charping from participating in any of the Actions.

FOR A NINETEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Judicial Expulsion & Dissociation - S.C. Code Ann. § 33-44-601(6))

68. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.
69. Based upon the foregoing allegations, the company cannot continue to operate with Charping's involvement in any way, whether by ownership or as an employee.
70. As a result of these actions by Charping, Ludy, as a Member of the company, is entitled to judicial expulsion and dissociation of Charping, pursuant to S.C. Code § 33-44-601(6), as Charping has: (i) engaged in wrongful conduct that has adversely and materially affected the LLC's business; (ii) willfully and persistently committed material breaches of the Operating Agreement and the duties he owes the company and Ludy under S.C. Code § 33-44-409; and (iii) engaged in conduct related to the company's business which makes it not reasonably practicable for Ludy to carry on the company's business with Charping.

PRAYER FOR RELIEF

WHEREFORE, Ludy requests that this tribunal:

- A. Issue an Order requiring Charping to fully account for all "property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but not be limited to, all withdrawals from the company's bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof;
- B. Issue an Order imposing a constructive trust on "any property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but

not be limited to, all withdrawals from the company's bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof;

C. Award Ludy damages, both actual and punitive, in an amount to be determined by the hearing tribunal;

D. Issue a temporary and permanent injunction, enjoining, restraining, and prohibiting Charping from participating in any of the Actions;

E. Expel and dissociate Charping from the company; and

F. Order such other and further relief as is deemed just, equitable, and proper under the circumstances as presented.

WESLEY D. FEW, LLC

s/Wesley D. Few/ 
Wesley D. Few, S.C. Bar No. 15565
1527 Blanding St., Suite 203
Columbia, South Carolina 29201
803-223-6942 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIMANT JUSTIN LUDY

Columbia, South Carolina
July 11, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

PALMETTO WILDLIFE
EXTRACTORS, LLC, AND PATRICK
CHARPING,

PLAINTIFFS,

V.

JUSTIN LUDY AND FIRST
COMMUNITY CORPORATION,
D/B/A FIRST COMMUNITY BANK,

DEFENDANTS.

2829
C.A. No.: 2017-CP-40-00176

NOTICE OF MOTION AND
MOTION TO DISMISS OR
STAY AND COMPEL
ARBITRATION BY
DEFENDANT JUSTIN LUDY

2017 JUN -6 PM 2:00
JEANETTE V. ROSENBERG
C.C.R. & G.S.

TO: MARGARET N. FOX, ESQ., AND JAMES M. GRIFFIN, ESQ., COUNSEL FOR
PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that, in accordance with S.C. R. CIV. P. RULE 12 on the tenth day after filing of this motion or at some other time that may be set by the Court, the undersigned attorneys for the Defendant Justin Ludy, ("Ludy" or "Defendant") will move this Honorable Court for an order dismissing this case and compelling arbitration in accordance with the parties' attached Operating Agreement for the LLC entity Plaintiff, which includes an agreement to arbitrate these claims (Exhibit A). Specifically, as shown in the attached Operating Agreement for the Plaintiff entity, Palmetto Wildlife Extractors, LLC, at page 10, Section 12.14, the parties agreed as follows:

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, *et. seq.* and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have

acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

Id.

Further grounds in support of this motion are set forth in the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3, which provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

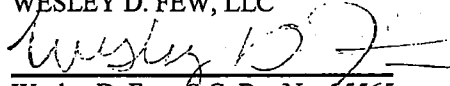
Id. Additionally, the policy of the state of South Carolina is to favor arbitration. General Equipment & Supply Co., Inc. v. Keller Rigging & Const., SC, Inc., 344 S.C. 553, 555, 544 S.E.2d 643, 645 (Ct. App. 2001) (stating, "Furthermore, it is the policy of this state to favor arbitration of disputes.").

For at least the reason that a binding arbitration agreement exists between the Plaintiff Charming and Defendant Ludy, and based upon the authorities referenced above, Defendant Ludy respectfully requests this Court issue an order dismissing or staying this action and compelling arbitration of this dispute.

Respectfully submitted,

[signature on next page]

WESLEY D. FEW, LLC



Wesley D. Few, S.C. Bar No. 15565
1527 Blanding St., Suite 203
Columbia, South Carolina 29201
803-223-6942 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANT JUSTIN LUDY

Columbia, South Carolina
June 6, 2017

**THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT
(SOUTH CAROLINA CODE SECTIONS 15-48-10, ET. SEQ.)**

**PALMETTO WILDLIFE EXTRACTORS LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

This Amended and Restated Operating Agreement (the "Agreement") for Palmetto Wildlife Extractors LLC, a South Carolina limited liability company (the "LLC"), is made and entered into and shall be effective as of October 13, 2014, by and between Justin R. Ludy and W. Patrick Charming (the "Members"). This Agreement is intended to supersede any and all prior agreements between the Members.

RECITALS

WHEREAS, on April 6, 2012, the LLC was organized by the filing of Articles of Organization with the South Carolina Secretary of State;

WHEREAS, the Members desire that W. Patrick Charming join the LLC as a member in exchange for capital contributions to the LLC in the amount of approximately \$49,000, including \$40,000 cash and a \$9,000 2006 Toyota Tacoma; and

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charming will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions.

NOW, THEREFORE, the Members agree as follows:

**SECTION 1
Name and Term**

- 1.1. Name. The LLC's name is Palmetto Wildlife Extractors LLC.
- 1.2. At-Will Company. The LLC shall be an at-will Company, as that term is defined in the South Carolina Limited Liability Company Act of 1996 (the "Act").

**SECTION 2
Nature of Business, Designated Office, and Agent**

2.1. Business. The LLC is formed to transact business related to a wildlife removal business, and to make such other investments and transact such other related business as the Members may deem appropriate for the LLC.

2.2. Designated Office. The LLC's Designated Office is at 959 East Main Street, Lexington, SC 29072, although the Members may change the LLC's Designated Office to another

location and add additional places of business.

2.3. Agent. The LLC's agent for service of process shall be Justin R. Ludy at 209 Sandy Valley Court, Gaston, SC 29053.

2.4. Principal Place of Business. The LLC's Designated Office shall be its principal place of business.

2.5. Income Tax Election. The LLC shall be taxed as a partnership for state and federal income tax purposes, and the LLC shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the LLC and the Members.

2.6. Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

SECTION 3 Capital and LLC Interests

3.1. Percentages. Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

3.2. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the LLC (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective shares of Financial Interest, upon dissolution of the LLC such deficit shall not be an asset of the LLC and such Members shall not be obligated to contribute such amount to the LLC to bring the balance of such Member's capital account to zero.

3.3. Adjustments. Each Member's Capital Account shall be adjusted as necessary to reflect the economic conditions of the Financial Interests. These adjustments shall include, but are not limited to, the following:

3.3.1. Adjustments to reflect each Member's distributive share of LLC profits and losses, including capital gains and losses, and tax-exempt income;

3.3.2. Adjustments to reflect each Member's additional contributions to the LLC;

3.3.3. Adjustments to reflect distributions made by the LLC to each Member;

3.3.4. Tax-Sensitive Adjustments (as defined below).

3.4. Loans. A Member's loans to the LLC shall not be added to his Capital Account.

3.5. Amount of Contributions. The amount of a Member's contributions of property to the LLC and of the LLC's distributions of property to a Member, shall be reflected in the Member's Capital Account at the fair market value of the property on the date of the contribution or distribution, reduced by any liabilities secured by that property, if those liabilities are treated under applicable federal income tax laws as being assumed by or taken subject to by the transferee.

3.6. No Interest Paid. A Member shall receive no interest on his capital contributions or Financial Interest.

3.7. Withdrawals. A Member may not withdraw his Capital Account except as expressly authorized in this Agreement.

SECTION 4 **Profits, Losses, and Cash Flow**

4.1. Profits and Losses. The LLC's net profits and losses (and each item of income, deduction, gain, loss, and credit that makes up net profits and losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting used by the LLC, and shall be allocated among the Members solely according to their respective percentage of Financial Interests. Notwithstanding this general rule, any income, gain, loss, and deduction with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis and the fair market value of the contributed property at the time of the contribution, in accordance with any applicable U.S. Treasury regulations.

4.2. Consent to Maintenance of Working Capital Reserve. The Members hereby authorize the establishment and continued maintenance of a working capital reserve in the amount of twenty percent (20%) of the LLC's annual net income after payment of the LLC's accrued and unpaid debts and expenses. Such reserve shall be kept in the LLC's bank accounts, funded with cash flows prior to any distributions to Members.

4.3. Assignment or Death. When a Member dies, retires, or assigns his Membership Interest, profits and losses shall be allocated based on the number of days in that year during which each Member owned a Financial Interest, or on any other reasonable basis selected by the remaining Members, as long as it is consistent with applicable United States tax laws and regulations.

4.4. Cash Flow. The Members shall cause the LLC to distribute its Net Cash Flow to the Members annually, in proportion to their respective percentage of Financial Interest.

SECTION 5 Management

5.1. Management. The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.1. The Members may sell real or personal property to any person, giving any warranties or assurances deemed appropriate;

5.1.2. The Members may buy, lease, or otherwise acquire real or personal property to carry on and conduct the LLC's business;

5.1.3. The Members may borrow money for the LLC's business;

5.1.4. The Members may issue promissory notes and other debt instruments (negotiable or nonnegotiable), in any amounts and secured by any encumbrance on all or any part of the LLC's assets;

5.1.5. The Members may assign any debts owing to the LLC;

5.1.6. The Members may engage in any other means of financing;

5.1.7. The Members may enter into any agreement for sharing of profits and any joint venture agreement with any person or entity engaging in any business or venture in which the LLC may engage;

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties;

5.1.9. The Members may execute any type of agreement or instrument in connection with any other LLC power;

5.1.10. The Members may employ all types of agents and employees (including lawyers and accountants), even if they are related to the Members by blood, marriage, or business relationship, and pay them reasonable compensation;

5.1.11. The Members may buy or otherwise obtain the use of any type of equipment or other property that may be convenient or advisable in connection with any LLC business;

5.1.12. The Members may incur any reasonable expense for travel, telephone, telegraph, insurance, taxes, and such other things in carrying on the LLC's business;

5.1.13. The Members may sue and be sued, complain, and defend in the name of and on behalf of the LLC; and

5.1.14. The Members may quitclaim, release, or abandon any LLC assets with or without consideration.

5.2. Voting. Each Member shall be entitled to vote in accordance with his respective percentage of Governance Interest. Unless otherwise provided by law or this Agreement, all actions of the LLC must be approved by a Majority Vote.

5.3. Tax Matters Partner. W. Patrick Charming shall be the "Tax Matters Partner," as defined for federal income tax purposes, and shall be solely responsible for representing the LLC in all dealings with the U.S. Internal Revenue Service and any state, local, and foreign tax authorities. The Tax Matters Partner shall keep the other Members reasonably informed of any LLC dealings with any tax agency.

SECTION 6

Financial Reports

Within a reasonable period after the close of each fiscal year, the Tax Matters Partner shall, at the LLC's expense, give a written report to each Member who requests it, indicating that Member's share of the LLC income or loss and any changes in that Member's Capital Account. This requirement may be satisfied by giving each Member a copy of any tax form that includes such information.

SECTION 7

Banking

All LLC funds shall be deposited in the LLC's name in such accounts as the Members may designate. The Members may authorize other persons to draw checks on LLC bank accounts, but such authority must be in writing. Each bank in which an LLC account is maintained is relieved of any responsibility to inquire into a Member's authority to deal with such funds.

SECTION 8

Transfer of Membership Interests

8.1. Limitations on Transfer. A Member shall not Transfer any Membership Interest except in accordance with the terms of this Section 8 or with the prior written consent of all of the other Members. An attempted Transfer of Membership Interest not in accordance with the terms of this Section shall not be valid and shall not be reflected on the LLC's books.

8.2. Right of First Refusal. A Member who wishes to Transfer any Membership Interest, or who has reason to believe that an involuntary Transfer or a Transfer by operation of law is reasonably foreseeable (an "Offering Member"), shall first give each other Member written notice of

the intent to Transfer such Membership Interest (the "Offered Interest") or of the knowledge that an Involuntary Transfer or Transfer by operation of law is reasonably foreseeable. This notice must contain a description of the portion of Membership Interest to be Transferred, the consideration (if any) to be paid, the terms of Transfer and of the payment of consideration (including but not limited to the relative percentages of cash and debt, and the terms of any debt instruments), and the name, address (both home and office), and business or occupation of the person to whom the Membership Interest would be transferred, and any other facts which are or would reasonably be deemed material to the proposed Transfer.

8.2.1. Upon the receipt of such notice, each other Member shall have a right to buy that share of the Offered Interest having the same proportion to all of the Offering Member's Membership Interest as the buying Member's Membership Interest bears to the Membership Interests of all Members (except the Offering Member).

8.2.2. Each Member may exercise this purchase option by giving the Offering Member written notice within thirty (30) days after receipt of the latter's notice.

8.2.3. If the Members do not agree to buy all of the Offered Interest, the Offering Member may complete the intended Transfer. If this Transfer is not completed within thirty (30) days after expiration of the option period, any attempted Transfer shall be deemed made under a new offer and this section shall again apply.

8.3. Agreement Price. The purchase price that the Members must pay for the Offered Interest under this Section 8 shall be the Lesser of (a) that of any proposed Transfer if the proposed Transfer for which notice was given is to be made for any valuable consideration in money or money's worth of property, or (b) an amount equal to the proportion that the Offered Interest bears to all outstanding Membership Interests, multiplied by the fair market value of the LLC's assets reduced by any liabilities of the LLC. The fair market value of the LLC's assets shall be determined by an independent appraisal performed by a professional appraiser selected by the unanimous consent of the Members. The LLC and the Offering Member shall share the cost of the appraisal.

8.4. Agreement Terms. Ten percent (10%) of the purchase price shall be paid in cash or by good personal check at the closing for the sale of such Membership Interest, and the balance shall be paid in twelve (12) equal quarterly principal payments beginning three (3) months after the date of such closing. Simple interest shall be added to each installment, computed against the outstanding principal balance at the Applicable Federal Rate determined for federal income tax purposes on the date of the closing. The buyer shall give the Offering Member a promissory note as evidence of this debt, and the buyer may prepay all or any part of the principal balance of the note at any time without penalty or premium.

8.5. The Closing. The purchase of a Membership Interest under this Section shall take place at a closing to be held not later than the thirtieth (30th) day after the earlier of the date on which the Members' purchase options have all expired, or the earliest date on which the Members in the

aggregate exercise their purchase options, if any, to buy all of the Offered Interest. The closing shall be held during normal business hours at the LLC's principal business office, or at any other place to which the parties agree. If the Offering Member is not present at the closing, then the buyer shall deposit the purchase price by check, note, or both, as this section requires, with any state or federally chartered bank with which the LLC has an account, as escrow agent, to be paid to the Offering Member as soon as is reasonably practicable, less an appropriate fee to the LLC (not to exceed one thousand dollars (\$1,000.00)) to cover additional administrative costs, and the LLC shall adjust its books to reflect the transfer of these Membership Interests.

8.6. Family Transfers. Notwithstanding any other provision herein to the contrary, a Member may make a Family Transfer of a Financial Interest. The transferee of any such Family Transfer shall be accepted as a substitute member of the LLC without the approval of the other Members and the Financial Interest shall remain subject to all the terms and conditions of this Agreement, including the transfer restrictions contained herein, in the hands of the transferee. A Member may not make a Family Transfer of a Governance Interest.

SECTION 9

Amendments

This Agreement shall be amended automatically to reflect any valid Transfers of Membership Interests. Otherwise, this Agreement shall be amended only with the unanimous vote of the Members owning a Governance Interest.

SECTION 10

Admission, Retirement, and Resignation of Members

10.1. Admission. A person may be admitted as an additional Member by the unanimous consent of the Members owning a Governance Interest (excluding any Member transferring a Membership Interest to the prospective new Member).

10.1.1. A Member need give no reason for voting not to admit an applicant as a new Member, and a Member may unreasonably withhold his agreement to such admission.

10.1.2. In no event may any person be admitted as a new Member unless that person consents in writing to be bound by this Agreement and pays the LLC a fee not to exceed one thousand dollars (\$1,000.00) to cover costs of preparing, executing, and recording all pertinent documents. Absent such unanimous consent, the individual to whom the Membership Interest was Transferred shall be an assignee and shall be entitled to share in the profits, losses and distributions to which the assigning Member would have been entitled, but not to participate in the management and affairs of the LLC.

10.2. Retirement and Resignation. A Member may resign, withdraw, dissociate, or retire from the LLC only with the unanimous consent of the Members.

SECTION 11

Dissolution

11.1. Causes. The LLC shall be dissolved only upon the occurrence of one of the following "Dissolution Events":

11.1.1. The affirmative vote of all of the Members owning a Governance Interest;

11.1.2. Any event occurs that makes it unlawful for all or substantially all of the business of the LLC to be continued, but any cure of illegality within ninety (90) days after notice to the LLC of the event is effective retroactively to the date of the event for purposes of this section;

11.1.3. On application by a Member or a dissociated Member, upon entry of a judicial decree as provided by Section 33-44-801(5) of the Act; or

11.1.4. The filing by the Secretary of State of a certificate administratively dissolving the LLC pursuant to Section 33-44-810 of the Act.

11.2. Upon Dissolution. Upon its dissolution, the LLC shall end and commence to wind up its affairs. The Members shall continue to share in profits and losses during liquidation as they did before dissolution. The LLC's assets may be sold, if a price deemed reasonable by the Members can be obtained. The proceeds from liquidation of LLC assets shall be applied as follows:

11.2.1. First, all of the LLC's debts and liabilities to persons other than Members shall be paid and discharged in the order of priority as provided by law;

11.2.2. Second, all debts and liabilities to Members shall be paid and discharged in the order of priority as provided by law;

11.2.3. Third, all remaining assets shall be distributed proportionately among the Members based on their respective positive Capital Accounts.

11.3. Gain or Loss. Any gain or loss on the disposition of LLC properties in the process of liquidation shall be credited or charged to the Members in proportion to their respective percentages of Financial Interests, except that gain or loss with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable U.S. Treasury regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on the sale of property, and shall be credited or charged to the Members accordingly.

11.4. LLC Assets Sole Source. The Members shall look solely to the LLC's assets for the payment of any debts or liabilities owed by the LLC to the Members and for the return of their capital contributions and liquidation amounts. If the LLC property remaining after the payment or discharge of all of its debts and liabilities to persons other than Members is insufficient to return the Members' capital contributions, they shall have no recourse therefor against the LLC or any other Members, except to the extent that such other Members may have outstanding debts or obligations owing to the LLC.

SECTION 12

Miscellaneous

12.1. Notices. Any notice under this Agreement shall be given and served either by personal delivery to the party to whom it is directed, or by registered or certified mail, postage and charges prepaid, and if it is sent to a Member, it shall be addressed with his address as it appears on the records of the LLC.

12.1.1. Any notice shall be deemed given when it is personally delivered, or, if mailed, on the date it is postmarked by the United States Postal Service, if it was addressed as required in this Section 12.1.

12.1.2. Any Member may change his address for purposes of this Agreement by written notice to the other Members, stating his new address. A change of address shall be effective fifteen (15) days after the notice is received by the other Members.

12.2. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation.

12.3. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity shall not affect the validity of the remainder of the Agreement.

12.4. Good Faith. The performance of any act or the failure to do any act by a Member or the LLC, the effect of which causes any loss or damage to the LLC, shall not subject such Member or the LLC to any liability, if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests.

12.5. Governing Law. This Agreement is to be construed according to the laws of South Carolina.

12.6. Cumulative Rights. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit a party's right to use any or all other

remedies. All rights and remedies in this Agreement are in addition to any other legal rights the parties may have.

12.7. Other Activities. A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the Act.

12.8. Confidentiality. No Member may, without every Member's express written consent, divulge to others any information not already known to the public pertinent to the services, clients, customers, or operations of the LLC, whether before or after the LLC's dissolution.

12.9. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

12.10. Waiver of Partition. Each Member waives any right to maintain any action for partition with respect to the LLC's property or assets during its term.

12.11. Binding Terms. The terms of this Agreement are binding upon and inure to the benefit of the parties and, to the extent permitted by this Agreement, their heirs, executors, administrators, legal representatives, successors, and assigns.

12.12. Personal Property. The interests of each Member in the LLC are personal property.

12.13. Gender and Number. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, et. seq. and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

SECTION 13

Definitions

13.1. Act. "Act" shall mean the South Carolina Uniform Limited Liability Company Act

of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

13.2. Agreement. The "Agreement" is the Palmetto Wildlife Extractors LLC Amended and Restated Operating Agreement, as amended from time to time. The Agreement shall include all exhibits, as they may be amended from time to time.

13.3. Articles. The "Articles" means the Articles of Organization filed on behalf of Palmetto Wildlife Extractors LLC, as may be amended from time to time.

13.4. Capital Accounts. The "Capital Accounts" or "LLC Capital" is the total of the Members' capital contributions.

13.5. Days and Months. "Day," "days," "month," and "months" refer to calendar days and months, including any days which fall on legal holidays or weekends.

13.6. Family Transfer. A "Family Transfer" is any transfer of Financial Interests to a spouse or a lineal descendant of a Member or to a trust for the benefit of a spouse or lineal descendant of a Member and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Financial Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

13.7. Financial Interests. "Financial Interests" means a Member's rights to share in profits and losses, a Member's rights to receive distributions and a Member's Capital Interest.

13.8. Governance Interests. "Governance Interests" means all a Member's rights as a Member in the Company, other than financial rights and the right to assign financial rights.

13.9. LLC. The "LLC" is Palmetto Wildlife Extractors LLC.

13.10. Majority Vote. "Majority Vote" means an affirmative vote of the Members holding more than fifty percent (50%) of the Governance Interests.

13.11. Members. The "Members" shall refer to Justin R. Ludy, W. Patrick Charping, and any persons who later become Members.

13.12. Membership Interests. The "Membership Interests" are the aggregate of Governance Interests and Financial Interests owned by the individual Members in the LLC as listed in Exhibit A or set forth in such Member's Contribution Agreement.

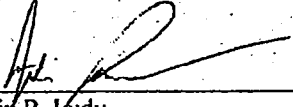
13.13. Net Cash Flow. Net Cash Flow is the LLC's total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital contributions

and the proceeds of any LLC borrowing), and reduced by any principal payments on any LLC debts, expenditures to acquire or improve LLC assets, any proceeds from the sale or exchange of LLC assets, and such reasonable reserves and additions thereto as the Members shall determine to be advisable and in the best interests of the LLC.

13.14. Tax-Sensitive Adjustments. The "Tax-Sensitive Adjustments" are all adjustments to a Member's Capital Account that are not specifically required under the terms of this Agreement, but that are required by U.S. Treasury Regulations § 1.704-1(b)(2)(iv) ("Maintenance of Capital Accounts"), as amended. These adjustments shall be made annually, unless applicable regulations require a more frequent adjustment.

13.15. Transfer. A "Transfer" of a Member's interest includes any sale, pledge, encumbrance, gift, bequest, or other transfer or disposition of the Membership Interest, or permitting it to be sold, encumbered, attached, or otherwise disposed of, or changing its ownership in any manner, whether voluntarily, involuntarily, or by operation of law. "Transfer" shall not include any assignment of any Membership Interest to another Member or to any trust that is entirely revocable by the assignor, and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Membership Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement, under seal, on the date first noted above.


Justin R. Judy

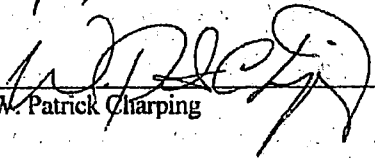

W. Patrick Charing

Exhibit A
Membership Interests

Member	Contribution	Financial Interest	Governance Interest
Justin R. Ludy	Continuing Interest	50%	51%
W. Patrick Charping	\$49,000 (Cash and Vehicle)	50%	49%

Exhibit B
Regulatory Allocations

The following Regulatory Allocations shall be made in the following order:

1. Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(f), if there is a net decrease in Company Minimum Gain during any fiscal year, each member shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such member's share of the net decrease in Company Minimum Gain, determined in accordance with Treas. Reg. § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. § 1.704-2(f)(6) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(f) and shall be interpreted consistently therewith.

2. Member Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(i)(4), notwithstanding any other provision in this Exhibit or the, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(i)(4) and shall be interpreted consistently therewith.

3. Qualified Income Offset. In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Regs. § 1.704(b)(2)(ii)(d)(4), (5), or (6), items of LLC income and gain shall be specially allocated to such member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the member as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that the member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Exhibit or the Operating Agreement have been tentatively made as if this Paragraph were not in this Operating Agreement.

4. Gross Income Allocation. In the event any member has an Adjusted Capital Account Deficit at the end of any fiscal year, such member shall be specially allocated items of LLC income and gain in the amount of such deficit as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that such member would have an Adjusted Capital

Account Deficit after all other allocations provided for in this Exhibit and the Operating Agreement have been made as if this Paragraph and Paragraph (3) were not in this Operating Agreement.

5. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated to the members in proportion to their share of profits and losses.

6. Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i)(1).

7. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any LLC asset pursuant to I.R.C. § 734(b) or I.R.C. § 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) or (m)(4), to be taken into account in determining capital accounts as a result of a distribution to a member in complete liquidation of such member's interest in the LLC, the amount of such adjustment to capital accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the members in accordance with their interests in the LLC in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the member to whom such distribution was made in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) applies.

8. Definitions. The following terms shall for purposes of this Exhibit and elsewhere in this Operating Agreement have the following definitions:

(A) "Adjusted Capital Account Deficit" means with respect to any member (or assignee), the deficit balance, if any, in such member's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (i) Credit to such capital account any amount which such member is deemed to be obligated to restore pursuant to the next to the last sentences in Treas. Regs. § 1.704-2(g)(1) and § 1.704-2(i)(5); and
- (ii) Debit to such capital account the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(B) "Company Minimum Gain" shall have the same meaning as "partnership minimum gain" as set forth in Treas. Reg. § 1.704-2(b)(2).

(C) "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" as set forth in Treas. Reg. § 1.704-2(b)(4).

(D) "Member Nonrecourse Debt Minimum Gain" has the same meaning as "partner nonrecourse debt minimum gain" as set forth in Treas. Reg. § 1.704-2(i)(2).

(E) "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" as set forth in Treas. Reg. § 1.704-2(i)(1).

(F) "Nonrecourse Deductions" has the same meaning as is set forth in Treas. Reg. § 1.704-2(b)(1).

(G) "Nonrecourse Liability" has the same meaning set forth in Treas. Reg. § 1.704-2(b)(3).

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charping,
Plaintiffs,

Civil Case No. 2017-CP-40-02822

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,
Defendants.

MOTION TO APPOINT RECEIVER

2017 JUN 29 PM 1:58
JANETTE W. MCBRIDE
CIC.P. & G.S.
RICHLAND COUNTY
FILED

Plaintiff Patrick Charping ("Charping"), by and through undersigned counsel, hereby files his Motion to Appoint a Receiver pursuant to S.C. Code Ann. § 15-65-10 and moves the Court for an order appointing a receiver for Plaintiff Palmetto Wildlife Extractors, LLC ("Palmetto Wildlife"). In support of this motion, Plaintiff Charping states as follows:

PROCEDURAL HISTORY

On April 25, 2017, Ludy filed a complaint against Plaintiff Charping in the Lexington County Court of Common Pleas, C.A. No. 2017-CP-32-01416 ("the Lexington suit"), seeking, among other remedies, the judicial expulsion and dissociation of Charping from Palmetto Wildlife. Lexington Compl., P. 10 §§ 46-47, p. 11 § E. In response, Plaintiffs Charping and Palmetto Wildlife filed the present action on May 10, 2017 seeking the appointment of a receiver, an accounting, and judicial dissolution of Palmetto Wildlife, in addition to other relief. Thereafter, Ludy dismissed the Lexington suit, and filed a Motion to Dismiss or Stay and Compel Arbitration of the present matter.

FACTS

Effective October 13, 2014, Charping acquired a 50% interest in Palmetto Wildlife from Defendant Justin Ludy (Ludy) in exchange for a capital contribution of \$49,000. V. Compl. ¶ 7; Aff. of W. P. Charping, June 29, 2017, ¶ 2, attached hereto as **Exhibit A**. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife Extractors. V. Compl. ¶ 8; Ex. A ¶ 2. Ludy was granted a 51% governance interest, which is defined as "all of a Member's rights as a Member in the Company, other than financial rights." V. Compl. ¶ 9; Ex. A ¶ 3.

Despite agreeing to share 50% of all profits from Palmetto Wildlife Extractors, since 2015 Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife Extractors. V. Compl. ¶ 10; Ex. A ¶ 4. In fact, Ludy has used Palmetto Wildlife Extractors' bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for non-business expenses. V. Compl. ¶ 11; Ex. A ¶ 5. These personal expenditures include dues payments to Swinger lifestyle websites, attorneys' fees payments for Ludy's girlfriend's divorce lawyer, payments to Ludy's girlfriend, and payments to start a new business with Ludy's girlfriend. V. Compl. ¶¶ 12-15; Ex. A ¶ 5.

By the end of 2015, Charping had had enough of Ludy's conduct. As a result, Charping and Ludy amended the Operating Agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping. V. Compl. ¶ 16; Ex. A ¶ 6. Nevertheless, Ludy continued using the business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017. V. Compl. ¶ 17; Ex. A ¶ 7. In addition, Ludy withdrew

\$57,944.92 for tax payments in 2016; whereas Charping only withdrew \$24,197.62 – a difference of \$33,747.30; V. Compl. ¶ 18; Ex. A ¶ 8.

Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational. V. Compl. ¶ 19; Ex. A ¶ 9. As early as March 2017, Ludy began restricting Charping's access to monitor the expenses incurred by Palmetto Wildlife. Ex. A ¶¶ 9, 12. For example, on March 31, 2017, Ludy removed Charping's administrative access to financial information and customer data within Palmetto Wildlife's QuickBooks software; thereby, preventing him from writing estimates while working, updating financial information on large projects, and communicating with customers regarding the status of their accounts. Ex. A ¶ 12.

In April 2017, Charping took a permissible tax draw of \$32,000 after verifying this amount with Palmetto Wildlife Extractors' tax accountant. V. Compl. ¶ 20; Ex. A ¶ 9. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife's accounting software and social media sites. V. Compl. ¶ 21; Ex. A ¶ 9. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information. V. Compl. ¶ 22; Ex. A ¶¶ 9-10. Subsequently, Ludy failed to make loan payments owed by Palmetto Wildlife that Charping personally guaranteed, thereby harming Charping's credit and exposing him to personal liability. V. Compl. ¶ 23; Ex. A ¶ 10. Ludy's failure to make timely payments also negatively impacts the credit history of Palmetto Wildlife. Ex. A ¶ 10.

Following Charping's filing of this suit, Ludy has: (1) continued to miss loan payments of the business guaranteed by Charping, (2) removed Charping from accessing all commercial revolving accounts of the business that are also guaranteed by Charping, (3) removed Charping's

access to company financial and scheduling software, customer accounts, and payroll data, (4) refused to distribute Charping's earnings; (5) terminated Charping's employment as of June 16, 2017; (6) changed all of the locks to the Palmetto Wildlife building for which Charping is the sole signor on the lease renewal; and (7) sent Charping self-serving emails and communications containing factually inaccurate statements in an attempt to construct a paper record to presumably defend his improper conduct. Ex. A ¶¶ 12-15.

ARGUMENT

The Court should appoint a receiver prior to resolution of the present suit to prevent Defendant Ludy from further improper dissipation of the company's assets and to protect Plaintiff Charping's financial interest in the company as well as his personal credit that is tied to the company by personal guarantees on certain lines of credit. The appointment of a receiver is proper before judgment when a party "establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or [] profits, are in danger of being lost or materially injured or impaired." S.C. Code Ann. § 15-65-10(1) (1976, as amended). This is especially true "in actions for dissolution where a partner is misusing, wasting, mismanaging or misappropriating firm property" and compels action from the Court to address the same. *Wrenn v. Wrenn*, 91 S.E.2d 267, 269 (S.C. 1956).

As set forth in the Verified Complaint and Affidavit of Plaintiff Charping, Defendant Ludy has a history of improperly taking more than 50% of all profits from Palmetto Wildlife and using said funds to pay for non-business expenses incurred by himself and his girlfriend. Ludy's revocation of Charping's access to all company financial records is not only a violation of the Operating Agreement, but prevents Charping from monitoring the spending of Ludy and leaves Palmetto Wildlife vulnerable to misappropriation of its funds by Ludy. Additionally, Charping

has no way of preventing Ludy from continuing to default on company loans for which Charping is the personal guarantor or primary obligor, including revolving commercial accounts and the lease for the building out of which Palmetto Wildlife operates.

Not only has Ludy breached his fiduciary duties to the company, through misappropriation of company funds for personal use and to start a separate business, but his efforts to constructively evict Charping while simultaneously defaming him warrant dissolution of Palmetto Wildlife pursuant to SC Code Ann. § 33-44-801(4) (1976, as amended). Ludy's conduct has undoubtedly "unreasonably frustrated" the economic purpose of the company and made it impractical for Charping to carry on the company's business with Ludy and in conformity with the Operating Agreement. S.C. Code Ann. § 33-44-801(4)(a)-(c). Moreover, the ousting of Charping from Palmetto Wildlife by Ludy, and the continued misappropriation of company funds by Ludy for non-business expenses illustrates that Ludy, as the member in control of the company, has acted and will continue to act in a manner that is fraudulent and unfairly prejudicial to Charping as a member entitled to 50% of the profits from Palmetto Wildlife. § 33-44-801(4)(e).

Given Ludy's misuse of Palmetto Wildlife money and the danger presented to Charping's 50% financial interest in the company, the appointment of a receiver is necessary to protect the interests of Palmetto Wildlife and Charping throughout the dissolution of the company. *Wrenn*, 91 S.E.2d at 269.

CONCLUSION

Based on the foregoing, Plaintiff Charping respectfully requests the Court appoint a receiver to oversee and manage, while simultaneously protecting, the assets of Palmetto Wildlife pending dissolution and the winding-up of the company.

By:


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mfox@griffindavislaw.com

Attorneys for Plaintiffs

June 29, 2017
Columbia, South Carolina

Exhibit A

Affidavit of W. Patrick Charping

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

Civil Case No. 2017-CP-40-02822

RICHLAND COUNTY
FILED
2017 JUN 29 PM 1:58
JEANETTE W. MCBRIDE
C.C.P. & G.S.

AFFIDAVIT OF W. PATRICK CHARPING

Personally appearing before me, W. Patrick Charping, after being duly sworn deposes and states:

1. I am over the age of 18 and submit this affidavit in support of my motion to have a receiver appointed for Palmetto Wildlife Extractors, LLC ("Palmetto Wildlife" or "Company") because I have been ousted from the Company in which I own a 50% interest.
2. Effective October 2014, I acquired a 50% interest in Palmetto Wildlife from Justin Ludy ("Ludy") in exchange for a capital contribution of \$49,000.
3. Under the terms of the Operating Agreement, Ludy and I were to share equal control over the financial rights of Palmetto Wildlife.
4. Despite being entitled to 50% of the profits from Palmetto Wildlife, Ludy has taken in excess of \$126,000 more than myself from the financial accounts of Palmetto Wildlife since 2015.
5. It has been Ludy's practice to make payments for personal, non-business related expenses from Palmetto Wildlife's bank accounts. For example, Ludy has withdrawn funds from

Palmetto Wildlife to pay for membership dues to SDC Media Inc. – the “official app for SCD-Swingers Date Club” and to Kennard & Jones, LLC, who were his girlfriend Ms. Thomas’ divorce attorneys for fees she incurred during her divorce proceeding. Ludy has also written checks from Palmetto Wildlife’s account directly to Ms. Thomas for over \$11,000 and issued additional checks for over \$8,000 for the startup of a fashion apparel business by Ms. Thomas.

6. In October 2015, Ludy and I amended the Operating Agreement to establish set salaries for each of us in an effort to prohibit Ludy from withdrawing money from Palmetto Wildlife for personal use unless I agreed to the same. The only way to change the amount of salary each of us receives is by amending the Operating Agreement, which requires that we both agree.

7. Despite this amendment, Ludy withdrew approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017.

8. In addition, Ludy withdrew \$57,944.92 for tax payments in 2016, whereas I only withdrew \$24,197.62 – a difference of \$33,747.30.

9. When I would withdraw agreed upon funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational towards me. For example, in April 2017, I took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife’s tax accountant. Thereafter, Ludy accused me of theft, blocked my access to Palmetto Wildlife’s accounting software and social media site. He also had First Community Bank remove me from all of Palmetto Wildlife bank accounts, preventing me from accessing any funds or viewing any account information.

10. As a result of First Community Bank’s agreement to block me from accessing the account, I am unable to ensure that loan payments of Palmetto Wildlife that I have personally guaranteed, are paid in a timely manner. Additionally, Ludy’s failure to make some of these loan

payments harms my credit and exposes me to personal liability. It also negatively impacts the credit history of the Company.

11. Since the beginning of my involvement with Palmetto Wildlife, I have been responsible for day to day operations and all financial management and oversight of the business. This included, managing the schedule of Palmetto Wildlife employees so as to maximize the work flow abilities of Palmetto Wildlife and streamlining business processes related to our most lucrative clients – insurance companies – so as to ensure the timely provision of services to the needs of their insureds. I also was in charge of all hiring, firing, and performance reviews for employees.

12. Set forth below is a timeline of events beginning in March 2017 illustrating some of the actions taken by Ludy to oust me from any involvement in Palmetto Wildlife and the damage resulting from the same:

- **March 30, 2017 – Verizon Account** – Removing my administrative rights to Palmetto Wildlife's Verizon account, leaving me unable to monitor charges or access any of individual user accounts.
- **March 31, 2017 – QuickBooks** – Limiting my access to Palmetto Wildlife's financial software, QuickBooks, containing financial information and customer data. Such limitations interfered with my ability to conduct business on behalf of Palmetto Wildlife by, among other things, preventing me from writing estimates while I was working and from amending and editing financial information regarding ongoing projects worth tens of thousands of dollars.
- **April 4, 2017 – First Community Bank Accounts**: Removing my access to all Palmetto Wildlife accounts held at First Community Bank, thus preventing me from ensuring all Palmetto Wildlife bills are paid on time and the Company loans I have personally guaranteed stay current.
- **April 5, 2017 – Scheduling Software** – Removing my administrative access to Palmetto Wildlife's scheduling software, thus impairing my ability to run the operations of the Company, while simultaneously building and maintaining revenue from its most lucrative sources, namely insurance companies. Following such removal, Ludy assigned my responsibilities to another employee who lacked the experience necessary to takeover my responsibilities. As a result, Palmetto Wildlife has lost potential job opportunities and clients.

- **May 3, 2017 – Delinquent Sun Trust Bank Vehicle Loan 1st offense** – I was notified that the Sun Trust Bank Vehicle Loan payment due April 15, 2017 and personally guaranteed by me was not made.
- **May 3, 2017 – Delinquent Fuel Account 1st offense** – I was notified that the Universal Fuel Card payment due April 20, 2017 and personally guaranteed by me was not made.
- **May 22, 2017 – Insurance Software and Financials** – Removing my access to all customer information and financial data regarding our largest profit center and insurance claims.
- **May 23, 2017 – Delinquent Sun Trust Bank Vehicle Loan 2nd Offense** – I was notified that the Sun Trust Bank Vehicle Loan payment due May 15, 2017 and personally guaranteed by me was not made.
- **May 25, 2017 – Delinquent Palmetto Citizens Bank Vehicle Loan 1st Offense** – I was notified that the Palmetto Citizens Vehicle Loan payment due May 5, 2017 and personally guaranteed by me was not made.
- **June 9, 2017 – Delinquent Palmetto Citizens Bank Vehicle Loan 2nd Offense** – I was notified that the Palmetto Citizens Vehicle Loan payment due May 5, 2017 and personally guaranteed by me had still not been made.
- **June 15, 2017 – Salary** – Failure to pay agreed upon salary as required by the Operating Agreement.
- **June 17, 2017 – Company Email** – Removing my access to Company email containing financial records, statements and correspondence to customers, contracts, accounts and employees.
- **June 17, 2017 – Scheduling Software and Customer Accounts** – Removing all of my access to Company customer data containing financial records, statements of accounts and customer notes and correspondence.
- **June 17, 2017 – QuickBooks** – Removing all of my access to all of Palmetto Wildlife's financial accounting information within QuickBooks.
- **June 17, 2017 – Home Depot Account** – Closing the Home Depot commercial revolving account held by Palmetto Wildlife and guaranteed by myself, which negatively impacts the business credit history and my own.

- **June 18, 2017 – Lowe's Revolving Account** – Attempting to close the Lowe's commercial revolving account held by Palmetto Wildlife and guaranteed by myself, which would have been damaging to the business credit history and my own. Additionally, Ludy removed all of my online access to the Lowe's account, thus barring my access to an account which I have personally guaranteed.
- **June 19, 2017 – Removal From access to Payroll** – Removing my access to all payroll data for the Company, thus prohibiting me from viewing this financial information of the Company.
- **June 23, 2017 – Changed Locks of Palmetto Wildlife** – Removing my access to the Palmetto Wildlife office by having the locks changed to a building currently being leased during a 3-year renewal period authorized by me and for which I am responsible.

13. In addition to the actions outlined above, Ludy has sent me numerous emails since March 2017 containing factual misrepresentations regarding my work and the business which I can only assume are an effort by him to build a paper case to support his improper actions.

14. He also sent a defamatory text message to my wife in April 2017 stating I stole funds from Palmetto Wildlife and otherwise engaged in criminal actions requiring I be removed from the financial business of the Company.

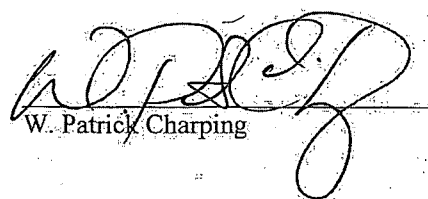
15. Despite my 50% financial ownership of Palmetto Wildlife, Ludy sent me a termination letter dated June 16, 2017 that also contains numerous falsehoods that allegedly constitute the grounds for my termination from Palmetto Wildlife.

16. Presently, I have no way of monitoring the financial status of Palmetto Wildlife – the Company of which I am a 50% owner. Nor do I have any means of ensuring the actions of Ludy will not continue to harm my credit or that of Palmetto Wildlife.

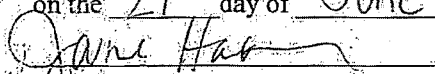
17. Ludy's conduct is not only unfairly prejudicial to myself and a breach of his fiduciary duty to Palmetto Wildlife, but it has made it impractical for me to carry on the business with him as a member of Palmetto Wildlife.

FURTHER AFFIANT SAYETH NOT.

Date: 6/29/17


W. Patrick Charing

Sworn to and subscribed before me
on the 29th day of June, 2017.


Jane Har

Notary Public for South Carolina
My Commission Expires September 1, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

Civil Case No. 2017-CP-40-02822

**MOTION FOR CASE ASSIGNMENT TO
THE BUSINESS COURT PROGRAM**

2017 JUL 28 PM 2:23
FILED
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

1. As counsel for a party who has appeared in this action, Plaintiffs move for an order of the Chief Business Court Judge assigning this case to the Business Court Program of the South Carolina Circuit Courts. Plaintiffs certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, Plaintiffs certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program.

(Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

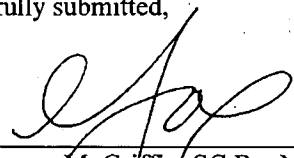
- ☒ Title 33—South Carolina Business Corporation Act of 1988;
- ☐ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☐ Other Appropriate Matter determined by the Chief Justice.

3. Indicate whether the non-moving party or parties:

- Defendant Ludy: ☐ consents, ☐ does not oppose, ☒ opposes; ☐ position on assignment is unknown.
- Defendant First Community Bank: ☒ consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

Respectfully submitted,

By:


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Margaret N. Fox, SC Bar No. 78226
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Attorneys for Plaintiffs

WE SO CONSENT:


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Columbia, SC 29201
T: (803) 799-2000

Attorneys for First Community Bank

July 28, 2017
Columbia, South Carolina

ATTACHMENT

Description of Claims

Civil Case No. 2017-CP-40-02822

Plaintiff Charping and Defendant Ludy each own 50% of Plaintiff Palmetto Wildlife. Plaintiff Charping and Palmetto Wildlife filed the instant action against Defendant Ludy alleging Ludy has improperly taken funds from Palmetto Wildlife, constructively evicted Plaintiff Charping from the business, and made defamatory statements about Charping being involved in criminal activity. Plaintiffs also allege that First Community Bank improperly removed Charping's access to the business accounts which he personally guaranteed, thereby conspiring with Defendant Ludy to constructively remove Charping from the business. Based on these allegations, Plaintiffs brought the following causes of action against the Defendants:

- Plaintiff Palmetto Wildlife:
 - o Derivative Claim against Defendant Ludy for Breach of Fiduciary Duty (S.C. Code Ann. § 33-44-1101)
 - o Derivative Claim against Defendant First Community Bank for Aiding and Abetting Defendant Ludy's Breach of Fiduciary Duty
- Plaintiff Charping:
 - o Civil Conspiracy against the Defendants
 - o Defamation against Defendant Ludy

Plaintiffs also raised a claim seeking the appointment of a receiver (S.C. Code Ann. § 33-44-803(a)), an accounting, and the judicial dissolution of Palmetto Wildlife (S.C. Code Ann. § 33-44-801).

Defendants denied Plaintiff's claims. Additionally, Defendant Ludy has asserted counterclaims against Plaintiff Charping for breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of duty of loyalty (S.C. Code Ann. § 33-44-409(b)(2)), and breach of the duty of good faith and fair dealing (S.C. Code Ann. § 33-44-409(d)). Defendant Ludy also set forth claims for imposition of a constructive trust (S.C. Code Ann. § 33-44-409(b)(1)), an injunction, and judicial expulsion and dissociation of Charping from Palmetto Wildlife (S.C. Code Ann. § 33-44-601(6)).

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No. 2017-CP-40-02822

CERTIFICATE OF SERVICE

FILED
2017 JUL 28 PM 2:23
JEANNETTE W. MOORE
C.C.P. & G.S.

I, Jaime Harmon, the undersigned employee of Griffin Davis LLC, attorneys for Plaintiffs in this matter do hereby certify that I have served a copy of the foregoing **Motion for Case Assignment to the Business Court Program**, in connection with the above-referenced case by hand delivery, to the following addresses:

Wesley D. Few
Wesley D. Few, LLC
1527 Blanding Street, Suite 203
Columbia, SC 29201

John T. Moore
Jody A. Bedenbaugh
Nelson Mullins
1320 Main Street, 17th Floor
Columbia, SC 29201


Jaime Harmon

July 28, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charping,
Plaintiffs,

Civil Case No. 2017-CP-40-02822

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,
Defendants.

**PLAINTIFF CHARPING'S RESPONSE
IN OPPOSITION TO DEFENDANT
LUDY'S MOTION TO DISMISS OR
STAY AND COMPEL ARBITRATION**

RICHLAND COUNTY
FILED
JAN 10 2018
PM 3:06
JAN 10 2018
JAN 10 2018

Plaintiff Patrick Charping ("Charping"), by and through undersigned counsel, hereby files his response in opposition to Defendant Justin Ludy's Motion to Dismiss or to Stay and Compel Arbitration (the "Motion") in the present action. The Motion should be denied because the plain language of the arbitration clause illustrates it is not applicable to Plaintiffs' statutory claims for judicial dissolution, appointment of a receiver, and an accounting. The Court should also deny the Motion because Defendant Ludy waived his right to demand arbitration of Plaintiff's claims by first suing Plaintiff Charping in the Circuit Court for Lexington County.

PROCEDURAL HISTORY

On April 25, 2017, Ludy filed a complaint against Plaintiff Charping in the Lexington County Court of Common Pleas, C.A. No. 2017-CP-32-01416 ("the Lexington Suit"), seeking various remedies stemming from the Uniform Limited Liability Company Act, S.C. Code Ann. § 33-44-101, et. seq., (the "Act"), including the judicial expulsion and dissociation of Charping from Palmetto Wildlife Extractors, LLC ("Palmetto Wildlife"). Lexington Compl., p. 10 §§ 46-47, p. 11 § E, attached hereto as **Exhibit A**. In response, Plaintiffs Charping and Palmetto Wildlife filed the present action on May 10, 2017 seeking the appointment of a receiver, an accounting, and judicial dissolution of Palmetto Wildlife, in addition to other relief. See V. Compl., attached hereto

as **Exhibit B**. Thereafter, Ludy dismissed the Lexington Suit, and filed an Answer to the Verified Complaint and counterclaimed against Plaintiff Charping, reasserting among other claims, those originally raised in the Lexington Suit. See Def. Ludy Answer & Counterclaims, attached hereto as **Exhibit C**. Thereafter, Defendant Ludy filed the present Motion. On June 29, 2017, Plaintiff Charping moved the Court pursuant to S.C. Code Ann. § 15-65-10 for an order appointing a receiver for Palmetto Wildlife.

FACTS

Effective October 13, 2014, Charping acquired a 50% interest in Palmetto Wildlife from Defendant Ludy in exchange for a capital contribution of \$49,000. V. Compl. ¶ 7; Aff. of W. P. Charping, June 29, 2017, ¶ 2, attached hereto as **Exhibit D**. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife. V. Compl. ¶ 8; Charping Aff. ¶ 2. Ludy was granted a 51% governance interest, which is defined as “all of a Member’s rights as a Member in the Company, other than financial rights.” V. Compl. ¶ 9; Charping Aff. ¶ 3.

Despite agreeing to share 50% of all profits from Palmetto Wildlife, since 2015 Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife. V. Compl. ¶ 10; Charping Aff. ¶ 4. In fact, Ludy has used Palmetto Wildlife’s bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for non-business expenses. V. Compl. ¶ 11; Charping Aff. ¶ 5. These personal expenditures include dues payments to Swinger lifestyle websites, attorneys’ fees payments for Ludy’s girlfriend’s divorce lawyer, payments to Ludy’s girlfriend, and payments to start a new business with Ludy’s girlfriend. V. Compl. ¶¶ 12-15; Charping Aff. ¶ 5.

By the end of 2015, Charping had enough of Ludy's conduct. As a result, Charping and Ludy amended the operating agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping. V. Compl. ¶ 16; Charping Aff. ¶ 6. Nevertheless, Ludy continued using the business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017. V. Compl. ¶ 17; Charping Aff. ¶ 7. In addition, Ludy withdrew \$57,944.92 for tax payments in 2016, whereas Charping only withdrew \$24,197.62 – a difference of \$33,747.30. V. Compl. ¶ 18; Charping Aff. ¶ 8.

Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset, and confrontational. V. Compl. ¶ 19; Charping Aff. ¶ 9. As early as March 2017, Ludy began restricting Charping's access to monitor the expenses incurred by Palmetto Wildlife. Charping Aff. ¶¶ 9, 12. For example, on March 31, 2017, Ludy removed Charping's administrative access to financial information and customer data within Palmetto Wildlife's QuickBooks software; thereby, preventing him from writing estimates while working, updating financial information on large projects, and communicating with customers regarding the status of their accounts. Charping Aff. ¶ 12.

In April 2017, Charping took a permissible tax draw of \$32,000 after verifying this amount with Palmetto Wildlife's tax accountant. V. Compl. ¶ 20; Charping Aff. ¶ 9. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife's accounting software and social media sites. V. Compl. ¶ 21; Charping Aff. ¶ 9. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information. V. Compl. ¶ 22; Charping Aff. ¶¶ 9-10.

Subsequently, Ludy failed to make loan payments owed by Palmetto Wildlife that Charping personally guaranteed, thereby harming Charping's credit and exposing him to personal liability. V. Compl. ¶ 23; Charping Aff. ¶ 10. Ludy's failure to make timely payments also negatively impacts the credit history of Palmetto Wildlife. Charping Aff. ¶ 10.

Following Charping's filing of this suit, Ludy has: (1) continued to miss loan payments of the business guaranteed by Charping, (2) removed Charping from accessing all commercial revolving accounts of the business that are also guaranteed by Charping, (3) removed Charping's access to company financial and scheduling software, customer accounts, and payroll data, (4) refused to distribute Charping's earnings; (5) terminated Charping's employment as of June 16, 2017; (6) changed all of the locks to the Palmetto Wildlife building for which Charping is the sole signor on the lease renewal; and (7) sent Charping self-serving emails and communications containing factually inaccurate statements in an attempt to construct a paper record to presumably defend his improper conduct. Charping Aff. ¶¶ 12-15.

ARGUMENT

The Court should deny the Motion because the plain language of the arbitration provision within the operating agreement necessitates a finding that Plaintiffs' claims under the Act are not subject to arbitration. "When construing a contract, the best evidence of the parties' intent is the contract's plain language." N. Am. Rescue Prods., Inc. v. Richardson, 769 S.E.2d 237, 240 (S.C. 2015). "If a contract's language is unambiguous, the plain language will determine the contract's force and effect." Id. (citing Lee v. Univ. of S.C., 757 S.E.2d 394, 397 (S.C. 2014)).

As set forth in Paragraph 12.14 of the operating agreement, "Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, *except as may otherwise be provided herein*, by binding arbitration..." (emphasis added). The inclusion of this

language in Paragraph 12.14 necessitates a finding that it was the parties' intent that the arbitration provision would not automatically apply to any and all claims. If the parties had intended for the arbitration clause to apply to all claims, there would have been no reason to include language carving out an exception to the arbitration provision.

Moreover, the plain language of Section 11 of the operating agreement clearly illustrates dissolution pursuant to Paragraph 11.1.3 is within the carve-out of exceptions to the arbitration provision in Paragraph 12.14. Specifically, Paragraph 11.1.3 plainly states that a Member seeking dissolution may do so by making application to the Court and upon entry of a judicial decree as provided by Section 33-44-810 of the Act. In the present case, Plaintiffs have done just this and specifically cited to this Section in their request for judicial dissolution. See Ver. Compl. ¶ 57. Accordingly, the Motion should be denied.

The Court should also deny the Motion because examination of the procedural history in the present case requires a finding that Defendant Ludy waived the right to claim Plaintiffs' claims are subject to arbitration when he previously sought similar redress against Plaintiff Charping, including judicial expulsion and dissociation of Charping in Lexington County Circuit Court. "A party may waive the right to arbitrate given by a contract." Hyload, Inc. v. Pre-Engineered Prod., Inc., 417 S.E.2d 622, 624 (S.C. Ct. App. 1992) (citing Lawton v. Cain, 172 So.2d 734 (La. App. 1965)). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." Id. "Ordinarily, however, bringing a suit based on the contract instead of relying on the arbitration provision constitutes a waiver of the right to arbitrate." Id.; see also S.C. Nat. Bank v. Westpac Banking Corp., 678 F. Supp. 596, 598-99 (D.S.C. 1987) (citing Bonnette v. State, 282 S.E.2d 597, 598 (S.C. 1981)) (recognizing that waiver may be implied from acts inconsistent with an asserted right).

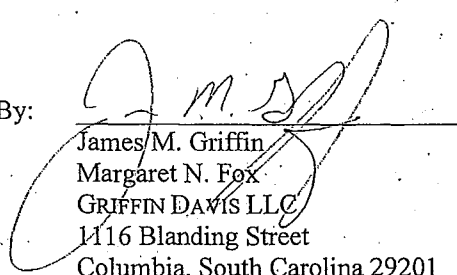
In the present case, Defendant Ludy's prior act of filing the Lexington Suit, as well as counterclaiming against Plaintiff Charping in the present suit, in lieu of seeking arbitration in either instance amounts to a waiver of his right to seek arbitration. Examination of the Lexington Suit illustrates that Defendant Ludy asserted six causes of action including (1) an accounting (§ 33-44-409(b)(1)); (2) imposition of a constructive trust (§ 33-44-409(b)(1)); (3) breach of the duty of loyalty (§ 33-44-409(b)(2)); (4) breach of the duty of good faith and fair dealing § 33-44-409(d); (5) judicial expulsion and disassociation (§ 33-44-601(6)); and (6) an injunction. See Lexington Compl. ¶¶ 25-47. Although, Defendant Ludy dismissed these claims in the Lexington Suit, he thereafter counterclaimed against Plaintiff Charping in the present action for (1) breach of fiduciary duty; (2) breach of contract; (3) breach of contract accompanied by a fraudulent act; (4) a constructive trust (§ 33-44-409(b)(1)); (5) breach of the duty of loyalty (§ 33-44-409(b)(2)); (6) breach of the duty of good faith and fair dealing § 33-44-409(d); and (7) Injunction.¹ See Def. Ludy Answer & Counterclaims ¶¶ 29-70. Thus, not once, but on two separate occasions, Defendant Ludy has requested the Court, not an arbitrator, adjudicate his claims against Plaintiff Charping. He filed his claims knowing of the arbitration provision, and thus, must be found to have waived his right to arbitration.

CONCLUSION

Based on the foregoing, Plaintiff Charping respectfully requests the Court deny Defendant Ludy's Motion.

¹ Tellingly, the only cause of action Defendant Ludy did not carry forward from his Lexington Suit into his counterclaims in the present action is a request for an accounting.

By:



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Attorneys for Plaintiffs

December 27, 2017
Columbia, South Carolina

Exhibit A

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Justin R. Ludy,

CIVIL ACTION COVERSHEET

vs.

W. Patrick Chapping,

Plaintiff(s)

2017 APR 25 PM 3:10

2017-CP - 32-

Defendant(s)

2017CP3201416

Submitted By: Benjamin P. Carlton

SC Bar #: 101142

Address: Richardson Plowden & Robinson, P.A.

Telephone #: (803) 771-4400

P.O. Drawer 7788

Fax #: (803) 779-0016

Columbia, SC 29202

Other:

E-mail: bcarlton@richardsonplowden.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Disorim (170)
☐ Employment (180)
☒ Other (199) Breach of
Fiduciary Duties | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: [Signature]

Date: 4/25/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Justin R. Ludy,

Plaintiff,

v.

W. Patrick Charing,

Defendant.

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2017 APR 25 PM 3:10

C/A No.: 2017-CP-32-

LISA COMER
CLERK OF COURT
LEXINGTON, SC

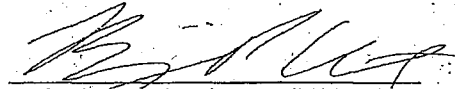
SUMMONS

2017CP3201416

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber at his offices located at 1900 Barnwell Street, Post Office Drawer 7788, Columbia, South Carolina 29202, within thirty (30) days after the date of such service, exclusive of the day of such service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

RICHARDSON PLOWDEN & ROBINSON, P.A.



Benjamin P. Carlton (SC Bar # 101142)

P.O. Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
April 25, 2017

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
2017 APR 25 PM 3:10

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2017-CP-32-

Justin R. Ludy,

Plaintiff,

v.

W. Patrick Charping,

Defendant.

VERIFIED COMPLAINT
(Non-Jury)

2017CP3201416

Plaintiff Justin R. Ludy ("Ludy") brings this Complaint against Defendant W. Patrick Charping ("Charping") and alleges as follows:

PARTIES

1. Plaintiff Ludy is a resident of Lexington, Lexington County, South Carolina, and is subject to the jurisdiction of this Court.

2. Upon information and belief, Defendant Charping is a resident of West Columbia, Lexington County, South Carolina, and is subject to the jurisdiction of this Court.

3. Plaintiff Ludy and Defendant Charping, collectively, are the sole Members of Palmetto Wildlife Extractors LLC (the "LLC"), pursuant to the terms of that certain Amended and Restated Operating Agreement, dated October 13, 2014, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "Operating Agreement").

JURISDICTION, VENUE, & GOVERNING LAW

4. Jurisdiction and venue in this action are proper pursuant to the applicable provisions of the South Carolina Constitution and Title 15 of the South Carolina Code.

RELEVANT OPERATING AGREEMENT PROVISIONS

5. The Recitals of the Operating Agreement state, in pertinent part:

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that *Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charping will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions.*

(Emphasis added).

6. Section 3.1 ("Percentages") of the Operating Agreement states:

Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

7. In turn, Exhibit A to the Operating Agreement provides that while both Plaintiff

Ludy and Defendant Charping have a 50% Financial Interest, Plaintiff Ludy has a 51% Governance Interest and Defendant Charping has a 49% Governance Interest.

8. Section 3.7 ("Withdrawals") the Operating Agreement states:

A Member *may not withdraw* his Capital Account except as expressly authorized in this Agreement.

(Emphasis added).

9. Section 5.1 ("Management") of the Operating Agreement states, in pertinent part:

The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties.

10. Section 5.2 ("Voting") of the Operating Agreement states:

Each Member shall be entitled to *vote in accordance with his respective percentage of Governance Interest*. Unless otherwise provided by law or this Agreement, *all actions of the LLC must be approved by a Majority Vote*.

(Emphasis added).

11. Section 12.4 ("Good Faith") of the Operating Agreement states, in pertinent part:

The performance of any act or the failure to do any act by a Member or the LLC . . . shall not subject such Member or the LLC to any liability, *if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests*.

(Emphasis added).

12. Section 12.7 ("Other Activities") of the Operating Agreement states:

A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided *such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the [South Carolina Uniform Limited Liability Company Act of 1996 (the "Act")]*.

(Emphasis added).

13. Section 13.8 defines the term "Governance Interests" to mean "*all a Member's rights as a Member in the Company, other than financial rights* and the right to assign financial rights." (Emphasis added).

14. Section 13.10 defines the term "Majority Vote" to mean "*an affirmative vote of the Members holding more than fifty (50%) of the Governance Interests*." (Emphasis added).

FACTS

15. By virtue of his fifty-one (51%) percent Governance Interest and pursuant to the voting requirements of Section 5.2 and the definition of "Majority Vote" (Section 13.10), Plaintiff Ludy has the sole and exclusive authority to take an action on behalf of the LLC, except where a

greater vote is expressly required in the Operating Agreement. Stated differently, Defendant Charping has no authority to take an action on behalf of the LLC unless it is approved by Plaintiff Ludy.

16. On or about March 30, 2017, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping had a cashier's check issued to himself, from the LLC's operating bank account, in the amount of Six Thousand Nine Hundred Eighty-Five and 58/100 (\$6,985.58) Dollars.

17. On or about March 31, 2017, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping withdrew approximately Thirty-Two Thousand Two Hundred Eighty-Six and No/100 (\$32,286.00) Dollars from the LLC's bank account.

18. Due to Defendant Charping's refusal to provide Plaintiff Ludy with information concerning these unauthorized withdrawals, in response to Plaintiff Ludy's demands, the purpose of the withdrawals is believed to be unrelated to the LLC's business and not in the LLC's best interests.

19. Upon information and belief, Defendant Charping has taken from the LLC or has otherwise removed, without permission, an external hard drive containing back-ups of the LLC's insurance files and other confidential information.

20. Additionally, Defendant Charping has forwarded the LLC's client list to his personal email address.

21. Again, due to Defendant Charping's refusal to provide Plaintiff Ludy with information concerning these unauthorized actions related to the LLC's confidential information, in response to Plaintiff Ludy's demands, the purpose of such actions is believed to be unrelated to the LLC's business and not in the LLC's best interests.

5 *BA*

22. Upon information and belief, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping has paid for personal expenses—including, but not limited to, a plane ticket—from the LLC's bank account(s), for non-LLC business and/or purposes.

23. Upon information and belief, without Plaintiff Ludy's permission, authorization, or approval, Defendant Charping paid a Seven Hundred (\$700.00) fee to a local law firm, from the LLC's account, for legal fees and/or expenses unrelated to the LLC's business and not in the LLC's best interests.

24. Upon information and belief, on at least two occasions, clients of the LLC have paid Defendant Charping monies for completed LLC projects; however, Defendant Charping has failed to deposit such monies, belonging to the LLC, which are believed to be in the approximate total amount of Three Thousand Four Hundred Forty-Seven and 50/100 (\$3,447.50) Dollars.

FIRST CAUSE OF ACTION
(Accounting—S.C. Code Ann. § 33-44-409(b)(1))

25. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

26. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Defendant Charping—as part of the duty of loyalty that he owes the LLC and Plaintiff Ludy—is required to account for “any property, profit, or benefit derived by the [M]ember in the conduct . . . of the [LLC's] business or derived from a use by the [M]ember of the [LLC's] property.”

27. As such, based upon the allegations set forth herein and the fact that Plaintiff Ludy's demands for information have been ignored, Plaintiff Ludy hereby respectfully requests an Order requiring Defendant Charping to fully account for all property, profit or benefit derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies,

all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof.

SECOND CAUSE OF ACTION
(Constructive Trust—S.C. Code Ann. § 33-44-409(b)(1))

28. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

29. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Defendant Charping—as part of the duty of loyalty that he owes the LLC and Plaintiff Ludy—is required to “hold as trustee . . . any property, profit, or benefit derived by the [M]ember in the conduct . . . of the [LLC's] business or derived from a use by the [M]ember of the [LLC's] property.”

30. As such, Plaintiff Ludy hereby respectfully requests an Order imposing a constructive trust on “any property, profit or benefit” derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof.

THIRD CAUSE OF ACTION
(Breach of Duty of Loyalty—S.C. Code Ann. § 33-44-409(b)(2) &
Operating Agreement Section 12.7)

31. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

32. Defendant Charping owes a duty of loyalty to the LLC and Plaintiff Ludy “to refrain from dealing with the [LLC] in the conduct . . . of the [LLC's] business as . . . a party having an interest adverse to the [LLC].”

7 BPC

33. Defendant Charping has breached this duty of loyalty owed to the LLC and Plaintiff Ludy by acting as a party having an interest adverse to the LLC by withdrawing funds from the LLC's bank accounts for non-LLC purposes; by paying personal expenses with LLC funds; by taking or otherwise removing LLC property and confidential information; and by failing to deposit LLC monies, among other actions.

34. Defendant Charping's breach of the duty of loyalty owed to Plaintiff Ludy has directly and proximately caused Plaintiff Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this Court.

35. Additionally, based upon Defendant Charping's willful, wanton, and/or reckless breach of the duty of loyalty, Plaintiff Ludy is informed and believes that he is entitled to punitive damages, in an amount to be determined by this Court.

FOURTH CAUSE OF ACTION

(Breach of Obligation of Good Faith and Fair Dealing—S.C. Code Ann. § 33-44-409(d) & Operating Agreement Section 12.4)

36. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

37. Defendant Charping owes an obligation of good faith and fair dealing to the LLC and Plaintiff Ludy.

38. Defendant Charping has breached this obligation of good faith and fair dealing by withdrawing funds from the LLC's bank accounts for non-LLC purposes; by paying personal expenses with LLC funds; by taking or otherwise removing LLC property and confidential information; by failing to deposit LLC monies; and by not acting in the LLC's best interests.

39. Defendant Charping's breach of the obligation of good faith and fair dealing owed to Plaintiff Ludy has directly and proximately caused Plaintiff Ludy, as a Member and holder of a 51%

Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this Court.

40. Additionally, based upon Defendant Charping's willful, wanton, and/or reckless breach of this obligation of good faith and fair dealing, Plaintiff Ludy is informed and believes that he is entitled to punitive damages, in an amount to be determined by this Court.

FIFTH CAUSE OF ACTION
(Injunction—Temporary and Permanent—Rule 65, SCRPC)

41. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

42. Plaintiff Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, will suffer immediate and irreparable injury, loss, or damage (the "Injury") if Defendant Charping continues to (A) withdraw funds from the LLC's bank accounts, without Plaintiff Ludy's approval; (B) pay personal expenses with LLC funds; (C) take, remove, or otherwise convert LLC property and confidential information; (D) hold and fail to promptly deposit LLC monies; and/or (E) act adverse to the best interests of the LLC (collectively, the "Actions").

43. Plaintiff Ludy does not have an adequate remedy at law to prevent or otherwise compensate him for such immediate and irreparable Injury.

44. Therefore, based on the above, Plaintiff Ludy requests the assistance of this Court to prevent such immediate and irreparable Injury, for which Plaintiff Ludy does not have an adequate remedy at law.

45. As such, Plaintiff Ludy is informed and believes that, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, he is entitled to the issuance of a temporary and a permanent injunction, enjoining, restraining, and prohibiting Defendant Charping from participating in any of the Actions.

SIXTH CAUSE OF ACTION
(Judicial Expulsion & Dissociation—S.C. Code Ann. § 33-44-601(6))

46. Each and every allegation in the preceding paragraphs is reiterated as if set forth verbatim.

47. Based upon the foregoing allegations, Plaintiff Ludy, as a Member of the LLC, hereby applies for the judicial expulsion and dissociation of Defendant Charping, pursuant to S.C. Code Ann. § 33-44-601(6), as Defendant Charping has: (A) engaged in wrongful conduct that has adversely and materially affected the LLC's business; (B) willfully and persistently committed material breaches of the Operating Agreement and the duties he owes the LLC and Plaintiff Ludy under S.C. Code Ann. § 33-44-409; and (C) engaged in conduct related to the LLC's business which makes it not reasonably practicable for Plaintiff Ludy to carry on the LLC's business with Defendant Charping.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ludy requests that this Court:

A. Issue an Order requiring Defendant Charping to fully account for all "property, profit or benefit" derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof;

B. Issue an Order imposing a constructive trust on "any property, profit or benefit" derived, by Defendant Charping, in any manner related to the LLC and/or its property, to include, but not be limited to, all withdrawals from the LLC's bank accounts, all expenses paid for with LLC monies, all monies or other property received from any of the LLC's clients, all LLC property

currently in Defendant Charping's possession, and all LLC property that Defendant Charping has disposed of and the proceeds thereof;

C. Award Plaintiff Ludy damages, both actual and punitive, in an amount to be determined by this Court;

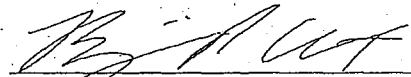
D. Issue a temporary and permanent injunction, enjoining, restraining, and prohibiting Defendant Charping from participating in any of the Actions;

E. Expel and dissociate Defendant Charping from the LLC; and

F. Order such other and further relief as this Court deems just, equitable, and proper.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.



Benjamin P. Carlton (SC Bar # 101142)

P.O. Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

ATTORNEYS FOR THE PLAINTIFF

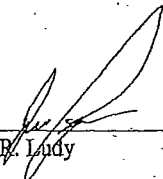
Columbia, South Carolina

April 25, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

VERIFICATION

PERSONALLY appeared before me, Justin R. Ludy, who, being duly sworn, says that: he has read the foregoing Complaint; that the facts alleged therein are true to the best of his knowledge, except as to those matters stated upon information and belief, and as to those, he believes them to be true.


Justin R. Ludy

SWORN to before me this
25th day of April, 2017.

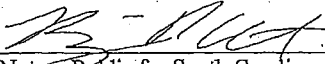
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/22/23

EXHIBIT A

**THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT
(SOUTH CAROLINA CODE SECTIONS 15-48-10, ET. SEQ.)**

**PALMETTO WILDLIFE EXTRACTORS LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

This Amended and Restated Operating Agreement (the "Agreement") for Palmetto Wildlife Extractors LLC, a South Carolina limited liability company (the "LLC"), is made and entered into and shall be effective as of October 13, 2014, by and between Justin R. Ludy and W. Patrick Charping (the "Members"). This Agreement is intended to supersede any and all prior agreements between the Members.

RECITALS

WHEREAS, on April 6, 2012, the LLC was organized by the filing of Articles of Organization with the South Carolina Secretary of State;

WHEREAS, the Members desire that W. Patrick Charping join the LLC as a member in exchange for capital contributions to the LLC in the amount of approximately \$49,000, including \$40,000 cash and a \$9,000 2006 Toyota Tacoma; and

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charping will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions.

NOW, THEREFORE, the Members agree as follows:

**SECTION 1
Name and Term**

- 1.1. Name. The LLC's name is Palmetto Wildlife Extractors LLC.
- 1.2. At-Will Company. The LLC shall be an at-will Company, as that term is defined in the South Carolina Limited Liability Company Act of 1996 (the "Act").

**SECTION 2
Nature of Business, Designated Office, and Agent**

- 2.1. Business. The LLC is formed to transact business related to a wildlife removal business, and to make such other investments and transact such other related business as the Members may deem appropriate for the LLC.
- 2.2. Designated Office. The LLC's Designated Office is at 959 East Main Street, Lexington, SC 29072, although the Members may change the LLC's Designated Office to another

location and add additional places of business.

2.3. Agent. The LLC's agent for service of process shall be Justin R. Ludy at 209 Sandy Valley Court, Gaston, SC 29053.

2.4. Principal Place of Business. The LLC's Designated Office shall be its principal place of business.

2.5. Income Tax Election. The LLC shall be taxed as a partnership for state and federal income tax purposes, and the LLC shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the LLC and the Members.

2.6. Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

SECTION 3 Capital and LLC Interests

3.1. Percentages. Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

3.2. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the LLC (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective shares of Financial Interest, upon dissolution of the LLC such deficit shall not be an asset of the LLC and such Members shall not be obligated to contribute such amount to the LLC to bring the balance of such Member's capital account to zero.

3.3. Adjustments. Each Member's Capital Account shall be adjusted as necessary to reflect the economic conditions of the Financial Interests. These adjustments shall include, but are not limited to, the following:

3.3.1. Adjustments to reflect each Member's distributive share of LLC profits and losses, including capital gains and losses, and tax-exempt income;

3.3.2. Adjustments to reflect each Member's additional contributions to the LLC;

3.3.3. Adjustments to reflect distributions made by the LLC to each Member;

3.3.4. Tax-Sensitive Adjustments (as defined below).

3.4. Loans. A Member's loans to the LLC shall not be added to his Capital Account.

3.5. Amount of Contributions. The amount of a Member's contributions of property to the LLC and of the LLC's distributions of property to a Member, shall be reflected in the Member's Capital Account at the fair market value of the property on the date of the contribution or distribution, reduced by any liabilities secured by that property, if those liabilities are treated under applicable federal income tax laws as being assumed by or taken subject to by the transferee.

3.6. No Interest Paid. A Member shall receive no interest on his capital contributions or Financial Interest.

3.7. Withdrawals. A Member may not withdraw his Capital Account except as expressly authorized in this Agreement.

SECTION 4 Profits, Losses, and Cash Flow

4.1. Profits and Losses. The LLC's net profits and losses (and each item of income, deduction, gain, loss, and credit that makes up net profits and losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting used by the LLC, and shall be allocated among the Members solely according to their respective percentage of Financial Interests. Notwithstanding this general rule, any income, gain, loss, and deduction with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis and the fair market value of the contributed property at the time of the contribution, in accordance with any applicable U.S. Treasury regulations.

4.2. Consent to Maintenance of Working Capital Reserve. The Members hereby authorize the establishment and continued maintenance of a working capital reserve in the amount of twenty percent (20%) of the LLC's annual net income after payment of the LLC's accrued and unpaid debts and expenses. Such reserve shall be kept in the LLC's bank accounts, funded with cash flows prior to any distributions to Members.

4.3. Assignment or Death. When a Member dies, retires, or assigns his Membership Interest, profits and losses shall be allocated based on the number of days in that year during which each Member owned a Financial Interest, or on any other reasonable basis selected by the remaining Members, as long as it is consistent with applicable United States tax laws and regulations.

4.4. Cash Flow. The Members shall cause the LLC to distribute its Net Cash Flow to the Members annually, in proportion to their respective percentage of Financial Interest.

SECTION 5 Management

5.1. Management. The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.1. The Members may sell real or personal property to any person, giving any warranties or assurances deemed appropriate;

5.1.2. The Members may buy, lease, or otherwise acquire real or personal property to carry on and conduct the LLC's business;

5.1.3. The Members may borrow money for the LLC's business;

5.1.4. The Members may issue promissory notes and other debt instruments (negotiable or nonnegotiable), in any amounts and secured by any encumbrance on all or any part of the LLC's assets;

5.1.5. The Members may assign any debts owing to the LLC;

5.1.6. The Members may engage in any other means of financing;

5.1.7. The Members may enter into any agreement for sharing of profits and any joint venture agreement with any person or entity engaging in any business or venture in which the LLC may engage;

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties;

5.1.9. The Members may execute any type of agreement or instrument in connection with any other LLC power;

5.1.10. The Members may employ all types of agents and employees (including lawyers and accountants), even if they are related to the Members by blood, marriage, or business relationship, and pay them reasonable compensation;

5.1.11. The Members may buy or otherwise obtain the use of any type of equipment or other property that may be convenient or advisable in connection with any LLC business;

5.1.12. The Members may incur any reasonable expense for travel, telephone, telegraph, insurance, taxes, and such other things in carrying on the LLC's business;

5.1.13. The Members may sue and be sued, complain, and defend in the name of and on behalf of the LLC; and

5.1.14. The Members may quitclaim, release, or abandon any LLC assets with or without consideration.

5.2. Voting. Each Member shall be entitled to vote in accordance with his respective percentage of Governance Interest. Unless otherwise provided by law or this Agreement, all actions of the LLC must be approved by a Majority Vote.

5.3. Tax Matters Partner. W. Patrick Charming shall be the "Tax Matters Partner," as defined for federal income tax purposes, and shall be solely responsible for representing the LLC in all dealings with the U.S. Internal Revenue Service and any state, local, and foreign tax authorities. The Tax Matters Partner shall keep the other Members reasonably informed of any LLC dealings with any tax agency.

SECTION 6 **Financial Reports**

Within a reasonable period after the close of each fiscal year, the Tax Matters Partner shall, at the LLC's expense, give a written report to each Member who requests it, indicating that Member's share of the LLC income or loss and any changes in that Member's Capital Account. This requirement may be satisfied by giving each Member a copy of any tax form that includes such information.

SECTION 7 **Banking**

All LLC funds shall be deposited in the LLC's name in such accounts as the Members may designate. The Members may authorize other persons to draw checks on LLC bank accounts, but such authority must be in writing. Each bank in which an LLC account is maintained is relieved of any responsibility to inquire into a Member's authority to deal with such funds.

SECTION 8 **Transfer of Membership Interests**

8.1. Limitations on Transfer. A Member shall not Transfer any Membership Interest except in accordance with the terms of this Section 8 or with the prior written consent of all of the other Members. An attempted Transfer of Membership Interest not in accordance with the terms of this Section shall not be valid and shall not be reflected on the LLC's books.

8.2. Right of First Refusal. A Member who wishes to Transfer any Membership Interest, or who has reason to believe that an involuntary Transfer or a Transfer by operation of law is reasonably foreseeable (an "Offering Member"), shall first give each other Member written notice of

the intent to Transfer such Membership Interest (the "Offered Interest") or of the knowledge that an Involuntary Transfer or Transfer by operation of law is reasonably foreseeable. This notice must contain a description of the portion of Membership Interest to be Transferred, the consideration (if any) to be paid, the terms of Transfer and of the payment of consideration (including but not limited to the relative percentages of cash and debt, and the terms of any debt instruments), and the name, address (both home and office), and business or occupation of the person to whom the Membership Interest would be transferred, and any other facts which are or would reasonably be deemed material to the proposed Transfer.

8.2.1. Upon the receipt of such notice, each other Member shall have a right to buy that share of the Offered Interest having the same proportion to all of the Offering Member's Membership Interest as the buying Member's Membership Interest bears to the Membership Interests of all Members (except the Offering Member).

8.2.2. Each Member may exercise this purchase option by giving the Offering Member written notice within thirty (30) days after receipt of the latter's notice.

8.2.3. If the Members do not agree to buy all of the Offered Interest, the Offering Member may complete the intended Transfer. If this Transfer is not completed within thirty (30) days after expiration of the option period, any attempted Transfer shall be deemed made under a new offer and this section shall again apply.

8.3. Agreement Price. The purchase price that the Members must pay for the Offered Interest under this Section 8 shall be the Lesser of (a) that of any proposed Transfer if the proposed Transfer for which notice was given is to be made for any valuable consideration in money or money's worth of property, or (b) an amount equal to the proportion that the Offered Interest bears to all outstanding Membership Interests, multiplied by the fair market value of the LLC's assets reduced by any liabilities of the LLC. The fair market value of the LLC's assets shall be determined by an independent appraisal performed by a professional appraiser selected by the unanimous consent of the Members. The LLC and the Offering Member shall share the cost of the appraisal.

8.4. Agreement Terms. Ten percent (10%) of the purchase price shall be paid in cash or by good personal check at the closing for the sale of such Membership Interest, and the balance shall be paid in twelve (12) equal quarterly principal payments beginning three (3) months after the date of such closing. Simple interest shall be added to each installment, computed against the outstanding principal balance at the Applicable Federal Rate determined for federal income tax purposes on the date of the closing. The buyer shall give the Offering Member a promissory note as evidence of this debt, and the buyer may prepay all or any part of the principal balance of the note at any time without penalty or premium.

8.5. The Closing. The purchase of a Membership Interest under this Section shall take place at a closing to be held not later than the thirtieth (30th) day after the earlier of the date on which the Members' purchase options have all expired, or the earliest date on which the Members in the

aggregate exercise their purchase options, if any, to buy all of the Offered Interest. The closing shall be held during normal business hours at the LLC's principal business office, or at any other place to which the parties agree. If the Offering Member is not present at the closing, then the buyer shall deposit the purchase price by check, note, or both, as this section requires, with any state or federally chartered bank with which the LLC has an account, as escrow agent, to be paid to the Offering Member as soon as is reasonably practicable, less an appropriate fee to the LLC (not to exceed one thousand dollars (\$1,000.00)) to cover additional administrative costs, and the LLC shall adjust its books to reflect the transfer of these Membership Interests.

8.6. Family Transfers. Notwithstanding any other provision herein to the contrary, a Member may make a Family Transfer of a Financial Interest. The transferee of any such Family Transfer shall be accepted as a substitute member of the LLC without the approval of the other Members and the Financial Interest shall remain subject to all the terms and conditions of this Agreement, including the transfer restrictions contained herein, in the hands of the transferee. A Member may not make a Family Transfer of a Governance Interest.

SECTION 9 **Amendments**

This Agreement shall be amended automatically to reflect any valid Transfers of Membership Interests. Otherwise, this Agreement shall be amended only with the unanimous vote of the Members owning a Governance Interest.

SECTION 10 **Admission, Retirement, and Resignation of Members**

10.1. Admission. A person may be admitted as an additional Member by the unanimous consent of the Members owning a Governance Interest (excluding any Member transferring a Membership Interest to the prospective new Member).

10.1.1. A Member need give no reason for voting not to admit an applicant as a new Member, and a Member may unreasonably withhold his agreement to such admission.

10.1.2. In no event may any person be admitted as a new Member unless that person consents in writing to be bound by this Agreement and pays the LLC a fee not to exceed one thousand dollars (\$1,000.00) to cover costs of preparing, executing, and recording all pertinent documents. Absent such unanimous consent, the individual to whom the Membership Interest was Transferred shall be an assignee and shall be entitled to share in the profits, losses and distributions to which the assigning Member would have been entitled, but not to participate in the management and affairs of the LLC.

10.2. Retirement and Resignation. A Member may resign, withdraw, dissociate, or retire from the LLC only with the unanimous consent of the Members.

SECTION 11
Dissolution

11.1. Causes. The LLC shall be dissolved only upon the occurrence of one of the following "Dissolution Events":

11.1.1. The affirmative vote of all of the Members owning a Governance Interest;

11.1.2. Any event occurs that makes it unlawful for all or substantially all of the business of the LLC to be continued, but any cure of illegality within ninety (90) days after notice to the LLC of the event is effective retroactively to the date of the event for purposes of this section;

11.1.3. On application by a Member or a dissociated Member, upon entry of a judicial decree as provided by Section 33-44-801(5) of the Act; or

11.1.4. The filing by the Secretary of State of a certificate administratively dissolving the LLC pursuant to Section 33-44-810 of the Act.

11.2. Upon Dissolution. Upon its dissolution, the LLC shall end and commence to wind up its affairs. The Members shall continue to share in profits and losses during liquidation as they did before dissolution. The LLC's assets may be sold, if a price deemed reasonable by the Members can be obtained. The proceeds from liquidation of LLC assets shall be applied as follows:

11.2.1. First, all of the LLC's debts and liabilities to persons other than Members shall be paid and discharged in the order of priority as provided by law;

11.2.2. Second, all debts and liabilities to Members shall be paid and discharged in the order of priority as provided by law;

11.2.3. Third, all remaining assets shall be distributed proportionately among the Members based on their respective positive Capital Accounts.

11.3. Gain or Loss. Any gain or loss on the disposition of LLC properties in the process of liquidation shall be credited or charged to the Members in proportion to their respective percentages of Financial Interests, except that gain or loss with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable U.S. Treasury regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on the sale of property, and shall be credited or charged to the Members accordingly.

11.4. LLC Assets Sole Source. The Members shall look solely to the LLC's assets for the payment of any debts or liabilities owed by the LLC to the Members and for the return of their capital contributions and liquidation amounts. If the LLC property remaining after the payment or discharge of all of its debts and liabilities to persons other than Members is insufficient to return the Members' capital contributions, they shall have no recourse therefor against the LLC or any other Members, except to the extent that such other Members may have outstanding debts or obligations owing to the LLC.

SECTION 12

Miscellaneous

12.1. Notices. Any notice under this Agreement shall be given and served either by personal delivery to the party to whom it is directed, or by registered or certified mail, postage and charges prepaid, and if it is sent to a Member, it shall be addressed with his address as it appears on the records of the LLC.

12.1.1. Any notice shall be deemed given when it is personally delivered, or, if mailed, on the date it is postmarked by the United States Postal Service, if it was addressed as required in this Section 12.1.

12.1.2. Any Member may change his address for purposes of this Agreement by written notice to the other Members, stating his new address. A change of address shall be effective fifteen (15) days after the notice is received by the other Members.

12.2. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation.

12.3. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity shall not affect the validity of the remainder of the Agreement.

12.4. Good Faith. The performance of any act or the failure to do any act by a Member or the LLC, the effect of which causes any loss or damage to the LLC, shall not subject such Member or the LLC to any liability, if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests.

12.5. Governing Law. This Agreement is to be construed according to the laws of South Carolina.

12.6. Cumulative Rights. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit a party's right to use any or all other

remedies. All rights and remedies in this Agreement are in addition to any other legal rights the parties may have.

12.7. Other Activities. A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the Act.

12.8. Confidentiality. No Member may, without every Member's express written consent, divulge to others any information not already known to the public pertinent to the services, clients, customers, or operations of the LLC, whether before or after the LLC's dissolution.

12.9. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

12.10. Waiver of Partition. Each Member waives any right to maintain any action for partition with respect to the LLC's property or assets during its term.

12.11. Binding Terms. The terms of this Agreement are binding upon and inure to the benefit of the parties and, to the extent permitted by this Agreement, their heirs, executors, administrators, legal representatives, successors, and assigns.

12.12. Personal Property. The interests of each Member in the LLC are personal property.

12.13. Gender and Number. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, et. seq. and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

SECTION 13 Definitions

13.1. Act. "Act" shall mean the South Carolina Uniform Limited Liability Company Act

of 1996, Sections 33-44-101 *et. seq.* of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

13.2. Agreement. The "Agreement" is the Palmetto Wildlife Extractors LLC Amended and Restated Operating Agreement, as amended from time to time. The Agreement shall include all exhibits, as they may be amended from time to time.

13.3. Articles. The "Articles" means the Articles of Organization filed on behalf of Palmetto Wildlife Extractors LLC, as may be amended from time to time.

13.4. Capital Accounts. The "Capital Accounts" or "LLC Capital" is the total of the Members' capital contributions.

13.5. Days and Months. "Day," "days," "month," and "months" refer to calendar days and months, including any days which fall on legal holidays or weekends.

13.6. Family Transfer. A "Family Transfer" is any transfer of Financial Interests to a spouse or a lineal descendant of a Member or to a trust for the benefit of a spouse or lineal descendant of a Member and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Financial Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

13.7. Financial Interests. "Financial Interests" means a Member's rights to share in profits and losses, a Member's rights to receive distributions and a Member's Capital Interest.

13.8. Governance Interests. "Governance Interests" means all a Member's rights as a Member in the Company, other than financial rights and the right to assign financial rights.

13.9. LLC. The "LLC" is Palmetto Wildlife Extractors LLC.

13.10. Majority Vote. "Majority Vote" means an affirmative vote of the Members holding more than fifty percent (50%) of the Governance Interests.

13.11. Members. The "Members" shall refer to Justin R. Ludy, W. Patrick Charing, and any persons who later become Members.

13.12. Membership Interests. The "Membership Interests" are the aggregate of Governance Interests and Financial Interests owned by the individual Members in the LLC as listed in Exhibit A or set forth in such Member's Contribution Agreement.

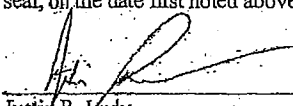
13.13. Net Cash Flow. Net Cash Flow is the LLC's total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital contributions

and the proceeds of any LLC borrowing), and reduced by any principal payments on any LLC debts, expenditures to acquire or improve LLC assets, any proceeds from the sale or exchange of LLC assets, and such reasonable reserves and additions thereto as the Members shall determine to be advisable and in the best interests of the LLC.

13.14. Tax-Sensitive Adjustments. The "Tax-Sensitive Adjustments" are all adjustments to a Member's Capital Account that are not specifically required under the terms of this Agreement, but that are required by U.S. Treasury Regulations § 1.704-1(b)(2)(iv) ("Maintenance of Capital Accounts"), as amended. These adjustments shall be made annually, unless applicable regulations require a more frequent adjustment.

13.15. Transfer. A "Transfer" of a Member's interest includes any sale, pledge, encumbrance, gift, bequest, or other transfer or disposition of the Membership Interest, or permitting it to be sold, encumbered, attached, or otherwise disposed of, or changing its ownership in any manner, whether voluntarily, involuntarily, or by operation of law. "Transfer" shall not include any assignment of any Membership Interest to another Member or to any trust that is entirely revocable by the assignor, and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Membership Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement, under seal, on the date first noted above.


Justin R. Ludy

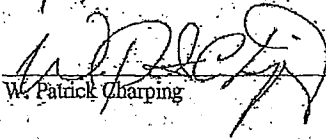

W. Patrick Charing

Exhibit A
Membership Interests

<u>Member</u>	<u>Contribution</u>	<u>Financial Interest</u>	<u>Governance Interest</u>
Justin R. Ludy	Continuing Interest	50%	51%
W. Patrick Charing	\$49,000 (Cash and Vehicle)	50%	49%

Exhibit B
Regulatory Allocations

The following Regulatory Allocations shall be made in the following order:

1. Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(f), if there is a net decrease in Company Minimum Gain during any fiscal year, each member shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such member's share of the net decrease in Company Minimum Gain, determined in accordance with Treas. Reg. § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. § 1.704-2(f)(6) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(f) and shall be interpreted consistently therewith.

2. Member Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(i)(4), notwithstanding any other provision in this Exhibit or the, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(i)(4) and shall be interpreted consistently therewith.

3. Qualified Income Offset. In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Regs. § 1.704(b)(2)(ii)(d)(4), (5), or (6), items of LLC income and gain shall be specially allocated to such member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the member as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that the member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Exhibit or the Operating Agreement have been tentatively made as if this Paragraph were not in this Operating Agreement.

4. Gross Income Allocation. In the event any member has an Adjusted Capital Account Deficit at the end of any fiscal year, such member shall be specially allocated items of LLC income and gain in the amount of such deficit as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that such member would have an Adjusted Capital

Account Deficit after all other allocations provided for in this Exhibit and the Operating Agreement have been made as if this Paragraph and Paragraph (3) were not in this Operating Agreement.

5. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated to the members in proportion to their share of profits and losses.

6. Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i)(1).

7. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any LLC asset pursuant to I.R.C. § 734(b) or I.R.C. § 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) or (m)(4), to be taken into account in determining capital accounts as a result of a distribution to a member in complete liquidation of such member's interest in the LLC, the amount of such adjustment to capital accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the members in accordance with their interests in the LLC in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the member to whom such distribution was made in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) applies.

8. Definitions. The following terms shall for purposes of this Exhibit and elsewhere in this Operating Agreement have the following definitions:

(A) "Adjusted Capital Account Deficit" means with respect to any member (or assignee), the deficit balance, if any, in such member's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (i) Credit to such capital account any amount which such member is deemed to be obligated to restore pursuant to the next to the last sentences in Treas. Regs. § 1.704-2(g)(1) and § 1.704-2(i)(5); and
- (ii) Debit to such capital account the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(B) "Company Minimum Gain" shall have the same meaning as "partnership minimum gain" as set forth in Treas. Reg. § 1.704-2(b)(2).

(C) "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" as set forth in Treas. Reg. § 1.704-2(b)(4).

(D) "Member Nonrecourse Debt Minimum Gain" has the same meaning as "partner nonrecourse debt minimum gain" as set forth in Treas. Reg. § 1.704-2(i)(2).

(E) "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" as set forth in Treas. Reg. § 1.704-2(i)(1).

(F) "Nonrecourse Deductions" has the same meaning as is set forth in Treas. Reg. § 1.704-2(b)(1).

(G) "Nonrecourse Liability" has the same meaning set forth in Treas. Reg. § 1.704-2(b)(3).

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Wildlife Extractors, LLC and Patrick
Charging

Plaintiff(s)

vs.

Justin Ludy and First Community Corporation d/b/a
First Community Bank

Defendant(s)

Submitted By: Margaret N. Fox
Address: 1116 Blanding Street
Columbia, SC 29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017CP400-2822

SC Bar #: 10576
Telephone #: 803-744-0800
Fax #: 803-744-0805
Other: _____
E-mail: mfox@griffindavislaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☒ Other (199) _____ | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | ☐ Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____ | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: May 10, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF RICHLAND)
)
Palmetto Wildlife Extractors, LLC and)
Patrick Charping,)
Plaintiff,)

IN THE COURT OF COMMON PLEAS

SUMMONS

vs.)
)
Justin Ludy and First Community)
Corporation d/b/a First Community Bank,)
Defendant.)

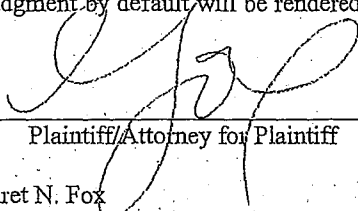
FILE NO.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: May 10, 2017



Plaintiff/Attorney for Plaintiff

Address: Margaret N. Fox
1116 Blanding Street
Columbia, SC 29201

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Palmetto Wildlife Extractors, LLC and
Patrick Charping,
Plaintiffs,

Civil Case No. _____

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

**VERIFIED
COMPLAINT
(JURY TRIAL DEMANDED)**

RECEIVED
CLERK OF COURT
JUL 2 2017

2017 MAY 10 PM 2:16

Introduction

In October 2014, Patrick Charping (Charping) acquired a 50% interest in Palmetto Wildlife Extractors, LLC (Palmetto Wildlife Extractors) from Justin Ludy (Ludy) in exchange for a capital contribution of \$49,000. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife Extractors. Ludy was granted a 51% governance interest, which is defined as "all of a Member's rights as a Member in the Company, other than financial rights." Despite agreeing to share 50% of all profits from Palmetto Wildlife Extractors, since 2015 Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife Extractors. In fact, Ludy has used Palmetto Wildlife Extractors' bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for non-business expenses. These personal expenditures include dues payments to Swinger lifestyle websites, attorneys' fees payments for Ludy's girlfriend's divorce lawyer, payments to Ludy's girlfriend, and payments to start a new business with Ludy's girlfriend.

By the end of 2015, Charping had enough. As a result, Charping and Ludy amended the Operating Agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping. Nevertheless, Ludy continued using the

business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017. In addition, Ludy withdrew \$33,747.30 more than Charping withdrew for tax payments in 2016.

Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational. In April 2017, Charping took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife Extractors' tax accountant. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife Extractors' accounting software and social media sites. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information. Since removing Charping from Palmetto Wildlife Extractors, Ludy has failed to make loan payments on loans that Charping has personally guaranteed, thereby harming Charping's credit and exposing him to personal liability.

Charping therefore brings this derivative lawsuit on behalf of Palmetto Wildlife Extractors against Ludy for freezing Charping out of the business operations and financial accounts of Palmetto Wildlife Extractors, for misappropriating the funds of Palmetto Wildlife Extractors, and against First Community Bank for aiding and abetting Ludy's breach of his fiduciary duties owed to Palmetto Wildlife Extractors. Charping also sues Ludy and First Community Bank for civil conspiracy and brings an additional claim of defamation against Ludy. Lastly, Charping also seeks an accounting, judicial dissolution of Palmetto Wildlife Extractors and requests the appointment of a receiver to supervise the winding up of the affairs of Palmetto Wildlife Extractors.

Parties

1. Plaintiff Palmetto Wildlife Extractors is a South Carolina limited liability corporation with its principal place of business located in Richland County, South Carolina.

2. Plaintiff Patrick Charping is a 50% owner of Palmetto Wildlife Extractors and is a citizen and resident of Lexington County, South Carolina.

3. Defendant Justin Ludy is a 50% owner of Palmetto Wildlife Extractors and is a citizen and resident of Lexington County, South Carolina.

4. Defendant First Community Corporation, d/b/a First Community Bank is a South Carolina corporation with its principal place of business in Lexington County. First Community Bank has a branch office in Columbia, South Carolina.

Jurisdiction and Venue

5. Jurisdiction is appropriate in this Court because all of the Defendants reside in South Carolina and conduct business in Richland County, South Carolina.

6. Venue is appropriate in Richland County, because Palmetto Wildlife Extractors has its headquarters in Richland County and the most substantial acts giving rise to the claims in this lawsuit occurred at either the Palmetto Wildlife Extractors office in Columbia or the First Community Bank Columbia branch.

Factual Allegations Common to All Causes of Action

7. In October 2014, Charping acquired a 50% interest in Palmetto Wildlife Extractors from Ludy in exchange for a capital contribution of \$49,000.

8. Under the terms of the operating agreement, Charping and Ludy were to share equal control over the financial rights of Palmetto Wildlife Extractors.

9. Ludy was granted a 51% governance interest, which is defined as "all of a Member's rights as a Member in the Company, other than financial rights."

10. Despite being entitled to a 50% share of all profits from Palmetto Wildlife Extractors, Ludy has taken in excess of \$126,000 more than Charping from the financial accounts of Palmetto Wildlife Extractors since 2015.

11. In fact, Ludy has used Palmetto Wildlife Extractors' bank accounts as his own personal accounts, writing checks and withdrawing funds to pay for personal, non-business related expenses.

12. For example, since 2014, Ludy has been withdrawing Palmetto Wildlife Extractors funds to pay membership dues to SDC Media Inc. According to its website, SDC Media Inc. is the "official app for SDC-Swingers Date Club." These payments were made during multiple months in 2015, 2016 and 2017, including payments of \$22.95 in January, February and March of 2017.

13. In 2015, Ludy wrote the below checks to his girlfriend Megan Thomas totaling \$11,028:

- a. 4/03/15 Check No. 1003 in the amount of \$1,074.
- b. 4/07/15 Check No. 1009 in the amount of \$220.00.
- c. 4/22/15 Check No. 1016 in the amount of \$780.00.
- d. 5/06/15 Check No. 1025 in the amount of \$1,270.00.
- e. 5/22/15 Check No. 1029 in the amount of \$804.00.
- f. 6/04/15 Check No. 1031 in the amount of \$2,155.00.
- g. 7/02/15 Check No. 1042 in the amount of \$2,225.00.
- h. 9/02/15 Check No. 1069 in the amount of \$2,500.00.

14. In addition to checks written directly to Ms. Thomas, Ludy also wrote twelve (12) separate checks totaling \$8,030.96 for the startup of a fashion apparel business by Ms. Thomas.

15. On October 28, 2015, Ludy wrote a check for \$1,800 to Kennard & Jones, LLC, who were Ms. Thomas' divorce attorneys, for fees she incurred during her divorce proceeding.

16. In October 2015, Charping and Ludy amended the Operating Agreement to establish set salaries for each and to prohibit Ludy from withdrawing money for personal use unless agreed to by Charping.

17. Despite this agreement, Ludy continued using the business account for personal use, withdrawing approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017.

18. In addition, Ludy withdrew \$57,944.92 for tax payments in 2016, whereas Charping only withdrew \$24,197.62 – a difference of \$33,747.30.

19. Moreover, whenever Charping would withdraw funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational.

20. In April 2017, Charping took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife Extractors' tax accountant.

21. Thereafter, Ludy snapped, accused Charping of theft, and blocked Charping's access to Palmetto Wildlife Extractors' accounting software and social media sites.

22. Furthermore, Ludy and First Community Bank removed Charping from the bank account, preventing him from accessing any funds or viewing any account information.

23. Since removing Charping from Palmetto Wildlife Extractors, Ludy has failed to make loan payments on loans that Charping has personally guaranteed, thereby harming Charping's credit and exposing him to personal liability.

First Cause of Action

(Palmetto Wildlife Extractors' Derivate Claim for Breach of Fiduciary Duty)

24. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

25. Plaintiff Charping brings this derivative action on behalf of Palmetto Wildlife Extractors pursuant S.C. Code Ann. § 33-44-1101 on the grounds that an effort to cause the remaining member of Palmetto Wildlife Extractors to initiate this action is not likely to succeed for the following reasons:

- a. The claim is against Defendant Ludy, who has 51% governing interest in Palmetto Wildlife Extractors and is not likely to sue himself.
- b. Plaintiff Charping has requested on numerous occasions that Ludy stop withdrawing funds from Palmetto Wildlife Extractors' accounts and to retain more funds in Palmetto Wildlife Extractors' accounts; Defendant Ludy, in response, has ousted Charping from Palmetto Wildlife Extractors, blocking his access to the financial and business records of Palmetto Wildlife Extractors.
- c. Defendant Ludy has falsely accused Charping of theft.
- d. Defendant Ludy also filed suit against Charping in the Lexington County Court of Common Pleas accusing Charping of misconduct.

26. Defendant Ludy owes a fiduciary duty to both Palmetto Wildlife Extractors and Charping to refrain from misappropriating the funds of Palmetto Wildlife Extractors for personal

use; not to use funds of Palmetto Wildlife Extractors for the creation of a new business; not to place his self-interest above the interest of Palmetto Wildlife Extractors; and to avoid actions that are harmful to the operations of the business.

27. Defendant Ludy has breached his fiduciary duty by misappropriating the funds of Palmetto Wildlife Extractors for personal use, using funds of Palmetto Wildlife Extractors for the creation of a new business, placing his self-interest above the interests of Palmetto Wildlife Extractors, and otherwise taking actions that are harmful to the operations of the business.

28. Defendant Ludy is therefore liable to Palmetto Wildlife Extractors for actual and punitive damages.

29. Plaintiff Charping is also entitled to an award of attorneys' fees and reimbursement of costs from any award to Palmetto Wildlife Extractors.

Second Cause of Action

(Palmetto Wildlife Extractors' Derivate Claim for Aiding & Abetting Breach of Fiduciary Duty)

30. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

31. On the evening of April 4, 2017, Plaintiff Charping received an email from Ludy notifying him that his access to the Palmetto Wildlife Extractors accounts at First Community Bank had been blocked.

32. At 9:15 a.m. on April 5, 2017, Plaintiff Charping met with First Community Bank's Vice President Harry Jeffcoat and Drew Painter, Regional President to advise First Community Bank that he was improperly removed from the account.

33. During this meeting, Plaintiff Charping provided First Community Bank a copy of the operating agreement which specifically provides that Charping is entitled to equal access to the financial accounts of Palmetto Wildlife Extractors.

34. Plaintiff Charping demanded that First Community Bank provide him access to the account.

35. Messrs. Jeffcoat and Painter informed Plaintiff Charping that they would look into the matter, but needed some time to "fix it."

36. Later in the day on April 5, 2017, however, Vice President Jeffcoat sent an email to Plaintiff Charping and Defendant Ludy, with copies to other branch personnel, stating that First Community Bank would not reinstate Charping on the account.

37. As a result, Defendant Ludy, as aided and abetted by First Community Bank, has completely locked Charping out of the financial affairs of Palmetto Wildlife Extractors in violation of his fiduciary duty to Palmetto Wildlife Extractors and Charping.

38. Defendant First Community Bank knowingly participated in Defendant Ludy's breach of his fiduciary duty.

39. Palmetto Wildlife Extractors has suffered damages as a result of this breach for which Defendant First Community Bank is jointly and severally liable with Defendant Ludy.

40. Palmetto Wildlife Extractors is therefore entitled to an award of actual and punitive damages.

41. Plaintiff Charping is also entitled to an award of attorneys' fees and reimbursement of costs from any award to Palmetto Wildlife Extractors.

Third Cause of Action
(Plaintiff Charping's Claim for Civil Conspiracy)

42. Plaintiff Charping hereby incorporates the above allegations as fully and effectually as if re-stated herein verbatim.

43. Defendants Ludy and First Community Bank have conspired and joined together for the purpose of injuring Plaintiff Charping.

44. The actions undertaken jointly by Defendants have resulted in Charping's ouster from Palmetto Wildlife Extractors, thereby causing the dissolution of Palmetto Wildlife Extractors.

45. Plaintiff Charping has suffered special damages resulting from such ouster and dissolution, including but not limited to the loss of value to Charping's ownership interest in Palmetto Wildlife Extractors and the costs of dissolution of Palmetto Wildlife Extractors.

46. Defendants Ludy and First Community Bank are therefore jointly and severally liable to Charping for all special damages resulting from the Defendants' jointly undertaken actions.

47. Plaintiff Charping is also entitled to a separate award of punitive damages against Defendants Ludy and First Community Bank.

Fourth Cause of Action

(Plaintiff Charping's Claim for Defamation Against Ludy)

48. Plaintiff Charping hereby incorporates the above allegations as fully and effectually as if re-stated herein verbatim.

49. Defendant Ludy has falsely stated that Plaintiff Charping stole funds from Palmetto Wildlife Extractors and otherwise engaged in criminal actions that required he be removed from the financial affairs of the business.

50. These statements were made orally and in writing via text message and postings on social media.

51. Specifically, on April 5, 2017, Ludy sent a text message stating that Charping "has embezzled over \$50,000 from the company he used to be a part of. It's a criminal offense and action is already taken." This statement is libelous and therefore actionable per se.

52. That same day, shortly after removing Plaintiff Charping from Palmetto Wildlife Extractors, Defendant Ludy posted the following on social media: "Three ways to be removed

from my life: 1. Steal from me; 2. Lie to Me; 3. Gossip about me." This statement is defamatory per quod; is libelous, and therefore, actionable per se.

53. Defendant Ludy has also made slanderous statements falsely accusing Plaintiff Charping with the commission of a crime of moral turpitude, which are also actionable per se.

54. Defendant Ludy's defamatory statements are all actionable per se and damages are presumed as a matter of law.

55. Plaintiff Charping is therefore entitled to an award of actual and punitive damages against Defendant Ludy.

Fifth Cause of Action

(Appointment of Receiver, Accounting and Judicial Dissolution)

56. Plaintiffs Charping and Palmetto Wildlife Extractors hereby incorporate the above allegations as fully and effectually as if re-stated herein verbatim.

57. Plaintiffs Charping and Palmetto Wildlife Extractors seek an order pursuant to S.C. Code Ann. § 33-44-801 dissolving Palmetto Wildlife Extractors on one or more of the following grounds:

- a. another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
- b. it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; and
- c. the member in control of the company has acted, is acting, or will continue to act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to Plaintiff Charping.

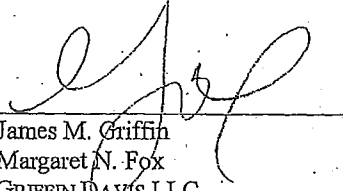
58. Plaintiffs Charping and Palmetto Wildlife Extractors further seek an order pursuant to S.C. Code 33-44-803(a) for the appointment of a receiver to take custody and control of the

financial accounts and all assets of Palmetto Wildlife Extractors and wind up the affairs of the business.

59. Plaintiffs Charping and Palmetto Wildlife Extractors further seek an order for an accounting requiring Defendant Ludy to account for and return all moneys that he has withdrawn to which he is not entitled to receive under the terms of the Operating Agreement, and Addendum thereto, and to reimburse Palmetto Wildlife Extractors for all personal expenses paid by Palmetto Wildlife Extractors on Defendant Ludy's behalf.

60. Plaintiffs Charping and Palmetto Wildlife Extractors seek any other equitable relief that the Court deems just and proper.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL NON-EQUITABLE CLAIMS

By: 

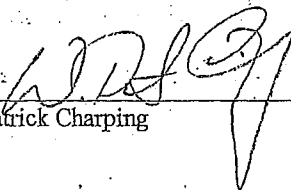
James M. Griffin
Margaret N. Fox
GRIFFIN DAVIS LLC
1116 Blanding Street
Columbia, South Carolina 29201
T: (803) 744.0800
F: (803) 744.0805
jgriffin@griffindavislaw.com
mfox@griffindavislaw.com

Attorneys for Plaintiffs

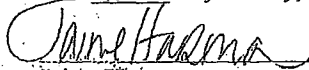
May 10, 2017
Columbia, South Carolina

VERIFICATION

I do hereby verify that the allegations contained the foregoing Complaint are true and correct to the best of my knowledge.


Patrick Charping

Sworn to and subscribed before me
This 10th Day of May, 2017

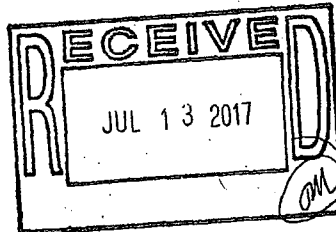

Jaime Haimon
Notary Public, State of South Carolina
My Commission Expires: September 4, 2019

2017 MAY 10 PM 2:16
SOUTH CAROLINA
NOTARY PUBLIC

Exhibit C

WESLEY D. FEW, LLC
1527 Blanding Street, Suite 203
Columbia, SC 29201
P.O. Box 11546 (29211)
E: wes@wesleyfew.com | O: 803-223-6942 | M: 864-404-7792

July 11, 2017



Via U.S. Mail

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
1701 Main Street, 1st Floor West Wing
Columbia, SC 29201

RE: Palmetto Wildlife Extractors, LLC and Patrick Charping v. Justin Ludy and
First Community Corporation, D/B/A First Community Bank
Case No.: 2017-CP-40-00176
Our File No.: 00226-001

Dear Ms. McBride,

Enclosed for filing are one original and one copy of Defendant Justin Ludy's Answer and Counterclaim in the above-referenced case. Please file the original and return the file-stamped copy in the enclosed self addressed envelope.

With warm regards, I remain

Very Truly Yours,

Wesley D. Few

WDF/cgy

Enclosures

CC: Margaret N. Fox, Esquire (*Via U.S. Mail*)
James M. Griffin, Esquire (*Via U.S. Mail*)
Jody Bedenbaugh, Esquire (*Via U.S. Mail*)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

PALMETTO WILDLIFE
EXTRACTORS, LLC, AND PATRICK
CHARPING,

PLAINTIFFS,

V.

JUSTIN LUDY AND FIRST
COMMUNITY CORPORATION,
D/B/A FIRST COMMUNITY BANK,

DEFENDANTS.

C.A. No.: 2017-CP-40-00176

**ANSWER AND
COUNTERCLAIM**

COMES NOW THE DEFENDANT, JUSTIN LUDY (hereafter "Ludy" or "Defendant")
answering the Complaint of the Plaintiff Charping¹ herein (hereafter "Complaint"), and would
respectfully show unto the appropriate tribunal as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation set forth in the Complaint which is
not hereinafter specifically admitted or to which a response is not otherwise provided.

FOR A SECOND DEFENSE

2. Answering Plaintiff's Introduction Paragraph on pages 1 and 2 of the Complaint,
Defendant responds and states that this Paragraph sets forth legal conclusions for
which no response is required. Defendant would further objects to the allegations in
this Paragraph in view of Rule 8's requirement that a pleading set forth a "short and

¹ Defendant files this Answer and Counterclaim in this Court in an abundance of caution in view of and subject to the pending motion to dismiss and compel arbitration, filed June 6, 2017. As set forth in that motion, this action by Charping should have been brought in arbitration, in accordance with the parties' Operating Agreement.

plain statement of the facts showing that the pleader is entitled to relief." Further subject to these objections, Defendant would respond and craves reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith, and specifically deny Charping's self-serving characterizations and commentary. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.

3. Answering Paragraph 1 of the Complaint, Defendant would admit only so much as alleges that Palmetto Wildlife Extractors, LLC ("PWE") is a South Carolina limited liability company with offices in Richland County. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.
4. Answering Paragraphs 2 and 3 of the Complaint, Defendant responds and admits only so much as alleges Defendant is a resident of Lexington County, and, on information and belief, that Charping is a resident of Lexington County, and would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith. The remaining allegations of this Paragraph set forth legal conclusions for which no response is required. To the extent any response is required to the remaining allegations of this Paragraph, Defendant denies.
5. Answering Paragraph 4 of the Complaint, Defendant responds and admits only so much as alleges the Paragraph identifies the bank that PWE has a banking relationship. Defendant is without information sufficient to admit or deny the remaining allegations of this Paragraph and therefore denies.
6. Answering Paragraphs 5 and 6 of the Complaint, Defendant responds and states the allegations of this Paragraph set forth legal conclusions for which no response is

required. To the extent any response is required to the remaining allegations of this Paragraph, Defendant denies.

7. Answering Paragraphs 7 to 23 of the Complaint, Defendant would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith, and specifically denies Charming's self-serving characterizations and commentary. To the extent any response is required to any remaining allegations of these Paragraphs, Defendant denies.
8. Answering paragraph 24 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.
9. Answering Paragraphs 25 to 29 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.
10. Answering paragraph 30 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.
11. Answering Paragraph 31 of the Complaint, Defendant would crave reference to the documents referenced or suggested in said Paragraph and deny any allegations inconsistent therewith. To the extent any response is required to any remaining allegations of this Paragraph, Defendant denies.
12. Answering Paragraphs 32 to 36 of the Complaint, Defendant is without information sufficient to admit or deny the allegations of these Paragraphs and therefore denies.
13. Answering Paragraphs 37 to 41 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the

extent any response is required to the allegations of these Paragraphs, Defendant denies.

14. Answering paragraph 42 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

15. Answering Paragraphs 43 to 47 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

16. Answering paragraph 48 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

17. Answering Paragraphs 49 to 55 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

18. Answering paragraph 56 of the Complaint, Defendant incorporates its responses to the preceding paragraphs and realleges them as if repeated here verbatim.

19. Answering Paragraphs 57 to 60 of the Complaint, Defendant responds and states these Paragraphs include legal conclusions for which no response is required. To the extent any response is required to the allegations of these Paragraphs, Defendant denies.

FOR A THIRD DEFENSE

20. Plaintiff's claims must be dismissed for failure to state a claim.

FOR A FOURTH DEFENSE

21. One or more of the Plaintiff's claims must be dismissed in accordance with the Business Judgment Rule.

FOR A FIFTH DEFENSE

22. One or more of Plaintiff's claims must be dismissed for failure to plead in accordance with Rule 9.

FOR A SIXTH DEFENSE

23. One or more of the Plaintiff's claims must be dismissed because those claims are preempted by other laws.

FOR A SEVENTH DEFENSE

24. One or more of the Plaintiff's claims must be dismissed due to the doctrines of estoppel, consent and waiver.

FOR A EIGHTH DEFENSE

25. The Plaintiff's claims fail because the Plaintiff has no damages, and also due to his failure to properly plead or prove damages.

FOR A NINTH DEFENSE

26. One of more of the Plaintiff's claims must be dismissed based upon the doctrine of privilege.

FOR A TENTH DEFENSE

27. One of more of the Plaintiff's claims must be dismissed based upon the First Amendment privilege of truth.

FOR A ELEVENTH DEFENSE

28. Defendant reserves the right to plead additional defenses or counterclaims as may arise in discovery in this action.

FOR A TWELFTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Fiduciary Duty)

29. Ludy herein asserts one or more of these claims on behalf of himself and the company / PWE as against Charping.

30. Prior to Charping's involvement in the company, Ludy had built the company and had acquired unique and valuable experience in the industry, which Charping did not possess.

31. Ludy's unique experience and work ethic make Ludy an invaluable asset to the company.

32. Ludy was at all times acting in accordance with his experience and judgment to protect the company, PWE, and his actions have in fact saved the company great expense, as well as other damages being caused to the company by the actions of Charping.

33. Charping took unauthorized expenditures for his own personal use, including specifically one unauthorized withdrawal in excess of \$32,000 in 2017.

34. Charping additionally refused to provide justification or any response to Ludy's inquiries regarding numerous other expenditures as was set forth in that certain civil action known as 2017-CP32-01416.

35. Charping additionally was not working and when he was allegedly at work for the company. His performance was that of an employee tempting his employer to be terminated for insubordination and gross negligence, such that Ludy had no choice

but to terminate Charping to protect the company and its reputation in the community in June of 2017, as set forth in a letter providing some of the reasons for the termination.

36. As will be shown at any arbitration trial or other adjudication of this matter, Charping's actions as set forth herein harmed the company and has caused it to lose revenue that cannot be recouped, despite the herculean and time consuming efforts of Ludy to maintain morale and revenue to the company.
37. As a result of Charping's breach of his duties to the company, the Company and Ludy have been damaged and are entitled to recover those actual and punitive damages from Ludy.

FOR A THIRTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Contract)

38. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.
39. Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.
40. Plaintiff's neglect of his promises to fulfill his obligations to the company are a breach of contract.

41. Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.

42. Ludy is entitled to actual damages in an amount sufficient to compensate him for the loss of value of his interest in the company, the loss of his status as an effective fifty-one percent owner of the company, lost profits resulting from Plaintiff's failure and refusal to perform as promised, and such other relief as the appropriate tribunal may determine.

FOR A FOURTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Breach of Contract Accompanied by Fraudulent Act)

43. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

44. Charping, among other things, has filed a fraudulent insurance claim and, as such, has jeopardized the company's credit rating and standing in the community, as well as its ability to obtain insurance for certain of its vehicles associated with Charping.

45. These actions constitute a breach of Charping's contractual duties to the company.

46. Charping's other actions as identified herein also constitute a continues to refuses to meaningfully respond or justify his actions in taking said monies.

47. fraud on the company as he has refused to and have breached Since apparently deciding it was in his best interests to attempt to sabotage the company and sue its bank, Plaintiff has continued to neglect his obligations to the company. On information and belief, Plaintiff has been pursuing other business activities, yet continued to assert his right to wages to be paid to him for work he was not performing or was performing in an objectively sub-standard manner, neglecting the very obligations to the company that he specifically identified as vital to the success of the company.

48. Ludy is entitled to actual damages in an amount sufficient to compensate him for the loss of value of his interest in the company, the loss of his status as an effective fifty-one percent owner of the company, lost profits resulting from Plaintiff's failure and refusal to perform as promised, and such other relief as the appropriate tribunal may determine.

FOR A FIFTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Constructive Trust - S.C. Code Ann. § 33-44-409(b)(1))

49. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

50. Pursuant to S.C. Code Ann. § 33-44-409(b)(1), Charging as part of the duty of loyalty that he owes the company and Ludy was required to "hold as trustee ... any property, profit, or benefit derived by the [M]ember in the conduct ... of the [company's] business or derived from a use by the [M]ember of the [company's] property."

51. Charging has failed to communicate with Ludy regarding his expenditures and activities for the company as set forth and referenced herein.

52. As such, Ludy respectfully requests an Order imposing a constructive trust on "any property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but not be limited to, all withdrawals from the company bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof.

FOR A SIXTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Duty of Loyalty S.C. Code § 33-44-409(b)(2) & Operating Agreement § 12.7)

53. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

54. Charping owes a duty of loyalty to the company and Ludy "to refrain from dealing with the [company] in the conduct ... of the [company's] business as ... a party having an interest adverse to the [company]."

55. Charping has breached this duty of loyalty owed to the company and Ludy by acting as a party having an interest adverse to the company by withdrawing funds from the company's bank accounts for non-company purposes; by paying personal expenses with company funds; by taking or otherwise removing company property and confidential information; and by failing to deposit company monies, among other actions.

56. Charping's breach of the duty of loyalty owed to Ludy has directly and proximately caused Ludy, as a Member and holder of a 51% Governance Interest and a 50%.

Financial Interest, damages in an amount to be determined by this appropriate tribunal.

57. Additionally, based upon Charping's willful, wanton, and / or reckless breach of the duty of loyalty, Ludy is entitled to punitive damages, in an amount to be determined by the appropriate tribunal.

FOR A SEVENTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Duty of Good Faith and Fair Dealing, S.C. Code § 33-44-409(d) & Op. Agr. § 12.4)

58. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

59. Charping owes an obligation of good faith and fair dealing to the company and Ludy.

60. Charping has breached this obligation of good faith and fair dealing by withdrawing funds from the company's bank accounts for non-company purposes, by paying personal expenses with company funds without explanation or accounting for same, and by taking or otherwise removing company property and confidential information, by failing to deposit company monies, and by not acting in the company's best interests.

61. Charping's breach of the obligation of good faith and fair dealing owed to Ludy has directly and proximately caused Ludy, as a Member and holder of a 51% damages Governance Interest and a 50% Financial Interest, damages in an amount to be determined by this appropriate tribunal.

62. Additionally, based upon Charping's willful, wanton, and/or reckless breach of this obligation of good faith and fair dealing, Ludy is entitled to punitive damages, in an amount to be determined by the appropriate tribunal.

FOR AN EIGHTEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Injunction – Temporary Restraining Order Rule 65)

63. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.
64. Ludy, as a Member and holder of a 51% Governance Interest and a 50% Financial Interest, will suffer immediate and irreparable injury, loss, or damage (the "Injury") if Charping continues to (i) withdraw funds from the LLC's bank accounts, without Ludy's approval, (ii) pay personal expenses with LLC funds, (iii) take, remove, or otherwise convert company property and confidential information, (iv) hold and fail to promptly deposit company monies, and / or (v) act adverse to the best interests of the LLC (collectively, the "Actions").
65. Absent Charping ceasing or being prevented from ceasing these Actions detrimental to the company and Ludy, Ludy does not have an adequate remedy at law to prevent or otherwise compensate him for such immediate and irreparable injury.
66. Therefore, based on the above, Ludy requests the assistance of the tribunal to prevent such immediate and irreparable injury, for which Ludy does not have an adequate remedy at law.
67. As such, Ludy is informed and believes that, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, he is entitled to the issuance of a temporary and a permanent injunction, enjoining, restraining, and prohibiting Charping from participating in any of the Actions.

FOR A NINETEENTH DEFENSE, BY WAY OF COUNTERCLAIM

(Judicial Expulsion & Dissociation - S.C. Code Ann. § 33-44-601(6))

68. Ludy for himself and the company re-allege each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

69. Based upon the foregoing allegations, the company cannot continue to operate with Charping's involvement in any way, whether by ownership or as an employee.

70. As a result of these actions by Charping, Ludy, as a Member of the company, is entitled to judicial expulsion and dissociation of Charping, pursuant to S.C. Code § 33-44-601(6), as Charping has: (i) engaged in wrongful conduct that has adversely and materially affected the LLC's business; (ii) willfully and persistently committed material breaches of the Operating Agreement and the duties he owes the company and Ludy under S.C. Code § 33-44-409; and (iii) engaged in conduct related to the company's business which makes it not reasonably practicable for Ludy to carry on the company's business with Charping.

PRAYER FOR RELIEF

WHEREFORE, Ludy requests that this tribunal:

A. Issue an Order requiring Charping to fully account for all "property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but not be limited to, all withdrawals from the company's bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof;

B. Issue an Order imposing a constructive trust on "any property, profit or benefit" derived, by Charping, in any manner related to the company and / or its property, to include, but

not be limited to, all withdrawals from the company's bank accounts, all expenses paid for with company monies, all monies or other property received from any of the company's clients, all company property currently in Charping's possession, and all company property that Charping has disposed of and the proceeds thereof.

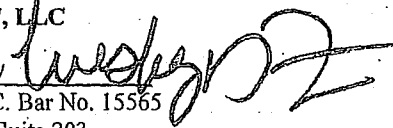
C. Award Ludy damages, both actual and punitive, in an amount to be determined by the hearing tribunal;

D. Issue a temporary and permanent injunction, enjoining, restraining, and prohibiting Charping from participating in any of the Actions;

E. Expel and dissociate Charping from the company; and

F. Order such other and further relief as is deemed just, equitable, and proper under the circumstances as presented.

WESLEY D. FEW, LLC


s/Wesley D. Few/
Wesley D. Few, S.C. Bar No. 15565
1527 Blanding St., Suite 203
Columbia, South Carolina 29201
803-223-6942 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIMANT JUSTIN LUDY

Columbia, South Carolina
July 11, 2017

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No: 2017-CP-40-00176

CERTIFICATE OF SERVICE

JUSTIN LUDY AND FIRST COMMUNITY
CORPORATION, D/B/A FIRST COMMUNITY
BANK,

Defendants.

Jody Bedenbaugh, Esquire
Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

[signature on next page]

WT

WESLEY D. FEW, LLC

s/Wesley D. Few/

Wesley D. Few, Esquire, S.C. Bar No. 15565
1527 Blanding Street, Suite 203

Columbia, SC 29201

P.O. Box 11546 (29211)

(803) 223-6942 | wes@wesleyfew.com

ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIMANT JUSTIN LUDY

July 11, 2017
Columbia, South Carolina

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Wildlife Extractors, LLC and
Patrick Charping,

Plaintiffs,

v.

Justin Ludy and First Community
Corporation d/b/a First Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No. 2017-CP-40-02822

RICHLAND COUNTY
FILED
2017 JUN 29 PM 1:59
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

AFFIDAVIT OF W. PATRICK CHARPING

Personally appearing before me, W. Patrick Charping, after being duly sworn deposes and states:

1. I am over the age of 18 and submit this affidavit in support of my motion to have a receiver appointed for Palmetto Wildlife Extractors, LLC ("Palmetto Wildlife" or "Company") because I have been ousted from the Company in which I own a 50% interest.
2. Effective October 2014, I acquired a 50% interest in Palmetto Wildlife from Justin Ludy ("Ludy") in exchange for a capital contribution of \$49,000.
3. Under the terms of the Operating Agreement, Ludy and I were to share equal control over the financial rights of Palmetto Wildlife.
4. Despite being entitled to 50% of the profits from Palmetto Wildlife, Ludy has taken in excess of \$126,000 more than myself from the financial accounts of Palmetto Wildlife since 2015.
5. It has been Ludy's practice to make payments for personal, non-business related expenses from Palmetto Wildlife's bank accounts. For example, Ludy has withdrawn funds from

Palmetto Wildlife to pay for membership dues to SDC Media Inc. – the “official app for SCD-Swingers Date Club” and to Kennard & Jones, LLC, who were his girlfriend Ms. Thomas’ divorce attorneys for fees she incurred during her divorce proceeding. Ludy has also written checks from Palmetto Wildlife’s account directly to Ms. Thomas for over \$11,000 and issued additional checks for over \$8,000 for the startup of a fashion apparel business by Ms. Thomas.

6. In October 2015, Ludy and I amended the Operating Agreement to establish set salaries for each of us in an effort to prohibit Ludy from withdrawing money from Palmetto Wildlife for personal use unless I agreed to the same. The only way to change the amount of salary each of us receives is by amending the Operating Agreement, which requires that we both agree.

7. Despite this amendment, Ludy withdrew approximately \$19,347.39 for personal expenses in 2016 and \$3,729.76 in personal expenses during the first quarter of 2017.

8. In addition, Ludy withdrew \$57,944.92 for tax payments in 2016, whereas I only withdrew \$24,197.62 – a difference of \$33,747.30.

9. When I would withdraw agreed upon funds in an effort to start reducing the imbalance in the capital accounts, Ludy would become very agitated, upset and confrontational towards me. For example, in April 2017, I took a tax draw of \$32,000 after verifying this amount with Palmetto Wildlife’s tax accountant. Thereafter, Ludy accused me of theft, blocked my access to Palmetto Wildlife’s accounting software and social media site. He also had First Community Bank remove me from all of Palmetto Wildlife bank accounts, preventing me from accessing any funds or viewing any account information.

10. As a result of First Community Bank’s agreement to block me from accessing the account, I am unable to ensure that loan payments of Palmetto Wildlife that I have personally guaranteed, are paid in a timely manner. Additionally, Ludy’s failure to make some of these loan

payments harms my credit and exposes me to personal liability. It also negatively impacts the credit history of the Company.

11. Since the beginning of my involvement with Palmetto Wildlife, I have been responsible for day to day operations and all financial management and oversight of the business. This included, managing the schedule of Palmetto Wildlife employees so as to maximize the work flow abilities of Palmetto Wildlife and streamlining business processes related to our most lucrative clients – insurance companies – so as to ensure the timely provision of services to the needs of their insureds. I also was in charge of all hiring, firing, and performance reviews for employees.

12. Set forth below is a timeline of events beginning in March 2017 illustrating some of the actions taken by Ludy to oust me from any involvement in Palmetto Wildlife and the damage resulting from the same:

- **March 30, 2017 – Verizon Account** – Removing my administrative rights to Palmetto Wildlife's Verizon account, leaving me unable to monitor charges or access any of individual user accounts.
- **March 31 2017 – QuickBooks** – Limiting my access to Palmetto Wildlife's financial software, QuickBooks, containing financial information and customer data. Such limitations interfered with my ability to conduct business on behalf of Palmetto Wildlife by, among other things, preventing me from writing estimates while I was working and from amending and editing financial information regarding ongoing projects worth tens of thousands of dollars.
- **April 4, 2017 – First Community Bank Accounts**: Removing my access to all Palmetto Wildlife accounts held at First Community Bank, thus preventing me from ensuring all Palmetto Wildlife bills are paid on time and the Company loans I have personally guaranteed stay current.
- **April 5, 2017 – Scheduling Software** – Removing my administrative access to Palmetto Wildlife's scheduling software, thus impairing my ability to run the operations of the Company, while simultaneously building and maintaining revenue from its most lucrative sources, namely insurance companies. Following such removal, Ludy assigned my responsibilities to another employee who lacked the experience necessary to takeover my responsibilities. As a result, Palmetto Wildlife has lost potential job opportunities and clients.

- **May 3, 2017 – Delinquent Sun Trust Bank Vehicle Loan 1st offense** – I was notified that the Sun Trust Bank Vehicle Loan payment due April 15, 2017 and personally guaranteed by me was not made.
- **May 3, 2017 – Delinquent Fuel Account 1st offense** – I was notified that the Universal Fuel Card payment due April 20, 2017 and personally guaranteed by me was not made.
- **May 22, 2017 – Insurance Software and Financials** – Removing my access to all customer information and financial data regarding our largest profit center and insurance claims.
- **May 23, 2017 – Delinquent Sun Trust Bank Vehicle Loan 2nd Offense** – I was notified that the Sun Trust Bank Vehicle Loan payment due May 15, 2017 and personally guaranteed by me was not made.
- **May 25, 2017 – Delinquent Palmetto Citizens Bank Vehicle Loan 1st Offense** – I was notified that the Palmetto Citizens Vehicle Loan payment due May 5, 2017 and personally guaranteed by me was not made.
- **June 9, 2017 – Delinquent Palmetto Citizens Bank Vehicle Loan 2nd Offense** – I was notified that the Palmetto Citizens Vehicle Loan payment due May 5, 2017 and personally guaranteed by me had still not been made.
- **June 15, 2017 – Salary** – Failure to pay agreed upon salary as required by the Operating Agreement.
- **June 17, 2017 – Company Email** – Removing my access to Company email containing financial records, statements and correspondence to customers, contracts, accounts and employees.
- **June 17, 2017 – Scheduling Software and Customer Accounts** – Removing all of my access to Company customer data containing financial records, statements of accounts and customer notes and correspondence.
- **June 17, 2017 – QuickBooks** – Removing all of my access to all of Palmetto Wildlife's financial accounting information within QuickBooks.
- **June 17, 2017 – Home Depot Account** – Closing the Home Depot commercial revolving account held by Palmetto Wildlife and guaranteed by myself, which negatively impacts the business credit history and my own.

- **June 18, 2017 – Lowe's Revolving Account** – Attempting to close the Lowe's commercial revolving account held by Palmetto Wildlife and guaranteed by myself, which would have been damaging to the business credit history and my own. Additionally, Ludy removed all of my online access to the Lowe's account, thus barring my access to an account which I have personally guaranteed.
- **June 19, 2017 – Removal From access to Payroll** – Removing my access to all payroll data for the Company, thus prohibiting me from viewing this financial information of the Company.
- **June 23, 2017 – Changed Locks of Palmetto Wildlife** – Removing my access to the Palmetto Wildlife office by having the locks changed to a building currently being leased during a 3-year renewal period authorized by me and for which I am responsible.

13. In addition to the actions outlined above, Ludy has sent me numerous emails since March 2017 containing factual misrepresentations regarding my work and the business which I can only assume are an effort by him to build a paper case to support his improper actions.

14. He also sent a defamatory text message to my wife in April 2017 stating I stole funds from Palmetto Wildlife and otherwise engaged in criminal actions requiring I be removed from the financial business of the Company.

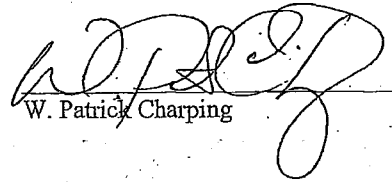
15. Despite my 50% financial ownership of Palmetto Wildlife, Ludy sent me a termination letter dated June 16, 2017 that also contains numerous falsehoods that allegedly constitute the grounds for my termination from Palmetto Wildlife.

16. Presently, I have no way of monitoring the financial status of Palmetto Wildlife – the Company of which I am a 50% owner. Nor do I have any means of ensuring the actions of Ludy will not continue to harm my credit or that of Palmetto Wildlife.

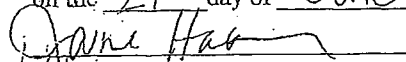
17. Ludy's conduct is not only unfairly prejudicial to myself and a breach of his fiduciary duty to Palmetto Wildlife, but it has made it impractical for me to carry on the business with him as a member of Palmetto Wildlife.

FURTHER AFFIANT SAYETH NOT.

Date: 6/29/17


W. Patrick Charing

Sworn to and subscribed before me
on the 29th day of June, 2017.



Notary Public for South Carolina
My Commission Expires September 1, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

PALMETTO WILDLIFE)
EXTRACTORS, LLC, AND PATRICK)
CHARPING,)
C.A. No.: 2017-CP-40-02822
PLAINTIFFS,)
NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
OF ORDER GRANTING IN PART
AND DENYING IN PART MOTION
TO DISMISS OR STAY AND
COMPEL ARBITRATION
V.)
JUSTIN LUDY AND FIRST)
COMMUNITY CORPORATION,)
D/B/A FIRST COMMUNITY BANK,)
DEFENDANTS.)

TO: MARGARET N. FOX, ESQ., AND JAMES M. GRIFFIN, ESQ., COUNSEL FOR
PLAINTIFFS; AND JOHN T. MOORE, ESQ., AND JODY A. BEDENBAUGH, ESQ.,
COUNSEL TO DEFENDANT FIRST COMMUNITY BANK

YOU WILL PLEASE TAKE NOTICE that, in accordance with S.C. R. CIV. P. RULE
59(e) on the tenth day after filing of this motion or at some other time that may be set by the
Court, the undersigned attorneys for the Defendant Justin Ludy, ("Ludy" or "Defendant") will
move this Honorable Court for reconsideration of its Order Granting in Part and Denying in Part
Motion to Dismiss or Stay and Compel Arbitration, dated June 21, 2018 (Order).

The grounds for this motion relate to the fact that the Order does not address the
"relatedness" of the Plaintiff's three claims (claims 3-5) that were stayed and not compelled to
arbitration, and our Supreme Court's decision in Zabinski v. Bright Acres Assoc., 346 S.C. 580,
597, 553 S.E.2d 110, 119 (2001), which required even tort claims be arbitrated with the LLC
claims. Id. (holding "Further, any tort claims between the partners that relate to the partnership
agreement are arbitrable.").

An analysis of these three claims as plead shows that these claims are not unrelated claims and relate to the parties relationship as former partners in the entity known as Palmetto Wildlife Extractors, LLC ("PWE"). For example, Charping's Claim 3 alleging a Civil Conspiracy is based upon facts directly related to the division/ running of the LLC. Paragraphs 43 and 44 allege:

43. Defendants Ludy and First Community Bank have conspired and joined together for the purpose of injuring Plaintiff Charping.

44. The actions undertaken jointly by Defendants have resulted in Charping's ouster from Palmetto Wildlife Extractors, thereby causing the dissolution of Palmetto Wildlife Extractors.

Similarly, Charping's Claim 4, alleging Defamation of Character, is based upon facts directly related to the division/ running of the LLC, for example, alleging as follows:

51. Specifically, on April 5, 2017, Ludy sent a text message stating that Charping "has embezzled over \$50,000 from the company he used to be a part of. It's a criminal offense and action is already taken." This statement is libelous and therefore actionable per se.

52. That same day, shortly after removing Plaintiff Charping from Palmetto Wildlife Extractors, Defendant Ludy posted the following on social media: "Three ways to be removed from my life: 1. Steal from me; 2. Lie to Me; 3. Gossip about me." This statement is defamatory per quod; is libelous, and therefore, actionable per se.

Most of the times when a dispute exists between partners that results in litigation / arbitration, it can be expected that one partner or the other will have alleged at some point in time that the other took money from the company improperly.

Finally, Charping's Claim 5 for Accounting / Receivership / Dissolution originates in part from the LLC code itself, and is also related to the Operating Agreement. In support of this claim, Charping alleges:

57. Plaintiffs Charming and Palmetto Wildlife Extractors seek an order pursuant to S.C. Code Ann. § 33-44-801 dissolving Palmetto Wildlife Extractors on one or more of the following grounds:

- a. another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on: the company's business with that member;
- b. it is not otherwise reasonably practicable to carry on the company's business in conformity with the Articles of organization and the operating agreement; and
- c. the member in control of the company has acted, is acting, or will continue to act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to Plaintiff Charming.

Id.

Each of the three stayed claims relates to the parties relationship as former partners in
PWE.

Additionally, the Order fails to address that portion of the parties Agreement that states that the parties agreed that any disputes regarding arbitration would be submitted to the arbitrators, as follows:

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, et. seq. and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

Id. (underlining emphasis added).

The Order also fails to address our state's precedent favoring arbitration of claims and that same policy of the federal Arbitration Act ("FAA"). See e.g., General Equipment & Supply Co., Inc. v. Keller Rigging & Const., SC, Inc., 344 S.C. 553, 555, 544 S.E.2d 643, 645 (Ct. App. 2001) (stating, "Furthermore, it is the policy of this state to favor arbitration of disputes."); and Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (holding, "It is the policy of this state and federal law to favor arbitration and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'"). In Landers, our Supreme Court reversed the trial court's order splitting the claims that would go into arbitration in a case interpreting an employment contract arbitration provision. Id. at 218 (concluding "In conclusion, we reverse the trial court with respect to each of Landers' remaining four causes of action¹ and hold that each is subject to arbitration.").

Finally, splitting the claims that will go to arbitration creates confusion amongst the parties and will impede settlement, as one party or the other may believe they will get a better result when the stayed claims come back for a second round of litigation amongst the same parties. Such splitting also creates confusion in the event one of the parties seeks to amend their pleadings during the discovery period, as the proposed amended claims will also be the subject of a dispute between the parties as to whether not they are subject to litigation in the courts or in arbitration. Requiring parties to litigate related disputes in two different forums is also inefficient and contrary to the intent of the state and federal policies favoring arbitration.

To address these types of concerns, the parties agreed in their Operating Agreement as quoted above that, "Any dispute as to whether a controversy or claim is subject to arbitration

¹ The four causes of action split out by the trial court in Landers included: (i) slander, (ii) intentional infliction of emotional distress, (iii) illegal proxy solicitation, and (iv) wrongful expulsion as a director.

shall be submitted as part of the arbitration proceeding.” *Id.* Mr. Charping now wishes to ignore those very words that he agreed to when he signed the Operating Agreement.

The Order states that “According to Section 11.1.3 of the parties’ agreement, a court must enter a judicial decree dissolving the company pursuant to S.C. Code Ann. § 33-44-801. Thus, Plaintiffs’ claim for appointment of receiver, accounting, and judicial dissolution is not subject to arbitration as Section 11.1.3 specifically requires a finding by a court.” *Order* at 3-4. Defendant would respectfully assert that the above-quoted concern is addressed by the provisions of S.C. Code Ann. § 15-48-120, providing for “confirmation of an award” in arbitration in this Court. *See e.g., Mills v. William Clarke Jeep Eagle*, 321 S.C. 150, 152, 467 S.E.2d 268, 269 (holding, “Once the motion to confirm was filed, the circuit court resumed jurisdiction of the case,” and also stating “[t]o request modification or clarification after the motion to confirm was filed, Clarke was required to move the circuit court to submit the award to the arbitrators for modification.”). Accordingly, the Uniform Arbitration Act provides that the arbitration tribunal decides the issues in dispute between the parties and the court is still available to enforce the arbitrator’s award, as may be interpreted and modified by the arbitration tribunal, just the same as if it were a decision of the court.

The undersigned hereby affirms that he has consulted with opposing counsel regarding the substance of this motion, and was unable to resolve the issues without the need for filing this motion.

CONCLUSION

For at least the reasons set forth herein, Defendant Ludy respectfully requests that this Court reconsider its Order and issue a new or amended order sending all claims (and counterclaims) in the case to arbitration consistent with our Supreme Court’s holdings in

Zabinski and Landers, and consistent the agreement between the parties to submit all claims to arbitration.

Respectfully submitted,

WESLEY D. FEW, LLC

s/Wesley D. Few/
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ATTORNEYS FOR DEFENDANT JUSTIN LUDY

Greenville, South Carolina
June 30, 2018

ELECTRONICALLY FILED - 2018 Jun 30 8:21 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4002822

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2017-CP-40-2822

Palmetto Wildlife Extractors,)
LLC, et al.,)

Plaintiffs,)

vs.)

Transcript of Record

Justin Ludy, et al.,)

Defendants.)
_____)

March 1, 2018
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

James M. Griffin, Esquire
Attorney for the Plaintiffs

Wesley D. Few, Esquire
Attorney for Defendant Ludy

Jody A. Bedenbaugh, Esquire
Attorney for Defendant First Community Bank

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: All right, I see all y'all here on the
2 first case, which is 2017-CP-40-2822, *Palmetto Wildlife*
3 *Extractors vs. Justin Ludy*.

4 MR. GRIFFIN: Yes, Your Honor.

5 THE COURT: It's two motions on the docket. The
6 defense has a motion; the plaintiff has a motion. It
7 doesn't matter to me which one we do first.

8 MR. GRIFFIN: Your Honor, on the, on the motion to
9 transfer the case to business court, that actually was
10 heard, if you will, by Judge Young via email frankly. And,
11 and his decision was that, that -- hold that in abeyance
12 until Your Honor rules on the motion to compel arbitration,
13 and so that matter, the other motion for transferring the
14 case to business court, is sort of under Judge ---

15 THE COURT: , Young ---

16 MR. GRIFFIN: --- Roger Young's jurisdiction.

17 THE COURT: Okay. All right, and then this is a
18 motion to dismiss or stay and compel arbitration?

19 MR. FEW: That's right, Your Honor.

20 THE COURT: All right. I'll be glad to hear from you.

21 MR. FEW: Your Honor, may it please the court? Wes
22 Few on behalf of defendant Justin Ludy and Palmetto
23 Wildlife Extractors. As we've just discussed, we're here
24 on a motion to compel arbitration, Your Honor. Mr. Ludy,
25 my client, I don't know that it really matters terribly,

1 the details, but he had an existing business that Mr.
2 Charping, for lack of a better word, bought into, and at
3 that time they executed the operating agreement that we've
4 attached to our motion which has an arbitration provision.

5 Your Honor, I know it's going to be part of Mr.
6 Griffin's argument, and I'll try to just stand up once.
7 They're presenting a waiver argument, which our position is
8 is that's just not -- there is no waiver here. The only
9 thing that really objectively indicates any waiver is that
10 before he was represented by my office, Mr. Ludy did file
11 an action -- I'm just going through chronologically -- on
12 April 25th in Lexington County where he resides, and then
13 Mr. Charping responded with an action of his own, which is
14 this action, in Richland County. Between that time,
15 between the time when we answered, I became engaged for Mr.
16 Ludy in this matter and by the time I was engaged, he had
17 already dismissed the action in Lexington County. So, it
18 was basically a filing and a filing fee and service of the
19 action. No discovery was taken at all. The timeline for
20 that -- so, his action -- my records show, my notes, filed
21 April 25, 2017. Mr. Charping filed this action on May the
22 10th of 2017.

23 Your Honor, our motion was just sort of plain vanilla.
24 You know, the courts enforce arbitration agreements in
25 South Carolina; I think most of us are well aware of that.

1 We're pursuing the motion to compel arbitration under the
2 South Carolina arbitration act, as well as the Federal
3 Arbitration Act. Your Honor, and, and I'm happy to go
4 through and sort of try to stand up one time if, if that
5 pleases the court, so that's the basis of our motion.

6 I think we cited *General Equipment Supply vs. Keller*,
7 344 S.C. 553 from 2001, stating it's the policy of this
8 state to favor arbitration disputes, and we, we also
9 referenced the Federal Arbitration Act, 9 USC, Section 3.
10 I think there's, you know, there's an argument that, that
11 Mr. Ludy's counsel, Mr. Griffith, has made that, that the
12 claims are not within the scope. Well, the claims we think
13 are clearly within the scope and, in fact, the case law
14 states and this arbitration agreement that they agreed to
15 -- and I have a copy of this, Your Honor, if you need me to
16 hand it up. It's on the first page of our motion, and I
17 don't think this language was referenced in their
18 opposition to the motion, but in 12.1.4 of arbitration it
19 says:

20 Any controversy or claim arising out of or
21 related to this agreement or the breach thereof
22 shall be settled except when it may be otherwise
23 provided herein by binding arbitration in
24 accordance with S.C. Code 15-48-10, and the
25 arbitration award may be entered as a final

1 judgment in any court having jurisdiction
2 thereon.

3 And next sentence states:

4 Any dispute as to whether a controversy or claim
5 is subject to arbitration shall be submitted as
6 part of the arbitration proceedings.

7 So, that's a part of the parties' agreement, and so if
8 Mr. Ludy didn't want to arbitrate, maybe he should have
9 gotten Mr. Griffin to review this agreement before he
10 signed it because that's, that's what they've agreed to.

11 Your Honor, the plaintiff's motion in opposition,
12 their response cites a *Hyload* case from 1992 which cites a
13 1965 case. The law is much more well developed on
14 arbitration since that time. We would rely on Benson,
15 *Rhodes vs. Benson Chrysler Plymouth*, which is 374 S.C. 122
16 at 126. Also 647 S.E. 2d 249 and page 251. That's a 2007
17 case, Your Honor, that states:

18 Generally the factors our courts consider to
19 determine if a party waived its right to compel
20 arbitration are, number one, whether a
21 substantial length of time transpired between the
22 commencement of the action and the commencement
23 of the motion to compel arbitration.

24 Here our motion was filed in June, so within less than
25 two months we had filed our motion, and that's even less

1 than a month after -- that they filed their -- this
2 particular action.

3 Number two, whether the party requesting
4 arbitration -- which would be us -- engaged in
5 extensive discovery before moving to compel
6 arbitration.

7 Well, we've engaged in no discovery. We were served
8 with discovery by Mr. Griffin's office in this action, and
9 my recollection is that we filed -- we answered the request
10 for admissions sort of in an abundance of caution. And
11 then the third factor, Your Honor, still quoting from

12 *Benson*:

13 Whether the nonmoving party was prejudiced by the
14 delay in seeking arbitration. These factors, of
15 course, are not mutually exclusive as one factor
16 may be inextricably connected to and influenced
17 by the others.

18 Your Honor, the *Benson* test that I just cited was
19 applied later in *Lucy vs. Myer*, and I have copies of these
20 cases if you'd like me to hand them up now.

21 THE COURT: That would be great. Thank you.

22 MR. FEW: That's a 2012 case, 736 S.E. 2nd 274 at 285,
23 and this case gets into the very reason that is why parties
24 seek to have arbitration of disputes primarily because the
25 discovery is a big issue. Quoting from *Lucy vs. Myer*, the

1 court stated:

2 Arbitration laws are passed in order to expedite
3 the settlement of disputes and should not be used
4 as a means of furthering and extending delays.

5 Citing *Evans vs. Accent Manufacturing*:

6 The benefits received by arbitrating certain
7 limitations on discovery -- citing *Benson* --
8 stating that if parties conducted little or no
9 discovery, then the party seeking arbitration has
10 not, quote, taken advantage of the judicial
11 system. Thus, prejudice will not likely exist.

12 Speaking to that third element in the test.

13 And the law would favor arbitration. However, if
14 the parties conducted significant discovery, then
15 the party seeking arbitration took advantage of
16 the judicial system. Prejudice will likely exist
17 and the law would disfavor arbitration.

18 It goes on to talk about limited discovery being a
19 consequence of every -- can't be a reason to invalidate an
20 arbitration agreement.

21 Your Honor, we would also rely on *Zabinsky vs. Bright*
22 *Acres*, which is a Supreme Court case from 2001, 346 S.C.
23 580 at 597 and 553, 110 at 118 and 119. *Zabinsky* states
24 that:

25 Any doubt concerning the scope of arbitrable

1 issues should be resolved in favor of
2 arbitration.

3 Citing *Toler's*.

4 Furthermore, unless the court can say with
5 positive assurance that the arbitration clause is
6 not susceptible to an interpretation that covers
7 the dispute, arbitration should be ordered.

8 Motion to compel arbitration made pursuant to an
9 arbitration clause in a written contract should
10 only be denied where the clause is not
11 susceptible to any interpretation which would
12 cover the asserted dispute.

13 Your Honor, I then went and looked to try to find a
14 case in South Carolina where the court had held that the
15 claims that were pending in the case were not related to
16 the arbitration agreement, and of course in this situation
17 even those such claims would go to arbitration first to be
18 decided.

19 The case I found was *Chasserau vs. Global Sun Pools*,
20 363 S.C. 628 from 2006, a Supreme Court case. And in that
21 case, Your Honor, plaintiff was bringing defamation claims,
22 intentional infliction of emotional distress. The
23 defendant had built a pool for them, and they were trying
24 to compel arbitration under the -- that particular
25 agreement, Your Honor. So, those claims -- that, that

1 spoke to at least the issue of how unrelated they have to
2 be.

3 Here the claims relate to the running of the company.
4 By way of update, Judge, Mr. Charping was terminated from
5 the company in or around June of last year. He has filed
6 an affidavit with the court, which I believe was around
7 June 29th. And in that affidavit he said that it would be
8 impractical for the company to continue with the two of
9 them running it. I handle -- I've seen a fair number of
10 these cases, and fortunately here with Mr. Charping having
11 stepped aside -- when the parties get to the point where
12 they can't get along, sometimes the company goes down the
13 tubes, too. In this particular situation, Mr. Ludy's been
14 able to keep it going and so that's where we are, Your
15 Honor.

16 We feel like that our motion and the wavier arguments
17 and the scope arguments all push us in the direction of
18 arbitration of this dispute, Your Honor. Thank you very
19 much.

20 THE COURT: Well, let me look and see. So, your
21 client filed suit against the now plaintiff in this case in
22 Lexington County. Is that...

23 MR. FEW: Yes, Your Honor. That was filed by a
24 younger lawyer at Richardson Plowden. I don't really
25 recall his name, and then before they even answered that

1 case -- my recollection is there was not even an answer
2 filed. They -- Mr. Charping responded by filing his own
3 action here, and then apparently upon the advice of Mr.
4 Ludy's prior counsel, he just dismissed that action and
5 choose to fight it here, I suppose, rather than dealing
6 with fighting in two actions, but I don't know that it, it
7 -- those are the facts. I don't know how it's really
8 relevant to the waiver issue because we have pursued no
9 discovery in this case and, therefore, our position is that
10 there is no prejudice to Mr. Charping by having the case go
11 to arbitration.

12 In fact, we think there's a benefit to arbitration
13 because we think we could get it resolved there quicker and
14 have a more full and final dispute because of the limited
15 rights of appeal in arbitration which, as I'm told,
16 essentially unless the arbitrator just completely ignores
17 relevant facts, that the parties would be stuck with his or
18 her decision, or in this case with the panel, however it
19 proceeds.

20 THE COURT: All right.

21 MR. GRIFFIN: Good afternoon, Your Honor. The -- this
22 is Patrick Charping with me and, and we -- it's -- it
23 reminds me of the old television show, you know, who is the
24 real so-and-so stand up. We represent Palmetto Wildlife
25 Extractors, LLC, as well. We filed a derivative action on

1 their behalf. Mr. Charping is a 50 percent owner of
2 Palmetto Wildlife Extractors, LLC. He has been frozen out
3 of the company. He is getting no money although he is
4 entitled to half the profits. He's, he's been, quote,
5 fired. He's been locked out by the bank, and so when, when
6 Mr. Ludy's lawyer, Mr. Few who's a fine lawyer, says things
7 are going just fine, well, they're going just fine if
8 you've stolen the company from your partner and not paying
9 him anything, which is where we find ourselves. So, so,
10 that's where we are.

11 We filed a motion for appointment of a receiver and
12 it's yet to come up. This motion has come up first and,
13 and, frankly, it was a surprise that they filed the motion
14 to compel arbitration because they had waived the right to
15 compel arbitration by initiating a lawsuit over the same
16 facts in Lexington County. And, and, Your Honor, the case,
17 that *Hyload* case is squarely on point.

18 Just briefly, the cases that Mr. Few is talking about
19 are cases where someone that is being sued, they undertake
20 extensive discovery or, or they delay before they file a
21 motion to compel arbitration. You look to see how, how
22 long they engaged in the case. Did they take advantage of
23 things in the case before they elected to, to move to
24 compel arbitration? That's the factor test that he's
25 talking about. But when you're first sued on a contract

1 that has an arbitration agreement, you have made a decision
2 to waive your right to arbitrate. That decision was made
3 on April 25, 2017, by Mr. Ludy.

4 The, the decision from the South Carolina Court of
5 Appeals, and citing other cases, says:

6 A party may waive the right to arbitrate given by
7 the contract. There is no set rule as to what
8 constitutes a waiver of the right to arbitrate.
9 The question depends on the facts of each case.

10 Then it says:

11 Ordinarily, however, bringing a suit based on the
12 contract instead of relying on the arbitration
13 provision constitutes a waiver of the right to
14 arbitrate.

15 That's what happened here. Mr. Ludy filed suit on, on
16 the contract in Lexington County Court of Common Pleas. In
17 the *Hyload* case, Your Honor, what happened was the
18 defendant then counterclaimed in the, in the case that was
19 filed and against Hyload and then Hyload, if that was the
20 plaintiff in the case, but then Hyload, the plaintiff, said
21 oh, well, you have to arbitrate the counterclaims.

22 Well, here instead of filing a counterclaim, we filed
23 a separate action because Palmetto Wildlife was domiciled
24 in Richland County and we did a derivative action, but, but
25 it's, it's a counterclaim brought in a separate lawsuit.

1 So, they made a decision to forego the arbitration
2 provision when Mr. Ludy, not when Mr. Wes Few was
3 representing him, but when Mr. Ludy filed suit in Lexington
4 County. That should be the end of the inquiry, and that's
5 undisputed, and we have attached the Lexington County
6 pleading to our, our case. It's different from if you're
7 defending and then you wait six months, a year before you
8 then ask for arbitration, you know. You get into a factor
9 analysis but not when you sue on the contract that -- then
10 you, and then you get counterclaimed against or you get
11 another lawsuit filed and you go, oh, I don't want to do
12 that anymore.

13 Well, you know, they picked a lane; they have to drive
14 in it. They picked a lane to litigate these disputes, not
15 through arbitration but through litigation, and that's what
16 we've done. And so they -- he has waived under the *Hyload*
17 case, squarely waived his right to arbitrate.

18 If Your Honor were to then get beyond that and look to
19 see what's subject to arbitration, I don't disagree with
20 the test that Mr. Few sets forth, but there are certainly
21 claims in this lawsuit that are not within the scope of
22 arbitration. And one claim he essentially admitted to
23 through citation of, of the last case is defamation. So,
24 there's a claim in the lawsuit for defamation against Mr.
25 Ludy and, and the -- and Mr. Ludy had told third parties

1 that Mr. Charping was stealing from the company. That's
2 defamation. That's not a dispute under the contract. It
3 is pure and simple defamation.

4 But if you look to the contract, it says --
5 arbitration provision, Your Honor, 12.14 says:

6 Any controversy or claim arising out of or
7 related to this agreement or the breach thereof
8 shall be settled except as otherwise provided
9 herein by binding arbitration.

10 So, where do we get the except for otherwise provided
11 herein? Well, where we find ourselves is 11.1.3 and this
12 issue of dissolution of the business, of the LLC, section
13 11 entitled Dissolution. How is the company to be
14 dissolved? One way is that all members can vote to
15 dissolve it. Second way is an event that occurs that makes
16 it unlawful to carry on the business. And the third way,
17 which is what we filed in this lawsuit, is:

18 On application by a member or a disassociated
19 member upon entry of a judicial decree as
20 provided in Section 33-44-801 subsection 5.

21 Now, the agreement itself says how do you get
22 dissolution? You go to court. We have pled a judicial
23 dissolution cause of action. It's our last cause of
24 action. There is no way you can make a good faith argument
25 that, that the scope of the arbitration provision, which

1 says except as provided herein, includes a person such as
2 Mr. Charping, who has been evicted from a company that he
3 is the only one that put money up -- he put 50,000 or
4 \$45,000 up to start this thing or buy into it -- that he's
5 been kicked out. The other partner is taking all the money
6 and he is, he is a disassociated member not by choice, and
7 he's come to court to seek a judicial dissolution because
8 of the conduct, the way his partner is running the
9 business, and that is not covered by the arbitration
10 agreement, no way, no how.

11 The arbitration -- the agreement itself says how you
12 go about dissolving the company. It says one of us can go
13 to court, and that's what Mr. Charping has done. He's
14 elected to come to court, and he's filed a petition for
15 judicial dissolution upon -- citing Section 33-44-801,
16 which is set forth in the, in the arbitration agreement.

17 So, Your Honor, the, the -- there's, there's -- I
18 don't disagree with him on the analysis but under the
19 facts, there's no way you can read the arbitration
20 agreement to cover the judicial dissolution claims which,
21 which are tied up statutorily with, with how you go about
22 dissolving a company. Including in that is you get an
23 appointment of receiver, which we request one because Mr.
24 Ludy has, has evicted Mr. Charping from the case -- from
25 the business, and he continues to collect all the profits

1 even though the contract says Mr. Charping is entitled to
2 50 percent of the profits. That's why we've asked for a
3 receiver to come in and take possession of all the money so
4 that Mr. Charping can get his due, what's under the
5 agreement, and, and right now it's -- he's not getting
6 anything.

7 He has a right under the agreement to come to court
8 for a judicial dissolution. And, frankly, waived all the
9 other -- there are other claims in here, but for the
10 waiver, I wouldn't disagree would be subject to
11 arbitration. But we've got a waiver, but even if we didn't
12 have a waiver, the claim of defamation which they, I
13 believe, concede not explicitly but through their argument
14 must concede, is not covered by an arbitration provision.
15 And, and specifically the claims for judicial dissolution
16 are not covered by the arbitration provision. Thank you.

17 THE COURT: Yes, sir.

18 MR. FEW: Your Honor, I'm happy to respond. Mr.
19 Bedenbaugh's here on behalf of the bank, who's also been
20 sued. Did you want to hear from him first or?

21 THE COURT: Sure. Sure.

22 MR. BEDENBAUGH: I'll be very brief, Your Honor. Jody
23 Bedenbaugh for First Community Bank. First Community Bank
24 holds the deposit accounts for the company involved here,
25 Palmetto Wildlife. Because of that, they find themselves

1 in the middle of this dispute between the two partners, and
2 in particular in connection with Mr. Ludy's submission of
3 an amended signature card which included only his name and
4 not Mr. Charping's name. And that's why the bank is
5 jointed in this action.

6 We've got an interest in the motion, and that interest
7 is seeking an efficient judicial review or nonjudicial
8 review of this matter. Essentially we want to go where the
9 rest of the parties go. In particular, if the court
10 enforces the fairly broad arbitration provision, we would
11 like the claims against First Community Bank to follow them
12 to arbitration.

13 Our Supreme Court has held where a nonsignatory, which
14 First Community Bank is not a party to the operating
15 agreement, wants to go to arbitration, the court can do
16 that and should do that in certain cases. The court said
17 that in *South Carolina Public Service Authority vs. Great*
18 *Western Coal*, 437 S.E. 2d 22. Particularly, courts have
19 said where there is a close relationship between the claims
20 against the nonsignatory as there, as there are with the
21 claims against the signatories, then that is -- that claim
22 is ripe for arbitration. In the case *Pierce vs. Hilton*
23 *Head Hospital* 733, S.E. 2d 597, the court discussed exactly
24 that.

25 Here I could not imagine a closer relationship. The

1 claims against the bank are aiding and abetting, breaching
2 fiduciary duties, and civil conspiracy. Both of those
3 claims as an element of the claims require some combination
4 of two parties, some joint participation by two parties.
5 Here the claims against First Community Bank are wholly
6 dependent on the allegations against one other party, Mr.
7 Ludy. So based on that, we're asking that if the court
8 enforces the arbitration agreement as to Mr. Ludy and Mr.
9 Charping, since we're in the middle of this case, and it
10 makes perfect sense to have our claims decided with those
11 other claims, that we also be arbitrated.

12 If not, if the court is not willing to compel
13 arbitration against the nonsignatory, we'd ask that, that
14 our claims either be stayed or dismissed without prejudice
15 because depending on how that arbitration turns out, it
16 could dispose of the claims against the bank. So, that's
17 our request here, Your Honor.

18 THE COURT: Thank you.

19 MR. GRIFFIN: Your Honor, may I address that very
20 briefly?

21 THE COURT: Sure.

22 MR. GRIFFIN: With all due respect to Mr. Bedenbaugh,
23 the way you bring that issue to the court is you file a
24 motion. The bank had not filed a motion seeking the relief
25 that he's asking for now. We're entitled to ten days'

1 notice of that motion and we're entitled to brief that
2 issue.

3 Now he's come to court asking the court to dismiss the
4 case against the bank without ever filing a motion. It's
5 just not proper before the court to be heard. He wants to
6 file a motion, we'll be happy to address it but he was
7 citing cases, making arguments that aren't before the court
8 and they've not filed a motion. Doesn't have any claims
9 against the bank being sent to arbitration.

10 MR. BEDENBAUGH: Your Honor, Mr. Few's motion sought
11 to arbitrate the entire case. It doesn't limit itself to
12 just the claims involving these particular two individuals,
13 and it sought to stay or dismiss the entire case. It
14 wasn't limited. So, we felt it procedurally appropriate
15 for us to be heard on that.

16 THE COURT: All right. Yes, sir, Mr. Few.

17 MR. FEW: Thank you, Your Honor.

18 THE COURT: Can you address the issue regarding the
19 defamation claim and the dissolution of business claim
20 argument that he made regarding the defamation and
21 dissolution claims not being within the scope of
22 arbitration?

23 MR. FEW: Sure, Your Honor. The case law like I was
24 quoting from earlier states that the arbitration act is to
25 be construed broadly or else the exceptions would eat it

1 up. If, in fact, a party could simply plead a cause of
2 action and, you know, a lawyer decides that he feels like
3 he has the cause of action, he's satisfied under his own
4 personal Rule 11 review of the claims that he, he or she
5 chooses to plead the claim, if that were, in fact, the law,
6 then that's what parties would be doing all the time. They
7 would bring in a civil conspiracy claim or a defamation
8 claim or a dissolution claim.

9 With respect to those things, there's a major
10 difference in the facts of, of that case and this case.
11 That particular case involved a third-party arrangement.
12 It was an arm's length deal for someone to build a pool, as
13 I recall, and they didn't really have an ongoing
14 relationship. And, in fact, the court in its review must
15 have decided that those defamation claims were unrelated to
16 that arbitration agreement.

17 Arbitration agreements, Your Honor, each time I come
18 to visit one of these things and, and we talk amongst them
19 with our lawyer friends, what we always have to remember
20 is, well, what does the particular arbitration agreement
21 say. So that agreement -- I'm not sure what the scope of
22 the arbitration agreement was. I guess it's cited in that
23 case but it's certainly of record, but so you've got to
24 consider the scope of the agreement. And here the parties
25 agreed to the section that I quoted from earlier that my,

1 my good friend Mr. Griffin didn't include in, in his
2 filing, the portion that says:

3 Any dispute as to whether a controversy or claim
4 is subject to arbitration shall be submitted as
5 part of the arbitration proceeding.

6 As far as the dissolution claim goes, Your Honor, we
7 see lots of these operating agreements. You know, as
8 lawyers, we get calls from people that want to know if they
9 need an operating agreement. Generally if there's two of
10 them, they should have one. A lot of times you don't know
11 how much money they spend negotiating it. They may take a
12 boilerplate agreement off -- I think 11.1.3 is merely
13 boilerplate. One thing that we do know for sure about the
14 arbitration act is an arbitration award is only so good as
15 you can bring it back to the court system. And, and so
16 once you get an award of arbitration, you have to file a
17 motion with the court to make it part of the record. If
18 it's a money judgment, then you have to take that
19 arbitration award because it's not enforceable in and of
20 itself, and you have to take it to the county of residence
21 of wherever the person is and, and try to get a lien
22 against their property. Or if it requires them to do some
23 type of specific performance, then you have to go there.
24 So, I think the language in the agreement, Mr. Griffin has
25 done a fine job of crafting that argument out of the

1 agreement, but it's just, it's just not applicable under
2 these circumstances because the parties agree that the
3 scope of this arbitration agreement is extremely broad.

4 I suppose -- I don't want to hypothesize indefinitely
5 but, you know, I suppose if the parties broke off -- if
6 they were getting along fine and there was only a
7 defamation claim brought and not all these other claims,
8 then, then, then maybe there would be a stronger argument
9 here. But the gist of this dispute, Your Honor, is
10 ownership and control of the company and the way these
11 things are resolved. And Mr. Griffin does an excellent job
12 of making it sound like his client has been so unjustly
13 deprived of everything, but the parties agreed if they, if
14 they split up, then one of them is entitled to be paid for
15 his or her share in the company. And there's an analysis
16 that goes into that and, you know, since he brings it up,
17 you know, we, we -- we've made an offer and there's been,
18 there's been no further discussion. So, I don't think that
19 any of that is really -- should be relevant, but because
20 they bring up the fact that, you know, that this is a
21 matter of sympathy -- it's not a matter of sympathy. It's
22 a matter of what they agreed to, Your Honor. And under
23 these facts, I'd also say -- I hope that -- does that
24 answer your question?

25 THE COURT: Yes, sir.

1 MR. FEW: So, Mr. Griffin relies on the *Hyload* case,
2 but I would note for the court that the *Hyload* case does
3 not hold that the mere filing of an action is a waiver. He
4 cites no case to this court that says the mere filing of an
5 action is a waiver.

6 Frankly, I would prefer to file an action and even
7 compel my own case into arbitration because sometimes it's
8 easier to do that and get ahold of people because of the
9 service rules that I'm just much more familiar with in the
10 court system than I am in arbitration and making a demand
11 in arbitration, Your Honor. So, there's no case that's
12 been cited.

13 I apologize for misstating to say that I represented
14 the entity under the pleadings. I don't. That always is
15 -- you know, lawyers have differing opinions about how they
16 plead these things, about which side they put the entity
17 on, Your Honor. So, where we are is Mr. Griffin has not --
18 there's no case.

19 And then also one final point, Judge. It would be an
20 absurd result if Mr. Ludy and Mr. Charping were to go into
21 arbitration and then the claims against the bank not be
22 presented there as well because the very thing that they
23 bargained for when they decided to do arbitration was to
24 get the resolution of the dispute that's going to have more
25 finality than the court system, with all due respect. We

1 know we have appeals in the court system, and the parties
2 would have control over the discovery process by way of the
3 arbitrators. If that were, in fact, the result which was
4 suggested earlier, there would one litigation with some
5 type of resolution and then there would be another case,
6 whereas Mr. Bedenbaugh's noted the claims are inextricably
7 intertwined with aiding and abetting and conspiracy
8 necessarily require two parties. So, I don't think that
9 that is ever what's intended, and I don't think that that's
10 generally what practically ever happens either, Your Honor.

11 THE COURT: All right. Well, I will take a look at
12 this. I want to go through the -- finishing up an order in
13 another case similar to this. So, I am -- I have, I think
14 I have some of the cases already we've reviewed, and so we
15 will get something back to you all in due time. All right,
16 thank you.

17 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 1ST DAY OF MARCH, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 24TH, 2018

Exhibit A - Motion to Compel
Arbitration

**THIS AGREEMENT IS SUBJECT TO AN ARBITRATION PROVISION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT
(SOUTH CAROLINA CODE SECTIONS 15-48-10, ET. SEQ.)**

**PALMETTO WILDLIFE EXTRACTORS LLC
AMENDED AND RESTATED OPERATING AGREEMENT**

This Amended and Restated Operating Agreement (the "Agreement") for Palmetto Wildlife Extractors LLC, a South Carolina limited liability company (the "LLC"), is made and entered into and shall be effective as of October 13, 2014, by and between Justin R. Ludy and W. Patrick Charing (the "Members"). This Agreement is intended to supersede any and all prior agreements between the Members.

RECITALS

WHEREAS, on April 6, 2012, the LLC was organized by the filing of Articles of Organization with the South Carolina Secretary of State;

WHEREAS, the Members desire that W. Patrick Charing join the LLC as a member in exchange for capital contributions to the LLC in the amount of approximately \$49,000, including \$40,000 cash and a \$9,000 2006 Toyota Tacoma; and

WHEREAS, the Members have agreed to amend and restate the Operating Agreement to reflect that Justin R. Ludy will own a 50% Financial Interest and a 51% Governance Interest in the LLC, and W. Patrick Charing will own a 50% Financial Interest and a 49% Governance Interest in the LLC in exchange for his capital contributions;

NOW, THEREFORE, the Members agree as follows:

**SECTION 1
Name and Term**

1.1. **Name.** The LLC's name is Palmetto Wildlife Extractors LLC.

1.2. **At-Will Company.** The LLC shall be an at-will Company, as that term is defined in the South Carolina Limited Liability Company Act of 1996 (the "Act").

**SECTION 2
Nature of Business, Designated Office, and Agent**

2.1. **Business.** The LLC is formed to transact business related to a wildlife removal business, and to make such other investments and transact such other related business as the Members may deem appropriate for the LLC.

2.2. **Designated Office.** The LLC's Designated Office is at 959 East Main Street, Lexington, SC 29072, although the Members may change the LLC's Designated Office to another

location and add additional places of business.

2.3. Agent. The LLC's agent for service of process shall be Justin R. Ludy at 209 Sandy Valley Court, Gaston, SC 29053.

2.4. Principal Place of Business. The LLC's Designated Office shall be its principal place of business.

2.5. Income Tax Election. The LLC shall be taxed as a partnership for state and federal income tax purposes, and the LLC shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the LLC and the Members.

2.6. Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

SECTION 3

Capital and LLC Interests

3.1. Percentages. Each Member's percentage of Membership Interest, including Financial Interest and Governance Interest, is set forth in Exhibit A.

3.2. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from deductions and losses of the LLC (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective shares of Financial Interest, upon dissolution of the LLC such deficit shall not be an asset of the LLC and such Members shall not be obligated to contribute such amount to the LLC to bring the balance of such Member's capital account to zero.

3.3. Adjustments. Each Member's Capital Account shall be adjusted as necessary to reflect the economic conditions of the Financial Interests. These adjustments shall include, but are not limited to, the following:

3.3.1. Adjustments to reflect each Member's distributive share of LLC profits and losses, including capital gains and losses, and tax-exempt income;

3.3.2. Adjustments to reflect each Member's additional contributions to the LLC;

3.3.3. Adjustments to reflect distributions made by the LLC to each Member;

3.3.4. Tax-Sensitive Adjustments (as defined below);

3.4. Loans. A Member's loans to the LLC shall not be added to his Capital Account.

3.5. Amount of Contributions. The amount of a Member's contributions of property to the LLC and of the LLC's distributions of property to a Member, shall be reflected in the Member's Capital Account at the fair market value of the property on the date of the contribution or distribution, reduced by any liabilities secured by that property, if those liabilities are treated under applicable federal income tax laws as being assumed by or taken subject to by the transferee.

3.6. No Interest Paid. A Member shall receive no interest on his capital contributions or Financial Interest.

3.7. Withdrawals. A Member may not withdraw his Capital Account except as expressly authorized in this Agreement.

SECTION 4 **Profits, Losses, and Cash Flow**

4.1. Profits and Losses. The LLC's net profits and losses (and each item of income, deduction, gain, loss, and credit that makes up net profits and losses) shall be computed in accordance with professionally accepted accounting principles, consistently applied and appropriate for the method of accounting used by the LLC, and shall be allocated among the Members solely according to their respective percentage of Financial Interests. Notwithstanding this general rule, any income, gain, loss, and deduction with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis and the fair market value of the contributed property at the time of the contribution, in accordance with any applicable U.S. Treasury regulations.

4.2. Consent to Maintenance of Working Capital Reserve. The Members hereby authorize the establishment and continued maintenance of a working capital reserve in the amount of twenty percent (20%) of the LLC's annual net income after payment of the LLC's accrued and unpaid debts and expenses. Such reserve shall be kept in the LLC's bank accounts, funded with cash flows prior to any distributions to Members.

4.3. Assignment or Death. When a Member dies, retires, or assigns his Membership Interest, profits and losses shall be allocated based on the number of days in that year during which each Member owned a Financial Interest, or on any other reasonable basis selected by the remaining Members, as long as it is consistent with applicable United States tax laws and regulations.

4.4. Cash Flow. The Members shall cause the LLC to distribute its Net Cash Flow to the Members annually, in proportion to their respective percentage of Financial Interest.

SECTION 5

Management

5.1. **Management.** The Members shall have the full and exclusive power to manage the LLC's affairs on the LLC's behalf and to do or cause to be done anything deemed necessary or appropriate for the LLC's business, including (but not limited to) the following powers:

5.1.1. The Members may sell real or personal property to any person, giving any warranties or assurances deemed appropriate;

5.1.2. The Members may buy, lease, or otherwise acquire real or personal property to carry on and conduct the LLC's business;

5.1.3. The Members may borrow money for the LLC's business;

5.1.4. The Members may issue promissory notes and other debt instruments (negotiable or nonnegotiable), in any amounts and secured by any encumbrance on all or any part of the LLC's assets;

5.1.5. The Members may assign any debts owing to the LLC;

5.1.6. The Members may engage in any other means of financing;

5.1.7. The Members may enter into any agreement for sharing of profits and any joint venture agreement with any person or entity engaging in any business or venture in which the LLC may engage;

5.1.8. The Members may manage, administer, conserve, improve, develop, operate, lease, utilize, and defend the LLC's assets, directly or through third parties;

5.1.9. The Members may execute any type of agreement or instrument in connection with any other LLC power;

5.1.10. The Members may employ all types of agents and employees (including lawyers and accountants), even if they are related to the Members by blood, marriage, or business relationship, and pay them reasonable compensation;

5.1.11. The Members may buy or otherwise obtain the use of any type of equipment or other property that may be convenient or advisable in connection with any LLC business;

5.1.12. The Members may incur any reasonable expense for travel, telephone, telegraph, insurance, taxes, and such other things in carrying on the LLC's business;

5.1.13. The Members may sue and be sued, complain, and defend in the name of and on behalf of the LLC; and

5.1.14. The Members may quitclaim, release, or abandon any LLC assets with or without consideration.

5.2. Voting. Each Member shall be entitled to vote in accordance with his respective percentage of Governance Interest. Unless otherwise provided by law or this Agreement, all actions of the LLC must be approved by a Majority Vote.

5.3. Tax Matters Partner. W. Patrick Chapping shall be the "Tax Matters Partner," as defined for federal income tax purposes, and shall be solely responsible for representing the LLC in all dealings with the U.S. Internal Revenue Service and any state, local, and foreign tax authorities. The Tax Matters Partner shall keep the other Members reasonably informed of any LLC dealings with any tax agency.

SECTION 6

Financial Reports

Within a reasonable period after the close of each fiscal year, the Tax Matters Partner shall, at the LLC's expense, give a written report to each Member who requests it, indicating that Member's share of the LLC income or loss and any changes in that Member's Capital Account. This requirement may be satisfied by giving each Member a copy of any tax form that includes such information.

SECTION 7

Banking

All LLC funds shall be deposited in the LLC's name in such accounts as the Members may designate. The Members may authorize other persons to draw checks on LLC bank accounts, but such authority must be in writing. Each bank in which an LLC account is maintained is relieved of any responsibility to inquire into a Member's authority to deal with such funds.

SECTION 8

Transfer of Membership Interests

8.1. Limitations on Transfer. A Member shall not Transfer any Membership Interest except in accordance with the terms of this Section 8 or with the prior written consent of all of the other Members. An attempted Transfer of Membership Interest not in accordance with the terms of this Section shall not be valid and shall not be reflected on the LLC's books.

8.2. Right of First Refusal. A Member who wishes to Transfer any Membership Interest, or who has reason to believe that an involuntary Transfer or a Transfer by operation of law is reasonably foreseeable (an "Offering Member"), shall first give each other Member written notice of

the intent to Transfer such Membership Interest (the "Offered Interest") or of the knowledge that an Involuntary Transfer or Transfer by operation of law is reasonably foreseeable. This notice must contain a description of the portion of Membership Interest to be Transferred, the consideration (if any) to be paid, the terms of Transfer and of the payment of consideration (including but not limited to the relative percentages of cash and debt, and the terms of any debt instruments), and the name, address (both home and office), and business or occupation of the person to whom the Membership Interest would be transferred, and any other facts which are or would reasonably be deemed material to the proposed Transfer.

8.2.1. Upon the receipt of such notice, each other Member shall have a right to buy that share of the Offered Interest having the same proportion to all of the Offering Member's Membership Interest as the buying Member's Membership Interest bears to the Membership Interests of all Members (except the Offering Member).

8.2.2. Each Member may exercise this purchase option by giving the Offering Member written notice within thirty (30) days after receipt of the latter's notice.

8.2.3. If the Members do not agree to buy all of the Offered Interest, the Offering Member may complete the intended Transfer. If this Transfer is not completed within thirty (30) days after expiration of the option period, any attempted Transfer shall be deemed made under a new offer and this section shall again apply.

8.3. Agreement Price. The purchase price that the Members must pay for the Offered Interest under this Section 8 shall be the Lesser of (a) that of any proposed Transfer if the proposed Transfer for which notice was given is to be made for any valuable consideration in money or money's worth of property, or (b) an amount equal to the proportion that the Offered Interest bears to all outstanding Membership Interests, multiplied by the fair market value of the LLC's assets reduced by any liabilities of the LLC. The fair market value of the LLC's assets shall be determined by an independent appraisal performed by a professional appraiser selected by the unanimous consent of the Members. The LLC and the Offering Member shall share the cost of the appraisal.

8.4. Agreement Terms. Ten percent (10%) of the purchase price shall be paid in cash or by good personal check at the closing for the sale of such Membership Interest, and the balance shall be paid in twelve (12) equal quarterly principal payments beginning three (3) months after the date of such closing. Simple interest shall be added to each installment, computed against the outstanding principal balance at the Applicable Federal Rate determined for federal income tax purposes on the date of the closing. The buyer shall give the Offering Member a promissory note as evidence of this debt, and the buyer may prepay all or any part of the principal balance of the note at any time without penalty or premium.

8.5. The Closing. The purchase of a Membership Interest under this Section shall take place at a closing to be held not later than the thirtieth (30th) day after the earlier of the date on which the Members' purchase options have all expired, or the earliest date on which the Members in the

aggregate exercise their purchase options, if any, to buy all of the Offered Interest. The closing shall be held during normal business hours at the LLC's principal business office, or at any other place to which the parties agree. If the Offering Member is not present at the closing, then the buyer shall deposit the purchase price by check, note, or both, as this section requires, with any state or federally chartered bank with which the LLC has an account, as escrow agent, to be paid to the Offering Member as soon as is reasonably practicable, less an appropriate fee to the LLC (not to exceed one thousand dollars (\$1,000.00)) to cover additional administrative costs, and the LLC shall adjust its books to reflect the transfer of these Membership Interests.

8.6. **Family Transfers.** Notwithstanding any other provision herein to the contrary, a Member may make a Family Transfer of a Financial Interest. The transferee of any such Family Transfer shall be accepted as a substitute member of the LLC without the approval of the other Members, and the Financial Interest shall remain subject to all the terms and conditions of this Agreement, including the transfer restrictions contained herein, in the hands of the transferee. A Member may not make a Family Transfer of a Governance Interest.

SECTION 9

Amendments

This Agreement shall be amended automatically to reflect any valid Transfers of Membership Interests. Otherwise, this Agreement shall be amended only with the unanimous vote of the Members owning a Governance Interest.

SECTION 10

Admission, Retirement, and Resignation of Members

10.1. **Admission.** A person may be admitted as an additional Member by the unanimous consent of the Members owning a Governance Interest (excluding any Member transferring a Membership Interest to the prospective new Member).

10.1.1. A Member need give no reason for voting not to admit an applicant as a new Member, and a Member may unreasonably withhold his agreement to such admission.

10.1.2. In no event may any person be admitted as a new Member unless that person consents in writing to be bound by this Agreement and pays the LLC a fee not to exceed one thousand dollars (\$1,000.00) to cover costs of preparing, executing, and recording all pertinent documents. Absent such unanimous consent, the individual to whom the Membership Interest was Transferred shall be an assignee and shall be entitled to share in the profits, losses and distributions to which the assigning Member would have been entitled, but not to participate in the management and affairs of the LLC.

10.2. **Retirement and Resignation.** A Member may resign, withdraw, dissociate, or retire from the LLC only with the unanimous consent of the Members.

SECTION 11

Dissolution

11.1. Causes. The LLC shall be dissolved only upon the occurrence of one of the following "Dissolution Events":

11.1.1. The affirmative vote of all of the Members owning a Governance Interest;

11.1.2. Any event occurs that makes it unlawful for all or substantially all of the business of the LLC to be continued, but any cure of illegality within ninety (90) days after notice to the LLC of the event is effective retroactively to the date of the event for purposes of this section;

11.1.3. On application by a Member or a dissociated Member, upon entry of a judicial decree as provided by Section 33-44-801(5) of the Act; or

11.1.4. The filing by the Secretary of State of a certificate administratively dissolving the LLC pursuant to Section 33-44-810 of the Act.

11.2. Upon Dissolution. Upon its dissolution, the LLC shall end and commence to wind up its affairs. The Members shall continue to share in profits and losses during liquidation as they did before dissolution. The LLC's assets may be sold, if a price deemed reasonable by the Members can be obtained. The proceeds from liquidation of LLC assets shall be applied as follows:

11.2.1. First, all of the LLC's debts and liabilities to persons other than Members shall be paid and discharged in the order of priority as provided by law;

11.2.2. Second, all debts and liabilities to Members shall be paid and discharged in the order of priority as provided by law;

11.2.3. Third, all remaining assets shall be distributed proportionately among the Members based on their respective positive Capital Accounts.

11.3. Gain or Loss. Any gain or loss on the disposition of LLC properties in the process of liquidation shall be credited or charged to the Members in proportion to their respective percentages of Financial Interests, except that gain or loss with respect to property contributed to the LLC by a Member shall be shared among the Members so as to take account of any variation between the basis of the property so contributed and its fair market value at the time of contribution, in accordance with any applicable U.S. Treasury regulations. Any property distributed in kind in the liquidation shall be valued and treated as though it were sold and the cash proceeds distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on the sale of property, and shall be credited or charged to the Members accordingly.

11.4. LLC Assets Sole Source. The Members shall look solely to the LLC's assets for the payment of any debts or liabilities owed by the LLC to the Members and for the return of their capital contributions and liquidation amounts. If the LLC property remaining after the payment or discharge of all of its debts and liabilities to persons other than Members is insufficient to return the Members' capital contributions, they shall have no recourse therefor against the LLC or any other Members, except to the extent that such other Members may have outstanding debts or obligations owing to the LLC.

SECTION 12

Miscellaneous

12.1. Notices. Any notice under this Agreement shall be given and served either by personal delivery to the party to whom it is directed, or by registered or certified mail, postage and charges prepaid, and if it is sent to a Member, it shall be addressed with his address as it appears on the records of the LLC.

12.1.1. Any notice shall be deemed given when it is personally delivered, or, if mailed, on the date it is postmarked by the United States Postal Service, if it was addressed as required in this Section 12.1.

12.1.2. Any Member may change his address for purposes of this Agreement by written notice to the other Members, stating his new address. A change of address shall be effective fifteen (15) days after the notice is received by the other Members.

12.2. Non-Waiver. Any party's failure to seek redress for violation of or to insist upon the strict performance of any provision of this Agreement shall not prevent a subsequent act that would have originally constituted a violation from having the effect of an original violation.

12.3. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is invalid for any reason whatsoever, its invalidity shall not affect the validity of the remainder of the Agreement.

12.4. Good Faith. The performance of any act or the failure to do any act by a Member or the LLC, the effect of which causes any loss or damage to the LLC, shall not subject such Member or the LLC to any liability, if the decision to perform or the failure to perform such act was made pursuant to advice of the LLC's legal counsel or in good faith to promote the LLC's best interests.

12.5. Governing Law. This Agreement is to be construed according to the laws of South Carolina.

12.6. Cumulative Rights. The rights and remedies provided in this Agreement are cumulative and the use of any right or remedy does not limit a party's right to use any or all other

remedies. All rights and remedies in this Agreement are in addition to any other legal rights the parties may have.

12.7. Other Activities. A Member may engage in whatever activities he chooses without any obligation to offer any interest in such activities to any party hereof provided such activities do not violate the Member's fiduciary duties of care and loyalty as provided by the Act.

12.8. Confidentiality. No Member may, without every Member's express written consent, divulge to others any information not already known to the public pertinent to the services, clients, customers, or operations of the LLC, whether before or after the LLC's dissolution.

12.9. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one (1) agreement.

12.10. Waiver of Partition. Each Member waives any right to maintain any action for partition with respect to the LLC's property or assets during its term.

12.11. Binding Terms. The terms of this Agreement are binding upon and inure to the benefit of the parties and, to the extent permitted by this Agreement, their heirs, executors, administrators, legal representatives, successors, and assigns.

12.12. Personal Property. The interests of each Member in the LLC are personal property.

12.13. Gender and Number. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

12.14. Arbitration. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall be settled, except as may otherwise be provided herein, by binding arbitration in accordance with South Carolina Code Sections 15-48-10, et. seq. and the arbitration award may be entered as a final judgment in any court having jurisdiction thereon. Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. Legal costs, attorneys' fees, and the fees of expert witnesses may be assessed against any person found to have acted in bad faith. All arbitration proceedings shall be conducted by a panel of three arbitrators. The party requesting arbitration shall have the right to select one arbitrator and the person or persons on the other side of the controversy shall select a second arbitrator. The two arbitrators so chosen shall select the third.

SECTION 13 **Definitions**

13.1. Act. "Act" shall mean the South Carolina Uniform Limited Liability Company Act.

of 1996; Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

13.2. Agreement. The "Agreement" is the Palmetto Wildlife Extractors LLC Amended and Restated Operating Agreement, as amended from time to time. The Agreement shall include all exhibits, as they may be amended from time to time.

13.3. Articles. The "Articles" means the Articles of Organization filed on behalf of Palmetto Wildlife Extractors LLC, as may be amended from time to time.

13.4. Capital Accounts. The "Capital Accounts" or "LLC Capital" is the total of the Members' capital contributions.

13.5. Days and Months. "Day," "days," "month," and "months" refer to calendar days and months, including any days which fall on legal holidays or weekends.

13.6. Family Transfer. A "Family Transfer" is any transfer of Financial Interests to a spouse or a lineal descendant of a Member or to a trust for the benefit of a spouse or lineal descendant of a Member and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Financial Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

13.7. Financial Interests. "Financial Interests" means a Member's rights to share in profits and losses, a Member's rights to receive distributions and a Member's Capital Interest.

13.8. Governance Interests. "Governance Interests" means all a Member's rights as a Member in the Company, other than financial rights and the right to assign financial rights.

13.9. LLC. The "LLC" is Palmetto Wildlife Extractors LLC.

13.10. Majority Vote. "Majority Vote" means an affirmative vote of the Members holding more than fifty percent (50%) of the Governance Interests.

13.11. Members. The "Members" shall refer to Justin R. Ludy, W. Patrick Charping, and any persons who later become Members.

13.12. Membership Interests. The "Membership Interests" are the aggregate of Governance Interests and Financial Interests owned by the individual Members in the LLC as listed in Exhibit A or set forth in such Member's Contribution Agreement.

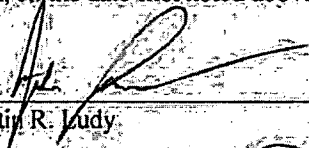
13.13. Net Cash Flow. Net Cash Flow is the LLC's total net income, computed for federal income tax purposes, increased by any depreciation or depletion deductions taken into account in computing taxable income and any nontaxable income or receipts (other than capital contributions).

and the proceeds of any LLC borrowing), and reduced by any principal payments on any LLC debts, expenditures to acquire or improve LLC assets, any proceeds from the sale or exchange of LLC assets, and such reasonable reserves and additions thereto as the Members shall determine to be advisable and in the best interests of the LLC.

13.14. Tax-Sensitive Adjustments: The "Tax-Sensitive Adjustments" are all adjustments to a Member's Capital Account that are not specifically required under the terms of this Agreement, but that are required by U.S. Treasury Regulations § 1.704-1(b)(2)(iv) ("Maintenance of Capital Accounts"), as amended. These adjustments shall be made annually, unless applicable regulations require a more frequent adjustment.

13.15. Transfer: A "Transfer" of a Member's interest includes any sale, pledge, encumbrance, gift, bequest, or other transfer or disposition of the Membership Interest, or permitting it to be sold, encumbered, attached, or otherwise disposed of, or changing its ownership in any manner, whether voluntarily, involuntarily, or by operation of law. "Transfer" shall not include any assignment of any Membership Interest to another Member or to any trust that is entirely revocable by the assignor, and such trust shall be treated as the agent of the assignor, and any subsequent disposition of such Membership Interest by such trust shall be deemed to have been made by the trust's settlor or grantor.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement, under seal, on the date first noted above.


Justin R. Ludy


W. Patrick Charing

**Exhibit A
Membership Interests**

Member	Contribution	Financial Interest	Governance Interest
Justin R. Ludy	Continuing Interest	50%	51%
W. Patrick Charing	\$49,000 (Cash and Vehicle)	50%	49%

Exhibit B
Regulatory Allocations

The following Regulatory Allocations shall be made in the following order:

1. Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(f), if there is a net decrease in Company Minimum Gain during any fiscal year, each member shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such member's share of the net decrease in Company Minimum Gain, determined in accordance with Treas. Reg. § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. § 1.704-2(f)(6) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(f) and shall be interpreted consistently therewith.

2. Member Minimum Gain Chargeback. Except as otherwise provided in Treas. Reg. § 1.704-2(i)(4), notwithstanding any other provision in this Exhibit or the, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each member pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Reg. § 1.704-2(i)(4) and § 1.704-2(j)(2). This Paragraph is intended to comply with the minimum gain chargeback requirement in Treas. Reg. § 1.704-2(i)(4) and shall be interpreted consistently therewith.

3. Qualified Income Offset. In the event any member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Regs. § 1.704(b)(2)(ii)(d)(4), (5), or (6), items of LLC income and gain shall be specially allocated to such member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the member as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that the member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Exhibit or the Operating Agreement have been tentatively made as if this Paragraph were not in this Operating Agreement.

4. Gross Income Allocation. In the event any member has an Adjusted Capital Account Deficit at the end of any fiscal year, such member shall be specially allocated items of LLC income and gain in the amount of such deficit as quickly as possible, provided that an allocation pursuant to this Paragraph shall be made only if and to the extent that such member would have an Adjusted Capital

Account Deficit after all other allocations provided for in this Exhibit and the Operating Agreement have been made as if this Paragraph and Paragraph (3) were not in this Operating Agreement.

5. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated to the members in proportion to their share of profits and losses.

6. Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year shall be specially allocated to the member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i)(1).

7. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any LLC asset pursuant to I.R.C. § 734(b) or I.R.C. § 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) or (m)(4), to be taken into account in determining capital accounts as a result of a distribution to a member in complete liquidation of such member's interest in the LLC, the amount of such adjustment to capital accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the members in accordance with their interests in the LLC in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the member to whom such distribution was made in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) applies.

8. Definitions. The following terms shall for purposes of this Exhibit and elsewhere in this Operating Agreement have the following definitions:

(A) "Adjusted Capital Account Deficit" means with respect to any member (or assignee), the deficit balance, if any, in such member's capital account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (i) Credit to such capital account any amount which such member is deemed to be obligated to restore pursuant to the next to the last sentences in Treas. Regs. § 1.704-2(g)(1) and § 1.704-2(i)(5); and
- (ii) Debit to such capital account the items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(B) "Company Minimum Gain" shall have the same meaning as "partnership minimum gain" as set forth in Treas. Reg. § 1.704-2(b)(2).

(C) "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" as set forth in Treas. Reg. § 1.704-2(b)(4).

(D) "Member Nonrecourse Debt Minimum Gain" has the same meaning as "partner nonrecourse debt minimum gain" as set forth in Treas. Reg. § 1.704-2(i)(2).

(E) "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" as set forth in Treas. Reg. § 1.704-2(i)(1).

(F) "Nonrecourse Deductions" has the same meaning as is set forth in Treas. Reg. § 1.704-2(b)(1).

(G) "Nonrecourse Liability" has the same meaning set forth in Treas. Reg. § 1.704-2(b)(3).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2017-CP-40-02822

Palmetto Wildlife Extractors, LLC,
And Patrick Charing,

Respondents,

v.

Justin Ludy and First Community Corporation d/b/a,
First Community Bank,

Appellant (Justin Ludy).

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AUG 20 2018
SC Court of Appeals

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 15-48-200(a), Justin Ludy appeals the order of the Honorable DeAndrea Gist Benjamin dated July 23, 2018 (attached), denying reconsideration of the order dated June 21, 2018 (attached). Appellant received electronic notice of entry of the order denying the motion for reconsideration on July 23, 2018.

s/ Wesley D. Few 
Wesley D. Few, LLC
Post Office Box, 9398
Greenville, SC 29604
(864) 527-5906 | wes@wesleyfew.com

August 14, 2018
Greenville, South Carolina

Other Counsel of Record:

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Post Office Box 999
Columbia, South Carolina 29202
(803) 774-0800

Margaret Fox
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(803) 774-0800

**ATTORNEYS FOR RESPONDENTS PALMETTO WILDLIFE EXTRACTORS, LLC, AND
PATRICK CHARPING**

Jody Bedenbaugh
Nelson Mullins
1320 Main Street
Columbia, South Carolina 29201

**ATTORNEYS FOR FIRST COMMUNITY CORPORATION D/B/A, FIRST COMMUNITY
BANK**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2017-CP-40-02822

Palmetto Wildlife Extractors, LLC,
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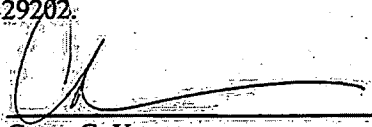
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AUG 20 2018

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal on counsel for the Respondent, James M. Griffin and Margaret Fox, by depositing a copy of it in the United States Mail, postage prepaid, on August 15, 2018, addressed to James M. Griffin and Margaret Fox, P.O. Box 999, Columbia, SC 29202.


Cassy G. Young
Paralegal to Wesley D. Few, Esq.

August 15, 2018
Columbia, South Carolina

WESLEY D. FEW, LLC
Attorney at Law
P.O. Box 9398, Greenville, South Carolina 29604
www.wesleyfew.com | wes@wesleyfew.com
O: 864-527-5906 | M: 864-404-7792

August 15, 2018

Via U.S. Mail

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

COPY

RE: Palmetto Wildlife Extractors, LLC and Patrick Charping v. Justin Ludy and First
Community Corporation d/b/a, First Community Bank
Civil Action No.: 2017-CP-40-02822
Our File No.: 00226-001

Dear Madame Clerk:

Enclosed for filing are an original and one copy of a Notice of Appeal in the above-referenced case, Proof of Service of the Notice of Appeal on the Respondents, a copy of the two Orders to be challenged on Appeal, and filing fee check number 2159 in the amount of \$100.00. Please return a file stamped copy for our files in the return-addressed envelope also enclosed.

With warm regards, I remain

Sincerely Yours,



Wesley D. Few

WDF/cgy

Enclosures

CC: James R. Griffin, Esq. (Via U.S. Mail)
Margaret N. Fox, Esq. (Via U.S. Mail)
Jody Bedenbaugh, Esq. (Via U.S. Mail)
Justin Ludy (Via email only)

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AUG 20 2018

SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4002822

Palmetto Wildlife Extractors LLC et al
PLAINTIFF(S)

Justin Ludy et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

The Defendants' Motion to Reconsider 59(e) is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/23/2018.

First Community Corporation
Patrick Charing

RECEIVED
AUG 20 2018
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2018 Jul 23 2:33 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4002822



Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-07-23 14:29:28 page 3 of 3

ELECTRONICALLY FILED - 2018 Jul 23 2:33 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4002822

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Palmetto Wildlife Extractors, LLC and)
Patrick Charing,)

Plaintiffs,)

v.)

Justin Ludy and First Community Bank)
Corporation d/b/a First Community)
Bank,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL
CIRCUIT

C/A No. 2017-CP-40-2822

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
JUSTIN LUDY'S MOTION TO
DISMISS OR STAY AND COMPEL
ARBITRATION**

RECEIVED

AUG 20 2018

SC Court of Appeals

This Court heard Defendant Justin Ludy's Motion to Dismiss or Stay and Compel Arbitration on March 1, 2018 in the Court of Common Pleas for Richland County, South Carolina. This Court issues the following order to grant in part and deny in part Defendant Ludy's motion.

First, this Court finds that Defendant Ludy did not waive the right to arbitrate. *See generally, Rich v. Walsh*, 357 S.C. 64, 590 S.E.2d 506 (Ct. App. 2003); *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007). Generally, the courts in South Carolina consider three factors to determine if a party waived its right to compel arbitration:

- (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration;
- (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and
- (3) whether the non-moving party was prejudiced by the delay seeking arbitration.

Rhodes, 374 S.C. at 126, 647 S.E.2d at 250. To establish prejudice, the non-moving party must show something more than mere inconvenience. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250. Further, neither delay nor the filing of pleadings by the party seeking a stay will suffice, without

much more, to establish waiver of arbitration. *Rich*, 357 S.C. at 71, 590 S.E.2d at 510. Material factors to consider when determining whether the non-moving party was prejudiced, are delay and whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250; *Rich*, 357 S.C. at 71, 590 S.E.2d at 510.

Defendant Ludy does not waive the right to arbitrate. Although Defendant Ludy filed a Complaint against Plaintiff Charming on April 25, 2017 in the Court of Common Pleas for Lexington County, South Carolina, this act in and of itself, is insufficient to waive Defendant Ludy's right to compel arbitration. On May 10, 2017, in response to Defendant Ludy's Lexington County Complaint, Plaintiffs initiated the instant action in the Court of Common Pleas for Richland County, South Carolina. On June 6, 2017, Defendant Ludy dismissed the Lexington County Complaint and responded to Plaintiffs' Richland County Complaint by filing a Motion to Dismiss or Stay and Compel Arbitration. In an abundance of caution, Defendant Ludy filed an Answer and Counterclaim on July 14, 2017 and noted in the pleading that the Court must decide his Motion to Dismiss or Stay and Compel Arbitration before considering his Answer and Counterclaim.

The Court considered many factors to determine Defendant Ludy has not waived the right to compel arbitration. This lawsuit commenced in May 2017 and Defendant Ludy filed the motion to compel arbitration on June 6, 2017. Between the commencement of the lawsuit and the request for arbitration, the parties engaged in minimal discovery. Further, Defendant Ludy has not utilized the judicial system to his advantage by filing extensive discovery requests or by engaging in discovery. On the contrary, Defendant Ludy filed a Motion to Limit and Stop Discovery on May 30, 2018, so that the Court may first determine whether this case is subject to arbitration. Such a filing is consistent with his request to compel arbitration. Last, Plaintiffs present no arguments as

to how Defendant Ludy's motion to compel arbitration prejudices them. Taken as a whole, the actions of Defendant Ludy do not prejudice Plaintiffs and are consistent with the request to compel arbitration.

Second, this Court finds that Plaintiffs' causes of action numbers one and two are subject to arbitration. The Plaintiffs' first cause of action is Palmetto Wildlife Extractors' Derivative Claim for Breach of Fiduciary Duty. The Plaintiffs' second cause of action is Palmetto Wildlife Extractors' Derivative Claim for Aiding and Abetting Breach of Fiduciary Duty. With regard to Plaintiffs' first two causes of action, Plaintiffs claim that Defendant Ludy misappropriated company funds in a manner inconsistent with the best interests of the company and utilized company funds for personal use. Plaintiffs additionally claim that Defendants removed Plaintiffs from the company's bank accounts. Plaintiffs and Defendant Justin Ludy entered into an Amended Operating Agreement for Palmetto Wildlife Extractor's, LLC. By virtue of the contract, the Plaintiffs and Justin Ludy are ascribed certain fiduciary duties. An alleged violation of a fiduciary duty falls under the scope of the parties' operating agreement, which requires that disputes relating to, or arising out of the contract, are subject to arbitration.

Third, this Court finds that Plaintiffs' causes of action numbers three through five are not subject to arbitration. The Plaintiffs' third cause of action is for Civil Conspiracy. The Plaintiffs' fourth cause of action is for Defamation. The Plaintiffs' fifth cause of action is for Appointment of Receiver, Accounting, and Judicial Dissolution. Plaintiffs' claims for civil conspiracy and defamation are tort claims that do not implicate the parties' contractual agreement and are not subject to arbitration. According to Section 11.1.3 of the parties' agreement, a court must enter a judicial decree dissolving the company pursuant to S.C. Code Ann. § 33-44-801. Thus, Plaintiffs'

claim for appointment of receiver, accounting, and judicial dissolution is not subject to arbitration as Section 11.1.3 specifically requires a finding by a court.

IT IS HEREBY ORDERED

Defendant Ludy's motion is GRANTED as to Plaintiffs' causes of action for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Those causes of action are dismissed and subject to arbitration. Defendant First Community Bank Corporation will follow the parties to arbitration.

Defendant Ludy's motion is DENIED as to Plaintiffs' claims for civil conspiracy; defamation; and appointment of receiver, accounting, and judicial dissolution. These causes of action are stayed.

The Honorable DeAndrea G. Benjamin
Judge of the Fifth Judicial Circuit

June _____, 2018
Columbia, South Carolina



Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Fifth Circuit Judge

Appellant Case No. 2018-001536

Palmetto Wildlife Extractors, LLC
And Patrick Charping,

Respondents,

v.

Justin Ludy and First Community Bank Corporation d/b/a
First Community Bank,

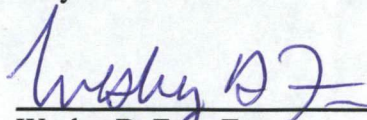
Appellants,

Of whom Justin Ludy is the Appellant.

Certificate of Counsel

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

April 4, 2019



Wesley D. Few, Esq.
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Attorney for Appellant Justin Ludy

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APR 11 2019
SC Court of Appeals