

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000267
Op. No. 5711 (S.C. Ct. App. filed Jan. 15, 2020)

Carla Denise Garrison and Clint Garrison.....Petitioners,

v.

Target Corporation.....Respondent.

APPENDIX
VOLUME III

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellant Case No. 2017-000267

Carla Denise Garrison and Clint Garrison,

Appellants / Respondents,

v.

Target Corporation

Respondent / Appellant.

RECORD ON APPEAL
VOLUME II

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1 plaintiff resting?

2 MR. HAWKINS: The plaintiff has
3 rested. We would like to make a Motion to go
4 with that.

5 THE COURT: We'll get into the
6 Motions. I just want to make sure where we
7 are for the record. Plaintiff has rested?

8 MR. HAWKINS: Yes, Your Honor,
9 plaintiffs rest.

10 THE COURT: Let me see the lawyers
11 here.

12 (OFF RECORD BENCH CONFERENCE)

13 THE COURT: All right. Madam
14 Forelady, ladies and gentlemen of the jury,
15 what I was doing was conferring with the
16 lawyer as well as Mister Clerk regarding the
17 next case that would be following this case.
18 There is another case to follow and we're
19 trying to get the nuts and bolts here of what
20 time to bring you back tomorrow. We're going
21 to let you go today in just about five
22 minutes, or less. We're going to continue to
23 work for just a little bit, but a part of my
24 job is to try to figure out when to bring
25 your brothers and sisters back so they can

1 join in all the fun, you know.

2 Having said that, the lawyers have
3 now conferred with Mister Clerk, so we're
4 going to let you go home for the evening.

5 I will tell you that the plaintiff
6 has rested. What that means is that the
7 plaintiff does not intend to call any more
8 witnesses or offer any evidence, whether that
9 be a piece of paper or testimony. The
10 plaintiff is done with their case, what they
11 call their case in chief.

12 So at this point I need to inquire
13 of the lawyers about some legal matters.
14 Also it may be that the defense doesn't put
15 up any more witnesses themselves, but we've
16 got to find out about those things.

17 Having said that, I'm going to let
18 you go home for the evening. I am going to
19 ask you to be back in the morning at 9:30,
20 not 9:00 o'clock but at 9:30.

21 Again, we are going to be earlier,
22 just talking about some this nuts-and-bolts
23 things, too, but I don't want you sitting
24 back there for thirty minutes or so while we
25 might be hashing that out.

1 Now, this is what I anticipate. It
2 could change, but this is what I anticipate
3 from the lawyers, is that the defense will
4 probably rest tomorrow morning. Having done
5 so, we will then go immediately into argue
6 and charge; which means that this case
7 tomorrow morning before lunch will be in your
8 hands for to determine. So after the lawyers
9 argue and charge you on the law, you will
10 retire to the jury room to begin your
11 deliberations. We anticipate that you will
12 have this tomorrow morning before lunch.

13 Have a good evening. Madam
14 Forelady, you can take the jury out.

15 (JURY OUT @ 4:29 P.M.)

16 THE COURT: Back on the record in
17 this case. The plaintiff has now rested.
18 Anything from the plaintiff?

19 MR. HAWKINS: Yes, Your Honor.
20 After hearing all the evidence, we'd like to
21 make a Motion for a directed verdict.
22 We've shown overwhelming evidence that only
23 did the hazard cause the injury but that the
24 hazard existed at Target for a significant
25 period of time, longer than their cleaning

1 person, property management technician, said
2 was acceptable. So by their own standards,
3 the hazard stayed on the ground longer than
4 acceptable and caused the injury. So we
5 would move for a directed verdict on that
6 basis.

7 We would also move for a directed
8 verdict due to the spoiliation of key
9 evidence in the case. I've got a case that
10 went up on appeal, a 2006 case, that I'll
11 hand up. *Stokes v. Spartanburg Regional*.
12 It is still good law, 368 SC 515. This case
13 doesn't speak directly to our Motion for a
14 directed verdict but it does speak to Rules
15 related to spoiliation.

16 So I make a Motion for directed
17 verdict based spoiliation and basically
18 summary judgment and, in the alternative, ask
19 for a spoiliation charge.

20 And I've got a proposed charge. You
21 can look at it or I can throw it in the
22 trash.

23 THE COURT: Mr. Haynsworth?

24 MR. HAYNSWORTH: Yes, Your Honor.

25 On the spoiliation issue, Judge, we can beat

1 each other with that shoe since his paralegal
2 took a bunch of pictures and this, which we
3 don't have here.

4 I would like, if Your Honor will
5 permit, to address the spoliation issue
6 tomorrow. I don't have the benefit of the
7 case, though I wrote down the citation that
8 Mr. Hawkins just gave. I don't think we have
9 any facts sufficient to support a spoliation
10 charge but I'd like to, if you don't mind,
11 save my response until in the morning so I
12 can do a little reading on it.

13 THE COURT: Yes, sir.

14 MR. HAYNSWORTH: You know, Judge,
15 rather than responding to his directed
16 verdict Motion, I'd be better off just
17 arguing mine, because it's the polar
18 opposite. I don't think that there's been
19 any evidence submitted in this case
20 establishing that Target is liable for the
21 plaintiffs' injuries. I want to save it to
22 address my whole spiel.

23 But to address his, I just don't
24 think factually they've done -- Josh said
25 they've violated what the maintenance guy

1 says their standard is. That's not what he
2 said the standard is. He got up on the stand
3 and said 'would you agree with me that it
4 would be reasonable to keep people safe, to
5 have someone check that parking lot once an
6 hour.'

7 There has been no evidence, no
8 testimony about any sort of standard that
9 Target is supposed to follow or does follows
10 as to the frequency of inspections. The only
11 evidence in this case, the only evidence
12 there has ever been is a syringe with no
13 needle in it was found in Target's parking
14 lot after this lady said it landed there from
15 wherever her daughter picked it up. There
16 is still absolutely no evidence as to how it
17 got there or how long it had been there. The
18 plaintiff admitted as much on the stand.

19 Judge, this is just like if this was
20 a slip-and-fall in water. The water was
21 cloudy, dirty and it's been tracked through,
22 therefore we all know that it must have been
23 there for some period of time. Otherwise it
24 couldn't be dirty, it couldn't be tracked
25 through. Well, if I take this water and pour

1 it on this table and I take some dirt and
2 step on it, I've now got muddy, tracked-
3 through water that's been there ten seconds.

4 There is simply no evidence beyond
5 rank speculation as to how long it'd been
6 there. We all agree that it is dingy. We
7 all agree that the plunger that your thumb
8 goes on is broken off. It could have fallen
9 out of a car five minutes before this lady's
10 daughter encountered it, been run over. Now
11 we've got a dingy hypodermic that is
12 partially broken. That doesn't establish
13 what is their burden, which is to prove that
14 Target had constructive notice.

15 They've got to prove that it had
16 been there for a sufficient length of time
17 for Target to have notice, 'you should have
18 found it and done something.' There just
19 isn't any evidence of that.

20 We can all speculate. I could
21 speculate, I could say, 'Judge, Martians put
22 that there five minutes before this lady
23 encountered it.' Well, that's kind of crazy
24 but it is just as possible that it'd been
25 there for three weeks. It's their burden.

1 It's not my burden to prove how long it
2 hadn't been there. It's their burden to come
3 forward with evidence, not 'it's dirty and
4 dingy, ergo it had to have been there for
5 awhile.' We just haven't had any of that
6 evidence, Judge. It just hasn't been present
7 in this case.

8 I have a couple of other grounds for
9 my Motion but I wanted to respond to Josh.

10 THE COURT: All right. Anything?

11 MR. HAWKINS: Judge, basically the
12 same reason summary judgment was denied the
13 first time. You know, we don't have to --
14 anytime that there is a plaintiff that gets
15 hurt by a condition, there's -- you know,
16 most of the time you're not going to have
17 pictures of the condition before they got
18 hurt, you're not going to have any reason to.
19 We did some investigation and cannot show
20 that this had been here awhile. While,
21 that's what we did. We presented lots of
22 evidence -- and, like he said, both sides
23 agree that there is wear on the needle. To
24 use her words, it's "dirty, dingy and gross."
25 It's among other trash. That's evidence that

1 that needle has been there for a long period
2 of time.

3 As far as what Mr. Jackson said, we
4 actually walk it between one hour and two
5 hours. So we talked about that, back and
6 forth. If you go back to -- I think it's
7 *Meeting Street Piggly Wiggly* and that progeny
8 of cases, uh, it -- I don't think it has to
9 be there an hour. And we don't have to prove
10 that it's been here exactly this amount of
11 time. We just have to prove that it is more
12 likely than not it's been there a sufficient
13 period of time to cause the injury. That
14 goes back to a fact question. We presented
15 evidence, lots of it, so the jury is entitled
16 to make a determination based on the
17 evidence, Your Honor.

18 And I am responding to his response
19 to my Motion. I'm not responding to his
20 Motion yet. Right?

21 THE COURT: The plaintiffs' Motion
22 for a directed verdict is denied in that if
23 there is any evidence whatsoever, question of
24 fact, it is to go to the finder of fact,
25 which is the jury.

1 Spoiliation is under advisement.

2 Anything else in play?

3 MR. HAWKINS: No, Your Honor.

4 Thank you.

5 THE COURT: Anything from the
6 defense?

7 MR. HAYNSWORTH: Your Honor, at
8 this time the defense would like to make a
9 Motion for a directed verdict. I have a few
10 grounds. The first ground, Your Honor, we
11 have just sort of been going over. That is,
12 Judge, -- and in my pretrial brief, I've
13 addressed what I believe to be the applicable
14 law on the issue of constructive notice.

15 To address something that Mr.
16 Hawkins said, you know, just because summary
17 judgment is denied based on the incomplete
18 record at the summary judgment stage really
19 has nothing at all to do with where we are
20 today. Today we have the benefit of all the
21 evidence that the plaintiff is going to bring
22 to bear in this issue.

23 Again, I -- you know, I don't want
24 to beat a dead horse but, honestly, there is
25 no evidence how long it had been there. It's

1 dirty. The thing is broken. That doesn't
2 mean that it had been there five minutes,
3 five days, ten minutes, ten days. There is
4 simply no evidence of how long it'd been
5 where it was. In fact, Judge, we don't know
6 where it was in the parking lot, where it was
7 found. We only know where it landed after
8 she said that she swatted it out of her hand.

9 So one of my grounds is that I do
10 not think that the plaintiffs, even
11 construing -- and I think the critical phrase
12 is "all reasonable inferences." If plaintiff
13 is entitled to go forward, we're basing that
14 decision on speculation as to how long it
15 must have been there because people say it's
16 dingy and dirty and must have been there a
17 long time.

18 I could have dropped that dingy,
19 dirty -- I could have dropped that very
20 needle out of my car five minutes before Mrs.
21 Garrison rolled up. If it's been there five
22 minutes, that obviously is not long enough.
23 We don't know how long it had been there.
24 The plaintiffs have to establish that and
25 they have not.

1 Another ground for my directed
2 verdict, Your Honor, deals with what
3 plaintiff has to establish in a negligence
4 case. Let me skip for a second the breach of
5 contract and unfair trade practices claim
6 that Mr. Hawkins brought based on agreeing to
7 pay the hospital bills. I'd like that thrown
8 out entirely because we haven't had any
9 evidence. In essence ---

10 THE COURT: Let's address that one
11 right now. How about that, Mr. Hawkins?

12 MR. HAWKINS: Your Honor, I would
13 respond to that by saying the statute says
14 that if there is harm to the public, capable
15 of repetition and it affects public interest
16 then you can bring an action under the South
17 Carolina Unfair Trade Practice Act.

18 I don't think that -- and he said
19 'based on the promise to pay.' I don't think
20 our -- I haven't look at the pleadings, in
21 all honesty, in a while but I don't think our
22 claim was based solely. I think it was based
23 on that if you do something that affects the
24 public, you know, is capable of repetition,
25 harmful to the public and is either unfair or

1 deceptive, -- it doesn't have to be
2 deceptive, it can be unfair. Certainly it is
3 unfair to the public to keep something that
4 has got a bunch of hazards in it.

5 Certainly it is unfair to say, 'all
6 right, don't worry about it, go bring us your
7 bill' and lead them to believe that they are
8 going to compensate for your medical bills.
9 That part at least is deceptive.

10 So I don't think that you can throw
11 it out on a directed verdict Motion. If the
12 jury doesn't find that way, the jury doesn't
13 find that way. But I think that they are
14 entitled to think about it since the statute
15 says 'capable of repetition', which it is.
16 They testified that they didn't do anything
17 different with the cleaning modes. 'Harmful
18 to the public', which is was. She got hurt.
19 And involves commercial, unfair and
20 deceptive.

21 MR. HAYNSWORTH: Your Honor, if
22 that claim is based on 'you promise to pay',
23 it's gone because there was no evidence about
24 any promise to pay in this trial.

25 MR. HAWKINS: I said 'lead to

1 believe' and we presented evidence based on
2 that.

3 THE COURT: I've been listening
4 carefully. Even after lunch, my law clerk
5 and I discussed that. It seems to us that
6 that claim was abandoned by the plaintiffs.
7 So the Motion is granted on the unfair trade.

8 MR. HAWKINS: Thank you, Your
9 Honor.

10 MR. HAYNSWORTH: Your Honor, back
11 to my second grounds for a directed verdict
12 on negligence is that we all know that duty,
13 breach and proximate cause. It sort of begs
14 the question of, you know, what is the duty.
15 If we were dealing with a case where Mrs.
16 Garrison was walking in the parking lot and
17 had impaled her toe, wearing flip-flops, on a
18 needle that Target had in the parking lot
19 that had been there longer than it should
20 have been there, I would spot you that that
21 is a foreseeable injury. We owe our patrons
22 -- we are not an insurer of our patrons'
23 safety but we have to keep our premises
24 reasonably safe for them.

25 Well, what are the likely

1 probabilities that we breached that? Let's
2 say for purpose of my discussion that it
3 happened, that there was a needle there that
4 Target let set out there for longer than it
5 should have. She has to establish that we
6 had a duty to protect against the thing that
7 hurt her. What hurt her, Judge, it wasn't
8 her daughter that got stabbed, she didn't
9 kick the needle and impale herself. The
10 proximate cause of what injured this lady,
11 according to everyone's testimony, is that
12 she went and hit the needle that her daughter
13 was holding. There is no way that that is
14 reasonably foreseeable if you're a merchant.
15 I don't think that the law provides that
16 Target has a duty to protect against that
17 type of activity.

18 So that's another ground, which
19 dovetails into my third, and that is, Judge,
20 that as a matter of law I believe the
21 evidence is that Mrs. Garrison was more than
22 fifty percent responsible for her own injury.
23 It's undisputed that the factual and legal
24 cause of her claim that she was impaled by a
25 needle is her own affirmative action in

1 hitting the needle from her daughter's hand.
2 Whether it was an instinctive reaction that a
3 mother would do is no different than I ran in
4 front of the vehicle to save my son. When I
5 sue the driver of the car, the reason I got
6 run over is because I ran out in front of
7 him. Whether that was parental instinct is
8 not really the issue. The issue is what
9 caused me to get hurt? Well, what caused
10 her to get hurt is what she did.. The only
11 reasonable view of all the testimony is that
12 she is fifty percent or more responsible for
13 her injury. If that's the case, then she is
14 entitled to no damages because of comparative
15 negligence, which we've pled. I believe that
16 we are entitled to a directed verdict on that
17 ground.

18 Finally, Judge, we are entitled to
19 a directed verdict on the punitive damages
20 claim. I don't think that there's been any
21 competent evidence that Target did not use
22 due care in the way that it handled its
23 store. But even if there was, there clearly
24 has been no evidence which suggests that
25 Target was willful, reckless and wanton.

1 There has been testimony as to what they do,
2 what the various team members do, the cart
3 guy does. Mr. Jackson has been sitting here,
4 one of their head maintenance guys. There
5 has been plenty of testimony of the efforts
6 that they take to maintain their premises.

7 Clearly we are not in a situation
8 where they did not use any care, so I think
9 that the punitive damages claim has got to go
10 because the plaintiffs have failed in their
11 burden to present any evidence that rises to
12 any level beyond mere negligence.

13 THE COURT: Yes, sir?

14 MR. HAWKINS: Thank you, Your
15 Honor. I guess I will speak to the parental
16 instinct thing first. If somebody has a car
17 where there is not supposed to be one,
18 driving like a maniac, and push your kid out
19 of the way, you still can sue the driver.
20 That's more tantamount to a path. The needle
21 is not supposed to be there. It's supposed
22 to be cleaned up. It's not supposed to stay
23 there long enough to get wear, dingy, dirty
24 and all that. To that's not a good analogy.

25 She has a claim and -- and as to her

1 contributory negligence, and I cited to this
2 in one of my requests to charge. I think a
3 property owner, business invitees owes a duty
4 commensurate with the level of, uh education,
5 capacity and sophistication of the invitee.
6 Unless it's been overruled, I cite to v.
7 *Meadows v. Heritage*, 305 SC 375. I think it
8 cites to *Henderson v. St. Francis*, 303 South
9 Carolina 177.

10 Target knows, and we've heard
11 testimony about it, there is even an exhibit
12 on point, and Target encourages mothers with
13 their children to come to Target. They owe a
14 duty to mothers with children, even small
15 children, and babies to come to Target, to
16 keep the parking lot reasonably safe of
17 hazard that can harm them.

18 As to punitive damages, we have --
19 we know that the cleaning is pretty much the
20 same ever since this happened. Based on
21 their failure to keep records, based on their
22 failure to review any records -- even though
23 they say should, based on their failure to
24 provide, uh, look at any video surveillance,
25 I think we can say that their acts are

1 willful, wanton and reckless. We've seen the
2 pattern with the bolt on impeachment. We've
3 seen how they don't tend to the parking lot
4 at all, and we know that it hasn't changed.
5 So we can say, since we know that it hasn't
6 changed, their behavior is willful, wanton --
7 I mean, they are at least entitled to tell
8 the jury about it, to ask them, to let them
9 make a factual determination about whether
10 their behavior has been willful and wanton.

11 THE COURT: Anything else?

12 MR. HAYNSWORTH: With that
13 statement, -- obviously, Your Honor, we've
14 run into this in a lot of arguments that
15 we've had in trials. Just because this came
16 to court doesn't mean that we as lawyers are
17 entitled to tell the jury whatever we want to
18 tell them. We only get to tell them what the
19 law allows us to tell them. The law in this
20 case does not allow us to get into punitive
21 damages because there simply ain't any
22 evidence of them.

23 MR. HAWKINS: Your Honor, I will
24 just point to all the evidence, the lack of
25 record keeping before or after. We've

1 presented evidence.

2 Also I want to address one more
3 thing that I forgot to address earlier. The
4 defense keeps getting hung up on 'you don't
5 know where this needle came from'. Of
6 course, they don't. 'You don't know how long
7 it's been there.' Of course they don't.
8 They don't know how long the Grand Canyon has
9 been there but we all know that it's been
10 there a long time. That's the example I'd
11 like to use. You only have to show that
12 something has been there long enough to be
13 cleaned up. You don't have to know when it
14 was dropped. She doesn't use drugs, she
15 doesn't hang around with drug dealers, she's
16 not a diabetic, she doesn't have any diabetic
17 friends that she hangs out in the Target
18 parking lot with. We've just got to present
19 evidence for the jury that it's been there
20 long enough to be cleaned up. I think we
21 passed that exit a long time ago.

22 THE COURT: Well, let me ask you
23 about that.

24 MR. HAWKINS: Yes, Your Honor.

25 THE COURT: What evidence is

1 before the court that anybody put them on
2 notice that it was out there? What evidence
3 is there, even if they didn't put them on
4 notice, that's the second prong: actual and
5 constructive. What evidence is before the
6 court that all the testimony, that somebody
7 saw it out there.

8 MR. HAWKINS: Your Honor, I don't
9 think that anybody has to see the needle out
10 there. I think the constructive notice is
11 the fact that it's laying among other
12 colored, discolored trash. That doesn't
13 prove anything but it's evidence for a jury
14 to consider, and the jury determines whether
15 or not we've proved that it was there long
16 enough for them to have cleaned it up.

17 In her deposition, Mrs. Garrison
18 testified -- and she testified pretty
19 consistent with her testimony here today --
20 that there was other trash along with the
21 needle, that the needle itself matches the
22 weathered condition of the other trash
23 because it's got divots and pings in it. The
24 end of it has been torn off. You can tell
25 that it's been run over. You can tell that

1 nobody dropped it an hour ago, like counsel
2 keeps trying to obviously imply. You can
3 tell that nobody dropped it ten hours ago.
4 That needle had obviously been in the parking
5 lot for a significant period of time. That's
6 clear from the dirt on the needle, the grime
7 on the needle, the trash surrounding the
8 needle and her observations of the parking
9 lot around the needle when she got hurt. All
10 of that has been talked about in front of the
11 jury, it's all in evidence.

12 MR. HAYNSWORTH: Judge, we've all
13 heard what been talked about. What has been
14 talked about is 'here's a picture of the
15 needle' and it looks dingy, part of it is
16 broken off. No argument from me at all
17 that's what that picture shows.

18 What that picture doesn't show and
19 there has been no testimony of is how long he
20 has been there.

21 Josh's example of the Grand Canyon
22 is a little extreme. It can't move. Again,
23 I think my analogy about the water is better.
24 I've run into that before. You know, you
25 want to assign a temporal component to

1 something. 'It must have been there some
2 period of time because' -- with that needle,
3 I don't doubt that she doesn't hang out with
4 drug dealers. That doesn't mean a drug
5 dealer didn't drop that out of his car and
6 run over it five minutes before this lady
7 pulled up.

8 To say that they're never going to
9 know where it came from or how it got there,
10 well, I'm sorry, that's the premises
11 liability law in South Carolina. You know,
12 the guy who fell on the big hothouse tomato
13 at Target in Spartanburg, there ain't no
14 doubt that he fell on it but he didn't know
15 how it got there or how long it had been
16 there. He didn't get to go forward, because
17 he couldn't establish his burden. Theirs is
18 simply no testimony pegging a timeframe of
19 how long that needle had been in the parking
20 lot. It is not a new needle, no dispute.
21 Doesn't mean that it'd been in the parking
22 lot for any length of time. The plunger part
23 that you push down on was broken off. It
24 could have been broken off five minutes
25 before it went in the parking lot. The fact

1 that we see it laying there tells us nothing
2 about how long it had been there. They've
3 got to prove it, I don't have to disprove it.

4 To let the jury go decide based on
5 the evidence that the plaintiffs have
6 presented is rank speculation, finding of the
7 same theory that Mr. Hawkins is advancing to
8 this court, 'well, it must have been there a
9 long time because, look, it's dirty.' That
10 is not the analysis. Dirty where it wound up
11 speaks not of how long it had been there.

12 MR. HAWKINS: Your Honor, may I
13 respond to that by saying that counsel, you
14 know, also likes to use the word
15 "speculation" -- a lot. But the only thing
16 that he has to rebut all the evidence that
17 it's been there a long time is 'well, it may
18 have dropped out of somebody's car.' That's
19 speculation.

20 What the evidence shows is the
21 divots and the broken needle, among other
22 trash that had been there a long time. It
23 matches the other weathered trash that we
24 heard about on the stand, that was there --
25 the cleaning methods, which have not been

1 changed since before the needle injury. We
2 know that they haven't changed cleaning
3 methods, we know that they were ---

4 THE COURT: I'll stop you there.
5 I am not going to pay any attention to that.

6 MR. HAWKINS: Well, okay.

7 THE COURT: I don't care about
8 what happened afterwards. I want to know
9 about -- I'm focusing on during and
10 immediately before the accident.

11 MR. HAWKINS: Yes, sir.

12 THE COURT: I don't care about
13 them not picking up that bolt.

14 MR. HAWKINS: That's what I am
15 talking about, Your Honor. We know how
16 grossly inadequate the cleaning measures were
17 now and how inadequate that they were before
18 that needle, because it -- because they are
19 the same. When you view that, along with all
20 that trash in that picture, the discolora-
21 tion, the weathered nature of the trash and
22 the needle laying among it, that is all
23 evidence for the jury to consider it.

24 I understand that Knox doesn't want
25 to get -- and make a factual determination,

1 but that's what juries are for. And at the
2 summary judgment level, you know, they made
3 that Motion. They're entitled to make that
4 Motion. We presented a whole bunch of
5 scintillas, way more than a scintilla and
6 that Motion was denied. It should be denied
7 here for both that reason and even more so
8 because now we've got all the evidence in
9 front of a jury, sworn witnesses, of how
10 weathered and dingy that needle appears to
11 be. And you can tell in that picture that
12 the trash on the ground around it had been
13 there a long time; that they haven't cleaned
14 it.

15 I asked her did it appear to be
16 cleaned, "no." I mean she observed it.
17 That's her testimony.

18 THE COURT: Okay. It's under
19 advisement. Anything else?

20 MR. HAWKINS: No, Your Honor. I
21 would hand up my proposed spoliation charge
22 in case we get that.

23 MR. HAYNSWORTH: That's all that I
24 have to say, Your Honor, from the defense.

25 MR. HAWKINS: I know that we're not

1 talking about that today but I just want to
2 hand it to the court while I am thinking
3 about it, (tendering). I actually have
4 copies of the all the charges that I've sent
5 via e-mail if the court has those?

6 MR. HAYNSWORTH: Could I have a
7 copy so that I can research ---

8 MR. HAWKINS: I've got one.

9 MR. HAYNSWORTH: If you wouldn't
10 mind.

11 MR. HAWKINS: You were copied on
12 all the e-mails, except that one. So you
13 have copies.

14 MR. HAYNSWORTH: If you wouldn't
15 mind, Mr. Shirley, make me a copy too. That
16 will save me having to track down the email.

17 CLERK: Sure.

18 MR. HAWKINS: I've got two more
19 copies here. Sorry, -- (tendering).

20 THE COURT: Let's get off the
21 record. See you in the morning, at 8:45 so
22 we can talk about our charges. Thank you.

23 (OFF RECORD DISCUSSION RE SCHEDULE)

24 (COURT IN RECESS)

25 (TRANSCRIPT CONTINUED NEXT PAGE)

1
2 SEPTEMBER 8, 2016

9:00 A.M.

3
4 THE COURT: Okay, the Court has
5 a couple of Motions pending. As to the
6 spoiliation, the Court will charge
7 spoiliation, not verbatim to the one that has
8 been handed up by plaintiff but will charge
9 spoiliation. Actually it cuts both ways.

10 As to punitive damages that was
11 under advisement, the directed verdict and
12 the punitive damages is denied.

13 In ruling on a directed verdict
14 Motion, the trial court is required to view
15 the evidence and all inferences that can
16 reasonably be drawn therefrom in the light
17 most favorable to the party proposing the
18 Motion. This Court must deny the Motion when
19 the evidence yields more than one inference
20 or inferences are in doubt. In this case,
21 the Court finds that there is at least
22 evidence that when viewed in the light most
23 favorable to the nonmoving party could lead
24 to more than one inference or at least cause
25 an inference that is in doubt.

1 Having said that, we will proceed to
2 the -- I don't think there is anything else
3 under advisement.

4 MR. HAYNSWORTH: I don't think so,
5 Your Honor.

6 MR. HAWKINS: Your Honor, I do
7 have one matter that a need to get the
8 direction of the Court about.

9 THE COURT: Okay.

10 MR. HAWKINS: It's a matter that
11 involves trial strategy during closing. I
12 don't want to divulge to the other side but
13 I don't know how to proceed to get direction
14 without the other side knowing kinda what I
15 am going to do. It's basically asking the
16 Court's permission to make sure that it's
17 okay to do something during closing. So I
18 don't know how to communicate that.

19 THE COURT: I don't know.

20 MR. HAYNSWORTH: I don't know
21 either.

22 THE COURT: I don't know, but I
23 can't have an *ex parte* communication.

24 MR. HAWKINS: That's why I raised
25 the issue. Since I'm trying to do it that

1 way, on the record, I can tell you now in
2 front of everybody that I want to use the
3 bolt that we got out of the parking lot as a
4 prop during closing. I want to hold it and
5 talk about it. I want some direction from
6 the court. If that's okay, then that's okay.
7 If it's not okay, then obviously -- but just
8 like with any other prop, I'd like to hold it
9 and talk about it during my closing. It's
10 not in evidence.

11 THE COURT: If it is not in
12 evidence, it can't come before the jury.

13 MR. HAWKINS: Right, but I want to
14 use it like a prop. That's what I am asking
15 about.

16 THE COURT: No, sir. It's not in
17 evidence. That's demonstrative evidence.
18 It's not a prop.

19 MR. HAWKINS: Thank you, Your
20 Honor.

21 THE COURT: Because that bolt is
22 in these pictures and I allowed those
23 pictures in not for the uncleanliness of the
24 parking lot, but I allowed them in for
25 impeachment purposes. It just happened to

1 be in those pictures. Okay?

2 MR. HAWKINS: (Affirmative nod),
3 thank you, Your Honor.

4 THE COURT: Are we ready for the
5 jury?

6 MR. HAWKINS: Plaintiff is ready.

7 MR. HAYNSWORTH: Defense is ready,
8 Your Honor.

9 THE COURT: Okay. Real quick
10 here, before they come in I'm going to tell
11 you what we have put together. You've seen
12 the verdict form before, and I think we are
13 all in agreement on that.

14 Just as a standard introduction:

15 Corporation as a person.

16 Finding of facts, I've got direct
17 and circumstantial evidence.

18 Spoiliation of evidence.

19 Elements of the cause of action,
20 plaintiff personally injured, those three.

21 Negligence.

22 Proximate cause.

23 Burden of proof.

24 As to the Answer of the Defendant:

25 Comparative negligence.

1 Store owner's duty.

2 The two that you gave up, the
3 parking lot and the store owner's duty --
4 one and three.

5 Damages:

6 Actual damages.

7 Lost wages.

8 Loss of consortium.

9 Actual damages proof.

10 Give damages burden of proof.

11 Conclusion.

12 Anything?

13 MR. HAWKINS: No, sir..

14 MR. HAYNSWORTH: No, Your Honor.

15 THE COURT: I think John was
16 thorough in his coverage. All right,
17 we will have our jury.

18 You want to rest on the record?

19 MR. HAYNSWORTH: Yes, sir. Thank
20 you.

21 (JURY IN @ 10:46 A.M.)

22 THE COURT: Good morning. We've been
23 here all morning. We've got things ---

24 BAILIFF: There is one more coming,
25 Your Honor.

1 (JUROR ENTERS COURTROOM)

2 THE COURT: I'm sorry! Thank you.

3 I was just telling them that we've been here
4 all morning, working, so I apologize for the
5 inconvenience.

6 The plaintiff rested yesterday, so
7 we will now go to the defendant.

8 MR. HAYNSWORTH: Your Honor, due to
9 the fact that all my witnesses were addressed
10 in plaintiff's case, the defense rests.

11 MR. HAWKINS: Your Honor, plaintiff
12 renews their Motions.

13 THE COURT: You're protected on
14 the record.

15 MR. HAYNSWORTH: I likewise renew
16 my Motions.

17 THE COURT: Yes, sir. Anything
18 further?

19 MR. HAWKINS: No, sir.

20 THE COURT: Ladies and Gentlemen
21 of the jury, Madam Forelady, it is now time
22 for you to give your attention to the
23 lawyers.

24 They are going to tell you what they
25 believe, in closing statements, what the

1 version of the facts are.

2 Then afterwards, I will charge you
3 on the law.

4 After that, Madam Forelady, Ladies
5 and Gentlemen, we'll send twelve of you back
6 to the jury room to determine this case.

7 Please give your attention to the
8 lawyers.

9 MR. HAWKINS: Thank you, Your Honor,
10 may it please the Court?

11 THE COURT: Yes, sir.

12 CLOSING STATEMENT

13 BY MR. HAWKINS:

14 The caption of this case is Denise
15 Garrison and Clint Garrison versus Target.
16 That's what's on the paperwork.

17 But what this case boils down to,
18 what we showed you through the course of
19 introduction of evidence is that the case
20 is really about the safety of the Anderson
21 County community versus the danger presented
22 by Target.

23 Target's got a broken system.
24 Target doesn't keep cleaning records. They
25 don't review records. The people in charge

1 of monitoring cleaning and safety don't know
2 where the records are, don't know if they
3 even exist. And don't rely on any records
4 when they generate the only two pieces of
5 paper we've seen from Target; one of which
6 has a mistake on it, calls the 28th and the
7 29th Monday. A fourth grader could create
8 that document in about fifteen minutes.

9 Everybody has to follow safety
10 rules. Everybody that opens their store to
11 the -- it doesn't matter if it's the third
12 largest retailer in the country. It doesn't
13 matter that they have, you know, they had
14 seventy-three billion dollars
15 (\$73,000,000,000) in total revenue last year.
16 That doesn't matter. They have to follow
17 safety rules.

18 If you're going to invite mothers
19 with children to come to your store, you put
20 out advertisements and say, '*Mothers come buy*
21 *our children's products. Bring your baby*
22 *with you. Buy a baby seat. Buy a car seat.*'
23 Then you've got to make the premises
24 reasonably safe for who you know is coming to
25 your store.

1 They know mothers come there with
2 children, they're making \$73 Billion dollars
3 off of it.

4 They've got to make sure the
5 cleaning truck comes. We know now it doesn't
6 come all the time. At least there was one
7 Thursday night it didn't come because Clint
8 worked ten hours, after hearing it comes
9 every night, went to the parking lot stayed
10 over there watching to see -- he wasn't even
11 -- he assumed it would come. He was watching
12 to make sure it cleaned that area. It never
13 came at all. He left and went to Bojangles
14 and got breakfast and then worked another ten
15 hours. Because that's how important it is to
16 my clients to show you what Target's doing.
17 They're not following safety rules.

18 You saw how many people were up here
19 when the Judge asked them, '*does anybody shop*
20 *at Target?*' I didn't see but two people who
21 didn't stand up out of forty-nine, I think.
22 Those people are in danger right now because
23 of Target's broken system.

24 Every mother that's at Target right
25 now with their child is in danger because of

1 their broken system.

2 Because when they come in make sure
3 the parking lot was cleaned, because when
4 they come in to make sure that housekeeping
5 came, they just eyeball it. They don't look
6 at any documents. We asked for any -- we
7 subpoenaed and asked for any and all
8 documents related to safety, cleaning, video
9 surveillance, we asked for all of that stuff.
10 It was subpoenaed, and two pieces of paper.

11 Target is a \$73 Billion dollar-a-
12 year company.

13 This (indicating plaintiffs) is a
14 single-income household.

15 And you've seen the evidence we
16 brought. You've seen the evidence we -- we
17 couldn't show it all to you. You can only go
18 off the admissible evidence, but you've seen
19 everything we've brought.

20 And when Knox gets up here and he
21 starts hammering, 'Well, they have those
22 pictures of that needle. They lost those.'
23 Yeah, we couldn't get them off the cellphone
24 so we tried to go back. And guess what, they
25 don't have the needle.

1 Again, \$73 Billion dollars in
2 revenue last year, and they can't hang on
3 to that three-inch needle?

4 You're entitled to presume -- the
5 Judge is going to tell you this in a little
6 bit. If they don't have evidence, you can
7 draw a negative inference from it:

8 What was on this needle they don't
9 want you to see?

10 Was it the needle was pushed back
11 in?

12 Was it broken off?

13 Was there part of it you could see
14 if you saw it in person? Because we know
15 that in person it looks more dingy than this,
16 more worn than this. Their own witness said
17 it had some wear on it. She used the words
18 "dirty", "dingy" and "gross."

19 It matches the weather condition of
20 the other trash in the area. And that's just
21 a few inches. You heard Denise say there was
22 other trash on the ground, so it was sort of
23 a part of a bigger group of trash and debris.

24 Your decision -- your verdict sends
25 a message, you know. Your verdict is a

1 public trust. It's public property. That's
2 what all those businesses are for, the
3 Anderson County community. Your decision
4 impacts the whole county, all the mothers and
5 all the children go to Target.

6 And so your message when it's sent
7 to Target is going to be profound one way or
8 another. You're either going to send the
9 message, *'That's okay. You don't have to be*
10 *held accountable. You told her yeah, go see*
11 *the doctor. Bring the documentation back to*
12 *us. It's okay. You get a pass.'* And in
13 Minneapolis when they review stuff about
14 Anderson, and about South Carolina they say
15 *'well, we don't really have to follow safety*
16 *rules.'*

17 The other message you could send is,
18 *'You can't do this in Anderson County. You*
19 *do this here to one of our mothers, our*
20 *children, and we're going to hold you*
21 *accountable. You're going to have to pay for*
22 *what you took from them.'*

23 Target took a year of her life. She
24 had to be treated for HIV for a year. They
25 took that from her. The year wasn't the same

1 as it would be if she hadn't got stuck with a
2 needle that they should have cleaned up; that
3 you can tell has been on the ground for more
4 than one hour, Ms. Brintnall's standard,
5 or two hours by John Jackson's standard.
6 According to anybody's standard -- I mean,
7 look at it, folks.

8 Knox is going to show it to you
9 again and try to draw your attention that you
10 can't see a big needle sticking out of it.
11 She said even before she got stuck it was
12 little. Look here and here and here and here
13 and the end is broke. That needle wasn't
14 just dropped five minutes ago. That needle
15 had been laying on the ground, just like the
16 bolt was, for four months.

17 So when you send back your message,
18 send back something that's going to protect
19 Anderson County. You've got to send it in
20 the only language they understand. See, as
21 far as a corporation, they can't sit in that
22 box like a person. They don't speak English.
23 They don't use letters of the alphabet like
24 we do. They understand one symbol. That's a
25 dollar sign and that's all they understand.

1 You threaten their money they tighten up
2 cleaning safety. You've got to send that
3 message back in the only language they
4 understand.

5 And they're going to get up here, I
6 promise you, and say, *'Well, this is just*
7 *about money. She didn't really get stuck.*
8 They're going to blame her. They're going to
9 say she shouldn't have swatted it out of her
10 child's hand. They're going to say
11 everything.

12 But all you can do in a civil case
13 is money. That's the only way you can weigh
14 what justice is. A \$73 Billion-dollar-a-year
15 company, a one-income household, the only way
16 to do justice is to take the money they took
17 from them and to take the time they took from
18 them and give it back to them. And to send a
19 message to Target that, *'You can't do this in*
20 *Anderson, South Carolina. We're not going to*
21 *stand for it. You're going to make the*
22 *community safer. You're going to follow*
23 *safety rules.'*

24 What evidence have we seen? We
25 haven't seen much from Target.

1 Third largest retailer in the
2 United States and this is the record of
3 safety we have before she was hurt in the
4 parking lot. Right here -- two Mondays in
5 a row, 4/28 and 4/29. There's no signature
6 anywhere on here. There's no time stamp.
7 There's no proof of the time this was
8 created. You can look on the guest incident
9 report and the LAD report and you can see a
10 signature and a time at least.

11 Now, I don't think they were
12 thorough. I think if somebody is injured and
13 has to be treated for HIV and you know that's
14 the result of the kind of injury they have, I
15 think there should be a little bit more of a
16 paper trail. I think we can see by now
17 Target hates paper trails. They don't have
18 any trail paper to show you. We asked for
19 it, for two and a half years we tried to get
20 it.

21 The people who testified for Target,
22 now that's evidence. Now, they brought two
23 people. They brought John Jackson and Shelby
24 Brintnall and they're witnesses.

25 So let's talk about their testimony.

1 First of all, I like both of them. They're
2 likeable people. I think they're trying to
3 make a living just like everybody else is.
4 You know, I like Shelby. I've talked to her
5 outside of the courthouse. And I like John,
6 I talked to him outside the courthouse. I
7 have nothing against those people.

8 I do have something against Target
9 who employs them. It's not their fault that
10 Target has a broken system. It's not their
11 fault that Target is endangering the
12 community, not just in Anderson County. I'm
13 sure this is going on all over the country.
14 And I'm sure your decision in some way is
15 going to affect everywhere there's a Target
16 store.

17 Shelby Brintnall said, Target's own
18 witness said it had some wear on it. You can
19 tell it had been on the ground. "It's dingy,
20 dirty and gross."

21 'So do you think they should pay for
22 her medical bills?'

23 'Well, I don't want to disclose my
24 opinion on that because obviously I work
25 for Target.'

1 I understand she doesn't want to
2 thrown them under the bus. That's fine. I
3 get that. But that's Target's witness that's
4 telling you that.

5 John Jackson, I have no doubt he
6 does everything that's expected of him. No
7 doubt at all. I have no doubt that he works
8 hard at his job and that his job is important
9 to him. I have no doubt about that. The
10 problem is they're not requiring that he
11 review any records. The problem is they're
12 not requiring that he be made aware of a
13 customer injury.

14 The problem is they had all of these
15 cameras and people like John Jackson and
16 Shelby Brintnall aren't required to retrieve
17 that and look at it, make sure somebody
18 cleaned the parking lot. Make sure
19 somebody's not walking around on their cell
20 phone. You know, you heard him testify about
21 that. This guy walking out there, doing a
22 safety sweep on the phone, not looking for
23 hazards. That's why bolts are on the ground
24 for four months.

25 I'm going to show you Exhibit 4 and

1 Exhibit 7 by the plaintiff. You can barely
2 -- in this picture you can barely see the
3 bolt. But if you look closely, you can tell
4 it's there. You can see it on 4/29 and you
5 can see it on 8/29.

6 It's not there anymore because
7 before we started trial, Clint went and
8 picked it up on the morning we started trial.

9 Look at this broken buggy rack.
10 He watched the progression of this. Whenever
11 he would go over there in that parking lot to
12 pay a bill he'd say, 'Well, I'm going to go
13 to Target to see if they got that bolt up.'
14 His sister had car trouble at one point.
15 'Well, I'm going to go over here and, you
16 know, see if they -- since I'm in the area,
17 I'm going to see if they've cleaned' the --
18 and after he saw that the bolt was still
19 there, he saw this pattern. He started going
20 back. He went back seven or eight different
21 times.

22 He went on 4/29, the bolt is there.

23 He went on May 5th, the bolt's
24 there.

25 He went on May 12th, the bolt's

1 there.

2 He went on May 27th, the bolt's
3 there.

4 He went on July 15th.

5 He went on August 12th and then he
6 went on August 29th.

7 Then he went the morning of trial.

8 The bolt was always there: four
9 months; a hundred and twenty-something days.
10 Their standard is it shouldn't lay on the
11 ground more than hour if you listen to Shelby
12 or two hours if you listen to John. A
13 hundred and twenty days the bolt lay there.

14 What's the worst kind of harm they
15 had. You've got to think of what harm could
16 have happened or what harm will happen next
17 time. Because if you're trying to keep the
18 community safe, you've got to think of what's
19 the worst harm that could happen?

20 Well, the next time maybe a kid puts
21 the bolt in their mouth if they pick it up.

22 He told you about the spring that
23 stayed on the ground for thirteen days, the
24 rod and spring.

25 What if it's a hypodermic needle

1 next time?

2 Maybe next time a little girl gets
3 stuck and she dies of AIDS before she's
4 twenty-one. Because the same -- and John
5 testified to this -- the same cleaning
6 practices are in place right now as were
7 before she got injured. It's those same
8 cleaning practices that allowed the bolt and
9 the spring and all that trash to lay on the
10 ground for four months and the buggy rack to
11 still be broken -- if you go up there right
12 now -- about to fall on somebody. It's that
13 same cleaning practices that allowed the
14 needle to lay there long enough to get
15 weathered, dingy, dirty, worn, until it hurt
16 somebody.

17 You know, she's just an unlucky
18 member of the Anderson County community.
19 It's like a lottery. Target's making a
20 lottery over there. Who's going to win the
21 injury? Well, this time it was Denise.
22 Who is it going to be next time?

23 John sat up there and he told -- I
24 mean, you could tell he didn't know to go
25 back and look. Maybe wasn't even aware of

1 the injury. Nobody involved.

2 Her claim was denied, a lawsuit was
3 filed, and even after that happened nobody
4 made anybody aware of what was going on.

5 Shelby Brintnall took the needle,
6 put it in a biohazard -- no. She should have
7 put it in a biohazard box. She put it in her
8 office and wrote Do Not Touch on it. Good.
9 It's a needle. I hope nobody's touching.
10 She did that because she knew it was
11 dangerous. Obviously it's dangerous.

12 And nobody said, 'we need to
13 preserve that.' Not even after a lawsuit was
14 filed, 'We need to make sure that doesn't go
15 anywhere. We need to send that somewhere.'
16 You heard both of them say never sent it to
17 the forensic lab in Las Vegas or Minneapolis
18 where Target's based.

19 What do you send to a forensics lab
20 if you don't send a dirty hypodermic needle
21 that hurt a customer trying to give you their
22 money? Trying to give Target her money and
23 they fought with her tooth and nail not to
24 pay for her ER bill for two and a half years.
25 Let that sink in.

1 I guess they don't want to lose any
2 of that \$73 Billion. Not even four thousand
3 dollars (\$4,000) worth. I don't know.

4 You heard from Clint. You heard how
5 many times they went up there. You heard
6 from Denise. You heard what happened.
7 You've seen the LOD Report, the Guest
8 Incident Report.

9 One of the things the defense has to
10 hang its hat on, one of the things that the
11 defense has to latch onto is, *'We never saw*
12 *any puncture wound. You can't prove you got*
13 *stuck in the hand.'* Well, that's right.
14 Because when you go to the ER they treat you
15 for an injury that's not there. When you go
16 to another doctor -- this is really an
17 elaborate scheme now -- he'll prescribe you
18 four or five different kind of medications
19 for an injury you don't have. That's absurd.

20 Clint's mom saw it with her own two
21 eyes. Clint saw it.

22 And I submit to you I think Shelby
23 Brintnall saw it. She said, *'Yes, she showed*
24 *me where it happened but I don't recall*
25 *seeing a puncture wound.'* Maybe she didn't.

1 She had just washed her hands four or five
2 times. Maybe in all the confusion she
3 honestly didn't. I don't know.

4 But I think a lot of people saw the
5 puncture wound. The doctor definitely saw
6 it.

7 The defense is going to get up here
8 and say, 'Well, you didn't subpoena the
9 doctor to come testify.' Yeah, because we
10 don't have seventy-three billion dollars.
11 We can't pay a doctor to come here and
12 testify. We can't pay all these witnesses
13 that are not here that Target could have had
14 here. We've got the people here to tell our
15 side of the story. We've got the people here
16 to tell you what happened.

17 All these Target employees that are
18 not here. I'm kind of glad they're not here.
19 Their absence speaks volumes, I think. You
20 know, if they had a reason or an excuse why
21 this happened. Why there was nothing done to
22 clean the parking lot, then they'd be here.
23 They're going to give you lots of excuses but
24 they're not going to give you any reasons. I
25 can promise you that.

1 In a little bit, the Judge is going
2 to give you some instructions. You're going
3 to be asked several questions. You're going
4 to be given a form and it's going to have
5 some questions on it.

6 And one of the questions is going to
7 be was Target negligent? Hey, well, you have
8 to ask yourself the question. Is it more
9 likely than not? Is it more likely than not
10 that this needle was on the ground long
11 enough to be discovered before it hurt
12 Denise. The answer is yes.

13 I mean, we've seen the evidence.
14 We've seen the evidence they don't have.
15 They don't have the footage showing anybody
16 cleaning the parking lot. They don't have
17 any records of anybody signing anything that
18 they did a routine safety sweep. They don't
19 have anybody to come testify, like Nick
20 Brooks or anybody else that 'yes, I took care
21 of the area.' I could have asked him if he
22 he were here, 'well, were you on your
23 cellphone like this guy?' And he can say yes
24 or no, but he's not here.

25 So I think the answer to the first

1 question is yes. I definitely think it's
2 yes.

3 If they had done any of these safety
4 rules, if they hadn't violated them, maybe it
5 would have prevented this; but they violated
6 a whole bunch of them and she's hurt.

7 You're going to be asked the question
8 okay, if Target was negligent, is she
9 negligent? Well, they want you to say yes
10 because whatever amount of money you award,
11 they get to chop off that percent for her
12 negligence. So they get to eat into the
13 burden. And if it's more than fifty percent,
14 she doesn't get anything.

15 I don't think it's negligent to look
16 down, see your little girl with a hypodermic
17 needle and try to get it out of her hand as
18 quickly as you can, make a split-second
19 decision. I don't think that's negligent. I
20 don't think she did anything.

21 The only thing she did was go to
22 Target to try to give them some of her money,
23 some of Clint's hard-earned money that he
24 works overtime every single week for.

25 You're going to be asked, you know,

1 if Target was negligent and that caused
2 Denise's injury? I don't think there was any
3 other cause but the needle. If they had
4 cleaned it up, it wouldn't have hurt her.
5 She wouldn't have been in this situation.
6 If it was gone, it wouldn't hurt her. So I
7 think there's no question about cause.

8 You're going to be asked about
9 damages. Well, I think it's pretty
10 reasonable to ask for the four thousand
11 dollars in medical treatment. The thirty-
12 nine ninety (\$3,990), I think, and then there
13 was some other -- you know, she had to keep
14 going back for a year for HIV tests. And so
15 that's about a hundred thirty dollars each
16 time you go. That wouldn't have happened if
17 she didn't get stuck at Target.

18 I don't think it's unreasonable to
19 ask Target to give it back to her. And we
20 wouldn't even be -- you wouldn't be sitting
21 in this box if they had done that to begin
22 with. But now that we are, I think you
23 should give her that and everything Target's
24 took from her now that we're here.

25 Now that we've had to do this for

1 two and half years.

2 Now, that Clint's had to take off
3 work for depositions and taking care of her
4 while she was sick off HIV medication.

5 And having to come -- they're going
6 to get up and say 'well, you can't sue
7 somebody and then ask the jury for money for
8 having to go to court.' You can.

9 The only person that judges anything
10 about damages is you and the Judge and that's
11 it. I don't have anything to do with it and
12 neither does Target. Target doesn't get to
13 say what you can and can't award.

14 You can award him for every day he
15 had to come to court. You can award him for
16 every day he had to take off of work to care
17 for their children. You can award him for
18 all of his lost wages. And he said it's
19 about two thousand dollars (\$2,000). And
20 that's a conservative estimate. He said now
21 it's more -- but to be fair to Target, let's
22 say it's two thousand dollars (\$2,000).

23 So four thousand dollars (\$4,000)
24 and two thousand dollars (\$2,000), six grand
25 (\$6,000).

1 What else? Well, you heard him
2 testify, at least Clint. I don't recall if
3 she did or not but you heard Clint testify
4 about the damage or the way this affected
5 their marital relationship. They've been
6 married for ten years and they had to go to
7 the store and buy protection. I mean, that's
8 not something they were accustomed to. She
9 was down and out. I mean, she was, you know,
10 down for the count on the couch at times.
11 Couldn't get up and care for the children.
12 There was less time for them to spend
13 together, less time for them to lie in bed
14 and have these intimate conversations and
15 confide in each other. That's not fair for
16 Target to take that from them for any amount
17 of time.

18 Take it back to Target and give it
19 to them in dollars and cents because they're
20 going to say this is all about money. But
21 that's the only thing we can do. Like I say,
22 in a civil case, that's all we can do.
23 That's all we can do to make Target's parking
24 lot safer, is hit them in the only place they
25 pay attention to, which is their wallet.

1 I think it's fair to award twenty-
2 five hundred dollars (\$2,500) apiece of their
3 loss of consortium claim, damage to their
4 marital relationship during that time.

5 And you can award more for any of
6 this if you want to. I'm just suggesting to
7 you what I think's reasonable.

8 Five thousand dollars (\$5,000) in
9 lost consortium.

10 Four thousand dollars (\$4,000) in
11 the medical bills.

12 Two thousand dollars (\$2,000) in
13 lost wages.

14 That's eleven thousand dollars
15 (\$11,000).

16 You have to figure out whether what
17 Target did was reckless, whether they're
18 entitled to punitive damages.

19 Punitive damages or exemplary
20 damages are designed to -- as in exemplar,
21 set an example. And as in punitive, punish
22 and deter violation of safety rules. They're
23 supposed to prevent a wrongdoer from doing a
24 similar wrong in the future.

25 If they missed this needle, one-

1 tenth of the times, they missed that bolt,
2 that's gross negligence. The first time you
3 miss something you should see -- the first
4 time you're on your cellphone and you miss
5 something, that's negligence.

6 The second time, that's twice as
7 much as much negligence.

8 The third time, you've got a serious
9 problem.

10 When you get into ten or more
11 times, that's reckless, that's wanton. I
12 think you should send a message to Target
13 with a punitive damage award. And that's
14 whatever -- I can't suggest that amount to
15 you because I honestly don't know. I don't
16 know how you may somebody with \$73 Billion
17 dollars pay attention in a case like this. I
18 don't know. I'm not going to ask for some
19 astronomical amount of money because I don't
20 know what's fair.

21 You've got to decide what amount
22 will get Target's attention and make them
23 take customer injuries seriously, make them
24 take customer safety seriously.

25 Because of your verdict, I want

1 them to have a Safety meeting. I want them
2 to have a meeting with John Jackson and
3 Shelby Brintnall and their bosses and say,
4 *'Look, we had a breakdown here. We found out*
5 *the cleaning truck's not coming. And when*
6 *people get hurt there's no way to get*
7 *footage. There's no documents. There's no*
8 *paper trail. There's nothing. We've got a*
9 *breakdown. We've got to fix it.'*

10 I want your verdict to send that
11 message. I want you to imagine that -- I
12 want you to imagine that on Clemson Boulevard
13 that Target, they've got all seventy-three
14 billion dollars stuffed in that store. You
15 know, a million dollars is an astronomical
16 amount of money in itself. It takes a
17 thousand million to make a billion, so all
18 seventy-three thousand billion dollars are
19 stuffed in that store. I guess that much
20 money would fill it up to the top.

21 And you tell Target, *'All right,*
22 *listen. If you miss one of these safety*
23 *sweeps, we're going to take some of that*
24 *money. If the cleaning truck doesn't come,*
25 *we're going to take that money. If you can't*

1 *find the cleaning records we're going to*
2 *take that money.'*

3 There would be cleaning trucks
4 circling that place like buzzards. There'd
5 be armed guards. There'd be so many cart
6 attendants doing safety sweeps, you wouldn't
7 be able to get in the doors. Do you think
8 they'd have any problem finding footage if
9 somebody took that money? And that's just
10 money. I'm talking about damaging a county
11 citizen, an Anderson County shopper, her
12 health. That's worth more than money to me.

13 THE COURT: Mr. Haynsworth.

14 MR. HAYNSWORTH: May it please the
15 Court?

16 CLOSING STATEMENT

17 BY MR. HAYNSWORTH:

18 Ladies and gentlemen, good after-
19 noon or good mid-morning.

20 When we met a couple of days ago,
21 Mr. Hawkins, the plaintiff's lawyer, and I
22 both got up here and told you what we
23 believed the evidence would show.

24 Let me speak to evidence for a
25 second and speak to what I believe one of the

1. things the Judge is going to charge y'all as
2. far as the law. We talked about when we
3. first got up here that a corporation in the
4. law is judged just like an individual. You
5. will hear that from the Judge and I'll get to
6. that issue in a second.

7. But the evidence in this case is not
8. what I say or Mr. Hawkins says. He just said
9. four or five times that Target is a \$73
10. Billion dollar-a-year corporation. That's
11. probably right. I don't know. But it's not
12. evidence. The only reason he brings up that
13. number over and over again standing up here
14. is the same reason that he started this case
15. by saying, and I'm paraphrasing, this case
16. began in 2008 when Target got a new CEO
17. because they had a data breach involving
18. credit cards. His goal is to try and
19. convince you not to use your logic and not to
20. use the law you'll hear from the Judge, but
21. to think 'gosh, it's a bazillion, gigantic
22. company and these poor Anderson citizens,
23. somebody should have paid their medical
24. bill.'

25. That's not the way the law works,

1 ladies and gentlemen. It's not a question of
2 'I have more money than you, therefore I
3 should give you some of my money because you
4 have your struggle.'

5 I'll submit to you the evidence in
6 this case has showed one thing. Target is
7 not -- yeah, they're a corporation based in
8 Minneapolis. But those two people right
9 there, John Jackson, the man who's in charge
10 of safety of that store, who every morning
11 when he comes to work walks that parking
12 looking -- Mrs. Garrison and Mr. Garrison
13 have nothing on John Jackson as far as the
14 safety of children. He's got eight kids, and
15 his kids come to that Target.

16 And it is not somebody in
17 Minneapolis who is in charge of the Anderson
18 store, it's that Anderson citizen, Shelby
19 Brintnall. She's not some nameless,
20 faceless, billion-dollar corporation. She's
21 the gal who was in charge of the store when
22 this lady came in and claimed that she got
23 stuck by a needle.

24 And what both of Target employees
25 told y'all is the truth. John Jackson said

1 -- is that parking lot spotless all of the
2 time? No, of course, not. He'd be lying if
3 he said it was.

4 What y'all are getting a lot of,
5 ladies and gentlemen, is the lawyer trying to
6 tell you what the evidence is. My example of
7 the billions of dollars. That's not evidence
8 in this case. Y'all can't consider that
9 Target is a 'seventy-eight billion' dollar
10 corporation, but if I say it five times, it's
11 hard for you to forget.

12 Mr. Hawkins got up here and said we
13 subpoenaed all these records from Target that
14 they're supposed to have and they didn't get.
15 Well, you know why he got this sheet of
16 paper? Because he asked me for cleaning
17 records for two months before and one month
18 after the incident, and that's exactly what I
19 gave him. All these records he says, videos
20 and all, if he subpoenaed them, where is the
21 subpoena that he sent? If we had video that
22 showed anything, obviously, we'd all want to
23 see it.

24 Another thing I would like to sort
25 of reflect with y'all on is, I feel like this

1 has been a setup on some level. You just
2 heard him talk about 'Target doesn't have
3 this needle to bring here to court.' No,
4 ladies and gentlemen, we don't. Because July
5 of last year, July 6th, a gal from his office
6 met me and Shelby Brintnall at the Anderson
7 Target because they wanted to take more
8 photographs of the needle. The needle is
9 laid there. She takes a bunch of photo-
10 graphs. No one says they need the needle any
11 longer. And it is, in fact, not here. I
12 wish it was.

13 But where are these photographs?
14 You heard evidence from the witness stand
15 that they were taken. Where are they?

16 You know, I blew up the photo she
17 took for a reason, because it's easier to
18 see. That's the evidence. That's what
19 everyone dealt with the night she said she
20 was stuck.

21 Another thing that the Judge will
22 charge y'all law-wise is the duties of a
23 premises owner, the duties of a merchant.
24 And basically Target, or any other business,
25 you know, the five and dime store, whatever,

1 is obligated to keep their premises
2 reasonably safe for their customers; makes
3 perfect sense. If you're in the business and
4 you want customers to buy your stuff, you
5 want them to have a good safe experience.

6 I don't know if the Garrisons still
7 shop at Target or not. I would hazard a
8 guess -- they seem upset with Target and
9 think it's a bad store, so Target might have
10 lost some customers. You don't get to be a
11 big corporation treating your customers
12 badly.

13 Another thing that I believe is
14 critical ladies and gentlemen, deals with
15 this whole fight, and it's the crux of the
16 lawsuit. Was this there long enough where
17 Target should have known about it?
18 Obviously, no one saw it. That's undisputed.

19 But let me refresh your recollection
20 or at least my recollection -- which doesn't
21 matter. Hopefully, we all saw it the same
22 way. But some of the testimony about what
23 Target does, and when it was discovered or
24 why it wasn't discovered earlier, they'd like
25 to suggest to you that it's on the ground and

1 it's next to some trash and that means it's
2 been there for a length of time.

3 Well, we know it wasn't there that
4 morning because John Jackson comes every
5 morning and he walks the parking lot. He is
6 not going to let something like that sit
7 there unattended.

8 Now, he does, in fact, leave every
9 day at 2:30. It is possible that that
10 hypodermic hit the ground at 2:45 and it sat
11 there for hours before Mrs. Garrison
12 encountered it that evening about 7:30, I
13 believe. But it's equally possible that that
14 syringe fell out of someone's car and was run
15 over five minutes before she got stuck.
16 Nobody knows. Nobody knows.

17 The Judge will tell you ladies and
18 gentlemen that the burden of proof in this
19 case is, is the plaintiff's burden to prove,
20 not to speculate but to prove that that had
21 been -- that that was a hazard in Target's
22 parking lot and that it had been there long
23 enough where Target should have seen it and
24 taken care of it. I submit to you if it had
25 been there for any length of time, it

1 wouldn't have been there when Mrs. Garrison
2 came along this evening.

3 Now, Mr. Hawkins also talked about
4 that clearly she was stuck. That she talked
5 about a needle stick. I don't know. I think
6 she thought she was stuck. I think she
7 swatted this out of her daughter's hand and
8 thought she was stuck. Who would go to the
9 hospital and report a needle stick if they
10 didn't believe they got stuck? Nobody. But
11 the fact of the matter is, ladies and
12 gentlemen, there's no evidence about the
13 stick.

14 There was testimony that AnMed took
15 pictures of the puncture wound. Those
16 pictures have never been shown to you.

17 There was testimony, as a matter of
18 fact, that Mr. Garrison had pictures of this
19 syringe with a needle but he doesn't have
20 them anymore because the memory card on his
21 cellphone got fried and he lost a bunch of
22 pictures; of the kids and other things,
23 including a picture actually showing the
24 needle. There was testimony that he got that
25 picture of the actual needle from his wife.

1 If there are pictures showing a
2 needle, why didn't we see them in this case?
3 I don't know the answer to it. You don't
4 know the answer to it, but it's something
5 that you need to consider when you
6 deliberate.

7 And, again, one of the hardest
8 things for y'all -- I mean, our hard work is
9 over. We're now finished with our part.
10 Y'all's is beginning. And it's hard to not
11 want to help someone who might be less
12 fortunate than others. Easiest thing in the
13 world is, *'They're a giant company. Give*
14 *these people their medical bill. How is*
15 *going to harm Target?'*

16 Is it going to harm Target? No,
17 it's not. But Target is to be treated
18 exactly like anyone else, exactly like a
19 person. And legally Target is not
20 responsible for the injuries Mrs. Garrison
21 says she sustained.

22 As I told y'all in my opening that I
23 thought at the end of this case, based on the
24 evidence that would be presented, that y'all's
25 verdict would be in favor of Target and it

1 would be a just and true verdict. That
2 is all that Target asks you to provide them
3 today. Thank y'all.

4 REPLY CLOSING STATEMENT

5 BY MR. HAWKINS:

6 More excuses, more smoke and
7 mirrors, no cleaning record.

8 Knox said, where's the subpoena?
9 We sent it to his office. See, Knox
10 represents Target and when you subpoena
11 things from Target, you send it to their
12 lawyer. Where's the subpoena? Probably on
13 his desk.

14 You know, Knox said that John
15 Jackson takes his kids to this Target.
16 Well, I asked him about that in his
17 deposition. He said, 'I don't put my
18 children down in the parking lot at night.'
19 When he goes to Target, he won't let his kids
20 walk on the ground at night. How is she
21 supposed to know how dangerous it is at
22 Target? She's an Anderson County shopper.
23 She's thinks it's supposed to be safe when
24 she goes there, at least reasonably safe.

25 You know, a hypodermic needle's been

1 laying there for however long it takes to
2 accumulate all that wear. It's not supposed
3 to be at a place where people to come spend
4 their money with their children.

5 He said John walked that parking lot
6 so we know it wasn't there that morning.
7 Baloney. How many times did John walk the
8 parking lot the hundred and twenty days that
9 bolt laid there? And it's not John's fault.
10 I believe he works hard. I believe he's a
11 good dad. I believe Shelby's a good girl.

12 But Target's not requiring enough of
13 its safety management technicians, plain and
14 simple. They say 'we go in, eyeball the
15 parking lot.' Look -- he testified up here
16 he has no idea how much trash the trash truck
17 picks up. He said he had no idea of the
18 percentage. He's in charge of monitoring
19 safety and cleaning. The person they put
20 specifically in charge of that has no idea of
21 the percentage of the dangerous hazards, like
22 that needle, it picks up.

23 I'm not going to try to talk a real
24 long time but I do want to leave you with two
25 figures, two calculations. And check this in

1 the jury room because I'm horrible at math.
2 That's why I went to law school. I didn't
3 like math classes.

4 The first calculation is -- let's
5 take the bolt, a product with the same
6 cleaning and safety methods that left this
7 syringe in the parking lot. Let's talk about
8 the bolt.

9 Let's apply Shelby Brintnall's
10 standard to the bolt. Once an hour they
11 should be on the lookout for hazards. Not on
12 their cellphones, not pulling buggies over
13 the bolt, not pulling buggies out of the
14 buggy rack and not tell anybody it's broken
15 and about to fall on somebody. No. Once an
16 hour, they're supposed to be checking for
17 hazards. Once an hour.

18 Okay. It's been more than a hundred
19 and twenty days. Let's be conservative.
20 Let's see a hundred and twenty days, or four
21 months. How many hours are they open?
22 Twelve hours a day? I honestly don't know
23 Target's hours, when they're open. But let's
24 say they're open from, you know -- let's say
25 they're open twelve hours a day. Twelve

1 times a hundred and twenty is one thousand
2 four hundred and forty chances to find that
3 bolt that they missed. Let's cut it in half.
4 Let's go by Ms. Brintnall's standard. Over
5 seven hundred chances they missed to find
6 that bolt.

7 Those are the same cleaning
8 practices, the same failure to keep records,
9 the same failure to review records as allowed
10 this syringe to lay in the parking lot long
11 enough to accumulate that wear and long
12 enough to injure Mrs. Garrison, long enough
13 to cause her to be treated for HIV for a
14 year. It's awful. I mean, it's an awful
15 event. It's terrible.

16 Target should make it right. They
17 should have made it right before she filed a
18 lawsuit and they've refused for two and a
19 half years, because they like that \$73
20 Billion dollars.

21 They want to discourage people in
22 Anderson County and other counties from
23 brining lawsuits when they get injured.
24 They want to send a message to us in Anderson
25 County. They want to send a message to

1 everybody in Anderson County that it's not
2 worth filing a lawsuit. 'They'll drag it out
3 and they won't pay you. They'll make you
4 take it to a jury.'

5 Send them a message back in their
6 language.

7 The second calculation is how many
8 minutes, how many minutes did Denise have to
9 deal with this? How many minutes did she
10 have to deal with knowing she's got to be
11 back in for each HIV treatment, testing,
12 blood testing.

13 Let's be fair to Target. Let's cut
14 the year in half, let's take six months.
15 Six months, so a hundred and eighty-two and a
16 half days times twenty-four hours, times
17 sixty minutes in an hour? That's like two
18 hundred and eighty-two thousand minutes.

19 Let's be fair to target. Let's cut
20 off a third of that because let's assume
21 she's getting sleep during that time. That's
22 over a hundred and seventy-five thousand
23 minutes.

24 How much is each one of those
25 minutes worth? A dollar? Five dollars?

1 Let's be fair to Target, put a dime on it and
2 it's over seventeen thousand five hundred
3 dollars (\$17,500).

4 My goal, as I said earlier, in
5 Minneapolis they don't know where Anderson is
6 on the map. And their perception of
7 Anderson, South Carolina is probably worse
8 than their ignorance of where we are on the
9 map. But I want your verdict to make them
10 say the words in Minneapolis "Anderson
11 County."

12 THE COURT: Thank you, gentlemen.
13 Madam Forelady, Ladies and Gentlemen of the
14 jury, you have heard the evidence and the
15 arguments of the parties and I will now
16 explain to you the law that applies in this
17 action.

18 This is an action in which the
19 plaintiff, Carla Denise Garrison, alleges
20 that she has suffered bodily injury during a
21 visit to Target. She alleges that the Target
22 Corporation was negligent, reckless, willful
23 or wanton in various specifications that
24 outlined in the Complaint. And that as a
25 consequence of one or more of those

1 specifications of negligence, she sustained a
2 bodily injury/damage that's been outlined to
3 you in the testimony.

4 Further, plaintiffs pled that
5 Michael Garrison claims that his injury to
6 his wife caused him to lose wages and
7 resulted in a loss of consortium.

8 I charge you that in South Carolina
9 law a plaintiff's proof cannot rest upon any
10 presumption arising from the mere incident
11 itself. The fact that an incident occurred
12 in and of itself is no evidence of liability
13 on the part of anyone. The plaintiff has the
14 burden and the plaintiffs must prove specific
15 allegations or negligence against the
16 defendant in order to recover.

17 In our courts, ladies and gentlemen,
18 no distinction is made between corporations
19 and individuals. A corporation is a person
20 in the eyes of the law. A corporation is
21 entitled to the same fair and impartial
22 consideration and to justice by the same
23 legal standards as a person.

24 A corporation can only act through
25 its agents or employees and, therefore, is

1 responsible for any neglect act or omission
2 of its agents or employees while acting
3 within the scope of their employment, which
4 caused the injury to another.

5 Now, under our constitution and the
6 code of laws of this state, only you twelve
7 jurors can make the findings of fact in this
8 case. I am not permitted to tell you how I
9 feel about evidence in the case. And
10 throughout the trial I have intended to be
11 fair and impartial towards each of the
12 parties involved.

13 As previously stated, to determine
14 the facts in this case you will have to
15 evaluate the credibility or believability of
16 witnesses. In establishing the facts you,
17 the jury, can believe as much or as little of
18 each witness' testimony as you think is
19 proper. You may believe the testimony of a
20 single witness against that of many or just
21 the opposite. You twelve may believe part of
22 a witness' testimony and disbelieve the
23 remainder of that same witness' testimony.

24 The fact that testimony is not
25 contradicted directly does not render it

1 undisputed and you must first gauge the
2 credibility of witnesses from which such
3 testimony comes.

4 Throughout this process, you have
5 but one objective, that is to seek the truth
6 regardless of its source.

7 Now, evidence may be direct or
8 circumstantial. Direct evidence is testimony
9 by the witness about what the witness
10 personally saw, heard or did. Circumstantial
11 evidence is indirect evidence that is proof
12 of one or more facts that did indicate the
13 existence of yet another fact.

14 In your deliberations you are to
15 consider all the evidence, both direct and
16 circumstantial. The law does not require a
17 greater degree of one type of evidence over
18 the other and permits you to give equal
19 weight to both, but it is up to you to decide
20 how much weight to give any evidence.

21 Now, ladies and gentlemen, I charge
22 you that when evidence is lost or destroyed
23 by a party an inference may be drawn by the
24 jury that the evidence was lost or destroyed
25 by the party would have been adverse to that

1 party.

2 The same Constitution and laws which
3 designate you the finders of the facts also
4 make me the instructor on the law. I tell
5 you that must accept it as I now give it to
6 you. If I am wrong, there is another place
7 and time for that error to be considered and,
8 if necessary, corrected. But for now you
9 must accept the law as I give it to you. And
10 that means that you should not be concerned
11 with what you think the law ought to be or
12 should be but what it is that I charge you --
13 what the law is that I charge you today in
14 South Carolina.

15 Now, to state a cause of action
16 against a defendant the law requires the
17 plaintiff to set out in her complaint -- this
18 would be Mrs. Garrison -- set out in her
19 complain the three essential claims of
20 negligence. And that is:

21 The particular defendant was
22 negligent in one more ways as stated in the
23 complaint;

24 That the plaintiff was personally
25 injured; and,

1 That the negligence of the defendant
2 was the proximate cause of her injuries and
3 damages.

4 In her Complaint she has alleged
5 that these three essential claims and now we
6 will discuss them briefly.

7 "Negligence" means a person did not
8 use the same amount of care that a person of
9 ordinary reason and prudence would exercise
10 under the same circumstances. The word
11 "careless" means the same thing. It could be
12 said that a negligent person has done
13 something a reasonable person would not have
14 done if faced with the same situation or, on
15 the other hand, has failed to do something a
16 reasonable person would have done or both.

17 "Proximate cause" means -- if you
18 determine that the defendant was negligent,
19 the plaintiff is not entitled to a verdict
20 unless you further find that the defendant's
21 negligence was the proximate cause of her
22 injuries or damages. The law defines
23 "proximate cause" of an injury to be
24 something that produces a natural chain of
25 events that in the end brings about the

1 injury. Proximate cause is the direct cause
2 without which, an injury would not have
3 occurred.

4 Foreseeability of some injury from
5 one's negligence is necessary to its being a
6 proximate cause of an injury, for which
7 recovery is sought. To be a proximate cause,
8 direct cause of her injury, her loss, it must
9 be reasonably foreseeable that the
10 defendant's negligence would cause injury to
11 another person.

12 In order to establish responsibility
13 for negligence, it is not necessary that the
14 person charged with negligence should have
15 contemplated the particular act which
16 occurred or the particular injury which
17 resulted. It is sufficient that he should
18 have foreseen that his negligence would
19 probably cause some injury to something or
20 someone and that such an injury was an actual
21 and probable consequence of the negligence.

22 You may not award damages for any
23 injury or condition from which the plaintiff
24 may have suffered or may now be suffering
25 unless it has been established by the greater

1 weight of the evidence that the injury or
2 condition was proximately caused by the
3 actions of the defendant.

4 If you find the plaintiff has met
5 the burden of proof of negligence and
6 proximate cause against the defendant, it is
7 then your duty to determine what type and
8 extent of the injuries to the plaintiff were
9 proximately caused by the defendant's
10 negligence and to what damages she is
11 entitled.

12 Madam Forelady and members of the
13 jury, as stated previously the mere fact that
14 an incident happened, standing alone, does
15 not permit you, the jury, to conclude the
16 plaintiff is automatically entitled to
17 damages against the defendant. The plaintiff
18 has the burden of her proving her claims in
19 the case.

20 Plaintiff must meet this burden by
21 proving her claims by a preponderance or the
22 greater weight of the evidence. A
23 "preponderance of the evidence" simply means
24 the greater weight. It is evidence which, as
25 a whole, shows you that the facts sought to

1 be proved is more likely true than not true.

2 Now, what do we mean by the greater
3 weight? I can tell you. Imagine a set of
4 scales and when the case began the scales are
5 even. After all evidence has been presented,
6 if the scales remain even or if they should
7 tip ever so slightly in favor of the
8 defendant, the plaintiff would have failed to
9 meet her burden of proof and your verdict
10 should be for the defendant.

11 On the other hand, if those scales
12 should tip ever so slightly in favor of the
13 plaintiff, then she will have met her burden
14 of proof and your burden should be for the
15 plaintiff to some extent.

16 There is no way to weigh evidence,
17 except through the exercise of your good
18 common sense and judgment. It is entirely a
19 mental process and the evidence to which you
20 should give the most weight is evidence which
21 convinces you of its truth regardless of its
22 source.

23 Now, in response to the plaintiffs'
24 Complaint, the defendant entered what we
25 called a denial or a general denial. And

1 this means that the defendant admits that
2 something occurred, but denies responsibility
3 for the incident. Thus, the issues are
4 present to you for trial.

5 The defendant has also raised what
6 we call an affirmative defense to the
7 plaintiff's claims and that defense raises
8 the issue of comparative negligence. By
9 raising this issue, the defendant alleges
10 that the plaintiff's own negligence
11 proximately caused or contributed to her
12 injury.

13 Under this defense if you find the
14 defendant was negligent, you must then decide
15 whether the plaintiff was also negligent.
16 Because the defendant has asserted this as an
17 affirmative defense the defendant has the
18 burden of proof on this issue and must prove
19 an affirmative defense by the preponderance
20 of the evidence or the greater weight of the
21 evidence, that the plaintiff breached the
22 duty of care that proximately caused her
23 injuries.

24 The same law which I told you to use
25 in deciding whether the defendant was

1 negligent should be used in deciding whether
2 the plaintiff was negligent.

3 Under comparative negligence if you
4 find the negligence of both the plaintiff and
5 the defendant combine to proximately cause
6 the plaintiff's injuries, you must then
7 decide how much the negligence the plaintiff
8 contributed to her injuries and how much the
9 defendant's negligence contributed to her
10 injuries.

11 In deciding the percentage of
12 negligence of the plaintiff and the
13 defendant, you may consider among other
14 things the following:

15 Whether each party's conduct was
16 only inadvertent or whether it was engaged in
17 with an awareness of the danger involved.

18 The magnitude of the risk created by
19 each party's conduct, including the number of
20 persons endangered and the possibility of
21 sever injury.

22 The significance or the goal that
23 each party was trying to reach and the need
24 to achieve the goal.

25 Each party's capabilities and

1 abilities to realize and eliminate the risk
2 involved.

3 The particular circumstances
4 confronting each party at the time the
5 conduct occurred, such as the existence of an
6 emergency regarding a quick decision.

7 The relative closeness of the causal
8 relationship by the negligent conduct to the
9 defendant and the harm to plaintiff.

10 And whether the conduct of either
11 party involved a violation of a safety
12 standard or regulation.

13 Ladies and Gentlemen, I will give
14 you written questions on a special verdict
15 form to help you reach the verdict. The form
16 has spaces for you to write the decisions
17 about the percentage of negligence, if any,
18 of both parties which proximately caused
19 plaintiff's injuries. The verdict form will
20 be explained to you in greater detail before
21 you retire to deliberate.

22 With regard to comparative
23 negligence let me make two comments. First,
24 if you find in your deliberations that the
25 plaintiff was comparatively negligent and

1 that her comparative negligence was greater
2 than fifty percent, then you stop your
3 deliberations at that point as the plaintiff
4 is not entitled to recover.

5 Second, if you find that both
6 parties were in fact negligent in causing
7 this incident and that plaintiff's negligence
8 was not greater than fifty percent, you then
9 must determine the specific percentages of
10 negligence attributed it to each party. And
11 after doing so, then determine the total
12 amount of plaintiff's negligence without
13 applying any percentages to your calculation.

14 After you have answered the
15 questions on the verdict form, I will compute
16 the amount of negligence for which the
17 defendant is responsible based on the
18 percentages of the defendant's negligence
19 which you have decided proximately caused
20 injury to the plaintiff.

21 Now, ladies and gentlemen, I charge
22 you that one who operates a mercantile
23 establishment is not an insurer of the safety
24 of those who enter his store. But he does
25 owe them a duty of exercising ordinary care

1 to keep the aisles, the passageways and such
2 other parts of the premises as are ordinarily
3 used by the customers in transacting business
4 in a reasonably safe condition.

5 I also charge you that the duty owed
6 to an invitee by a parking lot operator to
7 exercise ordinary care to keep its parking
8 lot in a reasonably safe condition. This
9 generally does not require the operator to
10 maintain a continuous sweeping and cleaning
11 operation to remove debris from the parking
12 lot surface. Neither does this duty require
13 the operator to have a regular unvarying
14 procedure for cleaning his parking lot.

15 Now, if a determination is made that
16 the plaintiff is entitled to a verdict
17 against the defendant, your responsibility is
18 then to decide how much money the plaintiff
19 is entitled to receive for the injuries
20 proximately caused to her by the defendant.
21 We call such an award "damages."

22 There are two types of damages
23 requested in this case: actual and punitive.

24 Actual damages are intended to
25 compensate a party for the actual losses and

1 harm proximately caused by defendant's
2 negligence.

3 On the other hand, punitive damages
4 are intended to punish a defendant in order
5 to deter others from similar conduct.

6 In this case the plaintiff has
7 requested actual damages. Actual damages are
8 intended to compensate her, or the injured
9 party. That is, an award of actual damages
10 should, as near as possible, put the
11 plaintiff in the same position that she was
12 prior to the accident or incident as best as
13 monetary damages can accomplish.

14 A universal principle of actual
15 damages is that an injured party should
16 receive compensation equal to her loss,
17 nothing more and nothing less. Actual
18 damages would be the actual losses, expenses
19 and harm that the plaintiff suffered because
20 of the defendant's actions.

21 Actual damages for a plaintiff who
22 has been physically injured include medical
23 charges or healthcare costs related to the
24 injury, other expenses related to the injury,
25 pain and suffering caused by or due to the

1 injury, lost earning capacity, loss of
2 enjoyment of life, anxiety or mental anguish
3 suffered because of the bodily injury,
4 disfigurement, permanent impairment of
5 physical condition.

6 Speaking to the award of healthcare
7 cost, the plaintiff is entitled to recover
8 healthcare cost if you determine it to be
9 both reasonable and necessary; keeping in
10 mind while the amount actually charged and
11 incurred may be considered by you, you are
12 not bound by that amount. You must find only
13 such sum as is reasonable and necessary.

14 As with all other facts in the case,
15 ladies and gentlemen, the plaintiff must
16 prove her actual damages by the greater
17 weight of the evidence.

18 In this case, the plaintiff Michael
19 Garrison has claimed damages for lost wages
20 while taking care of his wife and children.
21 In determining the amount of damages to be
22 awarded for loss of earnings, if any, you
23 should consider any evidence of the
24 plaintiff's earning capacity, his earnings,
25 the length of time that he was engaged in

1 earning money and his temporary inability to
2 pursue his occupation. Based upon these
3 considerations, you should determine the
4 amount he was reasonably certain to have
5 earned during the time that he lost.

6 In this case, Plaintiff Michael
7 Garrison has also claimed loss of consortium
8 based on the injuries suffered by his wife.
9 The companionship and society of a spouse are
10 not articles of commerce which can be weighed
11 or measured or bought and sold. No expert is
12 competent to testify as to their value. The
13 consideration of which you are given is not
14 monetary, but the plaintiff is entitled to
15 compensation in money for their loss. The
16 amount of that compensation is to be
17 determined by you, not from evidence of value
18 but your own observation, experience,
19 knowledge, and consciously applied to the
20 facts and circumstances of the case.

21 The plaintiff is entitled to recover
22 the value of the services of his spouse which
23 were lost, including his loss of his spouse's
24 society and companionship in the home.

25 Ladies and gentlemen, I charge you

1 that punitive damages are not recoverable in.
2 that loss of consortium.

3 Now, the actual damages burden of
4 proof. Ladies and gentlemen, plaintiff has
5 the burden of proving actual damages by the
6 greater weight of the evidence. I charge you
7 that an existence or amount of damages cannot
8 be left to conjecture, guess or speculation.
9 Damages must be susceptible to ascertainment
10 with a reasonable degree of certainty. But
11 this does not mean plaintiff must prove her
12 damages to a mathematical certainty or
13 produce evidence of the precise amount of
14 actual damages suffered. The evidence put
15 forth by the plaintiff should be such as to
16 enable you, the jury, to determine what
17 amount of damages is fair, just and
18 reasonable.

19 Again, the universal principle of
20 actual damages is that an injured party is
21 entitled to be compensated in an amount to
22 put her in as near as possible the same
23 position she was in prior to the injury as
24 far as money damages can do this.

25 Punitive damages are intended to

1 punish the defendant for extraordinary and
2 outrageous misconduct and to prevent a
3 defendant and others from committing similar
4 acts in the future.

5 Punitive damage can only be awarded
6 when conduct of the defendant has been
7 something more than mere negligence. The
8 evidence must establish defendant's acts were
9 reckless, willful, wanton and/or intentional,
10 meaning there was a conscious failure to
11 exercise due care or the conscious
12 indifference to the rights of others, or a
13 reckless disregard thereof.

14 If you find defendant's conduct was
15 intentional, willful, wanton, or reckless,
16 you may award the plaintiff punitive damages.

17 To support an award of punitive
18 damages the plaintiff must prove by clear and
19 convincing evidence that the conduct
20 complained of included a conscious or wrong-
21 doing at the time of the conduct.

22 Clear and convincing more than a
23 preponderance or greater weight of the
24 evidence, which requires only proof which
25 persuades you that a party's claim is more

1 likely true than not.

2 On the other hand, clear and
3 convincing proof is not as high a standard as
4 a burden of proof in criminal cases, which is
5 proof beyond a reasonable doubt.

6 Clear and convincing proof leaves no
7 substantial doubt in your mind. It means
8 that the evidence is not ambiguous, doubtful,
9 equivocal, or contradictory. Convincing
10 means persuade by proof or argument causing
11 one to believe the truth of what is being
12 asserted. Clear and convincing proof
13 establishes in your mind not only that the
14 fact that probable but that it is highly
15 probable.

16 Before awarding punitive damages,
17 you must consider -- there are four elements
18 which may be pertinent to the facts of this
19 case:

20 You must first consider the
21 relationship between any damage award and
22 harm caused.

23 Any penalty imposed should take into
24 account the reprehensibility of conduct or
25 harm caused, the defendant's awareness of the

1 conduct's wrongfulness, the duration of the
2 conduct and any concealment.

3 Thus any penalty imposed should bear
4 a relationship between the nature and extent
5 of the conduct and the harm caused, including
6 the compensatory damage award made by you.

7 Secondly, any penalty imposed
8 should take into account as a mitigating
9 factor any other penalty that you may have
10 imposed or which may be imposed for the
11 conduct involved, including criminal or civil
12 penalty or other punitive damage award
13 arising from the same conduct.

14 Next, you should consider whether
15 the award of and the amount of any punitive
16 damages may deprive the defendant of any
17 profits derived from the improper conduct and
18 whether the ill-gotten profits should be
19 properly awarded to the plaintiff.

20 And, finally, any award of punitive
21 damages must be limited to punishment and
22 does not effect economic bankruptcy. To this
23 end, a defendant's ability to pay any
24 punitive damages awarded should be
25 considered. However, the economic bankruptcy

1 factor is not an absolute bar to an award of
2 punitive.

3 Should you determine to award both
4 actual and punitive damages, please be
5 advised that the total verdict will be the
6 sum of actual and punitive damages awarded.

7 Now, ladies and gentlemen, during
8 deliberations, you may only discuss the case
9 in the jury room with your fellow jurors
10 because they have seen and heard the same
11 evidence you have seen and heard. However,
12 you must not discuss this case with anyone
13 else until you have returned a verdict in the
14 case.

15 Now, ladies and gentlemen, all
16 twelve of you must agree on the verdict.
17 Your verdict cannot be based on sympathy,
18 passion, prejudice and emotion or any other
19 consideration not in evidence in the case.

20 Now, Madam Forelady, I have the
21 verdict form here. I'm going to explain it
22 to you first. It's a form that my law clerk
23 creates for me. This gentleman I failed to
24 introduce earlier in the week is my law
25 clerk. He'll be with me for the next year.

1 He creates these documents, or whoever is
2 sitting in that chair, but he will create
3 them for the next year for me.

4 All of this information up here is
5 the caption of case, and it has the number on
6 it. That only is there because it ties it to
7 this case. That is for recording purposes.

8 The meat of this document begins
9 right here with the questions. I told you
10 you have several questions to answer.

11 Question one says, "Do you, the jury
12 find, that the defendant, Target Corporation,
13 was negligent and that such negligence caused
14 the plaintiff, Carla Denise Garrison's
15 injuries?" Yes or no? That's the question
16 you twelve decide.

17 It also says, "If you answer "yes",
18 go to question two."

19 "If you answer "no", stop your
20 deliberations." Do not answer any other
21 question on the form.

22 Madam Forelady it says, "Do you find
23 that the plaintiff, Carla Denise Garrison,
24 was negligent and that such negligence
25 proximately caused her injuries?"

1 If you answer yes, you go to question
2 three.

3 If you answer no, you go to question
4 four. It's written right up here in
5 instruction.

6 Number three, "If your answers to
7 both questions, one and two are "yes", then
8 answer the following question: "Taking the
9 combined negligence that proximately caused
10 Plaintiff Carla Denise Garrison's injuries as
11 one hundred percent, what percentage of that
12 negligence is attributed to plaintiff and
13 what percentage is attributed to Target?"

14 And on the second page it has a
15 place for you to put two figures, the
16 percentages that you find for each. We have
17 already put the one hundred there because it
18 must total one hundred percent.

19 If plaintiff's percentage of
20 combined negligence is greater than fifty
21 percent, stop right there. Deliberate no
22 further. Sign the form, knock on the door.
23 We'll receive you back and take your verdict.

24 If the percentage of plaintiff's
25 combined negligence is fifty percent or less,

1 you go to question four.

2 Right here, Madam Forelady, it says
3 please state the total amount of actual
4 damages, if any, that you, the jury, find by
5 a preponderance of the evidence, were
6 sustained by -- there's a place there. It
7 has a dollar symbol. I would respectfully
8 request that not only do you give me a
9 numerical number, but if you would write the
10 number in words, just like you're writing a
11 check. Please do both.

12 If your answer to question two is
13 "yes", do not reduce the plaintiff's damages
14 above by the percentage of negligence
15 attributed to her in number three. Only go
16 to the next question if you awarded actual
17 damages to the plaintiff in question four.
18 So if you put something on four, you go to
19 question five, "Do you, the jury, find by
20 clear and convincing evidence that defendant,
21 Target, acted willfully, wantonly,
22 maliciously, or with reckless disregard to
23 the plaintiff's rights?"

24 If you answer yes, you go to
25 question six. If you answer no, you go to

1 question seven.

2 Question six says, "Please state the
3 total amount of punitive damages, if any,
4 that you the jury find by clear and
5 convincing evidence were sustained by
6 plaintiff, Carla Denise Garrison."

7 If you answered that question -- and
8 if you don't, you go to the next question,
9 number seven, "Do you find by a preponderance
10 of the evidence that Target Corporation is
11 liable for lost wages that plaintiff pled,
12 Michael Garrison?" And again there's a yes
13 or no and instructions.

14 Question eight, "Please state the
15 total amount, if any, that you the jury have
16 found by a preponderance of the evidence was
17 sustained by him for lost wages."

18 Number nine, "Do you find by a
19 preponderance of the evidence that the
20 defendant is liable to the plaintiff, Mr.
21 Garrison, for loss of consortium?" Yes or
22 no. And if yes, you would go to number ten.
23 Again, write it numerically and a number out
24 by that.

25 And then, Madam Forelady, the last

1 page simply has a place for your signature to
2 be. When you sign this, you are certifying
3 that that is the verdict of the twelve of
4 you.

5 Madam Forelady, I'm going to ask you
6 to take your jury to the jury room for just
7 about thirty seconds. Please do not begin
8 deliberations: You are to take all thirteen
9 jurors with you to the jury room.

10 The lawyers have introduced various
11 exhibits during this trial. They belong to
12 you. They're the ones that have stickers put
13 on them. I practiced law for twenty-five
14 years before coming up here on this bench.
15 It is so very easy to pick up an exhibit when
16 you're talking to the jury in closing
17 argument, and walk back to my table, not
18 meaning to but lay it on my table. That
19 exhibit belongs to you. It doesn't belong to
20 them. It must go with you in the jury room.
21 When you leave the room, I'm going to ask
22 both lawyers to come up to Madam Court
23 Reporter and I'm going to ask them to verify
24 that all exhibits are present. There are
25 just a few so it shouldn't take very long.

1 When they have verified that all
2 exhibits are present, I will give those
3 exhibits and this (verdict) form to my
4 bailiff. He will bring those exhibits and
5 this form to you.

6 And when he does so, Madam
7 Alternate, you will please leave the room at
8 that time, okay? So the clue and the cue to
9 begin your deliberations will be you receive
10 the exhibits -- there are not very many --
11 and this form and she will leave the room.
12 When that happens, the jury can begin its
13 deliberations.

14 I also caution you again and remind
15 you that if a juror has to break, go to the
16 restroom, get a drink of water, deliberations
17 must cease until all twelve are together.
18 All twelve must be together at all times
19 during the deliberation. You certainly can
20 take a break but you must stop while that
21 juror is absent. Madam Forelady, take your
22 jury to the jury room.

23 (JURY OUT AT 11:58 A.M.)

24 THE COURT: Anything from the
25 Plaintiffs?

1 MR. HAWKINS: None, Your Honor.

2 THE COURT: Anything from the
3 Defense?

4 MR. HAYNSWORTH: Judge, I may well
5 have had a senior moment. You probably did,
6 but did you charge them on constructive
7 notice?

8 THE COURT: I don't think I did.

9 MR. HAYNSWORTH: I would think that
10 might -- since that's sort of a critical
11 component.

12 THE COURT: I'll be happy to add
13 that. I want you to come forward and look at
14 this.

15 (OFF RECORD BENCH CONFERENCE)

16 THE COURT: I'm going to charge
17 them. All right.

18 MR. HAYNSWORTH: I feel better.
19 I was actually paying closer attention than
20 I thought.

21 THE COURT: I'm sorry. I thought
22 I had included it. 31-24, that's what we've
23 agreed?

24 MR. HAYNSWORTH: Yes, sir.

25 THE COURT: I'll be happy to.

1 Let me have the jury back, all thirteen.

2 (JURY IN AT 12:02 P.M.)

3 THE COURT: Madam Forelady, I've
4 been asked to give one more charge to you
5 from the charge book, and I'm happy to do so.

6 Constructive notice may be proved
7 showing that the object had been in the area
8 sufficiently long so that the defendant was
9 negligent in failing to discover and remove
10 it. That is to say a customer can establish
11 a storekeeper's constructive knowledge of the
12 dangerous condition by showing that the
13 object had been in the area for a sufficient
14 length of time so that the storekeeper would
15 have or should have discovered and removed it
16 had the storekeeper used ordinary care.

17 The question of whether the object
18 was in the area for such a length of time as
19 to infer that the storekeeper was negligent
20 in not discovering and removing the substance
21 is not one that can be left to speculation.
22 Proof that a dangerous condition was caused
23 by the object in the area, standing alone, is
24 insufficient to support a finding of
25 negligence. Further, standing alone, the

1 fact that an object was in the area of the
2 store and that a store employee was in the
3 immediate vicinity at the time of the alleged
4 incident is insufficient evidence to raise
5 the inference that the storekeeper either
6 placed the substance there or object or knew
7 it was there and negligently failed to remove
8 it.

9 For you to find that the storekeeper
10 had constructive notice of a dangerous
11 condition in the area, the greater weight of
12 the evidence must show that the storekeeper
13 had sufficient time to know or discover the
14 condition and then negligently failed to move
15 it or remove it.

16 Madam Forelady, if you'd take your
17 jury back to the jury room.

18 (JURY OUT @ 12:04 P.M.)

19 THE COURT: Anything further?

20 MR. HAWKINS: No, Your Honor.

21 THE COURT: Anything from Defense?

22 MR. HAYNSWORTH: No, sir, Your
23 Honor.

24 THE COURT: Thank you so much for
25 catching that.

1 Okay. Gentlemen, we'll be off the
2 record. If you'll come forward and verify
3 the exhibits here.

4 (COUNSEL APPROVAL OF EXHIBITS)

5 (ALTERNATE JUROR EXCUSED)

6 (JURY IN DELIBERATION AT 12:06 P.M.)

7 (COURT IN RECESS)

8 (NOTIFIED OF VERDICT @ 1:45 P.M.)

9 THE COURT: Please be seated. I
10 understand that we have a verdict. Now, I
11 know everybody -- just talk to your clients.
12 This is not the time to celebrate, show out
13 or anything else. This courtroom is a court
14 of law. Okay? Ready for our jury? We'll
15 have our jury.

16 (JURY IN @ 1:51 P.M.)

17 THE COURT: Has the jury reached
18 a verdict?

19 FORELADY: We have.

20 THE COURT: If you would, give
21 that to the bailiff.

22 FORELADY: (Tenders to bailiff).

23 BAILIFF: (Tenders to Judge)

24 THE COURT: (Upon review), Mister
25 Clerk, please impose the verdict.

1 CLERK: May it please the Court,
2 this is the State of South Carolina, County
3 of Anderson, in the Court of Common Pleas,
4 Case Number 2014-GP-04-1426. That is the
5 case of Carla Denise Garrison and Clint
6 Michael Garrison, Plaintiffs, versus Target
7 Corporation, Defendant.

8 Verdict form, number one, "Do you,
9 the jury, find that the Defendant, Target
10 Corporation, was negligent and that such
11 negligence caused Plaintiff Carla Denise
12 Garrison's injuries?"

13 The answer is "Yes."

14 "If you answered Yes, go to Question
15 2."

16 Question 2, "Do you find that
17 Plaintiff Carla Denise Garrison was negligent
18 and that such negligence proximately caused
19 her injuries?"

20 Answer, "No."

21 "If you answered No, go to Question
22 4."

23 Question 4, "Please state the total
24 amount of actual damages, if any, that you
25 the jury have found by a preponderance of the

1 evidence were sustained by the Plaintiff,
2 Carla Denise Garrison."

3 The answer is "One Hundred Thousand
4 and No/100 Dollars (\$100,000)."

5 "Only go to the next question if you
6 award actual damages to the Plaintiff in
7 Question 4."

8 So we go to Question 5, "Do you, the
9 jury, find by clear and convincing evidence
10 that the Defendant Target Corporation acted
11 willfully, wantonly, maliciously or with
12 reckless disregard to the Plaintiff's
13 rights?"

14 The answer is "Yes."

15 "If you answered Yes, go to Question
16 6."

17 Question 6, "Please state the total
18 amount of punitive damages, if any, that you
19 the jury have found by clear and convincing
20 evidence were sustained by Plaintiff Carla
21 Denise Garrison."

22 The answer is "Four Million Five
23 Hundred Ten Thousand Dollars (\$4,510,000)."

24 Lost Wages, number 7, "Do you find
25 by a preponderance of the evidence that the

1 Defendant Target Corporation is liable for
2 the lost wages of Plaintiff Clint Michael
3 Garrison?"

4 The answer is "Yes."

5 If you answered Yes, go to question
6 eight.

7 Question 8, "Please state the total
8 amount of damages, if any, that you the jury
9 have found by the preponderance of the
10 evidence were sustained by Plaintiff Clint
11 Michael Garrison for loss of his wages."

12 The answer is, "Three Thousand Five
13 Hundred Dollars (\$3,500)."

14 Loss of consortium, question nine,
15 "Do you find by the preponderance of the
16 evidence that the Defendant Target
17 Corporation is liable to Plaintiff Clint
18 Michael Garrison for loss of consortium?"

19 Answer, "Yes."

20 If you answered Yes, please go to
21 question ten.

22 Question 10, "Please state the
23 amount of damages, if any, that you the jury
24 have found by the preponderance of the
25 evidence were sustained by Plaintiff Clint

1 Michael Garrison for loss of consortium in
2 this case."

3 Answer, "Five Thousand Dollars
4 (\$5,000).

5 This is signed by the foreperson and
6 dated today, September the 8th, 2016,
7 Anderson, South Carolina.

8 THE COURT: Polling of the jury by
9 the plaintiff?

10 MR. HAWKINS: I'm sorry, Your Honor.
11 Can you repeat that?

12 THE COURT: Polling of the jury
13 by the Plaintiff?

14 MR. HAWKINS: I don't know what that
15 means. I'm sorry.

16 THE COURT: Polling of the jury by
17 the defense?

18 MR. HAYNSWORTH: Yes, sir, Your
19 Honor.

20 THE COURT: We will poll the jury.

21 CLERK: Ladies and gentlemen, if
22 this is your verdict today, would you
23 indicate so by raising your right hand
24 (unanimous affirmative response by jurors).

25 Anything further -- I know that we

1 have some other matters to attend to, but
2 anything further from the jury at this time?

3 MR. HAYNSWORTH: No, sir, Your
4 Honor.

5 THE COURT: Anything from the
6 plaintiff?

7 MR. HAWKINS: Just ask that the
8 verdict be accepted, Your Honor.

9 THE COURT: Madam Forelady, ladies
10 and gentlemen of the jury, thank you so much
11 for your jury service here this week. It's
12 been a pleasure for me to be over here in
13 Anderson with you. I've been here before,
14 many times as a lawyer and a couple of times
15 as a judge, and I really, truly enjoy coming
16 here.

17 Thank you for your service. We
18 could not do what we do without you. It's
19 both an obligation to serve and it is also a
20 privilege to serve. We appreciate you doing
21 so.

22 With that, we are going to allow you
23 to leave. Do you have their pay vouchers?

24 CLERK: Yes, sir.

25 THE COURT: Have you got an armed

1 guard for every one of them?

2 CLERK: Yes, sir.

3 THE COURT: Okay, it's a lot of
4 money. Again, we do appreciate you so very
5 much. Thank you for your service. Mr. Clerk
6 is going to give you some pay vouchers and
7 some further instructions, then you will be
8 ready to leave.

9 This is the last trial that we are
10 going to have this week. So when you leave,
11 you will not have to come back.

12 Mister Clerk.

13 CLERK: Ladies and gentlemen, let's
14 retire to jury room.

15 (JURY OUT @ 1:57 P.M.)

16 THE COURT: Matters from
17 Plaintiff?

18 MR. HAWKINS: None, Your Honor.

19 THE COURT: Matters from the
20 Defense?

21 MR. HAYNSWORTH: Your Honor, if I
22 could, I'd like to ask you for my ten days
23 for post-trial Motions. As you might expect,
24 I am somewhat discombobulated, and don't want
25 to leave one out in the heat of the moment.

1 THE COURT: Absolutely. I'll give
2 you ten days. I extend that also to the
3 Plaintiffs, too. In the event that you have
4 any Motions, sir, you have ten days in which
5 to file them.

6 I guess while we are here on the
7 record, too, let's do this, too, Mr.
8 Haynsworth. Any Motions that you file, he's
9 going to need some time to respond to. So if
10 I give you (Mr. Haynsworth) ten days and give
11 you (Mr. Hawkins) ten days, would that be
12 satisfactory?

13 MR. HAWKINS: Yes, Your Honor.

14 MR. HAYNSWORTH: That would be
15 fine.

16 THE COURT: Then I will have to
17 get Court Admin to send me back over here at
18 some point to hear those Motions, I'm sure.

19 MR. HAYNSWORTH: I guess we could
20 come to you.

21 THE COURT: Or you could come to
22 me, (affirmative nod). I don't want to
23 inconvenience either of you. Are you also in
24 Greenville?

25 MR. HAWKINS: Yes, Your Honor, I

1 am. Not far from Mr. Haynsworth's office.

2 THE COURT: Okay. I am coming to
3 Greenville for State Grand Jury, the 28th of
4 the month -- what is today? Yeah, that might
5 be too soon. Go down into October. I know
6 I've got a two-week trial then.

7 I'm going to be in Spartanburg the
8 first week of November, if potentially that
9 works for you. That gives you ten days to
10 file, ten days. Then if anybody -- I am
11 satisfied that there will probably be some
12 briefs handed up -- (sidebar with law clerk
13 re schedule).

14 Ten days to file Motions.

15 Ten days to respond to any Motions.

16 Then after that we will set a
17 convenient time and either I can come to
18 Greenville or -- I don't guess there is any
19 reason we have to come to Anderson. Or if
20 you're kind enough to come to Spartanburg,
21 we'll do it that way. We'll set a time.

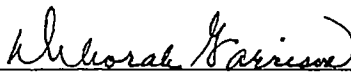
22 Thank you both for trying a good
23 case. Two good lawyers, folks. Thank you
24 both.

25 (TRIAL CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the jury trial
held in the within action hear before The Honorable
R. Keith Kelly as prepared from the audio notes of
Vivian Cross, assigned court reporter;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.



Deborah Garrison

Greenville, South Carolina



Target Sale for East Hanover

Sep 4 - Sep 10

Target Sale

Grocery &
Household
Sale

College
Checklist



find great
deals on all
car seats

20%
off
all car seats
shown



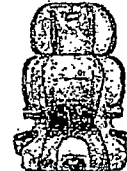
baby trend
Baby Trend Siro Car
Infant car seat
Reg. \$129.99, sale \$103.99



Safety 1st
Safety 1st Contender
3-in-1 convertible car seat
Reg. \$129.99, sale \$103.99



evenflo
Evenflo Maestro Performance
homemade booster seat
Reg. \$5.99, sale \$4.79



Chicco
Chicco KidFit 3-in-1
high-positioning booster
seat Reg. \$29.99



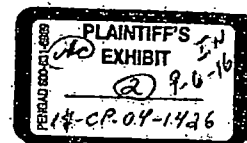
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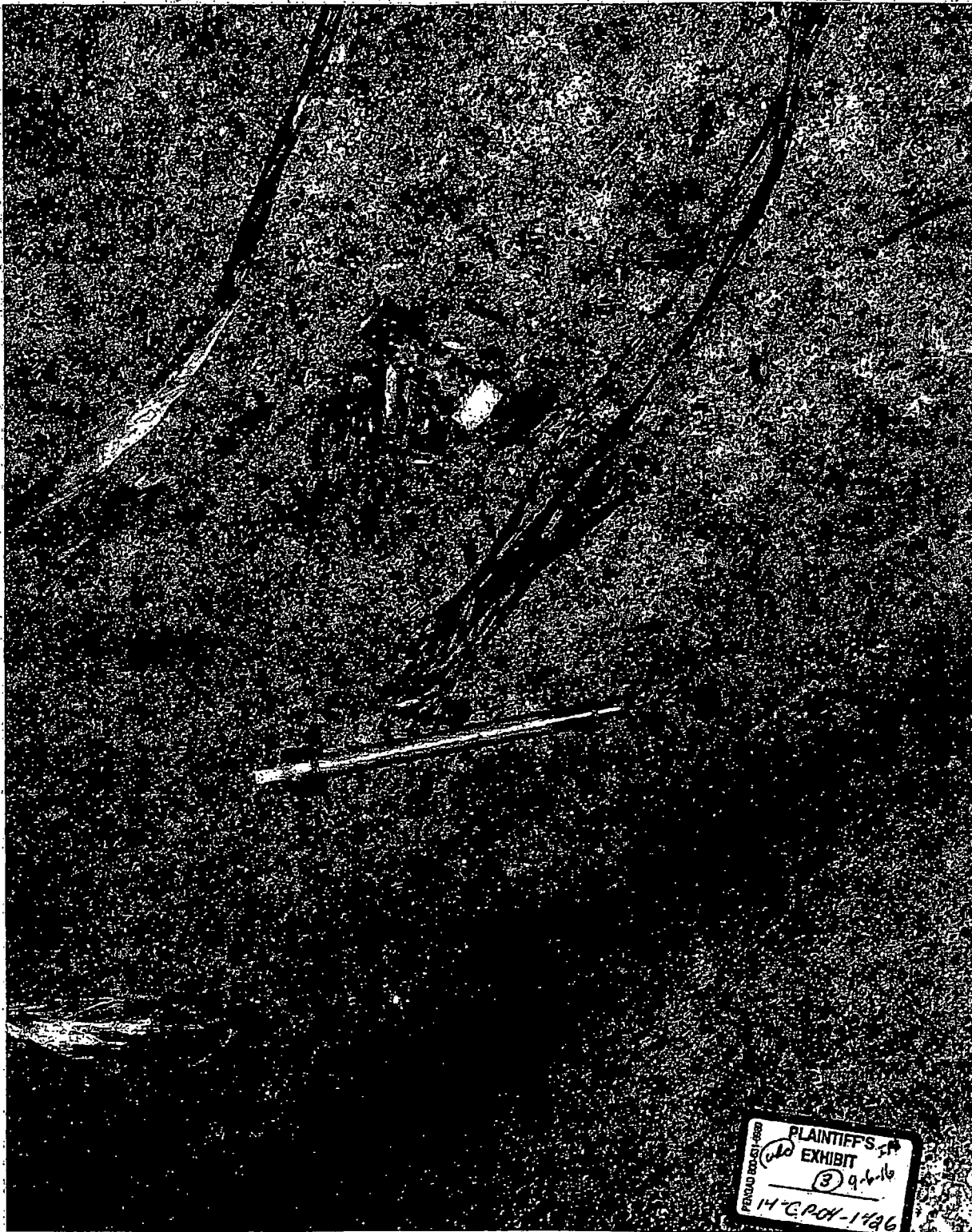
956

Guest Incident Report			
Location #: 1193		Report #: 131183 G	
Guest Information			
First Name: CARLA GARRISON (DENISE)		Last Name:	
Guardian Name (if a minor):			
Address: 1224 MITCHELL BLVD		City: ANDERSON State: SC Zip: 29206	
Phone: (home, work, cell, other):		J.H. J.W. R: 37-7163 J.O.	
Persons with the Guest Name Relationship to guest			
Name: KATRINA (daughter)		Relationship to guest:	
Address:		City: State: Zip: Phone:	
Name:		Relationship to guest:	
Address:		City: State: Zip: Phone:	
Incident Information			
Date of Incident: 05/21/2014		Time of Incident: 7:58 Circle: AM or PM	
Date Reported to Store: 05/21/2014		By Phone ☐ In Person ☒	
Location of the incident: (aisle, department, nearby landmark, be specific) PARKING LOT - RIGHT SIDE			
Guest Description of the incident, injury and/or damage (in their own words). Guest states that Guest's daughter picked up the needle, CARLA's first reaction to smack the needle out of her hand when she did it stuck her in the right hand.			
Questions to ask the guest			
What was the cause of the incident? THERE WAS A NEEDLE IN THE PARKING LOT THAT DAUGHTER PICKED UP.			
Are your clothes wet or damaged? ☐ Yes ☒ No			
If Yes, please describe:			
What type of shoes are you wearing? CLOSED TOES			
Was the floor/ground clean and dry? ☐ Yes ☒ No			
If No, please describe the condition in detail: (color, size, weight, quantity of substance, name of product, etc.) NEEDLE WAS ON THE GROUND			
Was an object involved? ☒ Yes ☐ No			
If Yes, please describe the object in detail: (size, weight, merchandise, name of product, etc.) A NEEDLE			
Were you injured? ☒ Yes ☐ No			
If Yes, please describe in detail: NEEDLE STUCK CARLA IN RIGHT HAND			
Guest Signature			
Print Name: Denise Garrison		Signature: [Signature] Date: 5/21/2014	
LOD Completing Report			
Print Name: Shelby Birtwell		Title: ETL-HR Signature: [Signature] Date: 05/21/2014	

Note to Guest: A representative of our company will contact you within the next few days. If you have any questions before that time, please call 800-553-8723 (Monday through Friday, 8:00 am to 5:00 pm CST).
White: Guest Reporting Center Copy / Pink: Guest Copy / Yellow: Store Copy

F6782.03 (7/05)





PLAINTIFF'S
EXHIBIT
③ 9-6-16
14-CR-1726



PLAINTIFF'S
EXHIBIT
49-6-16
44-CP-09-1426

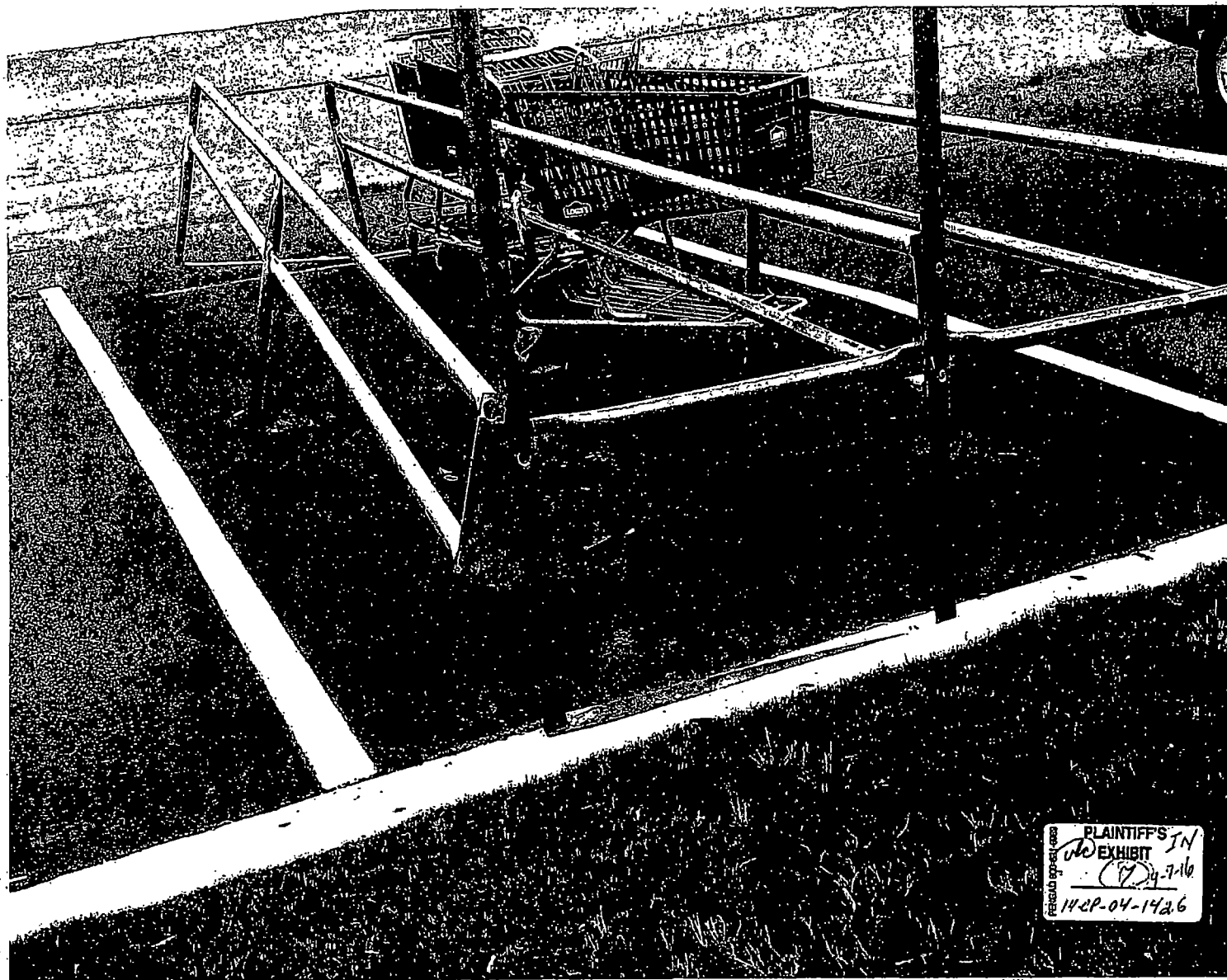
610





PLAINTIFFS
EXHIBIT
176
MAR 20 1956

612





PLAINTIFF'S
EXHIBIT
(3)
14-CP-04-1426

613

963

ANMED HEALTH SPECIALTY CLINIC
109 ESSEX DRIVE
ANDERSON SC 29621
PERSONAL & CONFIDENTIAL

FILED-CLERK'S OFFICE
ANDERSON SC



ADDRESS SERVICE REQUESTED

4571ab 4170
STRT DATE: 06/06/14

2016 SEP -8 PM 7:24	NO.	DUE DATE	AMOUNT DUE	SHOW AMOUNT PAID
SC6123ID	Upon Receipt		\$280.00	

COMMON PLEAS AND
GENERAL SESSIONS

CARLA D GARRISON
1224 MICHELIN BLVD
ANDERSON, SC 29626-6027

ANMED HEALTH SPECIALTY CLINIC
109 ESSEX DRIVE
ANDERSON SC 29621-3318



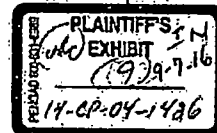
STATEMENT

555257A (PC1)

CHARGES APPEARING ON THIS STATEMENT ARE NOT INCLUDED ON ANY HOSPITAL BILL OR STATEMENT

PAGE 1	STATEMENT DATE 06/06/14	DUE DATE Upon Receipt	OFFICE PHONE NUMBER (864) 512-3879	ACCOUNT # SC6123ID	AMOUNT DUE \$280.00
DATE 05/27/14	PROVIDER	EXPLANATION OF ACTIVITY OFFICE/OUTPATIENT VISIT, NEW, EXTENDED	CHARGES & DEBITS \$280.00	PAYMENTS & CREDITS	
PLEASE INCLUDE ACCOUNT NUMBER ON CHECK					
CURRENT \$280.00	30-60 DAYS	60-90 DAYS	> 90 DAYS	TOTAL \$280.00	PATIENT BALANCE PAY THIS AMOUNT \$280.00
MESSAGE: PLEASE REMIT PAYMENT PROMPTLY.			SEND INQUIRIES TO: ANMED HEALTH SPECIALTY CLINIC 109 ESSEX DRIVE ANDERSON SC 29621-3318 (864) 512-3879		

15860-ALLSCYC-04822-1012730682-P; 4850194-1-44; 34652533-1; 1



800 North Fant Street
Anderson, South Carolina 29621

Page 1 of 2

##11222

CARLA DENISE GARRISON
1224 MICHELIN BLVD
ANDERSON SC 29626-6027



Thank you for choosing AnMed Health as your healthcare Provider.

Statement Date:	06/11/2014
Patient Name:	CARLA DENISE GARRISON
Account Number:	8166739
Total Charges	\$3,710.00

If you would like an itemized detail of your account, please contact our Patient Accounting Department at (800) 388-3496 or (864) 512-1450.

This is a balance due letter of your account with AnMed Health. We do not show any insurance information for this account. If this is incorrect please contact our office.

If you have any questions or need to make payment arrangements to resolve your account, please contact our Patient Accounting Department at 800-368-3496 or (864) 512-1450. Any payment arrangements, other than payment in full, must be approved in order to keep your account from being considered past due. If you have low income, you may qualify for financial assistance. Please see the back of this statement for additional information.

Thank you for your prompt attention and for choosing AnMed Health for your health care needs.

Sincerely,



**Online Business Office, 24 hours per day,
7 days per week www.armedhealth.org.
A convenient way to access your updated
account information, pay your balance,
view insurance payments, and answer
questions online.**

Please Note: This is a statement for hospital services rendered only.

800 North Fant Street
Anderson, South Carolina 29621

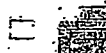
Statement Date:

Account Number: 8186739

06/11/2014

Responsible Party	Due Date	Amount Now Due	Amount Enclosed
CARLA DENISE GARRISON	07/11/2014	\$3,710.00	

For your convenience you may pay by credit/debit card, personal check, or money order. (Please do not send cash.) Make checks payable to: ANMed Health. If paying by credit card, indicate your card preference, provide the account information, and sign below.



AniMed Health
800 N. Fant St.
Anderson, SC 29621-5708

Account No.

Expiration Date

Signature

VÝČODĚ

* VCODE is a 3-digit, non-embossed number printed on the signature panel on the back of the card immediately following the credit card number.

615

965

ANMED HEALTH

Statement Date: 06/11/2014

Page 2 of 2

800 North Fant Street,
Anderson, South Carolina 29621

Patient Statement for: CARLA DENISE GARRISON Account Number: 89667397 Date of Service: 05/22/2014

Insurance: Self Pay	Service Type: Outpatient	Financial Class: 1	
<u>Charges</u>	<u>Amount</u>	<u>Account Activity Totals</u>	<u>Amount</u>
LABORATORY	\$1,430.00	Adjustments	\$0.00
EMERG ROOM	\$1,197.00	Insurance Payments	\$0.00
DRUGS REQ DETAIL COD	\$276.00	Patient Payments	\$0.00
VACCINE ADMINISTRATI	\$51.00		
E R PRO FEE	\$756.00		
Total Charges:	\$3,710.00	Balance Due:	\$3,710.00

Thank you for choosing AnMed Health. This account is currently your responsibility. Please note you are eligible for a prompt pay discount for a limited time. You may also contact AnMed Health's Business Services department to discuss payment options or provide any new insurance information we do not have on file.

AnMed Health and its facilities for which services are reflected in this billing statement offer financial assistance through AnMed Health Medical Assistance Program (AMAP) to certain patients and guarantors with an outstanding balance owed for certain medical services. To qualify for assistance you must submit an AMAP application and meet certain income and resource requirements. For details about the policies and procedures for AMAP, and to obtain an AMAP application, please go to www.anmedhealth.org, call 664-512-3435, or email financialcounselors@anmedhealth.org.

If satisfactory and timely payment is not made on the outstanding balance, you do not timely apply for AMAP, or are determined to not be eligible for AMAP, AnMed Health may pursue collection actions including selling the debt to another party, reporting adverse information to credit agencies or bureaus, or initiating available legal or judicial processes such as liens or civil actions.

Do We Have Your Insurance Information?

Accurate insurance information helps insure prompt payments by your insurance company. If you were unable to provide your insurance information or if different than shown on the front of this page, please complete the section below and return this page or call our office. Thank you! Mail this stub to the address on reverse side.

Primary Insurance	☐ Medicare ☐ HMO ☐ PPO ☐ Other	Secondary Insurance	☐ Medicare ☐ HMO ☐ PPO ☐ Other
Insured Name		Insured Name	
Insurance Comp.		Insurance Comp.	
Address		Address	
City / State	Zip Phone	City / State	Zip Phone
Group Name	ID#	Group Name	ID#
Employer		Employer	

I authorize the hospital to submit any or all medical data to my insurance company, and authorize the assignment of any benefits or payments to the hospital. I understand I am financially responsible to the hospital for charges not covered by this authorization. Please return with copies of the front and back of your insurance card(s).

Signed _____ Date _____

CHANGE OF ADDRESS

Name	Phone
Address	
State	Zip

 **Labtech Diagnostics** **Date** November 21 20 14 **No.** 00000611

Received From CARLA GARRISON **\$** 130.00

One Hundred Thirty & 00/100 ***** **Dollars**

For BLOODWORK

From _____ **To** _____

Account Number		☐ Cash	
Amount Due	130.00	☐ Check	
Balance Forward	0.00	☐ Money Order	By <u>BRANDIE PATTERSON</u>
Payment	130.00	☒ Credit / ATM	
Balance Due	0.00		



FILED-CLERK'S OFFICE
ANDERSON, SC
2016 SEP -8 PM 2:44
COMMON PLEAS AND
GENERAL SESSIONS

ARMED HEALTH,
800 N FAIR ST
ANDERSON SC 29621

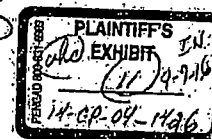
FILED-CLERK'S OFFICE
ANDERSON SC

2016 SEP -8 PM 2:44

COMMON PLEAS AND
GENERAL SESSIONS

PATIENT BILL DETAIL TRANSACTIONS.					
PATIENT		GUARANTOR		PAGE	1
8166739 CYCLE. 1-FINAL		8166739		PAT REP	
GARRISON, CARLA		GARRISON, CARLA			
1224 MICHELIN BLVD		1224 MICHELIN BLVD			
ANDERSON SC 29626		ANDERSON SC 29626			
DATE OF SERVICE	DATE OF POSTING	CHARGE NUMBER	DESCRIPTION	QTY	EXTENDED PRICE
5/22/14	6/04/14	3780573	DRAW FEE EMERG DEPT	1	17.00
		CPT-4: 36415			
5/22/14	5/22/14	4020830	COMPREHENSIVE MET. PANEL	1	600.00
		CPT-4: 80053			
5/22/14	5/22/14	4020899	HEPATITIS PANEL	1	583.00
		CPT-4: 80074			
5/22/14	5/22/14	4110523	HIV 1 & 2 ANTIBODY	1	115.00
		CPT-4: 86703			
5/22/14	5/22/14	4110524	HIV 1 ANTIGEN	1	115.00
		CPT-4: 87899			
TOTAL FOR REVENUE CODE- 0300					1,430.00
5/22/14	6/04/14	3780331	FACILITY ED FEE EXTENDED	1	1,197.00
		CPT-4: 99284			
5/22/14	6/05/14	3780331	FACILITY ED FEE EXTENDED	1	1,197.00
		CPT-4: 99284			
5/22/14	6/05/14	3780331	FACILITY ED FEE EXTENDED	1	1,197.00
		CPT-4: 99284			
TOTAL FOR REVENUE CODE- 0490					1,197.00
5/22/14	5/23/14	4610018	BOOSTRIX 0.5ML INT	1	276.00
		CPT-4: 90715			
TOTAL FOR REVENUE CODE- 0636					276.00
5/22/14	6/04/14	3780505	1M VACCINE INJ DEPT	1	51.00
		CPT-4: 90471			
TOTAL FOR REVENUE CODE- 0771					51.00
5/22/14	6/04/14	3790004	MO-LEVEL IV	1	756.00
		CPT-4: 99284			
TOTAL FOR REVENUE CODE- 0981					756.00
PATIENT 8166739 11 ITEMS TOTAL					3,710.00

618



7
AHMED HEALTH
800 N FANT ST
ANDERSON SC 29621

06/10/14

PATIENT BILL DETAIL SUMMARY

PAGE 1

PATIENT 8166739 CYCLE 1 FINAL GUARANTOR 8166739 PAT REP
GARRISON, CARLA GARRISON, CARLA
1224 MICHELIN BLVD 1224 MICHELIN BLVD
ANDERSON, SC 29626 ANDERSON SC 29626

DESCRIPTION	QTY	EXTENDED PRICE
0300 LABORATORY-GENERAL	5	1,430.00
0450 EMERGENCY ROOM	1	1,197.00
0636 DRUGS/DETAIL CODE	1	276.00
0771 VACCINE-ADM	1	51.00
0981 PRO FEE/BR.	1	756.00
TOTAL		3,710.00

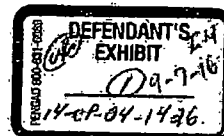
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620



PLAINTIFF'S
EXHIBIT
120716
14-004-1426

User First Name	Submission Form Name	SFT Name	Date	Area Assessment - Choose Day of the Week
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/15/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/16/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/17/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/18/2014	Friday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/21/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/22/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/23/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/24/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/25/2014	Friday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/28/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/29/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	4/30/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/1/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/2/2014	Friday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/5/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/6/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/7/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/8/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/19/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/21/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/21/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/22/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/27/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/28/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/29/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	5/30/2014	Friday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/2/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/3/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/4/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/5/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jerry	6/12/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/16/2014	Monday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/19/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/20/2014	Friday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/22/2014	Tuesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/25/2014	Wednesday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/26/2014	Thursday
T1198	1. Walk the Vibe Daily - Hskping/Area/Brand	Jon Jackson	6/30/2014	Monday



0.3. Exterior Debris Sweeping (Service Days Only)
N/A
In Maintenance Standards (GREEN)
In Maintenance Standards (GREEN)
In Maintenance Standards (GREEN)
In Maintenance Standards (GREEN)
N/A
In Maintenance Standards (GREEN)
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N/A

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF ANDERSON) COURT OF COMMON PLEAS
 3
 4 CARLA DENISE GARRISON AND)
 5 CLINT GARRISON,)
 6) PLAINTIFFS,)
 7) VS.)
 8) TARGET CORPORATION,)
 9) DEFENDANT.)
 10
 11 November 3rd, 2016
 12 Spartanburg, South Carolina
 13 B E F O R E:
 14 THE HONORABLE R. KEITH KELLY, Judge.
 15
 16 A P P E A R A N C E S:
 17 JOSHUA T. HAWKINS and G. TODD BUTLER
 18 ESQ.
 Attorneys for the Plaintiffs
 19
 20 KNOX L. HAYNSWORTH, III, GEORGE P. SIBLEY, III,
 21 KEVIN ELLIKER, AND ERIN OGLESBAY
 ESQ.
 Attorneys for the Defendant
 22
 23 PAMELA E. GREEN
 Circuit Court Reporter
 24 Seventh Judicial Circuit
 25

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I N D E X O F W I T N E S S E S

(There were no exhibits marked or testimony taken
during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: Tell me what's going on with the pro hac
4 vice or ever how we say that these days.

5 MR. HAWKINS: Judge?

6 THE COURT: Let's see if we can straighten that out.

7 MR. HAWKINS: Judge, we contacted the Clerk's Office in
8 Anderson yesterday about the application we had submitted
9 and about our motion for pro hac vice admission of
10 Mr. Butler. They informed my paralegal that they received
11 confirmation back from the Supreme Court or, or basically
12 the Supreme Court's blessing is the, is the language I
13 heard. They haven't sent that to us.

14 The way I understand is we're waiting a ruling from the
15 trial judge. I think you made that ruling from the bench
16 and you can tell me IF I'm wrong about that. But as far as
17 I understand it, the application's been submitted. The
18 Supreme Court has contacted Anderson -- the Anderson County
19 Clerk's Office and we're waiting for a ruling from Your
20 Honor.

21 THE COURT: Well, I don't have, I don't have an order.
22 You---

23 MR. HAWKINS: Right.

24 THE COURT: What's happened in the past is I mean -- is
25 I get an order that's been approved and it has the fee's

1 been paid, and \$250 or whatever it is, and---

2 MR. HAWKINS: Your Honor, I can hand up a scan of the,
3 the---

4 THE COURT: Do you have a copy?

5 MR. HAWKINS: ---of Respondent's---

6 MR. HAYNSWORTH: Your Honor, I was telling John, when I
7 went and looked on my phone from my car, efiled with
8 Anderson is a copy of the verification from the Supreme
9 Court that our applications and the money has been received.
10 I mean -- and as I read the rule, once that verification's
11 been filed, then you're in a position to address the motion.
12 But I will confess I don't have a copy cause I just pulled
13 it up on my phone but it is available online in Anderson.

14 THE COURT: Well, let me ask this, yeah, and I, and I
15 understand.

16 Is there any question as to whether or not -- I just
17 don't want to cross over some line. I know nobody here
18 does.

19 I mean is there any question everything, everything is
20 properly filed on either side?

21 MR. HAYNSWORTH: I don't think so, Your Honor.

22 THE COURT: Okay. If nobody's questioning it, I'm, I'm
23 good. I just want to make sure. I don't want to have to go
24 down and talk to the chief. I don't mind talking to him, I
25 know him, but I don't want to go down there on, on business.

1 I don't mind going down and talking about the game last
2 night. By the way, he's a huge baseball fan. I don't know
3 if you know that or not. But anyway.

4 All right. Is there any question then that
5 everything's proper then?

6 MR. HAYNSWORTH: No.

7 THE COURT: On either side?

8 MR. HAYNSWORTH: No, sir.

9 THE COURT: Okay. All right.

10 MR. HAWKINS: And, Your Honor, I would, I would
11 introduce Mr. Butler, the counsel we've, we've retained to
12 handle post-trial motions in the field. I've talked with
13 Phillips Dunbar. He's here to argue for the plaintiff.

14 THE COURT: Okay.

15 MR. HAYNSWORTH: And, Your Honor, likewise, let me
16 introduce Trey Sibley from Hunton & Williams and Kevin
17 Elliker also from Hunton & Williams. Trey will be handling,
18 on our behalf, the arguments before you today. And I've
19 also got Erin Oglesbay in from Minneapolis. She, she is
20 directed counsel for Target Corporation.

21 THE COURT: Okay. Well, let me extend a, a welcome to
22 everybody here to be in South Carolina.

23 Okay. Ready to get started?

24 MR. HAYNSWORTH: Yes, sir.

25 THE COURT: Okay. Anything from -- well, I guess it

1 will be defense will be---

2 MR. HAYNSWORTH: Yes, sir.

3 THE COURT: All right. Yes, sir.

4 MR. SIBLEY: I think so.

5 Good morning, Your Honor. Trey Sibley for, for Target
6 Corporation.

7 May it please the Court.

8 We filed, obviously, a lengthy paper that outlines all
9 the reasons why we think the Court should intervene and
10 adjust the, the substantial verdict that was awarded in this
11 case. I'd like to focus the Court's attention though on two
12 broad categories of issues that we think are the most
13 important in the motion we filed.

14 First, the threshold question of whether the plaintiffs
15 met their burden of proof on this type of case.

16 Obviously the case is a premises liability case and
17 it's a premises liability case moreover that focuses on
18 whether Target had constructive notice of the syringe in
19 their parking lot. The -- it's not a case involving any
20 allegation, let alone proof, that Target put the syringe
21 there. There's no allegation, let alone proof, that Target
22 had actual notice that the syringe was there.

23 It is, instead, a constructive notice case and we are,
24 we are fortunate enough to have a rich body of case law to
25 draw on to address what exactly it is plaintiff must show in

1 order to carry that burden of proof, and it's case that goes
2 back nearly 60 years, if not longer, and we've highlighted
3 those cases in our papers and I'd like to talk about a few
4 of them here this morning, Your Honor.

5 Constructive notice, of course, requires proof that the
6 danger existed long enough for a merchant to discover and
7 remedy it. That's the basic distillation of constructive
8 notice law.

9 In the case of Anderson versus Winn-Dixie Greenville
10 from 1971, Supreme Court case, involving a banana peel, of
11 all things, on a, on a floor, the Supreme Court articulated,
12 articulated the standard this way. The defendant will be
13 charged with constructive notice whenever it appears that
14 the condition has existed for such length of time prior to
15 the injury that, under existing circumstances, he should
16 have discovered and remedied, remedied it in the exercise of
17 due care. Conversely, absent evidence of such preexistence,
18 the defendant may not be so charged and that right there is
19 the, is the aspect of, of South Carolina jurisprudence and
20 jurisprudence of, of numerous other jurisdictions around the
21 country on which our, our motion principally rests.

22 Your Honor, I, I -- we, we handed up, before the
23 hearing, a, a flipbook that contains the cases that we think
24 are most important to our motion and we've, we've handed
25 that to your law clerk and there's a copy for you as well

1 and that's your copy. Feel free to take it with you and
2 mark it up. We have highlighted a few of these cases so
3 that---

4 THE COURT: Right here?

5 MR. SIBLEY: Right there. The highlighting is, is
6 intentional and that's giving counsel, opposing counsel, a
7 copy of the same one with the same highlighting. So -- and
8 the Anderson case is the -- behind Tab 5 in case the Court
9 wants to, wants to review that.

10 THE COURT: I have it.

11 MR. SIBLEY: Now, I'll tell you, the Anderson case is
12 one of the cases but, as I mentioned earlier, this is not a
13 novel rule of law. It goes back, it goes back nearly 60
14 years.

15 The first case that we found that, that has a, a clear
16 distillation of it is the Hunter versus Dixie Home Stores
17 case from 1957 where the hazard, the hazard was green beans
18 that had been dropped on the floor and that, that plaintiff
19 had slipped on, and the Court reversed a jury verdict noting
20 that there was no evidence regarding how long the green
21 beans had been on the floor. In the absence of that
22 evidence, the Court found, it could not sustain/allow the
23 jury verdict to be sustained and that's behind Tab 1.

24 Tab 2, we have a case from the Fourth Circuit, Mullin
25 versus Winn-Dixie, 1958, and this was some smashed grapes in

1 a paper bag. Same result. Reversal of the, of the jury
2 verdict finding the absence of evidence about how long the
3 object had been on the floor. That's the key item of proof.

4 1969, this is behind Tab 3, the Wimberly case. This
5 was -- this is the case involving grains of rice that had
6 been on the floor. There was no evidence in that case about
7 how long the rice had been there. The Court held, and I
8 quote, "the jury could not "be permitted to speculate" that
9 it was on the floor for a long enough period of time to
10 allow it to conclude that constructive notice existed."

11 1969, this is behind Tab 4, Pennington versus Zayer.
12 This is a case involving plastic bags that had fallen on the
13 floor and created a trip hazard. Same result. There was
14 a -- there was no proof about how long the bags had been
15 there, and so the -- an involuntary nonsuit was entered and
16 the Supreme Court affirmed that.

17 1979, it's almost, it's almost like the Olympics. They
18 come along -- these cases come along on a -- almost a
19 regular basis. 1979, Milliken versus Winn-Dixie, oil spill
20 on the sidewalk in front of the store. There was no
21 evidence about how long it had been there. It would be pure
22 speculation, the Court noted, that the store should of known
23 about it. Therefore, the Court reversed the jury verdict in
24 plaintiff's favor.

25 1990, Gillespie versus Wal-Mart Stores. This is a

1 Court of Appeals case but it's the same result. There was a
2 puddle of water and the Court, again, absent an -- absent
3 proof about how long that puddle had been there, you could
4 not enter -- sustain a plaintiff's verdict.

5 These cases didn't stop then either. We've got two,
6 one of which we cited in our brief, one we just recently
7 found and put in the flipbook, 2014, Norris versus Wal-Mart
8 Stores East. This is a Federal District Court case, but
9 it's applying South Carolina law, and this is Judge Childs,
10 and it was an oily substance that had been on the floor that
11 caused the slip hazard, and the judge entered, was it, was
12 it, summary judgment?

13 Summary judgment in that case but same result, judgment
14 as a matter of law in favor of the merchant noting that
15 there was no evidence of how long the oily substance had
16 been there.

17 And the Norris case is particularly important, we
18 think, here, Your Honor, because there was evidence that
19 there were some streak marks through the oil, which the
20 plaintiff said showed, while it must of been there for a
21 long time because it kind of looked like it'd been there for
22 a long time, that sounds a lot like the facts of this case.
23 The syringe looked like it had been -- it was kind of beat
24 up, dingy, and gross, I believe is what the testimony said,
25 but nobody could say how long that dingy and gross syringe

1 had actually been in Target's parking lot and that's the key
2 fact. There's no witness who, who said I saw it there the
3 day before, I saw it there a couple hours before, and that
4 is the level of proof that is necessary to put the question
5 to the jury to decide the question that properly belongs to
6 the jury, which is whether that length of time is long
7 enough to allow for a finding of constructive notice.

8 You know, if you had evidence that said this, this
9 syringe had been there a day, I saw it there the day before,
10 the jury could then decide well, it's one day long enough to
11 get, to get the constructive notice. That's the question
12 that belongs to the jury. In the absence of that proof, the
13 question doesn't belong to the jury. This question is one
14 of law and it requires an entry of judgment in favor of the
15 merchant.

16 One more case, Your Honor, and this is behind Tab 18,
17 and this is from Judge Anderson just this year granting
18 summary judgment in a, in a slip and fall case just like
19 this one. Again, on this same question, finding that
20 plaintiff had not provided the Court with evidence showing
21 that the substance had been on the floor for a sufficient
22 period of time such that the defendant should of known about
23 it. As I mentioned, that question, how long is long enough,
24 is a question for the jury but you need to know how long
25 first, how long the object was present to frame the question

1 and allow the jury to answer it.

2 Now, the evidence in this case, as I've alluded to
3 already, does not exceed that threshold. What we have,
4 based on the record, based on the transcript which we've
5 reviewed and the Court is well familiar with, we have
6 ultimately simply the lay opinion of the plaintiff, of the
7 two plaintiffs, Mr. and Mrs. Garrison. They say it must
8 have been there for a long time because it looked like it
9 had been there for a long time. It was dingy. It was
10 gross. It was beat up. But they offered no basis, no
11 testimony that would give the jury that thing that the jury
12 needed, a clear timeframe to decide whether the length of
13 time the syringe had been there was long enough.

14 They did not say it had been there a day. They did not
15 say it had been there several hours. They could offer no
16 testimony on that point, and, as the transcript reveals,
17 Mr. Hawkins admitted as much during oral argument at trial,
18 nobody knows how long the syringe had been there.

19 We have some testimony, some arguments about
20 comparisons of other pieces of trash. There were strings
21 and other things that were around the, the syringe when they
22 went back after the, the accident that happened to go, to go
23 pick it up.

24 Well, that doesn't get you there either. The -- first
25 of all, where they found the syringe was not where young

1 Kaleigh had picked it up. It was where -- it landed after
2 Denise Garrison slapped it out of her daughter's hand. And
3 so that doesn't tell you a whole lot right there, and, and
4 it also doesn't say anything about how long it had been
5 there.

6 Was it deposited with the string?

7 I mean if the string were old, does that necessarily
8 mean that the syringe had been there for a long time?

9 I don't think that, that -- that that's a fair
10 inference. We see cases, you go back and look through the
11 case law, you can look through some of these cases and see
12 examples of where a Court had -- Courts have dealt with
13 similar types of argument. The Pennington case is one that
14 deals with this type of argument where there was other
15 pieces of trash in the, in the store aisle where the slip
16 occurred. The Court said that's not enough.

17 You also have, ultimately, the evidence regarding the
18 visual appearance of the syringe. It was beat up. It was
19 dingy. It was gross. The -- that evidence does not answer
20 though the key question. I think that evidence, at most,
21 establishes that this syringe had been around for a while.

22 What it does not answer is whether it had been around
23 for a while in Target's parking lot. Those -- that -- the,
24 the weathering of the syringe could of occurred anywhere,
25 and what we see in the cases, when we go and look at them,

1 is that this type of evidence, the visual appearance of the
2 hazard, is not enough to establish a timeframe sufficient to
3 allow for a finding of constructive notice. And on this,
4 Your Honor, the best case is the one we'd urge the Court to
5 read. It's our favorite case is the banana peel, we call it
6 the banana peel case, behind Tab 5. That's Anderson versus,
7 versus Winn-Dixie.

8 In there, the, the plaintiff made an argument very
9 similar to what the plaintiffs made here. That banana peel
10 was all brown and mushed up and blackened and the Court said
11 that's not enough. That does not tell me how long that
12 banana peel had been on the ground. You know, that, that
13 could of happened to the, the banana peel before it fell on
14 the ground and I can't -- and unless you can put -- you have
15 some evidence that could put it on the ground for a
16 sufficient length of time, you have not met your burden.

17 The Norris case too, which I talked about from Judge
18 Childs, also talks about the streak through the oil. That's
19 another good point, point.

20 The other thing too we, we see a lot of, and it gets
21 repeated quite a bit in the plaintiff's submission, is the
22 sufficiency of Target's cleaning practices. All the
23 evidence about the records of the walk-by, whether the
24 trucks were coming and how they would keep tracking all of
25 that, and you heard very spirited argument about how it, it

1 just wasn't good enough.

2 well, Your Honor, look at the wimberly case. This is
3 the case from 1957 -- '69. I'm sorry. 1969, the wimberly
4 case, where the Court deals with exactly this very type of
5 evidence and this is behind Tab 3, and the, the passage in
6 that case is, I think, is directly on point here, and this
7 is this at -- this is on Page 3 of what we handed up and
8 it's in the right-hand column and it's the one, two, three,
9 third paragraph, second sentence.

10 In written brief it was argued this the store premises
11 were not kept in a reasonably safe condition because
12 insufficient personnel, inadequate inspection, inadequate
13 floor maintenance, appellate's pushcart obstructing review,
14 and use of a very dated floor. This is the same type of
15 evidence we've heard here. The Court goes on to say how, in
16 other states that apply a different rule from what South
17 Carolina applies, one that focuses on foreseeability of harm
18 as opposed to the presence of the object for a sufficient
19 period of time, that might be enough but, as the Court notes
20 in the last sentence of that paragraph, such is not the rule
21 in this State.

22 Now, Your Honor, we put, we put in our written paper,
23 which we served on the Court and we served on plaintiffs,
24 all of these cases and the plaintiffs filed a response to
25 that paper and I think it's quite revealing. We don't see

1 any discussion of this unbroken line of case law going back
2 more than 60 years. There is no discussion in those papers,
3 Your Honor, of Wimberly, the case I just quoted from.
4 There's no discussion of Anderson, the banana peel case. No
5 discussion of the Gillespie case from 1990 in the Court of
6 Appeals. No discussion of the Milliken case which I called
7 out just a moment ago.

8 The, the instances where the plaintiffs do cite some of
9 these cases, they do so in a glancing fashion. One is the
10 Pennington case where they, they cite to that but they don't
11 cite it in the section of their brief that deals with
12 constructive notice. They cite it in the portion that deals
13 with punitive damages. And they, they quoted for something
14 that we -- a passage that we don't actually find in that
15 case.

16 You have the Norris case, which they, they try to deal
17 with in a footnote and the footnote they note well, this is
18 Federal Court and they argue that there's a higher standard
19 for deciding what -- the issues as a matter of law. It set
20 aside whether the standard in Federal Court is any different
21 than what we have here in South Carolina but the result
22 there was the same. There was not a scintilla of evidence
23 about how long the oil had been on the floor in that case
24 and, therefore, judgment, as a matter of law, was
25 appropriate. By their silence on that point I think is an

1 acknowledgment that the rule of law is what it is and that
2 Judge Childs got that right.

3 Where, where plaintiffs do cite South Carolina cases,
4 they cite decisions that have very little to do with the
5 issues that we're confronted with in this case. For
6 example, they cite to the Dawkins versus Union Hospital
7 District case for the proposition that the case -- that,
8 that plaintiffs don't need to submit expert evidence in
9 order to establish liability.

10 Well, in that case, that was certainly true because the
11 defendant's were arguing that, because the slip and fall
12 occurred at a hospital, you needed, as a plaintiff, to
13 establish a standard of care the way you would establish it
14 in a medical malpractice case, which is through expert
15 evidence about what the standard of care was, and the Court
16 says no. This is a hospital. It's a premises. You, you
17 apply the same constructive notice law we apply everywhere
18 else. You don't need expert evidence to, to meet that
19 burden, and that brings me, Your Honor, to, I think an
20 important point, that is worth, worth discussing.

21 What, what would of been enough in this case?

22 Now, in our paper we talked about, you know, how maybe
23 expert evidence would have -- a certain type of expert
24 evidence could of helped them clear, clear the hurdle, some
25 sort of forensic, forensic examination of, of the parking

1 lot or the syringe. None of that was offered, none of that
2 was proffered, and that was the example we provided in our
3 brief.

4 That's not to say that that's the only type of evidence
5 that would get you over the hump. You might have, for
6 example, an eye witness who says oh, I saw that, I saw that
7 syringe there the day before, and, and I remember seeing it
8 because I thought it was such a hazard. You could have
9 somebody who, who otherwise puts it there visually and says
10 I saw the syringe on the ground. You might have
11 surveillance video footage. There's no such evidence in
12 this case but you might have surveillance video footage
13 that's -- you can see the person using the syringe in the
14 parking lot and then dropping it near to where young Kaleigh
15 picked it up. That evidence does not exist in this case.

16 You don't necessarily need expert evidence and I don't
17 want the Court to be led astray by that. We, we cited that
18 as an example but that's not to say that you can't do it
19 different ways.

20 The -- in terms of expert evidence, there's an
21 excellent case from the Seventh Circuit that we cited in our
22 brief and it's behind Tab 13. It doesn't involve South
23 Carolina law but it involves the same principles of law but
24 it's an Illinois case, case involving Illinois law, and
25 Illinois applies the same rules as South Carolina, and there

1 is an excellent discussion of the, the type of evidence that
2 would be needed to get over, to translate visual appearance
3 of the hazard into a -- the type of proof that would allow a
4 jury to make a decision about how long the hazard had been
5 there.

6 Now, getting back to the plaintiff's brief, and some of
7 the other cases they cite, they cite one case, Major versus
8 City of Hartsville, and this is a case that involves a, a, a
9 rut that had formed in the corner of an intersection and
10 that would recur if, if the City didn't tend to it. So, the
11 little, the little tire ruts would form and they'd go fill
12 it up and then the, the way the Court recites the evidence,
13 it just almost, as soon as they'd fill it up, it would cut
14 that corner again and that, that rut would appear. Sure
15 enough, somebody some down -- sometime down the line steps
16 in that rut and falls and a lawsuit ensues.

17 And in that particular case, the Court focused on the
18 type of evidence that, that can get you over the
19 constructive notice hurdle and that's evidence of
20 recurrence. And, in that particular case, the fact that
21 this recurred and there was, there was admissions on that
22 score from the defendant, that was enough to get them over
23 the hurdle.

24 Now, we don't have evidence of recurrence in this case.
25 In fact, there is zero evidence that this Target or any

1 other Target has experienced something quite like this. A
2 needle in the parking lot is not something that happens,
3 based on the record in this case, at all, near as we can
4 tell, before this case. There's not a, there's not a --
5 like a Methadone Clinic or anything like that across the
6 street or any evidence that people congregate there to use
7 intravenous drugs or anything like that. So, we don't --
8 this isn't a recurrence case.

9 They also cited -- cite that case, Your Honor, for the,
10 the proposition that an inadequate maintenance program can
11 form the basis of proof that would get you over the
12 constructive notice hurdle but that is a stretch and that's
13 not, that's not really what's going on in that case. What
14 the evidence was, and the Supreme Court doesn't discuss it
15 but so much, but the evidence is that the, these, these ruts
16 would form and the City admitted that, as soon as we finish
17 the maintenance, the rut comes back almost two days later.
18 We stopped doing the maintenance because the ruts would
19 form.

20 That would allow the jury to infer that, at some point
21 shortly after the last time you did maintenance, that rut
22 appeared and it had been there ever since. That gave the
23 jury a temporal framework with which to decide the
24 constructive notice question. That's what that case stands
25 for and no more.

1 Plaintiffs also cite, Your Honor, cases from other
2 jurisdictions. In fact, you go through this section of
3 their argument and it is noteworthy the extent to which we
4 see cases from other jurisdictions. In Footnote 5, we get
5 cases from Vermont and Kentucky. Those don't -- those
6 aren't controlling here and they don't even apply the same
7 rule of law.

8 AS I referenced earlier, there are other jurisdictions
9 that do this a little bit differently. They focus on
10 foreseeability and whether it's foreseeable that this harm
11 would occur.

12 The Supreme Court, in the Wintersteen case in 1999,
13 rejected that rule of law expressly and said we are sticking
14 with the same constructive notice jurisprudence that we've
15 had for 60 years. Foreseeability that a harm might, might
16 occur is not enough in these types of cases.

17 And as I mentioned earlier, there are cases from other
18 jurisdictions that do apply a rule that's identical to South
19 Carolina's and those cases are quite helpful. I mentioned
20 the Reid versus Kohl case from the Seventh Circuit, which we
21 like quite a bit. There's also a case which we did not cite
22 in our papers, but we've included in the binders that we
23 shared with the Court and with plaintiff's counsel, and it's
24 a case from an intermediate Appellate Court in Pennsylvania,
25 Rodriguez versus Cravco, and, in that particular case, Your

1 Honor, the, the substance, the foreign substance was a brown
2 liquid on the floor that the plaintiff had slipped on.

3 What's particularly noteworthy about that case, for us,
4 and why we think it's, it's one the Court should, should
5 reference and consider is that the plaintiff was able to
6 offer testimony that, you know, when I slipped on the floor,
7 I could see around the edges of this puddle that the brown
8 liquid had dried up a little bit. And so that tells me that
9 it was, it was there long enough for that evaporation to, to
10 occur, to occur, for that stuff to dry up.

11 The Court said that's not enough. Without evidence
12 showing how long it takes the liquid in question to become
13 sticky or dry, the jury would be unable to determine whether
14 the spill was present for a sufficiently long time to
15 warrant a finding of constructive notice. That's the
16 same -- it's a, it's a brown liquid in that case, a beat up
17 syringe in our case. Same ultimate factual question left
18 unanswered.

19 Finally we get to the plaintiff's argument regarding
20 expropriation and I want to take some time with this one.
21 Obviously, the syringe, by the time of trial, was, was no
22 longer available. It had been inspected by, by plaintiff's
23 counsel and pictures had been, been taken but it was not
24 available to be presented to the jury, and the Court entered
25 an adverse inference instruction that says, when evidence is

1 lost or destroyed by a party, an inference may be drawn by
2 the jury that evidence, which was lost or destroyed by that
3 party, would have been adverse to that party. That's the,
4 that's the instruction.

5 That inference only goes so far. The Pringle case,
6 which is cited in the plaintiff's paper from a Court of
7 Appeals in 2009, clarifies that to -- once you get the
8 adverse inference instruction, that the burden falls to the
9 plaintiff to make a showing that the document or evidence
10 might reasonably have supported whatever presumption is
11 being requested of the fact finder. The Court goes on in
12 that case to note that the -- that case involved a chair
13 that had been -- a patron in a restaurant had been sitting
14 on and it collapsed and was -- had been thrown away before
15 the, the lawsuit was filed.

16 What the Court there notes is that all that, all that
17 the chair would have shown was that it was of inadequate
18 design for use in a commercial establishment. It would not
19 have gone any further to show that the plaintiff, the
20 defendant, excuse me, knew that the chair was of an
21 inadequate design, and, in that premises liability case,
22 that was the key issue. That was the key question that
23 was -- that required entry of judgment, as a matter of law,
24 in favor of the defense.

25 We have the same thing here. The, the needle, had it

1 been present in Court, would only have allowed the jury to
2 reach a conclusion, which was not in dispute, that the
3 needle was beat up and gross and dingy. Target's witnesses
4 who had seen it acknowledged as much. Having the, having
5 the, the needle present in the courtroom would not have
6 added anything on the question -- the question that is
7 operative here, which is how long that dirty, beat up
8 syringe had been in Target's parking lot.

9 There are cases where expoliation, the adverse
10 inference available from expoliation, has allowed a
11 plaintiff to meet its burden on this temporal element, how
12 long something had been there but those are cases that
13 involve destroyed video footage where you've got evidence
14 and the evidence establishes there was a, there was a camera
15 trained on the area where the hazard formed. There was
16 video that, that reported that during the relevant timeframe
17 and that video was destroyed. Had it been available, it
18 would of shown that the, the hazard was present for some
19 period of time. It's in those type of cases where
20 expoliation and the adverse inference that arose from it
21 allows the plaintiff to exceed their -- to meet their burden
22 of proof.

23 Your Honor, for all these reasons, on constructive
24 notice, we think the Court is obliged to enter judgment, as
25 a matter of law, in favor of Target. There is a very clear

1 burden that's established by this long train of, of cases,
2 cases involving juries that have done what the jury did here
3 and have entered a verdict, and Courts have come in after
4 and said, you know what?

5 They didn't have enough to reach that conclusion. You
6 can't allow that verdict to stand.

7 This Court would be comfortably within the main stream
8 of South Carolina jurisprudence by doing just the same.
9 And, obviously, if the Court does, you don't need to reach
10 all the questions about the excessiveness of the damages,
11 the compensatory damages, the excessiveness of punitive
12 damages, the constitutionality of various things, the -- how
13 the, the punitive damage cap works. All of that stuff is
14 something the Court can set to one side if the Court
15 decides, as we think the Court must, that judgment, as a
16 matter of law, in favor of Target is appropriate.

17 I do, however, want to talk a little bit about punitive
18 damages and the size award. Obviously, 4.5 million dollars
19 against a hundred thousand jury verdict, it grabs, it grabs
20 the eye. That's a multiplier of 45 and we know, from the
21 cages -- cases like Mitchell versus Fortis here in South
22 Carolina, and the U.S. Supreme Court cases of BMW versus
23 Gore and State Farm versus Campbell, that anything over
24 about ten to one is, is suspect and something you should
25 look at.

1 We've, we've addressed all of that constitutional stuff
2 in our, in our brief and I'll talk, talk briefly about it
3 here toward the end. But I think, as a threshold matter, we
4 think the Court could comfortably decide that the plaintiffs
5 were not entitled to punitive damages at all.

6 The South Carolina Legislature has spoke on this in
7 Section 15-32-520(d). The, the Legislature states punitive
8 damages may be awarded only if the plaintiff proves, by
9 clear and convincing evidence, that the harm was the result
10 of the defendant's willful, wanton, or reckless conduct.
11 Your Honor, we think the plaintiffs here have fallen well
12 short of that standard both substantively and certainly with
13 the modicum of proof that they're offered.

14 As the Court knows, there's no evidence that Target
15 knew about this syringe. There was no evidence that Target
16 was aware of a risk of -- in their parking lot of syringes
17 generally. There wasn't anything that was any kind of
18 recurrence.

19 There's no knowledge of any similar safety hazards in
20 their parking lot. There's nothing that suggests that, that
21 something as significant as a syringe would be present in
22 their parking lot, and, therefore, they had to deal with it.
23 Your Honor, I can tell you I've done enough of these cases
24 and I've been on this side when I've had to stand up and
25 I've had to do some explaining about a bad piece of

1 evidence, about a document that kind of puts people on
2 notice that this, this kind of thing is going on, and, boy,
3 you know, and it's an uncomfortable position. We don't have
4 that here. It is really striking just how thin the, the,
5 the proof is on this very point.

6 We hear a lot about -- we also heard evidence at trial
7 about a, quartered evidence I should say, the jury heard
8 evidence about all the things that Target did to clean the
9 parking lot. They had a street sweeper that came once a
10 week. They would do cleanings four times a week, sweeps by
11 the housekeeping staff to pick up anything larger than a
12 golf ball. You had cart attendants who would be on the
13 lookout for big stuff whenever they would go, go to get the
14 carts from the parking lots and bring them back to the
15 store. And you had various ad hoc inspections by the staff
16 or maintenance staff at the, at the, at the store.

17 And we submit, Your Honor, notwithstanding some of the,
18 the, the, I would submit, hyperbole in the plaintiff's
19 brief, that this evidence was not effectively rebutted. If
20 you look at the litany of evidence that the plaintiffs
21 present in their brief, and I won't go through all of it,
22 what you see, what's immediately apparent, is how far they
23 must stretch to put together a case of willfulness,
24 wantonness, conscious disregard, how far they have to
25 stretch.

1 I'll just give you a couple of examples, Your Honor.
2 You hear there's a, a portion of the brief where they
3 mention the cart attendants using cell phones while going
4 out to pick up carts.

5 Well, according to the transcript I read from, Your
6 Honor, there was a motion -- an objection to a photo that
7 showed a cart attendant holding a cell phone and that motion
8 was granted. That's not in evidence. It's just an example.
9 You have to reach for something that wasn't even in
10 evidence.

11 Second, they note that Shelby Brintnall, who's the, the
12 manager, she said well, I only saw -- there's only one time
13 I can remember where I saw that sweeping truck come. Well,
14 what they didn't mention is that she doesn't work on
15 Thursday nights when the, the truck comes. There's no --
16 it's no surprise that she only saw it the one time. That's
17 not enough to refute the evidence that was presented from
18 Mr. Jackson about Target's practice of having that truck
19 come every week.

20 You also have evidence that, from -- they point to
21 testimony from Ms. Brintnall saying they -- acknowledging
22 the importance of keeping cleaning records and they, they
23 observed that, notwithstanding that acknowledgment, Target
24 maintained no records regarding how often the parking lot is
25 cleaned either by a third party vendor or by Target

1 employees.

2 That's misleading. They ignore the testimony from
3 Mr. Jackson about his walk the vibe inspection report, how
4 he kept track of that stuff. And they also ignore the
5 testimony of Ms. Brintnall explaining why they didn't need
6 those records and that's because the, the frequency with
7 which the employees were in and out of the building and in
8 the parking lot.

9 They point to the testimony where Ms. Brintnall
10 testified that the company, they, according to them, has no
11 policy for ensuring the parking lot is regularly cleaned
12 through safety sweeps. This, this gets to, I found amusing,
13 I obviously was not here for the trial, but I did read the
14 transcript, and you read through this, this attempt to
15 characterize, focus on that term safety sweep.

16 Well, they don't call it a safety sweep but they do go
17 clean the parking lot and she explained that they don't have
18 anything, Ms. Brintnall explained, that they don't have
19 anything called a safety sweep but all employees keep an eye
20 out in the parking lot, and if they see something, they let
21 us know and they pick it up and they put it in the trash,
22 whatever it may be, and they did have routines for regular
23 cleaning.

24 I mention this, Your Honor, I don't want to go through
25 all these things, I mention this because, when you think

1 about clear and convincing evidence, it's not this. It's
2 not stretching these things in a way that contradicts
3 testimony offered by witnesses piecing together examples of
4 what I would submit is ineffective impeachment or to, to
5 suggest that what these -- all of these practices that they
6 said they were doing, they weren't really doing. I don't
7 think they got over that hurdle, and if they have to reach
8 that far, and if they have to do things like mischaracterize
9 the record about the cell phone, that's a powerful
10 indication they don't have clear and convincing evidence
11 that Target was willful, wanton, or acted in conscious
12 disregard.

13 If the Court agrees with me on that, agrees with us on
14 that, you don't need to get into all this other questions
15 about the, the, the cap or the constitutionality or anything
16 like that.

17 Let me hit a few more, more points and then I want to
18 address the cap. We also ask, in our paper, Your Honor, for
19 a new trial absolute and that the standard on this is pretty
20 clear. It's articulated and rearticulated in multiple
21 cases. I'll quote from the McCourt, Ex Rel, McCourt versus
22 Abernathy case, which, which says it as well as any other
23 case.

24 "When a verdict is so grossly excessive so as to shock
25 the conscience of the Court, and clearly indicates the figure

1 reached was the result of caprice, passion, prejudice,
2 partiality, corruption, or other improper motives, then the
3 Trial Court must order a new trial absolute."

4 Now, the, the same standard, I would note, is found in
5 the statute, punitive damages statute. It's at 15-32-520
6 Subsection F. It gives the Court the same injunction to
7 review all punitive damages award to make sure that they're
8 not the result of passion, caprice, and the sole criterion
9 under the, the jurisprudential standard, not the, the common
10 law standard, is the size of the verdict. That's it. It's
11 the one thing the Court's to focus on is the size of the
12 verdict. And, boy, 4.5 million on this evidence, we think,
13 is a clear example of a verdict that is motivated by
14 passion, caprice, or prejudice.

15 Again, we don't think punitive damages should of been
16 awarded at all. This, this -- something else was going on.
17 We can only speculate about that. We don't have access to
18 what was going on in the jury room but it sure looks to us
19 like something else, something beyond the record, was what
20 was grabbing the jury's attention.

21 I don't -- we, we, in our papers, we talked a little
22 bit about some of the arguments that were made and speculate
23 as to what that might be. I won't do that now but the size
24 is clearly -- it clearly is arresting on this record.

25 Let's talk a moment about the cap, Your Honor.

1 Obviously, 4.5 million is well in excess of the cap that's
2 imposed by Section 15-32-530. The way the cap works, in, in
3 nearly every case, according to the statute, is \$500,000 or
4 three times the compensatory award.

5 Now, we have arguments in our brief about why we think
6 the compensatory award is excessive as well and it could be
7 reduced, under the remittitur rules, and even as big
8 enough -- it's even big enough, we think, to justify a new
9 trial absolute. We'll rest on our papers on that. But if,
10 if it is \$100,000, the cap would seem to indicate that we
11 get to \$300,000 or \$500,000, excuse me, which is the, the
12 higher of the two. And so that pretty clearly would apply
13 here. It would put us down into that, that range.

14 The plaintiffs make really two arguments in response to
15 that. First, they say we waived it. We didn't put it in
16 our answer. It was an affirmative defense and we waived it
17 and no South Carolina Court says that, and we submit that
18 the statute does not allow for that interpretation.

19 First of all, there are three features of the statute
20 that I think indicate that the Legislature never intended
21 for this to be an affirmative defense.

22 First, in Section 510, the statute talks about -- the
23 Legislature talks about the process that would apply
24 whenever a plaintiff wants to seek punitive damages. It
25 says that the plaintiff has to especially plead it and it

1 forbids the plaintiff from specifying an amount. That's
2 significant because, on the pleadings, the defendant does
3 not know whether the plaintiff even seeks something that
4 would exceed a potential compensatory award. Without that
5 amount, the cap doesn't come into, into play.

6 Second, even though the Court specifically talks about
7 pleading with respect to the plaintiff's obligations, it
8 imposes no similar obligation on defendants. That's
9 meaningful. That come -- that the Legislature would treat
10 this type of requirement one way, in one context, and be
11 silent on it in another indicates that they did not think
12 that the defendants had any pleading obligation with respect
13 to the statute, and that's, that's under fairly well
14 accepted principles of statutory interpretation.

15 Third, feature of the statute. Section 15-32-520
16 Subsection F mandates, mandates the Court to review the
17 award to determine whether it is excessive. It specifically
18 says, it's in Tab 19 of my colleague notes, it's in Tab 19,
19 and it says that the Court shall review all awards to
20 determine whether they are excessive, whether they are
21 motivated by passion or caprice.

22 Of course, the, the punitive damages statute itself
23 says what is excessive. It provides an example of, of how a
24 cap works. And so, even if, we would submit, even if we had
25 not even filed this motion, Your Honor, you still would of

1 had the obligation to look at the award and decide whether
2 it was excessive, excessive.

3 Now, there are, as I mentioned, there is no South
4 Carolina case on this cap to deciding whether it's a, it's
5 an affirmative defense or not but there are cases from a
6 number of other jurisdictions that have dealt with similar
7 caps and we've included those in our papers. We --
8 obviously this was in a response brief. So, we haven't had
9 a chance to put that on paper for you but I would point you
10 to those cases.

11 The, the best one, and it deals with an almost
12 identical cap to South Carolina's, is the Zurilla case from
13 Texas. It's behind Tab 28. And they conclude that that cap
14 is not an affirmative defense.

15 Behind Tab 22 is the Snyder case from Minnesota, and
16 that case too concludes that caps like this, on damages, are
17 not a, an affirmative defense.

18 Behind Tab 21 is a decision from the Ninth Circuit
19 interpreting California law called Taylor. Same result
20 there.

21 Then behind Tab 25 is the Anderson case from Wisconsin
22 reaching the same result.

23 Behind Tab 24 is the Groom versus Watts case from the
24 South Carolina Supreme Court. Now, that didn't deal with
25 the punitive damages cap or even a, a cap on, on

1 compensatory damages but what it did address was how the
2 setoff, the statutorily mandated setoff, would work in
3 uninsured motorist cases, and you had a similar argument
4 raised there, that the defendant had not raised the setoff
5 as a defense, and the Court notes well, that's not a --
6 that's -- it's not a, it's not a defense and they point to
7 two reasons.

8 First, it's a mandatory statutory obligation that it
9 apply and it didn't change the proof at trial. The Court
10 notes, notes elsewhere that there was no -- certainly no
11 surprise because it was in a statute.

12 We think those same reasons apply, would apply here
13 once the Supreme Court has a chance to address this issue.
14 It's a mandatory statutory obligation and it doesn't change
15 the proof at trial. Same proof.

16 The Court has some decisions to make about how that
17 proof affects which cap should apply but that's based on the
18 proof that the plaintiffs can offer anyway. It's important
19 to remember that there's no surprise here because, to even
20 seek punitive damages, you have to invoke a statute. You
21 have to invoke the very chapter here that we're, we're
22 dealing with.

23 And so there's, there's no surprise. And, again, the
24 fact that it's mandatory, the way the specific statute is
25 worded, we think puts it in play in every case, regardless

1 of what is pleaded, and regardless of what the defendant
2 moves for at the end.

3 Plaintiffs also argued that the statute is
4 unconstitutional. That it -- it impinges on the right to a
5 jury trial.

6 Now, there are cases in other jurisdictions that have
7 ruled as the plaintiff would ask this Court to rule. South
8 Carolina, though, has ruled in another case, this is the
9 Wright case that's behind Tab 23, that caps like this one,
10 not the specific cap, but caps like it do not run afoul of
11 the right to a jury trial. We think that case quite readily
12 answers the question here and they say -- and this is, this
13 is at the, if you're looking at the case, it's Page 6. It's
14 in the first column down at the bottom.

15 They say we find that the limitation on recovery as set
16 forth in the Tort Claims Act does nothing more than
17 establish the outer limits of a remedy provided by the
18 Legislature. A remedy is a matter of law and not a matter
19 of fact. Although a party has a right to have a jury assess
20 its damages, he has no right to have a jury dictate, through
21 an award, the legal consequences of its assessments.
22 Accordingly, we find that the fundamental right to a jury
23 trial has not been infringed upon.

24 Your Honor, at -- whenever the Supreme Court or the
25 Court of Appeals takes up this question, we think their

1 hands will be tied by this case. I think it will be -- it
2 will reach the same result and, and they'll fall -- they'll
3 put themselves comfortably in line with the vast majority of
4 other jurisdictions around the country that have addressed
5 this question.

6 Again, there are few outliers. Missouri is one. The
7 plaintiffs have called the Court's attention to that one
8 case. But that is the exception. It's a distinct minority.

9 Finally, Your Honor, we note that, when all is said and
10 done, the Court will need to be mindful of the due process
11 implications of whatever amount of punitive damages the
12 Court finds appropriate as compared to the compensatories
13 that were awarded. We've argued, in our paper, for a lot.
14 We think compensatory damages are excessive.

15 Should the Court conclude that those damages should be
16 reduced, there could come a point at which the ratios
17 mandated by cases like Mitchell versus Fortis here in South
18 Carolina, how those, those ratios should apply. So, for
19 example, we note that, that plaintiff's counsel argued for
20 \$10,000 in compensatory damages. Should the Court conclude
21 that that's the appropriate level, you get to ten to one at
22 about a hundred thousand dollars. If we go beyond that, you
23 would need to -- you may need to adjust the award, the
24 punitive damages award, further to satisfy due process
25 irrespective of how the cap would operate.

1 The cap might dictate, in those circumstances, \$500,000
2 but paired against a \$10,000 compensatory award, you would
3 be to -- it would be too high. The Court would need to,
4 need to come down yet further. It's just math at that
5 point.

6 I just call that to the Court's attention so that it's
7 not, it's not locked out.

8 Your Honor, I appreciate your patience. I realize I've
9 been talking for a while and we, we very much appreciate
10 your, your attention in this matter.

11 Thank you.

12 THE COURT: Yes, sir. Thank you.

13 MR. BUTLER: May it please the Court?

14 THE COURT: Yes, sir.

15 MR. BUTLER: Your Honor, again, I'll just start off by,
16 by saying that I very much appreciate the opportunity to
17 come before the Court.

18 I'll begin just by restating the obvious here and
19 that's that we're here because of various challenges that
20 Target makes to a, to a jury verdict.

21 In reviewing the trial transcript, I noticed that Your
22 Honor said, at the very beginning of the trial, you told the
23 jury that a trial before a jury is a fundamental part of our
24 democracy, and that is, that is certainly true and that's
25 why so much deference is afforded to that jury verdict.

1 This is simply not a case of an out of control jury.
2 The evidence, at trial, showed reckless indifference on the
3 part of Target to the safety of its customers. Target
4 rested, at trial, without even putting on a case. The only
5 exhibit that it put into evidence showed, at best, that it
6 included false information and, at worse, that it was
7 intentionally falsified and it lost or destroyed what its
8 own witnesses called the central piece of evidence in the
9 case.

10 So, despite Target's attempt to characterize this as
11 some frivolous lawsuit, it's really no surprise that the
12 jury rendered such a substantial verdict in this case.

13 One of the things Target tries to do is they
14 continually highlight the facts that the Garrisons didn't
15 ask for some astronomical amount of money but I'm not quite
16 sure how that, that benefits their argument at all. All it
17 really does is show that the Garrisons were far more
18 reasonable in this case than, than Target ever was, and
19 lawyers make strategic decisions all the time such as
20 whether to accept settlements or whether to accept offers,
21 offers of judgment and those strategic decisions have
22 consequences.

23 Sometimes a jury renders a defense verdict. Sometimes
24 it renders a plaintiff verdict. But those strategic
25 decisions that parties, parties and lawyers make, they're,

1 they're often stuck with them when, when they make those
2 decisions.

3 We make the point in our brief that this is not the,
4 the first time that Target had employed the same strategy
5 that they employed. Attached as Exhibit 1 to our brief is
6 the Cantrell case and that's where -- a case where a federal
7 jury awarded the plaintiff \$100,000 in actual damages and
8 3,000,000 in punitives. The same motions that are before
9 the Court now were, were brought before the Cantrell Court,
10 and all of them were, were denied in that case. And we
11 think the same result -- we should have the same result
12 here.

13 I'll try to address the different arguments made by
14 opposing counsel. I'll start, of course, with constructive
15 knowledge.

16 The Court properly instructed the jury, at Page 531 of
17 the record, that it -- the plaintiff's burden was to show
18 that the needle had been in the area sufficiently long
19 enough so that the defendant was a -- was negligent in
20 failing to discover and remove it. That's the instruction
21 that both parties agreed on.

22 No where in that instruction was that there had to be
23 direct evidence of how long the needle had, had, had laid in
24 the parking lot and that's, that's not the law in South
25 Carolina or anywhere else. It's just simply not the rule

1 that, that a plaintiff must prove exactly how long an object
2 has been there to satisfy that sufficiently long enough
3 standard.

4 The reason that is so is that -- we make the point in
5 our brief. The Courts have addressed this over and over
6 again. The reason that's the rule is because the defendant
7 is in control of the premises and the evidence upon which,
8 which knowledge is based. So, it would be an insurmountable
9 burden to place that on the, on the plaintiff to show
10 exactly how long an object has been there and that, that
11 simply is not the law.

12 He, counsel, obviously relies on various older cases
13 from the South Carolina Supreme Court. None of which
14 directly say you've got to say, with direct evidence, how
15 long an object, a dangerous object has been on the premises.
16 None of those cases say that. But I would cite to the Court
17 the major case that we cite in our brief and that counsel
18 obviously has relied on, and that case actually goes through
19 a survey of, of different cases under South Carolina law and
20 shows that the, the question of constructive knowledge is
21 regularly a question for the jury as it was here. As the
22 Court knows, if there was only a scintilla of evidence, then
23 the jury was entitled to make that determination.

24 One thing I'll start with is I think it, it was very
25 telling that, in the closing argument of Target's own

1 attorney, at Page 494 of the transcript, it was said that
2 the needle could of been in the parking lot for at least
3 five hours because a Target employee, Mr. Jackson, testified
4 that he left at 2:30 that day, and then he told the jury
5 Mrs. Garrison was injured at 7:30 that night. So, even
6 Target's own suggestion that it was there for at least five
7 hours, and the jury was entitled to determine that that was
8 a sufficiently long enough time that it should of been
9 discovered.

10 Now, that's just a starting point. There's mountains
11 of other evidence and other ways that you can prove
12 constructive knowledge but I think that's a telling point
13 that was made during, during closing argument.

14 There was evidence that allowed the jury to infer that
15 it was there sufficiently long enough, because of the
16 inadequate cleaning and inspection practices, and we
17 detailed all of this evidence at Pages 10 and 11 of our
18 brief. But a sample of that evidence, I'll just recount for
19 you here, and that, that's that there were no records
20 showing that any cleaning was actually ever done. The only
21 inspection documents, again, that were placed into evidence
22 were, were obviously false, and the jury was entitled to
23 infer that it was intentionally doctored.

24 There was testimony that the parking lot consistently
25 was in a dirty condition, and Target's position that they

1 regularly do this cleaning, it was impeached with evidence
2 that there was a bolt that laid in that parking lot for four
3 months and that there was a rod that remained there for 13
4 days. That testimony came -- that testimonial evidence came
5 in without objection as impeachment evidence. So, the jury
6 was entitled to infer that what Target said about its
7 cleaning practices didn't actually happen.

8 The -- they're also the same -- and the same thing goes
9 with the inspect practices. Target's main defense is that
10 well, we put on evidence that we clean the parking lot and
11 that we inspected the parking lot. But the jury was
12 entitled to not believe the story that, that Target tried to
13 sell them and there's all kinds of evidence in the record
14 that impeached what those witnesses said.

15 The Target, the Target employee responsible for the
16 parking lot couldn't even remember the name of the cleaning
17 company that supposedly came. There was evidence from
18 Mr. Garrison that, once he found out that Target's position
19 was that it came every Thursday night, that he went and
20 camped out at Target and it never came.

21 So, all of this evidence, there only need be a
22 scintilla of evidence that would allow a finding of
23 constructive knowledge and all of this evidence impeached
24 Target's position and entitled the jury to, to find in favor
25 of Target -- in favor of the plaintiffs as they did.

1 There also was evidence that allowed the jury to infer
2 that it was there sufficiently long enough because of the
3 condition of the needle. This comes from 11 and 12 of our
4 brief.

5 Witness after witness testified about the condition of
6 the needle and how it was found in an area next to old and
7 weathered trash, how it had dings and, and indentions on, on
8 this needle, about the condition of the needle. There also
9 was testimony from witnesses that the syringe appeared to
10 have been in the parking lot for a long period of time,
11 which constitutes opinion testimony that Target didn't
12 object to at trial, and they say that the Garrisons were the
13 only people that, that made that observation at trial. But
14 that's, that's not accurate. The -- Target's own manager
15 testified that it appeared to her that it had been there a
16 long time.

17 And that type of opinion testimony is, is admissible
18 and we cite cases in our brief, the Evans case is one in
19 particular that says you can infer constructive knowledge
20 both from the condition of the dangerous object and the
21 opinion testimony of the, of witnesses. That's enough to
22 allow the jury to infer the constructive knowledge.

23 A corollary that goes along with the idea that you can
24 infer it from looking at the object and making a
25 determination of whether it had been there a sufficiently

1 long enough time is the expoliation doctrine. That you
2 don't have the object for the jury to witness, then they're
3 able -- you're able to infer constructive knowledge from the
4 party that they believe lost or destroyed it. And Your
5 Honor gave that instruction to the jury and they were
6 entitled to infer constructive knowledge from the very fact
7 that, that Target had lost or, or destroyed that needle.

8 The counsel also mentions the, the Pringle case and we,
9 we, we brought the Pringle case up in our brief, not counsel
10 opposite, and we did so because it helps us. And what the
11 Court said in that case was that there could be no inference
12 of constructive knowledge because of that chair because
13 there had -- there was no testimony in the case that that
14 chair was in a dangerous condition. In other words, the
15 jury didn't need to see it because there was no evidence
16 that it actually was in a dangerous condition for them to be
17 able to infer anything at all. That's quite different in
18 this case.

19 Their own witness testified that it was the central
20 piece of evidence in the case, and there was testimony after
21 testimony about the, how the needle appeared to have been
22 there for a long period of time. So, it obviously would of
23 been helpful for the jury to be able to actually see and
24 hold that needle and look at it themselves and they were
25 able to infer constructive notice by that, by the

1 expoliation instruction alone, Your Honor.

2 So, all of these -- for, for all of these different
3 reasons, the jury was entitled to infer constructive
4 knowledge. There is no single way -- you have to look at
5 all the evidence, both, you know -- Target would argue --
6 advocate for a rule that essentially rewrites the
7 constructive notice doctrine out of the law. They would say
8 you have to have actual knowledge of how long a dangerous
9 object is in a -- on a particular premises and you got to
10 have direct evidence of such and that is simply not the law.

11 The Supreme Court has said over and over again that
12 constructive notice is a legal substitute for, for actual
13 knowledge and there's plenty of evidence in this record that
14 would allow, that would allow the jury to infer that.

15 Your Honor rejected that argument or that argument was
16 rejected at the summary judgment stage. Your Honor rejected
17 it at the directed verdict stage. It should be rejected for
18 a third time as well.

19 Now, counsel obviously didn't mention proximate cause
20 today. That's, that's another argument made in the brief.
21 It's one they didn't raise at summary judgment but I would
22 submit that that's because -- the, the issue of comparative
23 negligence is clearly a question for the jury.

24 Target had every right to get in front of the jury and
25 argue that Mrs., Mrs. Garrison's actions in swatting that

1 needle were unreasonable and they should find fault to her
2 and they exercised their right to do so. And the jury was
3 not impressed at all with that argument. They assigned no
4 fault to her as they were entitled to do under the law. So,
5 that, that definitely provides no basis for judgment as a
6 matter of law.

7 Then we have the question of, of, of punitive damages
8 and judgment as a matter of law on the issue of punitive
9 damages. And counsel obviously cherrypicked a couple of the
10 pieces of evidence that we highlight in our brief. But if
11 you actually look at the brief, we go on bullet point after
12 bullet point and page after page of all the mountain of
13 evidence that, that is included in this record. The
14 argument is built on the suggestion that Target would have
15 to have knowledge that that actual -- that needles were in
16 the parking lot before. That's not the kind of reckless
17 conduct that we're talking about for purposes of punitive
18 damages.

19 Target's own witnesses testified that they knew that
20 they had a duty and an obligation to keep their parking lot
21 safe. The question is whether they were reckless in doing,
22 in doing that and keeping the parking lot clean, and they
23 don't have to have -- they don't have to have knowledge of
24 this particular circumstance to injure Mrs. Garrison. And
25 what we saw from the record is that it -- of, of the -- any

1 cleaning practices and inspection practice, the jury was
2 entitled to infer that that was virtually, virtually
3 nonexistent.

4 The Court decided -- this Court decided, at the
5 directed verdict stage, that the issue of punitive damages
6 had to go to the jury. At Page 457 of the record, Your
7 Honor correctly laid out the standard, and that is that the
8 question of punitive damages must go to the jury when there
9 is more than one reasonable inference as to whether Target's
10 behavior was reckless, willful, or wanton, and we cite the
11 case that backs that proposition up on Page 115 of our
12 brief.

13 When you view the evidence in the light most favorable
14 to Denise Garrison, as this Court is obligated to do, there
15 really shouldn't be any doubt that there's sufficient
16 evidence to permit a reasonable inference of recklessness.
17 A red herring that they, that they make in their brief is
18 that they use this phrase conscious disregard, and then they
19 try to equate it with Target not having actual knowledge of
20 the syringe, and that gets back to what I was talking about
21 earlier. That's just an attempt to, to confuse the
22 standard.

23 The law is, as we explain on Page 15 of our brief, that
24 there simply has to be negligence so gross that it equates
25 to recklessness. In other words, if there's any evidence in

1 the record that suggests that Target was reckless in keeping
2 its parking lot safe, then that is enough to trigger the
3 question of punitive damages. There's no rule, rule of law
4 to support their suggestion, which they never come out and
5 flatly say, but the suggestion is that punitive damages
6 could never be available in a constructive knowledge case,
7 and that, and that's not the law and no case supports that.

8 So, once you dispose of that faulty premise that the
9 argument is, is based on, you get into this mountain of
10 evidence from which the jury could, could of inferred and
11 did infer that Target was reckless.

12 It's whole argument is that punitives shouldn't be
13 awarded because we cleaned and we inspected. We had a
14 cleaning truck and we had employees that inspected.
15 Therefore, we were not reckless.

16 That certainly was their position at trial. But the
17 evidence, all of the evidence impeached that position. The
18 jury did not believe that position. So, their obligation is
19 to consider the, the, the evidence in the light most
20 favorable to the, to the plaintiffs. And so it doesn't
21 matter that they had witnesses that got up there and said we
22 cleaned the parking lot once a week. There was contrary
23 evidence that said no, you didn't. And, and that's what
24 matters here is, when you view that evidence in the light
25 most favorable to the plaintiff, then, then you should --

1 you see their reckless conduct.

2 Again, we recount this evidence. This goes on for
3 three pages in our brief about all the mountains of evidence
4 that there is to support the, the inference of reckless
5 conduct but I'll recount a few of them for you.

6 The jury was entitled to believe that Target did not
7 actually clean its parking lot through a, through a third
8 party vendor like they claimed to because John Jackson could
9 not even recall the vendor's name. There were no records or
10 video footage of the vender having actually cleaned. There
11 was no evidence of any written cleaning policies or
12 procedures. There was evidence that the parking lot was
13 consistently dirty and the vendor argument of Target was
14 impeached with evidence that a huge bolt remained in the
15 parking lot for at least four months and that a spring and
16 rod remained in the parking lot for at least 13 days, and it
17 also was impeached by Clint Garrison's testimony who said I
18 came to the parking lot.

19 I stayed there overnight to see if this, this cleaning
20 truck that you claim comes every week if it really comes.
21 And he told the jury that it didn't come. And the jury was
22 entitled to believe that testimony and it, and it did
23 believe that testimony.

24 The jury was also entitled to believe the other defense
25 that Target or to disbelieve the other defense that Target

1 mounted to the punitive damages challenge and that that was
2 that they have inspection practices that make them not
3 reckless. And, again, some of the evidence there was that
4 there were no reliable records or, or video footage of any
5 inspections and, in fact, the only inspection document that
6 they placed into evidence was false and the jury could of
7 inferred that -- the jury heard that that was a computerized
8 document and somebody inputs the information. The jury was
9 entitled to find that that was intentionally falsified by
10 the company and that's the only document that they tried to
11 put into evidence.

12 There were no written inspection policies or procedures
13 and there was evidence that the parking lot was consistently
14 dirty again. The inspection argument also was impeached
15 with the evidence that cart attendants, cart attendants who
16 supposedly are charged with conducting the inspections are
17 distracted while retrieving the carts by items in their
18 hands.

19 Now, counsel opposite said that there was an objection
20 to a picture and it didn't come into evidence. That's true.
21 But there was testimony that was not objected to and the
22 testimonial evidence was just as good to impeach that
23 position and that is in the record. This inspection
24 argument of Target was also impeached with evidence that a
25 huge bolt remained in the parking lot for at least four

1 months, and that a spring rod remained there for 13 days.

2 So, all of this evidence, Target doesn't get to, to
3 stand before the Court and say we can't be -- we were not
4 reckless because we did X, Y, and Z when there's a --
5 there's evidence on the other side that says no, you didn't
6 do X, Y, and Z. The jury heard that competing evidence and
7 they, and they, they chose one side over the other as
8 they're obligated to do.

9 And so all of this evidence shows both recklessness and
10 a conscious disregard of the duty to maintain that parking
11 lot because Target's employees testified we know that we've
12 got to maintain it. We know that keeping it clean is
13 important. But yet, the evidence showed that, even though
14 they knew that, that's, that's not what happened. That's
15 not what they did and that is the, by definition, that's
16 textbook reckless, recklessness, Your Honor.

17 Target's employees also testified at trial, again, that
18 the company advertises to mothers and their children and
19 they try to get people to come there, and they understand
20 the importance of having good cleaning inspection practices.
21 But yet, again, they didn't do it. So, that shows the
22 conscious knowledge of the, of the obligation and then the
23 recklessness -- the reckless disregard of the conscious
24 knowledge.

25 We also cite an independent basis for punitive damages

1 on Page 18 of our brief and that is Target's loss of the
2 needle.

3 Now, we cited an Ohio case and it holds that, even in
4 states like South Carolina where expoliation is not an
5 independent tort -- in some cases -- in some states it is.
6 In South Carolina, it's not. And it's also not in Ohio.
7 But what that case suggests is that, when you have -- that
8 you still could award punitive damages off of the
9 expoliation instruction even though it's not an independent
10 tort.

11 The implication is that you could infer reckless
12 conduct from the loss or destruction of the evidence and
13 that's exactly what we have here. The jury was entitled to
14 infer reckless conduct simply from the loss or destruction
15 of that needle, and, in fact, it goes right along with the
16 fact that they were reckless in the needle being there in
17 the first place. So, it's just recklessness on top of
18 recklessness.

19 So, the question of punitives really just comes down to
20 viewing the evidence in the lights most favorable to Denise
21 Garrison, and when that's done, I think it's clear that
22 there is sufficient evidence to permit a reasonable
23 inference of reckless conduct, which is all that is
24 required.

25 So, there's no basis at all for this Court to reverse

1 the decision that it already made at the directed verdict
2 stage.

3 On the new trial issue, there is -- there's also no
4 basis at all for granting Target the extraordinary remedy of
5 a new trial. Target's argument focuses almost entirely on
6 the amount of the verdict, but the, the new trial; a new
7 trial shouldn't -- should not, and under South Carolina can,
8 South Carolina law, can not be granted simply because a
9 Court believes that a jury verdict is unduly liberal. That
10 comes from Page 20 of our brief where we cite the cases.

11 In short, again, I would say that that's the risk that
12 a party takes by going to trial. Sometimes there's, there's
13 no award at all. Sometimes they're high. There's a high
14 award. But parties don't get a redo just because they
15 don't, they don't get the results that they hope for.

16 They talk about actual damages award, and the actual
17 damages here of \$100,000. That is certainly not out of
18 bounds. I do a lot of employment work, Your Honor, and
19 it's, it's regularly that Courts uphold 150, 200, 250,000 in
20 noneconomic damages over a person losing a job.

21 In this case, we've got significant, and we cite an
22 employment case in our brief where I think there's \$135,000
23 award of noneconomic damages where South Carolina Court of
24 Appeals says that that was not -- that didn't suggest any
25 passion or prejudice by the jury.

1 Here we've got both physical and emotional injuries.
2 We -- there's testimony and evidence that Denise had a blood
3 field wound on her palm. She was bedridden. She had to
4 undergo HIV and hepatitis tests. She had to take medicine
5 because of those conditions and she suffered adverse effects
6 such as being lethargic, dizziness, vertigo, nausea, upset
7 stomach. She was described by witnesses as being in a
8 zombie like state during the, during the treatment. She
9 cried and worried and had suffered terrible nightmares.

10 The family was deprived of quality time together. The
11 husband missed work. The husband's mom was forced to assist
12 the family. The daughter suffered emotional distress.
13 Denise suffered embarrassment of having to ask for help
14 going to the bathroom, and the family was robbed of intimate
15 and close conversations and they had to use protection
16 during intercourse.

17 You don't hear about any of this stuff in, in the -- in
18 Target's brief even though they had the obligation to
19 consider the evidence in the light most favorable to the
20 non -- to the, to the jury verdict. And so all of this
21 evidence certainly justifies the approximately \$96,000 worth
22 of noneconomic damages and, in fact, the jury would of been
23 well within bounds to, to, to award far more than, than
24 that.

25 The -- counsel also, also said several times about they

1 only asked for \$11,000. That, that is not at all true.
2 That was a cherrypicked portion of the closing argument from
3 Mr. Hawkins where he was trying to explain to the jury how
4 it, how it might think of damages and it gets that \$11,000
5 amount by going through the economic portion of the award.
6 But actual damages, of course, are built on both, both
7 economic damages such as medical bills and lost wages and
8 the like. But it's also built on noneconomic damages such
9 as pain and suffering, physical injuries, all of these
10 things, and they just totally omit any discussion of that
11 and that's the bulk of the -- that's the bulk of the damages
12 in this case.

13 In fact, because Mrs. Garrison was, was so reasonable,
14 the testimony was that, after she suffered this injury, she
15 went to -- she tried to go to a free health department
16 clinic. She went somewhere where their infectious disease
17 doctor was a volunteer. So, she did everything she could do
18 to avoid these, these high economic damages, and that's why
19 they were lower, but that doesn't, at all, discount her
20 ability to be compensated for the noneconomic damages that
21 this record certainly supports.

22 Nor, nor is the punitive awards out of bounds either.
23 We cite case after case in our brief, and, in fact, we even
24 cite ones against Target that demonstrate that the punitive
25 damages award here was justifiable. Those cases hold that

1 similar or even greater awards for far less reckless
2 conduct.

3 Again, we, we recount the recklessness in our brief.
4 The company had no policies or recordkeeping related to
5 cleaning or inspection. The -- there was evidence that
6 permitted the jury to believe that it lied about a third
7 party vendor performing and cleaning function. There was
8 evidence that permitted the jury to believe that Target
9 falsified the only document that it placed into evidence in
10 the case, and there was evidence that this huge bolt
11 remained in the parking lot for four months and that the
12 spring rod remained in the parking lot for, for at least 13
13 days, and Target's own employee testified that they'd done
14 nothing to change. From the time this injury happened, from
15 the time the jury decided the case, nothing at all had
16 changed about their, their practices.

17 There was evidence that Target had an investigator take
18 a reported statement from Mrs. Garrison while she was sick
19 and then they denied her claim. There was evidence that
20 they lost what was the central piece of evidence in the
21 case. All of this supports a determination of recklessness
22 in the case and all there need be is an inference that would
23 allow a jury to, to make that determination and it's just
24 evidence after evidence on this record.

25 The only other thing that, that Target tries to rely on

1 to suggest that, that this jury was motivated by passion and
2 prejudice, they've said here today that they could speculate
3 what it might be but that that, of course, is not in the
4 record and not a basis for a decision. I would submit that
5 it's, it's the evidence that, that allowed the jury to make
6 that determination but the only other thing that they even
7 hint at is, is the closing argument by plaintiff's counsel.

8 There is -- there are various problems with that. For,
9 for starters, Target waived that argument. It's settled law
10 that if you do not contemporaneously object to a closing
11 argument, then that argument is waived. There, of course,
12 was no objection by either side during oral argument.

13 The other, the other point is they say Target mentioned
14 how big of the company was and how, how much money Target
15 makes ten different times. Well, he, he neglects to mention
16 that Target's counsel said that five times himself, and we
17 cite the cases in our brief that says, you know, they say
18 that you can't engage counsel opposite in a battle and then
19 come back and, and protest it when it doesn't work out for
20 you and that's what we have here.

21 He, Target's counsel, engaged in the same type of
22 behavior, and then failing all of that, this Court also
23 told, told the jury that nothing that, that the lawyers tell
24 you, their comments, are not evidence. Mr., Mr. Haynsworth
25 repeated that himself, I think, in his closing. So, even if

1 it was not waived and even though Target's counsel engaged
2 in it, and it was cured at the, at a very minimal by this
3 Court's instructions, and that, that's the case law on that.

4 So, you're really left only with them trying to suggest
5 that the amount of damages was out of whack, and, again, I
6 would say that's a, that's a one-sided view of the evidence
7 and that we don't see in their brief. So, I would just
8 reiterate that they're certain risks associated with going
9 to trial and that the parties don't get a redo just because
10 there's a, a high award in the case. There's no reason for
11 having a new trial.

12 Then there's the remittitur question finally. Target
13 asked for a remittitur on constitutional grounds and, under
14 the Fairness And Civil Justice Act caps, the punitive award
15 should not be remitted under, under either. I'll start with
16 the caps because I think that's where counsel opposite
17 started.

18 The -- he said that there's no South Carolina case
19 that, that suggests that it's an affirmative defense that
20 has to be waived, and I would submit that that's inaccurate,
21 Your Honor, and I would like to think Target submitted some
22 cases to you before this hearing started. I'd like to
23 tender one to the Court with the Court's permission.

24 THE COURT: Sure.

25 Do you have a copy for opposing counsel?

1 MR. BUTLER: I, I do, Your Honor.

2 Your Honor, the case I would tender to the Court is
3 James versus Lister and the question before the Court in
4 James versus Lister was whether a statutory limitation on
5 liability that required certain levels of proof, whether
6 that was an affirmative defense that had to be pled, and the
7 South Carolina Court of Appeals resolved that question in
8 1998 and they determined that it was, and the reason, the
9 reason is simple.

10 They're various caps on punitive damages throughout,
11 throughout South Carolina statutory law. There's a \$500,000
12 cap, there's a two million-dollar cap, and then there's an
13 unlimited cap. All of these caps place certain levels of
14 proof, beyond the common law burden, that a plaintiff would
15 have to prove at trial. For example, the two million-dollar
16 cap. To get to the two million-dollar cap, the plaintiff
17 would have to show that the defendant's conduct was
18 motivated by unreasonable financial gain.

19 What this case says is that, when you have a statutory
20 limitation of liability like that that requires certain
21 burdens of proof, then you have to plead it in your answer.
22 You have to put the plaintiff on notice that they have to --
23 that they're being called upon to prove that during the
24 trial or otherwise you, you waive that, you waive the right
25 to the application of that cap.

1 Counsel opposite talked about a Texas case, for
2 example, and that certainly there's, there's different cases
3 all over the a -- all over the country that hold different
4 things and that's what this case does. This case goes
5 through an analysis of a survey, if you will, of all these
6 cases all over the country and says some states say that
7 these statutory limitations on liability are things that are
8 affirmative defenses that must be raised. Other, other
9 Courts say that they're not. We're picking a side and they
10 picked the side of, if there's a statutory limitation that
11 requires certain burdens of proof to be proven at trial,
12 then you got to plead it in your answer or it's waived.

13 It's notable in this case that Target, Target pled the
14 constitutionality as an affirmative defense in their, in
15 their answers. They just didn't -- they didn't prove --
16 they didn't plead the caps, which didn't put the plaintiffs
17 on notice that they'd be called upon to, to prove these,
18 these other things.

19 And I'd point the case -- the Court just to Page 3 of
20 this case and that, that's where they discuss it here, and
21 they say that Conway argues that we should adopt the
22 reasoning from other jurisdictions which do not require a
23 limit on immunity to plead -- to be pled as an affirmative
24 defense. However, our research indicates that only a few
25 cases in other jurisdictions hold a statutory, statutorily

1 mandated recovery limit, a recovery limit which requires
2 additional proof at trial, does not constitute an
3 affirmative defense. And then they say a far greater number
4 of jurisdictions have concluded either that A, a limit on
5 recovery must be pled as an affirmative defense or a
6 recovery limit could constitute an affirmative defense if
7 the limit affects proof at trial. Given the current
8 holdings, and then they cite various Supreme Court cases, we
9 believe that the view which requires the pleading of
10 liability limits that effect proof at trial is consistent
11 with South Carolina law.

12 So, Your Honor, this, this case is directly on point
13 and it, it holds that, when you have a statutory limit on
14 liability that affects proof of trial, like, for example,
15 the two million-dollar cap and punitive caps of the South
16 Carolina Legislature that they enacted in 2012, you have to
17 raise them in your answer. Otherwise, the plaintiff is
18 prejudiced because they don't know what they're being called
19 upon to prove at trial.

20 So, I would submit, I would submit this case, Your
21 Honor, to, to the Court and say that it's waived and that,
22 that the Court need not reach the question that we make
23 about whether the punitive damages caps are constitutional
24 in any event. We would point out, as counsel opposite,
25 opposite acknowledged, that Courts -- that the States like

1 Missouri have recognized that it violates the plaintiff's
2 right to a jury trial to, to apply these caps and the reason
3 is simple.

4 Just like a Court is obligated to protect the
5 defendant's constitutional rights and perform a remittitur
6 analysis for purposes of the Constitution, it's likewise
7 Constitutionally unfair to have a bright line rule without
8 considering the particular circumstances of the particular
9 case on behalf of the plaintiff. So, so, we would, just as
10 an alternative argument, we'd submit that to the Court.

11 And just as a final alternative, even if this Court
12 were, were to reject the James versus Lister case, and even
13 if the Court were to find that the caps are, are
14 constitutionally adequate, then it's the two million-dollar
15 cap that we're talking about in this case and not the
16 \$500,000 cap because, again, the two million-dollar cap
17 focuses on whether the defendant's conduct was motivated by
18 unreasonable financial gain, and that is the plaintiff's
19 whole theory of the case is that Target put profits over,
20 over safety, and the evidence showed that at trial.

21 There was, there was evidence that Target, Target sends
22 the individuals supposedly charged with inspecting the
23 parking lots, its cart attendants, sends them home early to
24 save on payroll. There was evidence that they look at
25 cameras over the cash registers but don't look at camera

1 footage in the parking lot where people get injured; get
2 injured.

3 So, that's the plaintiff's whole theory of the case.
4 But, again, that's only an alternative argument. The Court
5 need not reach there -- need not reach that issue because
6 it, because it seems clear, under James versus Lister, that
7 Target has waived any application of the caps.

8 Finally, on the constitutional argument, I won't
9 regurgitate my brief there but I would just highlight,
10 again, Exhibit 1, which is the Cantrell case, and they, they
11 performed the constitutional remittitur analysis on this
12 very defendant. There was a hundred thousand dollar actual
13 damages award in that case, three million-dollar punitive
14 award, and the Trial Court rejected a constitutional
15 challenge.

16 Most notably, because none of the purposes of punitives
17 would be served if the award were remitted. The purposes of
18 the punitive damages, of course, are to punish, to deter,
19 and to compensate the victim and what the -- what the
20 Cantrell case says is that there, there could be no
21 punishment or, or no deterrent effect because, when you've
22 got a corporation, a corporation like Target, that they
23 would make this punitive damages award back in merely an
24 hour. So, there's no possibility to punish and deter if
25 they're gonna make this amount of money back in, in one

1 hour.

2 So, that's the, that's the central theme of the
3 Cantrell case. What would be an appropriate punitive damage
4 award for a mom and pop is far different than what it would
5 be for -- from a corporation like Target, and I also would
6 just call the Court's attention to the seminal South
7 Carolina case and that's the Mitchell case.

8 That case, like this one, involved infectious diseases,
9 and the South Carolina Supreme Court held that there, there
10 was a ten million-dollar punitive award was justified even
11 though the actual damages in that case were only \$186,000.

12 What Target neglects to put any focus on is that the,
13 the ratio that we're talking about on the, the second factor
14 of the constitutionality argument is not limited solely to
15 actual damages. It's not a -- it's not just what is the
16 ratio between punitives and actual.

17 You also have to factor in potential harm, the
18 potential harm to the plaintiff, and, and, in this case,
19 the, the potential harm is obviously that
20 Mrs., Mrs. Garrison could of, could of been in far worse
21 state than she actually was, and that other Target customers
22 could of been harmed as well. So, so, you can't neglect
23 this potential harm factor of the analysis.

24 So, ultimately, Your Honor, we think, of, of course,
25 our brief goes into much greater detail on all of these

1 issues. And so, so we would ask the Court to focus on those
2 closely but we, we would ask that all of Target's attack on
3 the jury verdict be, be denied, and the plaintiffs also have
4 their, their motion for costs and interest before the Court.
5 But I will, I will wait on that until the Court says it
6 wants to hear that motion.

7 THE COURT: Okay. Anything in response?

8 MR. SIBLEY: I do have a few things in response, Your
9 Honor, if you, you would indulge me.

10 THE COURT: Yes, sir.

11 MR. SIBLEY: Had a lot of discussion of the Cantrell
12 case, the Federal District Court case from 2008. I was
13 personally involved in that case myself after the, after the
14 trial.

15 Sorry, Knox.

16 The, the -- and I can tell you a couple things that are
17 noteworthy there.

18 First of all, South Carolina Supreme Court seminal
19 decision in Mitchell versus Fortis decided in 2009, the
20 Cantrell decision in Federal District Court was decided in
21 2008. That's a significant factor that cautions putting a,
22 putting a bit of a marker on that case.

23 Second, I'm, I'm limited in what I can say more about
24 that case except that, if you look in the, in the record,
25 you'll note that it was -- that the appeal of that case was

1 dismissed by mutual consent, and I can't talk much more
2 about it than that, and I would submit though that, if
3 counsel was aware of all the details there, he might not
4 have relied, relied on it quite so heavily.

5 THE COURT: Let me tell you too.

6 We actually looked for that case and, and we could not
7 find it but we, we, in fact, we talked to the, the law clerk
8 over there?

9 (Pause.)

10 THE COURT: A trial judge -- who -- was it -- Brucy
11 tried it?

12 MR. HAYNSWORTH: Yes, sir.

13 THE COURT: Brucy tried it.

14 Okay. Yeah, so, we actually tried to follow-up on that
15 case, and having practiced now for a very -- well, I
16 practiced for 25 years, been here three and a half, I
17 figured out what happened in that pretty quick.

18 MR. SIBLEY: Thank you, Your Honor.

19 But, Your Honor---

20 THE COURT: And you don't need to say anymore about it.
21 I just know, I know what happened. I don't, I don't know
22 any details but I know what happened.

23 MR. BUTLER: But, but, Your Honor, I would just tell
24 the Court that we submitted that order as Exhibit 1 to our,
25 our brief that goes through the opinion. So, I would just

1 remind the Court of that.

2 THE COURT: Okay.

3 MR. SIBLEY: So, I would just say that about, about the
4 Cantrell case. I'll move on.

5 I would like to talk quickly about the Mitchell v.
6 Fortis case before I get to some of the other points that I
7 noted during counsel's argument.

8 Counsel mentioned that Mitchell v. Fortis talks
9 about -- somehow endorses a ratio that gets much higher than
10 ten to one. It talks about potential damages. I think we
11 have a confusion in the concept of potential damages.

12 In that case, the allegation of wrongdoing was an
13 improper denial, bad faith denial of insurance coverage, and
14 the person had infected with HIV and had incurred medical
15 bills of \$180,000 up to the point of trial, and put on
16 testimony of an expert witness, an accountant, that went
17 through and documented all of the future damages that that
18 person would incur if insurance didn't step in to pick it
19 up.

20 Now, what the Court found was that's, that's -- those
21 are damages proven at trial. That's the potential harm that
22 they're talking about in that case.

23 It's very different from the kind of potential harm
24 that they're talking about here, which is well, maybe that
25 needle would of been infected with, with an infectious

1 disease and someone would of contracted that disease and you
2 have to take that into account. That's not what, that's not
3 what those cases are about.

4 Ultimately, the best passage from Mitchell versus
5 Fortis, and this is behind Tab 26 of our binder, it's on
6 page 13, second column, second full paragraph, where they
7 introduced this question. They note the next question we
8 must ask is whether a ratio of 13.9 to 1 is grossly
9 excessive. We conclude that it is. They reduced it down to
10 a lower ratio.

11 So, that -- when we talk about the ratios, I, I urge
12 the court to look very closely at Mitchell v. Fortis and the
13 applicable, applicable analysis that the court applies
14 there. That will get you down to those appropriate levels.

15 I want to -- I'll come back to punitive damages here in
16 just a moment. I want to go first back to constructive
17 notice.

18 There's some words that did not escape counsel's mouth
19 during that argument. You did not hear Wimberly. You did
20 not hear Anderson, talking about the Anderson case. Not
21 Anderson County. You did not hear Milliken, Gillespie, any
22 of those cases that set the plaintiff's burden in a
23 constructive notice case. The closest we got was a
24 reference to well, those are just some old cases.

25 Well, Your Honor, they're not old cases. We've got

1 cases from 2014. We got cases from this year applying that
2 same rule, the case they rely on, Major versus City of
3 Hartsville. That case cites Wimberly. That's good law.
4 Old law doesn't make it bad law. It's still good law.

5 Wilson, the case from 2016, this is Judge Anderson,
6 Federal District Courts, cites Pennington from 1969, cites
7 Hunter from 1957. These are not old cases.

8 Counsel also said there's no case that says you have to
9 show how long an object was there. Your Honor, that's just
10 not so.

11 I'd call the Court's attention to, to Tab 10 of the, of
12 our flipbook that we handed up. This is the Court of
13 Appeals decision in the Wintersteen case, which ultimately
14 was affirmed by the Supreme Court, and they're talking about
15 a liquid on the floor, and it's, again, this is Page 3 of
16 that decision. It's in Column 2 and I'm quoting from the
17 paragraph that starts that column. It looks like it's maybe
18 the third sentence.

19 "Thus, while the liquid could have been on the floor
20 for an extended period of time, it is just as possible that
21 it had been on the floor for only moments before Wintersteen
22 fell. Based on the evidence presented at trial, it is
23 apparent that any determination of how long the water had
24 been on the floor would be pure speculation. Wintersteen's
25 evidence, therefore, was insufficient to establish

1 constructive notice." They go on to cite the Wimberly case
2 as an example and cite Pennington as well.

3 Now, you also heard some arguments about what my, my
4 colleague, Mr. Haynsworth said, during his closing argument
5 and he made just this point. You got, you got half of the
6 quote. You didn't get the whole thing. Let me give you the
7 whole thing, Your Honor.

8 They talk about how -- suggest that Mr. Haynsworth
9 conceded that the needle had been there for five hours. He
10 didn't say that. He said -- and this is the paragraph I
11 think we're referring to. They talk about Mr. Jackson.

12 Now, he does, in fact, leave every day at 2:30.

13 "Is it possible that the hypodermic needle hit the
14 ground at 2:45 and it sat there for hours before Mrs.
15 Garrison encountered it that evening about 7:30, but it's
16 equally possible that the syringe fell out of someone's car
17 and was run over five, five minutes before she got stuck.
18 Nobody knows."

19 Nobody knows. That is the question. That is -- that
20 hits every one of those cases, Your Honor. Every one of
21 them. And that's the -- that is the -- that's the thing.

22 Now, we heard, again, a lot of testimony, a lot of
23 argument about the inadequate cleaning and the poor
24 recordkeeping and how that could support an inference. As I
25 mentioned in my opening argument, Wimberly deals with that

1 back in, back long ago.

2 when was Wimberly?

3 MS. OGLESBAY: '69.

4 MR. SIBLEY: '69. I can never remember that.

5 1969. They say that's not the type of proof that gets
6 you over the line. And this is, again, this is the Wimberly
7 says that's being cited here in these, in these 2016 cases.

8 You heard that the condition, a lot about the condition
9 of the needle and how that was the central thing. It's,
10 it's, it's an important piece but it's not sufficient. The
11 Kohl case from the Seventh Circuit applies the same type of
12 law. The Pennsylvania case we pointed to, the banana peel
13 case. All those cases involved arguments by plaintiffs that
14 the condition of the hazard, the way it looked, that
15 wasn't -- that that was sufficient, and in each of those
16 cases, the Court said no.

17 When we get to the discussion of punitive damages,
18 counsel, I think, inflated two concepts and I'd like to just
19 call the Court's attention to it because I think it would be
20 a mistake to follow this suggestion. They argue that, to be
21 entitled to punitive damages, they, they attribute to us the
22 argument that, for them to be entitled to punitive damages,
23 they must show that we had actual knowledge of -- actual
24 notice of the syringe.

25 That, that is not our argument. You can get punitive

1 damages in a properly documented constructive notice case
2 but you need actual evidence of the type that would support
3 it.

4 You know, for example, if this was a -- if syringes --
5 are people getting hurt in the parking lot was a recurring
6 pattern?

7 Right. Not, not -- we don't -- we may not have seen
8 this syringe but, boy, we know people get stuck all the time
9 out in our parking lot.

10 That's the evidence that comes in. That will get you
11 there. That shows we're aware of the specific risks and we
12 aren't doing anything -- we're not doing enough to deal with
13 it. That's one, that's one way you might do that. That's
14 not the evidence in this case.

15 We get to, again, on, on punitive damages, there's,
16 there's -- in the recitation of the evidence that they rely
17 on, they talk a lot about stuff that Target didn't do. We
18 didn't put on this evidence about this thing. We didn't put
19 on evidence about this. We didn't produce additional
20 records. We only put one record in at trial and I think
21 it's important to remember that they bear the burden on this
22 point. It's their job to put in that evidence.

23 You know, back in, in the Wimberly case -- no, it's
24 Anderson, 1971, the Court dealt with a very similar type of
25 argument in ruling that judgment, as a matter of law, was

1 appropriate. This is the banana peel case. This is at Page
2 2 of that decision behind Tab 5. It's a paragraph that
3 begins at the bottom.

4 Plaintiff apparently argues that the defendant's
5 unexplained failure to call as a witness the employee
6 assigned to sweep the floor on the night before plaintiff's
7 injury raises adverse inferences which supports submission
8 of the case to the jury, the jury. If shown -- if so, she
9 misconceives the force and effect to be given such
10 inferences, which are not substantive evidence and may not
11 relieve the party of, of the necessity of proving his case
12 or defense.

13 So, this isn't anything new, Your Honor. This is the
14 same type of -- same types of arguments that have been
15 raised and rejected for decades now.

16 Counsel mentioned, when we -- in discussing our
17 argument for a new absolute, that, that the, the passage
18 that appears in numerous cases that a new trial absolute can
19 not be rewarded just because the verdict is unduly liberal.

20 Now, that's a true statement as far as it goes. In
21 those cases, the Court can award a new trial nisi remittitur
22 and invoke all of that process. That's, that's when it's
23 just unduly liberal, that's what the Court is suppose to do.
24 But there does come a threshold beyond which the verdict is
25 so excessive that it suggests passion and caprice and we

1. submit that we have exceeded that.

2. All the Court needs to find is that you have
3. exceeded -- that the verdict exceeds that threshold. Your
4. Honor, you need find no more. That's it. That's the sole
5. criterion on which that, that decision is based.

6. Finally, I want to talk about the, the Lister case,
7. which deals with the, the cap. The -- look through the
8. Lister case here that counsel, counsel handed to us and a
9. couple of things are noteworthy.

10. First of all, the mandate in that case is not the
11. mandate. Excuse me. The cap in that case is not mandatory.
12. It is conditional. It is conditional on certain proofs
13. being offered by the charitable status of hospitals and that
14. would give you entitlement to that particular cap that was
15. at, at issue there.

16. Also noteworthy, they cite the Broom case. This is --
17. and remember, Lister is a Court of Appeals case. Cites to
18. the Supreme Court's case in Broom and distinguished it.
19. Broom is what we hang our hat on as far as South Carolina
20. authority that the cap is not an affirmative defense, and
21. what the, what the -- what Broom emphasizes is that the
22. statute -- that the setoff was statutorily mandated and was
23. not a matter properly triable to the jury.

24. That's exactly -- remember, the jury's not even suppose
25. to be told about the cap in, in, in the case. So, it's not

1 something triable to a jury, and, Your Honor, you have the
2 duty, again, read -- the way the statute reads, you're
3 suppose to impose that cap even if we don't -- even if I
4 haven't stood up today and we haven't put in a paper. It
5 still -- we'd be in the same place till after you address
6 it.

7 Ultimately, what these -- there are a number of cases
8 that grappled with this. The Zurilla case that we cited to
9 in the -- from Texas, they deal with this exact issue that,
10 that counsel raised about there being an exception, and what
11 they, they, they ultimately rest on is look, yes, yes,
12 there's this exception that may allow you to give a little
13 bit higher, but, first of all, you have to invoke the
14 statute to get punitives at all. So, you can't say you're
15 not on notice that this exists.

16 Second, that exception is your burden of proof. You're
17 the one who has to prove that, to prove that, that, that the
18 case is one that triggers these various things. So, that
19 rests on you. It doesn't rest on the defendant.

20 I urge the Court to look at the Zurilla case. I think
21 it is a terrific distillation of what is and what isn't an
22 affirmative defense and it would be excellent law for the
23 State of South Carolina to follow when that time comes.

24 They argue in favor of the two million-dollar cap.
25 Your Honor, I don't think -- and by the way, the fact that

1 they say they've got enough evidence in this record to get
2 to the two million-dollar cap kind of proves my point that
3 there's no additional proof needed here, at least they
4 didn't think there, there should be, and I know that we
5 heard no argument about additional evidence that they would
6 of put on had they seen this in a -- in our answer.

7 And the answer is there wasn't any. They made the best
8 case they could. They made the strongest case they could.
9 Even still, they do not qualify for the two million-dollar
10 cap because they've only focused on one of the two factors,
11 which I don't think they satisfied.

12 The, the, the cap that -- the exception that they talk
13 about appears at Section 530 Subsection B-1 and it requires
14 the Court to determine, not the jury, the Court to determine
15 whether the wrongful conduct proven was motivated, motivated
16 primarily by unreasonable financial gain and determines that
17 the unreasonably dangerous nature of the conduct, together
18 with the high likelihood of injury resulting from the
19 conduct, was known and approved by the managing agent.

20 We submit that they've not satisfied that second
21 element, that, that anything about knowledge of this
22 specific, this specific mechanism of injury was known to
23 anyone at Target. No evidence that anyone appreciated the
24 unique hazards imposed by a syringe or that Target faced,
25 faced that type of hazard based on what was in their parking

1 lots.

2 Finally, Your Honor, on constitutionality, I neglected
3 to note an important point and I think it's, it's important
4 for the Court to note as well. Under Rule 24 of the South
5 Carolina Rules of Civil Procedure is the analogue to the
6 Federal Rule 5.1. If a party is going to challenge the
7 constitutionality of a state enactment, notice needs to be
8 provided to the State Attorney General so that the State can
9 intervene to defend the enactment. That has not been, to my
10 knowledge, no, no such notice has been provided in this
11 case. So, I think that, before any consideration by this
12 Court of the constitutionality of the enactment is, is, is
13 undertaken, we would need to hear from -- give the, give the
14 Attorney General the opportunity to participate and explain
15 why they believe the, the statute is constitutional.

16 I will, just for completeness and for the record, quote
17 that -- this is the very last tab. It's Tab 29 and it's the
18 last sentence of Rule 249(c). "When the constitutionality
19 of a statute is drawn in question in any action in which the
20 State or officer or agency or employee thereof is not a
21 party, the party shall so serve the motion and the challenge
22 on the Attorney General. That has not happened here.

23 Your Honor, that is all I have. We've gone quite a bit
24 longer than we told you we would. We appreciate the Court's
25 patience.

1 Thank you.

2 THE COURT: Yes, sir.

3 Anything on that issue?

4 We're gonna take a break.

5 MR. BUTLER: Your Honor, I would just -- I think the

6 different situation here is that we're raising the

7 constitutionality of a cap as a defense to Target's request

8 that they be applied. This is not an action we're going out

9 and filing a lawsuit to challenge the constitutionality. I

10 think, I think that's the situation where a plaintiff would

11 have the -- to serve the Attorney General's Office and not

12 when it's been raised as a defense.

13 That's what I would say to that issue.

14 THE COURT: Okay. All right. We're gonna take about

15 15 minutes, gentlemen.

16 MR. SIBLEY: Thank you.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: Is there anything else from the, from

19 the --- Target?

20 MR. SIBLEY: No, Your Honor.

21 THE COURT: Okay.

22 Yes, sir.

23 MR. BUTLER: Your Honor, also before the Court, I don't

24 think this one will take very long, the plaintiffs have

25 filed a motion to tax cost and interests as required under

1 the rules, Rule 68 and Rule 54.

2 The plaintiff, Mrs. Garrison, submitted a \$12,000 offer
3 of judgment in this case on February 13th, 2015. The
4 defendant, the defendant, Target, did not file a written
5 acceptance of the offer as contemplated under Rule 68(a)
6 within ten days after judgment, without ten days prior to
7 trial.

8 So, that mandates an award of eight percent prejudgment
9 interest plus costs in favor of Mrs. Garrison. In our, in
10 our motion before the, before the Court, I think we
11 calculated that amount. The eight percent prejudgment
12 interest is \$577,955 in favor of, of Mrs. Garrison and we've
13 also billed costs. That's articulated in, in the motion as
14 well, and we also ask the Court to set the post-judgment
15 interest rate in accordance with the South Carolina Statute.

16 The defendant doesn't, doesn't dispute that the rules
17 require that the prejudgment interest to be taxed to the
18 defendant. Their, their argument is that it doesn't apply
19 to the punitive damages award. They say that it has to
20 apply to any remitted judgment and that it also doesn't
21 apply to the punitive damages award but that, that, that
22 argument is flawed.

23 There's no South Carolina Supreme Court case addressing
24 Rule 68. It was a product of a legislative enactment in
25 July of 2005, and, since then, the Courts have not dealt

1 with this issue but there's two problems with, with the
2 argument.

3 The plain language of Rule 68 ties the prejudgment
4 interest amount to the jury verdict without any distinction
5 made between punitive damages or any remitted amount. So,
6 the plain language of the rules says you get eight percent
7 prejudgment interest on the jury's verdict.

8 So, Target's request is that this Court rewrite what
9 the rule says and, and write things into the rule and into
10 the statute that simply aren't there, and the, the well
11 established rule in this state is that Courts are to apply
12 the plain language of the rule and, and not read things into
13 the statute, but it also is important that it, it -- our
14 position on it supports the underlying purpose of the rule
15 anyway.

16 The underlying purpose of Rule 68 is to encourage early
17 settlement and resolution of cases and to conserve judicial
18 resources, to get parties to settle cases early. Strong
19 public policy in favor of that, and the Rule 68 offer of the
20 judgment rule is punitive in nature. It punishes litigants
21 who take unreasonable positions and reject reasonable
22 settlement offers.

23 So, it would, it would not only, Target's position, not
24 only disregard the plain language of the rule, it also
25 disregards the primary purpose of the rule, and, again,

1 there, there is no South Carolina case on this point, but
2 Courts in other jurisdictions have, have decided it. Again,
3 I tender the case to the Court, with the Court's permission.

4 It's a, it's a case from, from Connecticut also. I
5 have a copy for opposing counsel. Connecticut has a Offer
6 of Judgment Rule similar to South Carolina's and the holding
7 in, in Connecticut is that a, a prejudgment interest, from
8 an offer of judgment statute, it applies to punitive damages
9 because nothing in the Offer of Judgment Rule limits
10 application of it to, to actual damages, and, in fact,
11 taking that, that track would, would thwart the Legislative
12 goal of early resolution of cases and not wasting judicial
13 resources.

14 I have the pertinent part to this case highlighted. If
15 Court will, the Court would look on Page 3, it goes into the
16 rationale for offer of judgment rules such as this one and
17 that is to encourage pretrial settlements, conserve judicial
18 resources, and it imposes a penalty for wasting this State's
19 judicial resources. You know, it, it follows closely to the
20 South Carolina Legislators efforts with tort reform.

21 This is, this is sort of the tradeoff that it gives --
22 this is a, a rule that's somewhat unique to South Carolina
23 that it provides eight percent prejudgment interest to, to a
24 plaintiff who tries to make a reasonable, a reasonable
25 settlement offer that is rejected, and Page 4 of this case

1 shows, you know, that Courts have consistently held that
2 prejudgment interest is to be awarded, awarded by the Trial
3 Court when that offer of judgment has been rejected and the
4 plaintiff ultimately recovers a greater amount and that
5 amount is -- nothing in the statute limits it to the entire
6 jury verdict award, and, in fact, the plain language of the
7 statute ties it to the jury verdict.

8 So, the plaintiff would ask for all the costs,
9 prejudgment interests, and that the post-judgment interest
10 rate be calculated in accordance with law.

11 THE COURT: Okay.

12 MR. SIBLEY: Your Honor, very briefly.

13 THE COURT: Yes, sir.

14 MR. SIBLEY: We, we filed a short written response to
15 the petition for cost. We would, we would principally stand
16 on that. I don't want to emphasize a couple points.

17 First, should the Court conclude that a punitive damage
18 award should be remitted, either by force of the statute,
19 either by force of the nisi remittitur doctrine, or under
20 the constitutional limitations, prejudgment interest should
21 only be calculated on that amount.

22 Yes, the rule says the jury's verdict, the jury's
23 verdict is not final until it has been approved and entered
24 by this Court, and if the law requires that verdict be
25 adjusted, of course, that would affect the prejudgment

1 interest and how that's calculated.

2 Second, we, we have noted that it should not apply to
3 punitive damages, and the, the logic of that is very plain.

4 The purpose of prejudgment interest, more broadly, is
5 to compensate plaintiff. So, if the plaintiff had that
6 money that they would have -- they should have been given at
7 the time the offer was made and rejected, they would have
8 the benefit of investing in it or whatever, and they would
9 be made whole, they would be compensated -- they would be --
10 the injury they have incurred, they had incurred would be
11 compensated plus the interest on the money that would
12 reflect the compensatory award.

13 Punitive damages are different. They're not intended
14 to compensate. The plaintiff does not need punitive damages
15 to be made whole. Punitives are about punishing the
16 defendant, and, therefore, logically, the punitive damages
17 should fall outside of this grant.

18 Now, I will acknowledge there's no South Carolina Court
19 that says that. The language of the statute does not
20 differentiate -- the rule does not differentiate. Counsel's
21 correct on that, on that point. But I think that the
22 conclusion we draw from that is not the one he would draw.
23 I think it allows the Court to resolve any ambiguity.

24 It could include both, it may not include both, and I
25 think the logic of the, the enactment would seem to dictate

1 the rule that would exclude punitives from the principles
2 that's used to calculate the prejudgment interest and --
3 well, Your Honor, with that I'll -- we would rest on this.

4 MR. BUTLER: Brief response, Your Honor.

5 There are, there are cases in other states that say the
6 prejudgment interest are, are not applied to punitives and,
7 and -- but I would submit to the Court that those cases come
8 up in the context when you have prejudgment interest that
9 would be mandated by contract and because, again, as counsel
10 opposite said, under ordinary purposes, prejudgment interest
11 is to compensate the, the plaintiff.

12 That's not so in the case of a legislative enactment
13 like the Offer of Judgment Rule. The very purpose behind
14 enacting the statute is to punish, is to punish defendants
15 who, who don't accept reasonable settlement offers, and, by
16 the same token, token, to punish plaintiffs as well who, who
17 won't accept reasonable settlement offers. It goes both
18 ways, of course, but, but the very, the very purpose of the
19 statute is, in fact, to punish, punish the two -- is
20 punishment in nature.

21 So, just because you can say generally prejudgment
22 interest is intended to compensate the plaintiff, that's
23 right, but the Legislature has chose to use it also as a
24 vehicle, in their Offer of Judgment Rule, to punish parties
25 who take unreasonable positions and this is a perfect

1 example of a case where, where that rule should be applied.

2 Again, I think, as counsel opposite just acknowledged,
3 the plain language of the rule ties it to the jury verdict,
4 to nothing else, and to do anything beyond that would be to
5 read words in the statute that simply aren't, aren't there.

6 Thank you.

7 THE COURT: Okay. Anything further?

8 MR. SIBLEY: No, Your Honor.

9 THE COURT: All right. Anything further from the
10 plaintiff?

11 MR. BUTLER: No, Your Honor.

12 THE COURT: Any other motions?

13 MR. HAWKINS: No, Your Honor.

14 THE COURT: All right. Gentlemen, of course, it's
15 under advisement. I have a lot of reading to do.

16 All right. That will conclude our hearing and thank
17 you-all for being here.

18 MR. HAWKINS: Thank you, Judge Kelly.

19 MR. BUTLER: Thank you, Your Honor.

20 MR. SIBLEY: Thank you, Your Honor.

21 MR. HAYNSWORTH: Thank you.

22

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 3rd day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 8th, 2017

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

OFFER OF JUDGMENT

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT.

Pursuant to Rule 68 SCRCP, the plaintiff hereby offers judgment of \$12,000.00. If this offer is rejected, or if this offer is not accepted within 20 days, and a verdict of at least this amount is awarded to the plaintiff, all costs incurred subsequent to the making of this offer shall be taxed against the defendant, along with interest accrued from this point forward.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC

Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015

1

A TRUE COPY

FEB 18 2015

Robert D. Kelly
CLERK OF COURT

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Carla Denise Garrison)

Plaintiffs,)

vs.)

Target Corporation)

Defendants.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

CIVIL ACTION NO. 2014-CP-04-1426

Plaintiff's Attorney:
Joshua T. Hawkins, Bar No. 78470
Address: 1225 South Church Street,
Greenville, South Carolina 29605
Phone: 864-275-8142 Fax: 864-752-0911
E-mail: josh@jthawkinslaw.com Other:

Defendant's Attorney:
Knox Haynsworth

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Tax Costs and Interest

Estimated Time Needed: fifteen (15) minutes

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion and proposed order attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted: 9/14/16

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

Judge Signature: _____

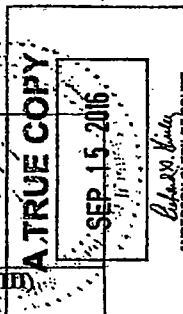
Collected by: AMV Date Filed: 9/15/16

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)



Common Pleas
Clerk : Richard A. Shirley
100 South Main Street
Anderson, SC 29622

Phone:(864) 260-4053 Fax:(864) 260-4715

MOTION FEE PAID ^{DUPLICATE}

Received From: Hawkins, Joshua Thomas
1225 S. Church Street
Greenville, SC 29605
Paying for: Garrison, Carla Denise
Transaction Type: Payment
Payment Type: Check
Total Paid:

\$25.00
\$25.00

Reference #: 1550
Comment:
Non-Refundable

Date: 9/15/2016
Receipt #: 94921
Clerk: c04avoigt

You may check the status of your Anderson case at:
<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2014CP0401426	Carla Denise Garrison VS Target Corporation	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00

ReceiptSingleCase.rpt V6.1

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

MOTION TO TAX COSTS AND
INTEREST AGAINST DEFENDANT

A TRUE COPY

SEP 15 2016

Patricia A. Bailey
ANDERSON CLERK OF COURT

Plaintiffs Carla Denise Garrison and Clint Garrison move, pursuant to Rules 68 and 54 of the South Carolina Rules of Civil Procedure and pursuant to the South Carolina Code of Laws, to tax costs and interest in this case against Defendant Target Corporation. In support, Plaintiffs would show the following:

1. Plaintiff Carla Denise Garrison made an offer of judgment in the amount of \$12,000 to Defendant on February 13, 2015 in this action. A copy of the offer of judgment and proof of service are attached as Exhibit A. Defendant mailed its motion to consolidate *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, on May 19, 2016, with knowledge that an offer of judgment had been made in this action. A copy of Defendant's motion to consolidate is attached as Exhibit B. Defendant did not file a written acceptance of the offer of judgment, as contemplated under Rule 68(a) of the South Carolina Rules of Civil Procedure, "[w]ithin twenty days after service of the offer of judgment or at least ten days prior to the trial date[.]" See also S.C. Code § 15-35-400(B).

2. This Court entered a final judgment in favor of Plaintiffs on September 8, 2016, in the amount of \$4,618,500.00. A copy of the judgment notice from this Court's website is attached as Exhibit C.¹ Plaintiff Denise Garrison obtained a verdict of \$100,000.00 in actual damages and a verdict of \$4,510,000.00 in punitive damages. Plaintiff Clint Garrison obtained a verdict of \$8,500.00 in actual damages. A copy of the returned verdict form is attached as Exhibit D.

¹ Plaintiffs have attempted to obtain a signed copy of the judgment from the Clerk's Office, but, to date, the Clerk's Office has not made a signed copy of the judgment available.

3. As prevailing parties, Plaintiffs are entitled to recover interest and costs from Defendant. Plaintiffs are entitled to "eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment" and to "any administrative, filing, or other court costs from the date of the offer until the entry of the judgment" under Rule 68(b) of the South Carolina Rules of Civil Procedure. Plaintiffs also are entitled to the costs outlined in Rule 54(e)(1)-(6) of the South Carolina Rules of Civil Procedure. Plaintiffs further are entitled to post-judgment interest as mandated by Section 34-31-20 of the South Carolina Code of Laws.

4. What follows is an itemized list of pre-judgment interest and costs:

a) Pre-judgment interest in accordance with South Carolina Rule of Civil Procedure 68: \$579,021.00 (The eight percent interest computed on the amount of the verdict from the date of the offer to the entry of judgment for Plaintiff Carla Garrison is \$577,955.00; the eight percent interest computed on the amount of the verdict from the date of the offer to the entry of judgment for Plaintiff Clint Garrison is \$1,066.00);

b) Administrative, filing, or other court costs from February 13, 2015 to September 8, 2016 in accordance with South Carolina Rule of Civil Procedure 68 as well as Costs Authorized by Statute and Sanctions Imposed in Favor of Prevailing Party, Fees of the Clerk, Fees of the Sheriff, Fees Incurred in Service of Process, Witnesses' Fees, and Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial from the initiation of this action to the entry of judgment in accordance with South Carolina Rule of Civil Procedure 54: \$1,284.99.

<u>Date</u>	<u>Description</u>	<u>Check</u>	<u>Amount</u>
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
9/15/15	Jackson and Clint Garrison depositions	1267	\$261.60
9/17/15	civil action filing fee for 2015-CP-04-02206	1269	\$150.00

service on registered agent and CEO—return receipt		\$14.36
4/20/16 postage—letter to Knox		\$0.49
4/29/16 filing fee—motion to compel mediation	1466	\$25.00
5/10/16 Carla Garrison deposition transcript—EveryWord	1472	\$196.35
5/10/16 postage for payment to EveryWord		\$0.47
5/19/16 postage—letter to Knox		\$0.47
5/24/16 postage—Margaret Garrison affidavit		\$0.94
5/25/16 postage—Brintnall and Jackson subpoenas to Knox		\$0.47
5/27/16 postage—letters to Shirley and Knox		\$1.36
5/27/16 APS Legal Ease—Margaret's deposition	1486	\$215.10
5/27/16 postage—payment to APS Legal Ease		\$0.47
6/7/16 postage—letter to Richard Shirley		\$0.47
8/19/16 mileage for trial preparation (60 miles/round trip)		\$32.40
8/24/16 postage—Brintnall and Jackson subpoenas to Knox		\$0.47
8/24/16 postage—NoD to Annie Vieira		\$0.47
8/26/16 mileage for trial preparation (60 miles/round trip)		\$32.40
9/5/16 enlargements of Target photos		\$5.55
9/6/16 mileage for trial (60 miles/round trip)		\$32.40
9/7/16 mileage for trial (60 miles/round trip)		\$32.40
9/8/16 mileage for trial (60 miles/round trip)		\$32.40

5. The above-referenced pre-judgment interest is mandated by law.

6. The above-referenced costs were necessarily incurred in this case. In some instances, the costs Plaintiffs are entitled to under Rules 68 and 54 of the South Carolina Rules of Civil Procedure may overlap. Plaintiffs seek all costs to which they are entitled under both rules.

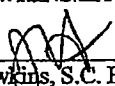
7. In addition to the above-referenced pre-judgment interest and costs, Plaintiffs are entitled to post-judgment interest. This Court should set the post-judgment interest rate as mandated by Section 34-31-20(b) of the South Carolina Code of Laws. According to the South Carolina Supreme Court, "for the period January 15, 2016, through January 14, 2017, the legal rate of interest for judgments and money decrees is 7.50% compounded annually."

8. Affidavits supporting this motion are attached as Exhibit E, including the affidavits of the Plaintiffs and the affidavit of Plaintiff's counsel.

For these reasons, Plaintiffs request that the Court (1) award pre-judgment interest to the Plaintiffs in the amount of \$579,021.00, (2) tax costs against Defendant and in favor of Plaintiffs in the amount of \$1,284.99, and (3) set the post-judgment interest rate in accordance with law. Plaintiffs further request any other relief as the Court deems just and appropriate and to which Plaintiffs are entitled to by law.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC


Joshua T. Hawkins, S.C. Bar No: 78470
1225 South Church Street
Greenville, South Carolina 29605
864.275.8142 Fax 864.752.0911
josh@jthawkinslaw.com

Attorney for Plaintiff

Greenville, South Carolina
9/14, 2016

The J.T. Hawkins Law Firm, LLC

1225 South Church Street
Greenville, South Carolina 29605

Phone: (864) 275-8142

Fax: (864) 752-0911

josh@jthawkinslaw.com

February 13, 2015

The Honorable Richard A. Shirley
Anderson County Clerk of Court
Post Office Box 8002
Anderson, South Carolina 29622-8002

Re: *Carla Denise Garrison vs. Target Corporation*
C.A. No.: 2014-CP-04-1426

Dear Mr. Shirley:

Enclosed for filing please find the original and one copy of Plaintiff's Offer of Judgment in the above referenced case. I would appreciate your filing the original and returning a clocked copy to me in the stamped, self-addressed envelope provided.

By copy of this letter and as evidenced by the attached Certificate of Service, we have served a copy of our Offer of Judgment on Knox L. Haynsworth, III as attorney for Defendant.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,



Joshua T. Hawkins

JTH/blm
Enclosure
cc: Knox L. Haynsworth, III

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CASE NO. 2014-CP-04-1426

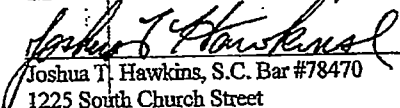
) **OFFER OF JUDGMENT**

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT,

Pursuant to Rule 68 SCRCP, the plaintiff hereby offers judgment of \$12,000.00. If this offer is rejected, or if this offer is not accepted within 20 days, and a verdict of at least this amount is awarded to the plaintiff, all costs incurred subsequent to the making of this offer shall be taxed against the defendant, along with interest accrued from this point forward.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC


Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

)
) IN THE COURT OF COMMON PLEAS

)
) CASE NO. 2014-CP-04-1426

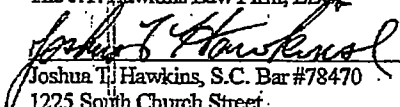
)
) **OFFER OF JUDGMENT**

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT,

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Respectfully submitted,

The J.T. Hawkins Law Firm, LLC


Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015

) IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

)

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Brittany L. Miller
Legal Assistant to Joshua T. Hawkins

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

OFFER OF JUDGMENT

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT,

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Respectfully submitted,

The J.T. Hawkins Law Firm, LLC

Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015

1

A TRUE COPY

FEB 18 2015

Patricia A. Kline
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

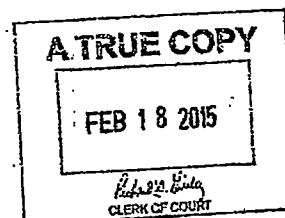
CERTIFICATE OF SERVICE

YS.

Defendant.

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod & Haynsworth, LLC
Post Office Box 2464
Greenville, South Carolina 29602

Brittany L. Miller
Brittany L. Miller
Legal Assistant to Joshua T. Hawkins



R. David Massey
H Douglas P Evans
Stanley E. McLeod
Knox L. Haynsworth, III
E. Zachary Horton
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC

ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 271-7424
FAX (864) 242-6469
WEBSITE: bmaslllc.com

OF COUNSEL
C. Vincent Brown

May 19, 2016

The Honorable Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622-8002

Re: *Carla Denise Garrison vs. Target Corporation*
C.A. No.: 2014-CP-04-1426

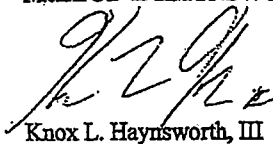
Dear Mr. Shirley:

Enclosed for filing please find the original and one copy of a Notice of Motion and Motion to Consolidate in the above matter along with a motion cover skip and our firm's check in the amount of \$25.00 representing the filing fee. I would appreciate your filing the original and returning a clocked copy to me in the stamped, self-addressed envelope provided. By copy of this letter and as evidenced by the attached certificate of service, we have served a copy of the motion on Joshua T. Hawkins as attorney for plaintiff.

Thank you for your assistance in this regard.

Sincerely,

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**



Knox L. Haynsworth, III

KLH/lab
Enclosure
cc: Joshua T. Hawkins, Esquire

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

☐ Plaintiff

v.

Target Corporation

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-04-1426

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:		Defendant's Attorney: Knox L. Haynsworth, III, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424 fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: MOTION TO CONSOLIDATE Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted 5/19/16	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

**NOTICE OF MOTION AND MOTION
TO CONSOLIDATE**

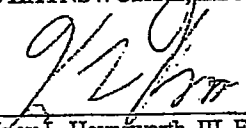
TO: JOSHUA T. HAWKINS, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that defendant will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard for an order consolidating the present action with the related action entitled Carla Garrison and Clint Garrison vs. Target Corporation C.A. No.: 2015-CP-04-2206. The grounds for the foregoing motion are as follows: In the above matter the plaintiff Carla Garrison instituted an action against Target regarding injuries she allegedly sustained in the parking lot of Target's Anderson, South Carolina store. During discovery in the above action, the undersigned counsel took the deposition of Ms. Garrison as well as her husband Clint, during which time Ms. Garrison discussed her injuries and damages and her husband, Clint discussed his injuries and damages caused by virtue of the injuries allegedly sustained by his wife. Subsequently on September 21, 2015 the action involving both Clint and Carla Garrison was filed and ultimately served on Target.

Based upon the correspondence exchanged between counsel for Target and counsel for plaintiffs, collectively attached hereto as Exhibit A, defendant believed a consent order would be executed between the parties consolidating the two actions for purposes of trial. However, it has recently been determined that plaintiffs do not intend to consolidate these actions and, in fact, have moved the court to compel Target to mediate the latter filed action. In light of plaintiffs' new position relative to consenting to consolidating the two actions, Target files this motion requesting the court consolidate both actions.

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**



Knox L. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424
Attorney for Defendant

Greenville, South Carolina

May 19, 2016.

EXHIBIT

A

727

1077

Knox Haynsworth

From: Josh Hawkins <josh@jthawkinslaw.com>
Sent: Thursday, April 14, 2016 11:49 AM
To: Knox Haynsworth
Cc: Paralegal
Subject: RE: Garrison v. Target

Alright, we will send a consent order to you.

Sincerely,

Joshua T. Hawkins
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605
Telephone: (864) 275-8142
Facsimile: (864) 752-0911

From: Knox Haynsworth [mailto:knoxhaynsworth@bmemhlaw.com]
Sent: Thursday, April 14, 2016 11:48 AM
To: Josh Hawkins
Cc: Paralegal
Subject: RE: Garrison v. Target

Since we probably ought to do one anyway, do you want to prepare a consent Order consolidating the two cases? Not sure how that works as far as whether that still keep separate case numbers, etc., seems to me if they are consolidated, that may solve the 2nd mediation issue.

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
106 Williams Street
Greenville, SC 29601
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IT IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, REVIEW, RE-TRANSMISSION, DISSEMINATION, DISTRIBUTION OR REPRODUCTION OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS IN ERROR, PLEASE DELETE IT FROM YOUR COMPUTER AND NOTIFY BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC, IMMEDIATELY BY PHONE OR E-MAIL. THANK YOU.

From: Josh Hawkins [mailto:josh@jthawkinslaw.com]
Sent: Monday, April 11, 2016 1:43 PM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below a Notice of Motion and Motion to Consolidate by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605


Laura Barry

Greenville, South Carolina
May 19, 2016



Anderson County Tenth Judicial Circuit Public Index



Anderson County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

Carla Denise Garrison VS Target Corporation					
Case Number:	2014CP0401426	Court Agency:	Common Pleas	Filed Date:	07/01/2014
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Jury Trial	Disposition Date:	09/08/2016	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP0401426	Court Roster:	JURY SEPTEMBER 6-9, 2016 9:30 AM		

Case Parties								Judgments	Tax Map Information	Associated Cases	Actions	Financials
For:	Garrison, Carla Denise		Against:	Target Corporation	Judg. Amount:	\$4,618,500.00	Judgment Date:	09/08/2016				
Description:	Judgment/Judgment		Disposition:		Disp. Date:		Date Entered/Last Changed	09/08/2016				
Notes:	None											
Judgment Details												
Claims Code		Detail Desc.			Detail Amount		Detail Date					
None												
For:	Garrison, Clinton Michael		Against:	Target Corporation	Judg. Amount:	\$4,618,500.00	Judgment Date:	09/08/2016				
Description:	Judgment/Judgment		Disposition:		Disp. Date:		Date Entered/Last Changed	09/08/2016				
Notes:	None											
Judgment Details												
Claims Code		Detail Desc.			Detail Amount		Detail Date					
None												

CHSWeb 6.1 © 2013 South Carolina Judicial Department • All rights reserved

Exhibit C

<http://publicindex.sccourts.org/Anderson/PublicIndex/CaseDetails.aspx?County=04&Cour...> 9/14/2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Michael
Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

VERDICT

FILED CLERK'S OFFICE
ANDERSON SC
2016 SEP - 8 PM 2:36
COMMON PLEAS AND
GENERAL SESSIONS

1. Do you, the jury, find that the Defendant, Target Corporation, was negligent and that such negligence caused the Plaintiff, Carla Denise Garrison's, injuries?

☒ YES: If you answer yes, GO TO QUESTION 2

☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

2. Do you find that the Plaintiff, Carla Denise Garrison, was negligent and that such negligence proximately caused her injuries?

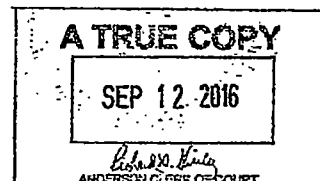
☐ YES: If you answer yes, GO TO QUESTION 3

☒ NO: If you answer no, GO TO QUESTION 4

3. If your answers to both question number 1 and question number 2 are YES, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff, Carla Denise Garrison's, injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, Target Corporation?

Exhibit D



NEGLIGENCE PERCENTAGES REQUIRED TO ADD UP TO 100%

Plaintiff _____ %
Defendant _____ %
Total _____ 100%

If the Plaintiff's percentage of the combined negligence is greater than 50%, **GO TO QUESTION 4.**
DELIBERATE NO FURTHER.

If the Plaintiff's percentage of the combined negligence is 50% or less, **GO TO QUESTION 4.**

4. Please state the total amount of actual damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Carla Denise Garrison.

\$ 100,000.00 one hundred thousand

NOTE: If your answer to question number 2 was **YES**, do not reduce the plaintiff's damages above by the percentage of negligence attributed to her in question number 3.

ONLY GO ON TO THE NEXT QUESTIONS IF YOU AWARDED ACTUAL DAMAGES TO THE PLAINTIFF IN QUESTION 4

5. Do you, the jury, find by clear and convincing evidence that the Defendant, Target Corporation, acted willfully, wantonly, maliciously, or with reckless disregard of the plaintiff's rights?

☒ **YES: If you answer yes, GO TO QUESTION 6**
☐ **NO: If you answer no, GO TO QUESTION 7**

6. Please state the total amount of punitive damages, if any, that you, the jury, have found by clear and convincing evidence were sustained by the Plaintiff, Carla Denise Garrison.

~~\$ 4,510,000.00~~ \$ 4,510,000.00 four million five hundred ten thousand and no/100

COMMON PLEAS AND
GENERAL SESSIONS

TRUE COPY
SEP - 8 PM 2:36

FILED CLERK'S OFFICE
ANDERSON SC

ANDERSON CLERK OF COURTS

**PLEASE ANSWER THE FOLLOWING QUESTIONS EVEN IF YOU DID NOT
AWARD PUNITIVE DAMAGES TO THE PLAINTIFF IN QUESTIONS 5 & 6**

NOTE: If you answered NO to question 1, DO NOT answer the following questions

Lost Wages:

7. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable for the lost wages of the Plaintiff, Clint Michael Garrison?

☒ YES: If you answer yes, GO TO QUESTION 8

☐ NO: If you answer no, GO TO QUESTION 9

8. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of his wages.

\$3,500 three thousand five hundred

Loss of Consortium:

9. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable to the Plaintiff, Clint Michael Garrison, for loss of consortium?

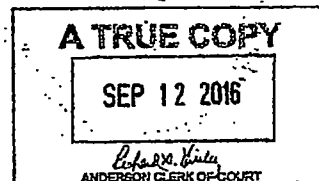
☒ YES: If you answer yes, GO TO QUESTION 10

☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

10. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of consortium in this case.

\$5000 five thousand

WHEN YOU HAVE FINISHED DELIBERATING,
PLEASE SIGN ON THE FOLLOWING PAGE

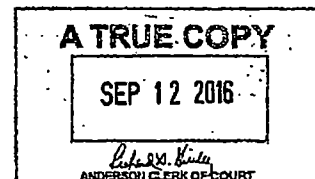


David B. Ego
FOREPERSON

September 8th, 2016
Anderson, SC

FILED-CLERK'S OFFICE
ANDERSON SC
2016 SEP - 8 PM 2:36
COMMON PLEAS AND
GENERAL SESSIONS

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE NOTIFY THE BAILIFF



Defendant.

**CLINT GARRISON'S AFFIDAVIT
IN SUPPORT OF MOTION TO TAX
COSTS AND INTEREST**

1. My name is Clint Garrison, I am a plaintiff in this action, suffer from no disabilities, and I have personal knowledge in connection with the motion to recover costs and interest.
2. The Court entered a final judgment in Plaintiffs' favor on September 8, 2016.
3. I state that the following is an accurate list of the costs incurred by Plaintiffs: \$1,284.99

Exhibit E

<u>Date</u>	<u>Description</u>	<u>Check</u>	<u>Amount</u>
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
9/15/15	Jackson and Clint Garrison depositions	1267	\$261.60
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9/7/16	mileage for trial (60 miles/round trip)		\$32.40
9/8/16	mileage for trial (60 miles/round trip)		\$32.40

4. I believe interest, calculated at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, is \$579.021 for both parties and \$1,066 for the jury award related to my damages.
5. Defendant mailed its motion to consolidate the action *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action for filing on May 19, 2016, after Plaintiff Denise Garrison's offer of judgment in the existing action.
6. The above costs were necessarily incurred in this action.

7. I believe Plaintiffs are also entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016, as contemplated by S.C. Code 34-31-20(B).

Clint Garrison
Clint Garrison

SWORN TO before me this fourteenth day of September, 2016.

David Schroeder
Notary Public for South Carolina



Defendant.

**DENISE GARRISON'S AFFIDAVIT
IN SUPPORT OF MOTION TO TAX
COSTS AND INTEREST**

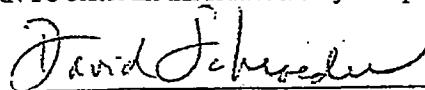
<u>Date</u>	<u>Description</u>	<u>Check</u>	<u>Amount</u>
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
9/15/15	Jackson and Clint Garrison depositions	1267	\$261.60
9/17/15	civil action filing fee for 2015-CP-04-02206	1269	\$150.00
	service on registered agent and CEO—return receipt		\$14.36
4/20/16	postage—letter to Knox		\$0.49
4/29/16	filing fee—motion to compel mediation	1466	\$25.00
5/10/16	Carla Garrison deposition transcript—EveryWord	1472	\$196.35
5/10/16	postage for payment to EveryWord		\$0.47
5/19/16	postage—letter to Knox		\$0.47
5/24/16	postage—Margaret Garrison affidavit		\$0.94
5/25/16	postage—Brintnall and Jackson subpoenas to Knox		\$0.47
5/27/16	postage—letters to Shirley and Knox		\$1.36
5/27/16	APS Legal Ease—Margaret's deposition	1486	\$215.10
5/27/16	postage—payment to APS Legal Ease		\$0.47
6/7/16	postage—letter to Richard Shirley		\$0.47
8/19/16	mileage for trial preparation (60 miles/round trip)		\$32.40
8/24/16	postage—Brintnall and Jackson subpoenas to Knox		\$0.47
8/24/16	postage—NoD to Annie Vieira		\$0.47
8/26/16	mileage for trial preparation (60 miles/round trip)		\$32.40
9/5/16	enlargements of Target photos		\$5.55
9/6/16	mileage for trial (60 miles/round trip)		\$32.40
9/7/16	mileage for trial (60 miles/round trip)		\$32.40
9/8/16	mileage for trial (60 miles/round trip)		\$32.40

4. I believe interest, calculated at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, is \$579,021 for both parties, and \$577,955 for the jury award related to my damages.
5. Defendant mailed its motion to consolidate the action *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action for filing on May 19, 2016, after Plaintiff Denise Garrison's offer of judgment in the existing action.
6. The above costs were necessarily incurred in this action.

7. I believe Plaintiffs are also entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016, as contemplated by *S.C. Code* 34-31-20(B).


Denise Garrison

SWORN TO before me this fourteenth day of September, 2016.


Notary Public for South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

**AFFIDAVIT IN SUPPORT OF
MOTION TO TAX COSTS AND
INTEREST**

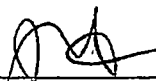
PERSONALLY APPEARING BEFORE ME, Joshua T. Hawkins, deposes and swears the following:

1. I am the attorney for the plaintiffs in this action, suffer from no disabilities, and I have personal knowledge in connection with the plaintiffs' motion to recover costs.
2. The Court entered a final judgment in the plaintiffs' favor on September 8, 2016, which is attached to the plaintiffs' motion, and incorporated herein by reference.
3. I state that the following is an accurate list of the costs incurred by the plaintiff: \$1,284.99.

<u>Date</u>	<u>Description</u>	<u>Check</u>	<u>Amount</u>
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
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5/27/16	postage—letters to Shirley and Knox		\$1.36
5/27/16	APS Legal Ease—Margaret's deposition	1486	\$215.10
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8/24/16	postage—NoD to Annie Vieira		\$0.47
8/26/16	mileage for trial preparation (60 miles/round trip)		\$32.40
9/5/16	enlargements of Target photos		\$5.55
9/6/16	mileage for trial (60 miles/round trip)		\$32.40
9/7/16	mileage for trial (60 miles/round trip)		\$32.40
9/8/16	mileage for trial (60 miles/round trip)		\$32.40

4. My office has calculated interest at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, and I believe that amount is \$579.021. Eight per cent interest for Denise Garrison is \$577.955. Eight per cent interest for Clint Garrison is \$1.066.
5. Defendant mailed its motion to consolidate *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action was filed on May 19, 2016, after Carla Denise Garrison's offer of judgment in the existing action.

6. The above costs were necessarily incurred in this action.
7. I believe Plaintiffs are entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016



Joshua T. Hawkins

SWORN TO before me this fourteenth day of September, 2016.



Notary Public for South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

☐ Plaintiff

v.

Target Corporation

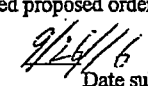
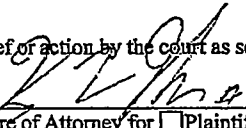
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-04-2206

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:		Defendant's Attorney: Knox L. Haynsworth, Iii, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424 fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Reply to plaintiffs' motion for costs and interest pursuant to SCRCF Rule 68 Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: 7/24/16			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. NO.: 2014-CP-04-1426
	)	C.A. NO.: 2015-CP-04-2206
Carla Denise Garrison and	)	
Clint Garrison	)	
Plaintiff	)	REPLY TO PLAINTIFFS' MOTION
	)	TO TAX COSTS AND INTEREST
vs.	)	
	)	
Target Corporation	)	
	)	
Defendant.	)	

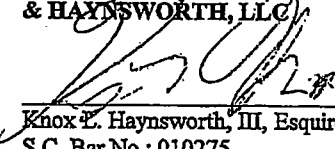
Defendant Target Corporation, by counsel, opposes Plaintiffs' Motion to Tax Costs and Interest. Specifically, the Court should deny the Motion on the following grounds:

1. Target's post-trial motions remain pending, thus any assessment of costs and interest is premature. Until such time as the Court has ruled on those motions, the amount of any judgment has not been finally determined.
2. Plaintiff Clint Garrison is not entitled to prejudgment interest because he made no offer of judgment, either before or after his action was consolidated with the action initiated by his wife, Plaintiff Carla Denise Garrison.
3. Any interest calculation relative to any final verdict in this action should not be calculated based upon any amount of punitive damages.

This reply is further supported by the pleadings on file with the Court, any applicable previously filed motions, as well as a memorandum of law to be submitted and such other and further materials as the Court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**



Knox E. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424

Attorney for Defendant

Greenville, South Carolina

September 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

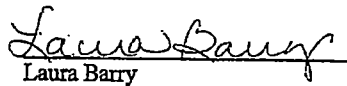
C.A. NO.: 2014-CP-04-1426

C.A. NO.: 2015-CP-04-2206

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below Target Corporation's reply to plaintiffs' motion to tax costs and interest by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605


Laura Barry

Greenville, South Carolina
September 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

A TRUE COPY

OCT - 5 2016

224 M. Kelly
ANDERSON CLERK OF COURT

THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

CASE NO. 2015-CP-04-2206

**PLAINTIFFS' REBUTTAL IN
SUPPORT OF MOTION TO TAX
COSTS AND INTEREST AGAINST
DEFENDANT**

After the jury returned its verdict, and after this Court entered judgment, Plaintiffs Carla Denise Garrison and Clint Garrison filed a motion for the costs and interest mandated by the South Carolina Rules of Civil Procedure and the South Carolina Code of Laws. Defendant Target Corporation has opposed the Garrisons' request on three grounds, specifically arguing (1) that the Garrisons' motion is premature because of Target's pending post-judgment motions, (2) that Plaintiff Clint Garrison is not entitled to pre-judgment interest because he did not file an offer of judgment under Rule 68, and (3) and that any interest calculation should not encompass the jury's punitive damages award. Each of these arguments fail for the reasons addressed below.

First, the Garrisons' motion for costs and interest certainly is not "premature." With respect to "costs" mandated by Rule 54, the Garrisons were required to make their motion "within 10 days of the receipt of written notice of the entry of [the September 8, 2016] final judgment." See SCRCP 54(d). With respect to "costs" and "prejudgment interest" mandated by Rule 68, Target's post-judgment motions are entirely irrelevant. Rule 68 does not tie such amounts to the judgment – remitted or otherwise. Instead, the plain language of the rule ties such amounts to "the amount of the verdict[.]" See SCRCP 68. The Garrisons' motion for costs and interest is timely.

Second, Target's voluntary act of consolidating Clint Garrison's lawsuit with Carla Denise Garrison's lawsuit, at a time when Target knew Carla Denise Garrison had made an offer of judgment, makes Target liable to Clint Garrison for the costs and interest amounts mandated

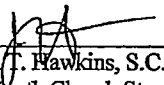
by Rule 68. Even if that were not the case, though, Clint Garrison's pre-judgment interest amount is only \$1,066.00 – a mere fraction of the \$579,021.00 amount owed to Carla Denise Garrison. Clint Garrison plainly is entitled to the "costs" mandated by Rule 54, regardless of whether he also is entitled to relief under Rule 68.

Third, Target's argument that the Garrisons' interest amounts should not encompass the jury's punitive damage award is unfounded. Again, the plain language of Rule 68 ties prejudgment interest to "the amount of the verdict[.]" without making any distinction between actual and punitive damages. See SCRPC 68. Plus, the central purposes underlying Rule 68's enactment – to encourage settlement and to avoid protracted litigation – support the inclusion of punitive damages into the calculation of interest. No South Carolina decision endorses Target's argument, and, in fact, other courts have flatly rejected it. See, e.g., *Demarest v. Progressive Am. Ins. Co.*, 552 So.2d 1329 (5th Cir. 1989) (holding that prejudgment interest is recoverable on an award of exemplary damages); *Latham Seed Co. v. Nickerson Am. Plant Breeders, Inc.*, 978 F.2d 1493 (8th Cir. 1992) (holding that the Michigan Supreme Court would treat an exemplary award as a "money judgment").

For these reasons, the Garrisons reiterate their request for costs, for pre-judgment interest, and for this Court to set the post-judgment interest rate in accordance with law.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC


Joshua T. Hawkins, S.C. Bar No: 78470
1225 South Church Street
Greenville, South Carolina 29604
864.275.8142 Fax 864.752.0911
josh@jthawkinslaw.com

Attorney for Plaintiffs

Greenville, South Carolina

10/13, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

☐ Plaintiff

v.

Target Corporation

☒ Defendant

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-04-2206

MOTION INFORMATION FORM AND COVER SHEET

A TRUE COPY

SEP 16 2016

Anderson Clerk of Court

Plaintiff's Attorney:

Joshua T. Hawkins, Esquire, Bar No.

Address:

1225 South Church Street Greenville, SC 29605

phone: (864) 421-0036 fax:

e-mail: other:

Defendant's Attorney:

Knox L. Haynsworth, III, Bar No. 010275

Address:

P.O. BOX 2464 GREENVILLE, SC 29602

phone: 864-271-7424 fax: 864-271-3192

e-mail: knoxhaynsworth@bmemblaw.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Judgment as a Matter of Law, New Trial Absolute or New Trial Nisi

Remittitur

Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID -- AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court, or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

AMV

Date Filed:

9/16/2016

☒ **MOTION FEE COLLECTED: \$25.00**

☐ **CONTESTED -- AMOUNT DUE:**

SCCA/233 (1/2003)

MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison,

Plaintiffs,

v.

Target Corporation,

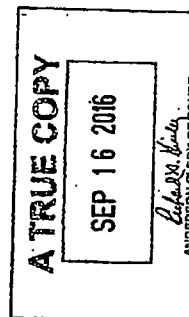
Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. 2014-CP-04-1426

C.A. No. 2015-CP-04-2206

MOTION FOR JUDGMENT AS A
MATTER OF LAW, NEW TRIAL
ABSOLUTE, OR NEW TRIAL NISI
REMITTITUR



Pursuant to South Carolina Rules of Civil Procedure 50, Defendant Target Corporation, by counsel, moves for judgment as a matter of law. In the alternative, Target requests pursuant to Rule 59 a new trial absolute or, alternatively, new trial nisi remittitur.

1. Target is entitled to judgment as a matter of law on Plaintiff's claim, because the Plaintiff did not prove that Target breached any duty owed to the Plaintiff. Under settled South Carolina premises liability law, Target only owes a duty to the Plaintiff to prevent reasonably foreseeable harm with respect to hazards Target itself created, hazards about which Target had actual notice, or hazards about which Target had constructive notice. The evidence presented at trial was insufficient to establish any of these predicates for Target's liability. Judgment therefore should be entered in Target's favor on the question of liability.

2. Target is also entitled to judgment as a matter of law on the question of liability, because the only reasonable conclusion the jury could draw from the evidence is that Ms. Garrison's own negligence was the proximate cause of her injuries.

3. Target is likewise entitled to judgment as a matter of law with respect to Plaintiff's claim for punitive damages, because the evidence regarding Target's conduct was

insufficient to establish that any wrongdoing by Target was willful, wanton, or in reckless disregard of Plaintiff's rights.

4. In the alternative, Target is entitled to a new trial absolute. The excessiveness of the awards of actual and punitive damages demonstrate that the jury's decision was actuated by passion, prejudice or caprice, not by a fair review of the evidence presented at trial.

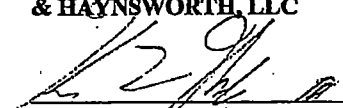
5. In the alternative, Target is entitled to a new trial nisi remittitur.

a. Target is entitled to a new trial nisi remittitur with respect to the award of actual damages, because the evidence presented at trial was insufficient to allow a reasonable jury to award the Plaintiff \$100,000 in compensatory damages.

b. Target is likewise entitled to a new trial nisi remittitur with respect to the award of punitive damages, because (i) the evidence of Target's alleged culpability is insufficient to support an award of punitive damages that is 45 times greater than compensatory damages; (ii) the amount of punitive damages exceeds the levels permissible under S.C. Code § 15-32-530; (iii) the jury's award of punitive damages violates Target's right to due process under the federal and South Carolina constitutions.

Respectfully submitted,

**BROWN, MASSEY, EVANS, MCLEOD
& HAYNSWORTH, LLC**



Knox L. Haynsworth, III
S.C. Bar No. 010275
P.O. Box 2464
Greenville, South Carolina 29602
(864) 271-7424

Attorneys for Defendant

Greenville, South Carolina
Sept. 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison

Plaintiff

vs.

Target Corporation

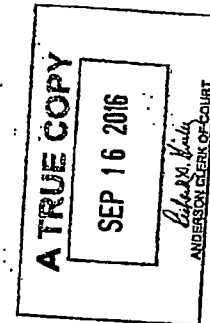
Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

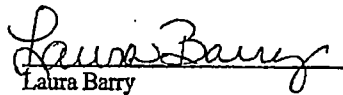
C.A. NO.: 2015-CP-04-2206

CERTIFICATE OF SERVICE



This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below Target Corporation's motion for judgment as a matter of law, new trial absolute or new trial nisi remittitur by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605


Laura Barry

Greenville, South Carolina
September 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

☐ Plaintiff

v.

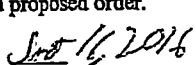
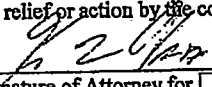
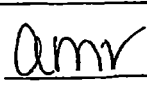
Target Corporation

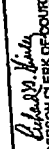
☒ Defendant

MOTION FEE PAID
IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-04-2206

**MOTION INFORMATION FORM
AND COVER SHEET**

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:		Defendant's Attorney: Knox L. Haynsworth, III, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424 fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Reduce Punitive Damages Award Pursuant to S.C. Code Ann. §15-32-530(A) Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion – I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: 9/16/2016			
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
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SEP 16 2016

ANDERSON CLERK OF COURT

SCCA/233 (1/2003)

MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison,

Plaintiffs,

v.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. 2014-CP-04-1426

C.A. No. 2015-CP-04-2206

MOTION TO REDUCE PUNITIVE
DAMAGES AWARD PURSUANT TO S.C.
CODE § 15-32-530

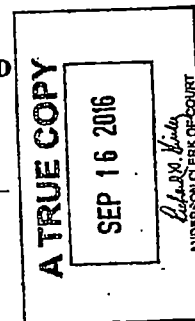
Pursuant to S.C. Code Ann. §15-32-530(A), Defendant Target Corporation respectfully requests the trial court reduce the punitive damages award in this matter to the statutory maximum as provided by the aforementioned code section.

Respectfully submitted,

BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC

[Signature]
Knox L. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424

Attorney for Defendant



Greenville, South Carolina

September 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

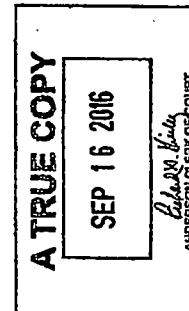
C.A. NO.: 2015-CP-04-2206

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below Target Corporation's motion to reduce punitive damages award by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605

Laura Barry
Laura Barry



Greenville, South Carolina
September 16, 2016

MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

☐ Plaintiff

v.

Target Corporation

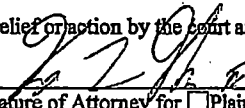
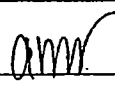
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-04-2206

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:	Defendant's Attorney: Knox L. Haynsworth, III, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424 fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:												
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)													
SECTION I: Hearing Information Nature of Motion: Motion For a New Trial Absolute Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO													
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant  Date submitted Sept 16, 2016													
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td colspan="2"> ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions </td> </tr> <tr> <td colspan="2"> Name of Court Reporter: ☐ Other: </td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status	☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act	☐ Post-Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRPC)	☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: ☐ Other:	
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MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

Plaintiffs

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

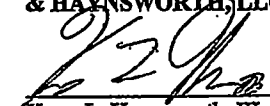
C.A. NO.: 2015-CP-04-2206

**MOTION FOR NEW TRIAL
ABSOLUTE**

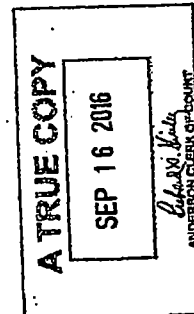
Defendant Target Corporation hereby moves the court for a new trial absolute based upon the fact that the evidence in this case does not justify the verdict. Accordingly, pursuant to the 13th juror doctrine, the trial court should grant a new trial in Target's favor.

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**


Knox L. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424

Attorney for Defendant



Greenville, South Carolina

September 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison
Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

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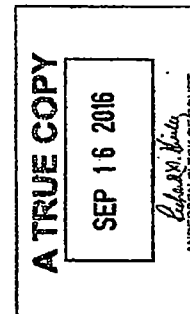
CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below Target Corporation's motion for new trial absolute by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605

Laura Barry
Laura Barry

Greenville, South Carolina
September 16, 2016



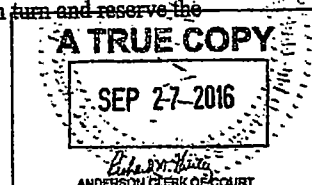
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Carla Denise Garrison and Clint Garrison,	)	CASE NO. 2014-CP-04-1426
	)	CASE NO. 2015-CP-04-2206
Plaintiffs,	)	
	)	PLAINTIFFS' RESPONSE
vs.	)	TO DEFENDANT'S MOTION FOR
	)	JUDGMENT AS A MATTER OF
Target Corporation,	)	LAW, NEW TRIAL ABSOLUTE, OR
	)	NEW TRIAL NISI REMITTITUR,
Defendant.	)	TO DEFENDANT'S MOTION FOR
	)	NEW TRIAL ABSOLUTE, AND TO
	)	DEFENDANT'S MOTION TO
	)	REDUCE PUNITIVE DAMAGES
	)	AWARD PURSUANT TO S.C. § 15-
		32-530

After Carla Denise Garrison was stuck by a hypodermic needle in Target's parking lot, she and her husband, Clint Garrison, filed lawsuits against Target that were consolidated in this Court. Target refused an offer of judgment in February 2015, and this case was tried to 12 Anderson County jurors in September 2016. A \$4,618,500.00 verdict was returned in favor of the Garrisons, and they submitted their motion for interest and costs thereafter. Target has now filed a litany of its own post-judgment motions, all of which should be denied.

RESPONSE

Target's motions, as an initial matter, do not specifically state the basis on which relief is sought. Instead, Target only generally states the legal avenue upon which it seeks to travel. Such a strategy implicates the rule that, in the context of a post-judgment motion, "counsel must specifically state the grounds for the motion[.]" *See, e.g., Vaughn v. City of Anderson*, 386 S.E. 2d 297, 301 (S.C. Ct. App. 1989). For this reason alone, all of Target's motions should be denied.

Nonetheless, even if Target later provides more detail in support of its bare-bones motions, and even if this Court is willing to consider those belated additions, the motions fail for numerous other reasons. The Garrisons address each of Target's requests in turn and reserve the



right to supplement this response if Target submits additional briefing in support of the motions at a later date.

I. This Court should deny Target's request for judgment as a matter of law on the issue of liability.

Despite the jury's substantial verdict in this case, Target first contends that it, rather than the Garrisons, should be declared the winner. That contention is meritless. The standard governing an attempt to reverse a jury verdict is high, requiring that the "finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict." *See, e.g., Hutson v. Cummins Carolinas, Inc.*, 314 S.E. 2d 19, 22 (S.C. 1984) (emphasis in original). All evidence and inferences must be viewed in the light most favorable to the Garrisons, with this Court concerning itself "with the existence of evidence and not with its weight." *See Pike v. South Carolina Dep't of Transportation*, 506 S.E. 2d 516, 518 (S.C. 1998).

Plenty of evidence exists to support the jury's verdict here. Though Target generally claims that the evidence was insufficient to sustain the jury's finding "[u]nder settled South Carolina premises liability law," it fails to explain how there is a lack of evidence on the elements of duty, breach, causation, and injury. Significantly, only a scintilla of evidence need exist to defeat Target's motion. *See, e.g., Jones v. Sun Publishing Co.*, 278 S.C. 12 (S.C. 1982) ("South Carolina adheres to the 'scintilla of evidence' rule which requires submission of an issue to a jury whenever there is competent and relevant evidence tending to establish the issue in the mind of a reasonable juror."). Because this record is full of documentary and testimonial evidence amounting to far more than "the smallest trace" needed to uphold the verdict of the 12 Anderson County jurors who heard this case, Target's motion for judgment as a matter of law on the issue of liability must be denied. *See Bethea v. Floyd*, 181 S.E. 721, 724 (S.C. 1935) (defining the scintilla standard).

II. This Court should deny Target's request for judgment as a matter of law on the issue of punitive damages.

Target also contends, wrongly, that there was insufficient evidence for this Court to send the issue of punitive damages to the jury. That contention fails because there is more than enough evidence to support the jury's finding of "willful, wanton, or reckless misconduct" on the part of Target. *See, e.g., Solanki v. Wal-Mart*, 763 S.E. 2d 615, 617-20 (S.C. Ct. App. 2014).

The South Carolina Court of Appeals recently reiterated, in a case against a national retailer, that “[t]he issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant’s behavior was reckless, willful, or wanton.” *Id.* at 618 (emphasis added). Because this Court correctly determined that more than one reasonable inference could be drawn from the facts of this case, Target’s motion for judgment as a matter of law on the issue of punitive damages must be denied.

III. This Court should deny Target’s request for a new trial absolute.

Target further contends that, if this Court refuses to reverse the jury’s determination outright, it ought to be given a second-bite at the apple with a new trial. Such relief is extraordinary, available only when “the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives.” *See, e.g., Graham v. Town of Latta*, 789 S.E.2d 71, 80 (S.C. Ct. App. 2016). It is irrelevant whether the jury’s verdict is unduly liberal or whether the trial judge would have rendered a lesser amount. *See Elam v. S.C. Dep’t of Transp.*, 602 S.E.2d 772, 781 (S.C. 2004); *Rush v. Blanchard*, 426 S.E.2d 802, 805 (S.C. 1993). Because “[i]t is the duty of the court to sustain a verdict when a logical reason for reconciling the verdict can be found[.]” Target’s motion for a new trial must be denied. *See Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 450 S.E.2d 66, 74 (S.C. Ct. App. 1994).

IV. This Court should deny Target’s request for a new trial nisi remittitur.

Target lastly contends that the jury’s damages award should be reduced, if this Court is unwilling to grant its other requests. *See James v. Horace Mann Ins. Co.*, 638 S.E.2d 667, 670 (S.C. 2006) (“A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive.”). But no justification at all is given for such relief.

There certainly is no reason to remit the actual damages award, in an amount of \$100,000.00 to Carla Denise Garrison and in an amount of \$8,500.00 to Clint Garrison. The record is replete with evidence of medical bills, lost wages, physical injury, emotional distress, and the like. Actual damages in this case fall in the more conservative range for comparable circumstances, so a reduction would be both inconsistent with the evidence and violate the Garrisons’ constitutional rights under the federal and state constitutions. *See, e.g., Smith v.*

Department of Ins., 507 So. 2d 1080 (Fla. 1987) (holding reduction in noneconomic damages unconstitutional).

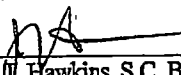
Nor is there any basis for reducing the punitive award, in the amount of \$4,510,000.00 to Carla Denise Garrison. With no supporting argument, Target refers to South Carolina's punitive damages cap and to the federal and state constitutions. In reality, though, it is Carla Denise Garrison's constitutional rights that would be violated if the punitive award were reduced. See, e.g., *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014) (en banc) (holding punitive damages cap unconstitutional); see also *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822 (2011); *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 715 N.E.2d 1062 (1999); *Henderson v. Alabama Power Co.*, 627 So.2d 878 (Ala. 1993); *McBride v. GM Corp.*, 737 F. Supp. 1563 (M.D. Ga. 1990). The record is replete with evidence supporting Target's "willful, wanton, or reckless misconduct" as well as the jury's decision to punish and deter. Reduction of punitive damages would be both inconsistent with the evidence and violate Carla Denise Garrison's constitutional rights under the federal and state constitutions.

CONCLUSION

All of Target's requests for relief must be denied. In fact, the very nature of Target's alternative motions demonstrates the weakness of its arguments. Twelve conscientious jurors decided this case, and their decision should be respected.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC


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Attorney for Plaintiff

Greenville, South Carolina

9/26, 2016

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

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Carla Denise Garrison and
Clint Garrison,
Plaintiffs,)

v.)

Target Corporation,)

Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

C.A. NO.: 2015-CP-04-2206

MEMORANDUM OF LAW
IN SUPPORT OF TARGET'S
MOTIONS FOR JUDGMENT AS A
MATTER OF LAW, NEW TRIAL
ABSOLUTE, OR NEW TRIAL NISI
REMITTITUR AND RELIEF UNDER
THIRTEENTH JUROR DOCTRINE

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W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 61 (5th ed. 1984)	7, 8

INTRODUCTION

A discarded medical syringe of unknown origin is dangerous. It might be contaminated with infectious disease, so it should be handled with care and disposed of properly. Had Target known of the discarded syringe in its parking lot that Kaileigh Garrison found—or had the syringe been there long enough to allow a finding of “constructive knowledge”—Target should have disposed of it carefully to avoid any risk of injury to its guests or its employees. These are the common-sense premises on which Plaintiffs’ case was built.

The evidence presented at trial complicated this simple story. To begin, there was no evidence that anyone at Target was aware of the syringe, and the Plaintiffs produced not even a scintilla of cognizable evidence to establish that the syringe had been in the parking lot long enough for Target to have constructive knowledge of it. All they offered was their own conjecture. And although she alleged that Target should have handled the discarded syringe with the utmost care, Denise Garrison, on seeing it in her daughter’s hand, did not exercise that care herself. Rather, she slapped at it in a way that magnified risk of injury if not creating that risk altogether. On the record presented at trial, South Carolina law commanded a verdict in favor of Target.

The jury did not oblige. It found Target negligent, it absolved Denise of any fault, and it awarded compensatory damages in an amount that exceeded the Garrisons’ ask by an order of magnitude and punitive damages in an amount that shocks the conscience. The jury’s verdict betrays its passion, prejudice, and partiality. This case cries out for judicial intervention.

Target is entitled to judgment as a matter of law on three issues. First, Plaintiffs failed to prove Target was negligent in its duty to maintain a safe parking lot. Because they offered nothing more than speculation to show how long the syringe had been in the parking lot,

Plaintiffs failed to prove that Target had constructive knowledge of a dangerous condition. Thus, their negligence claim fails as a matter of law.

Second, even if Plaintiffs had submitted sufficient evidence that Target had constructive knowledge of the syringe, the only reasonable inference that could be drawn from the record was that Denise's injury was caused predominantly by her own conduct. She was aware of the potential hazards associated with the syringe, and even said she saw a small needle sticking out. Nonetheless, she imprudently slapped the syringe with her bare hand. On this record, the only permissible conclusion was that Denise's negligent conduct contributed to her injury far more than Target's failure to detect and remove the syringe, so Target is entitled to judgment as a matter of law on this issue as well.

Third, even assuming Plaintiffs' evidence was sufficient to find Target had constructive knowledge of the syringe, Plaintiffs nonetheless failed to show that Target was reckless by clear and convincing evidence. Their failure to clear that high hurdle bars them from recovering any punitive damages.

The Court also must intervene here in light of the jury's exorbitant damages awards. To be blunt, the paucity of Plaintiffs' evidence calls into question the jury's motivation in awarding more than \$4.6 million in combined damages. The compensatory award of more than \$100,000 showed that the jury ignored not only Plaintiffs' failure to present sufficient evidence of Target's liability and the compelling evidence of Denise's comparative negligence, but also the Plaintiffs' demand for only \$11,000. Even more shocking, the punitive damages award of \$4,510,000—forty-five times greater than the already outsized compensatory award—not only lacks any basis in evidence, but also contravenes Target's constitutional right to due process. The only conclusion to be drawn from the jury's exorbitant damages awards is that the jury was motivated

by caprice, passion, or prejudice rather than a fair review of the evidence. Target is thus entitled to a new trial absolute or, in the alternative, a new trial nisi remittitur. Finally, even if the Court were to deny Target judgment as a matter of law or a new trial, the Court must nonetheless reduce the jury's punitive damages award because it exceeds the limit imposed by South Carolina law.

FACTS¹

On the evening of May 21, 2014, Denise Garrison drove to the Target store in Anderson, South Carolina, with her eight-year-old daughter Kaileigh. (Tr. 360:20.)² After exiting the car and stopping a moment to set her coupon book on the hood, Denise heard her daughter ask, "Mommy, what is this?" (Tr. 361:5.) Denise looked up and saw her daughter holding a three-inch-long plastic syringe with a small needle "pointing out." (Tr. 361:4-8, 18-19.) Denise did not ask Kaileigh to put the syringe down. Nor did she calmly take the syringe from the child's hand. Instead, Denise "immediately reacted and swatted" the syringe. (Tr. 361:9.) The syringe flew down to the pavement. (Tr. 363:4-5.)

Denise then looked down at her right palm and saw "a tiny bead of blood and a puncture wound." (Tr. 365:21-22.) She quickly went to the store's restroom, where she washed her hands several times. (Tr. 364:18-20.) Denise then called her husband Clint to tell him about the accident, and Clint suggested that she speak with a Target employee. (Tr. 364:20-24.) So Denise located and spoke with Shelby Brintnall, the Target manager serving as the "lead-on-duty" that evening. (Tr. 366:9-11.) Brintnall went with Denise out to the parking lot and took a photograph of the plastic syringe, which was "dirty, dingy, and gross." (Tr. 151:23-25.) But the

¹ For the purposes of this memorandum, Target recites the facts in the light most favorable to Plaintiffs. See *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

² A copy of the trial transcript is attached to this memorandum as Exhibit 1.

needle that Denise had seen in the syringe was nowhere to be found. (See Tr. 396:7.) Brintnall brought the syringe back into the store. (Tr. 213:25.)

While Denise was still at the store, Brintnall interviewed her and filled out a guest incident report. (Tr. 149:11-17.) Brintnall wrote: "Guest's daughter picked up needle. [Denise's] first reaction was to smack the needle out of her hand. And when she did it stuck, it stuck her in the right hand." (Tr. 153:3-6.) Later that evening, after Denise left, Brintnall filled out a report that included Brintnall's notes regarding the investigation and personal impressions about the incident. (Tr. 154:19-25.) In that report, Brintnall noted that she did not see a needle. (Tr. 154:17.)

The next day, Denise went to the emergency room, where she was treated for a needle stick. (Tr. 369:22-370:2.) A nurse at the emergency room referred Denise to an infectious disease specialist, who prescribed her an HIV/antiviral medication and antibiotics. (Tr. 370:12-15, 373:11-13.) The combination of medicines led to side effects including vertigo, dizziness, loss of balance, and vivid nightmares. (Tr. 374:3-5, 375:5-6.) Clint, the family's sole breadwinner, took several days off from work and was unable to work overtime shifts. (Tr. 304:4-24; 377:20-24.) He described his wife as inhabiting a "zombie-like state" during that period. (Tr. 334:13-14.) After about a week, Denise was able to change her prescriptions to stop most of the side effects, although she still experienced nausea. (Tr. 376:10-23.) Over the following year, Denise received four HIV blood tests. (Tr. 378:7-9.) The last time Denise received medical care related to the needle stick was about September 2015. (See Tr. 405:16.) There is no evidence that Denise contracted any infectious diseases as a result of the incident with the syringe.

On June 27, 2014, Denise alone filed a lawsuit against Target in the Court of Common Pleas for Anderson County. In her complaint, Denise alleged negligence and unfair trade practices.³ After discovery, Denise and Clint filed a second lawsuit against Target, which incorporated the same claims as the 2014 suit plus claims on behalf of Clint for loss of consortium and loss of wages. The two actions came before the Court for a consolidated jury trial on September 6, 2016. During the three-day trial, the jury heard testimony from Shelby Brintnall, Target's property maintenance technician John Jackson, Clint, Denise, and Clint's mother Martha Ann Garrison. After ninety minutes of deliberations, the jury returned a verdict in favor of Denise and Clint. The jury awarded Denise \$100,000 in actual damages and \$4,510,000 in punitive damages, and awarded Clint \$3,500 for lost wages and \$5,000 for loss of consortium.

STANDARD OF REVIEW

Judgment as a matter of law is appropriate "[i]f the evidence as a whole is susceptible to only one reasonable inference" so that "no jury issue is created." *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001). When considering a motion for judgment as a matter of law, "the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). Regarding a motion for new trial, the court must grant a new trial absolute if the jury's verdict "is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). If the verdict "is merely excessive," then the court retains the discretion to grant a new trial nisi remittitur. *See id.*

³ At trial, Denise abandoned her unfair trade practices claim. (See Tr. 443:7.)

ARGUMENT

- L. Target is entitled to judgment as a matter of law because Plaintiffs failed to prove Target had constructive knowledge of the presence of the syringe in its parking lot.**

The evidence adduced at trial was not sufficient to support Plaintiffs' negligence claim. Specifically, South Carolina law requires a plaintiff alleging negligence against a merchant to prove that the merchant created the dangerous condition that caused her injury, or that the merchant knew or should have known about the condition and failed to remedy it. Here, Plaintiffs allege that Target should have known about the syringe, but Plaintiffs' evidence fails to prove that the syringe was in the parking lot long enough for Target to discover it. With nothing more than speculation to offer as proof on that element, Plaintiffs' case fails. On that basis alone, Target is entitled to judgment as a matter of law.

- A. Constructive knowledge requires proof beyond speculation that a dangerous condition existed long enough for the merchant to discover and remedy it.**

Under longstanding South Carolina law, a merchant cannot be held liable simply because a customer injures herself while at its store. See *Hunter v. Dixie Home Stores*, 232 S.C. 139, 144, 101 S.E.2d 262, 265 (1957). Instead, the customer must prove either that (1) her injury was caused by a dangerous condition specifically created by the merchant; or (2) that the merchant "had actual or constructive knowledge of the dangerous condition and failed to remedy it." *Wintersteen*, 344 S.C. at 35, 542 S.E.2d at 729. Thus, the law does not require the merchant "to maintain the premises in such condition that no accident could happen to a patron using them." *Denton v. Winn-Dixie Greenville, Inc.*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (Ct. App. 1993). Nor is it obliged to "continuously inspect" the premises for dangerous conditions. *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 377 (Ct. App. 2006). Rather, the merchant must exercise reasonable care to prevent known or knowable hazards.

If the plaintiff cannot show that the merchant created the dangerous condition or actually knew of its existence, she must show that the merchant had constructive knowledge of the hazard. Constructive knowledge can only be imputed if the plaintiff proves that the dangerous condition preexisted her injury long enough for the merchant to "have discovered and remedied it." *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971).⁴ And, as South Carolina law makes clear, the length of time a hazard existed at the store cannot be left to speculation. See, e.g., *Milligan v. Winn-Dixie Raleigh, Inc.*, 273 S.C. 118, 121, 254 S.E.2d 798, 800 (1979) (reversing jury verdict when conclusion that oil had been on sidewalk long enough for merchant to discover "would be pure speculation"); *Pennington v. Zayre Corp.*, 252 S.C. 176, 179, 165 S.E.2d 695, 696 (1969) (affirming grant of involuntary nonsuit when evidence that plastic bags had been on department store's floor long enough to be "discovered by the merchant would be pure speculation"); *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 91, 394 S.E.2d 24, 25 (Ct. App. 1990) (affirming award of summary judgment to merchant when plaintiff's evidence showed puddle was on floor within employee's field of vision, but no evidence suggested how long water had been on floor).

The requirement that a dangerous condition last long enough for the merchant to discover it derives from the rule that a landowner cannot be liable for injuries caused by conditions "which [he] neither knew about nor could have discovered with reasonable care." See W. Page Keeton, et al., *Prosser and Keeton on the Law of Torts* § 61, at 426 (5th ed. 1984). As Dean Keeton explained, "The mere existence of a defect or danger is generally insufficient to establish

⁴ South Carolina law also imputes constructive knowledge when a hazard recurs often enough to be deemed a "continual condition" that should be discovered by a merchant exercising due care. *Major v. City of Hartsville*, 410 S.C. 1, 3, 763 S.E.2d 348, 350 (2014). There has been no suggestion in this case that syringes were a recurring problem in the parking lot at Target's Anderson store.

liability, unless it is shown to be of such a character or of *such duration* that the jury may reasonably conclude that due care would have discovered it." *Id.* (emphasis added). South Carolina law reflects that understanding, as a merchant's duty to maintain a safe premises is predicated on the merchant's "superior knowledge of the danger" that might befall its customers. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 448, 531 S.E.2d 535, 540 (Ct. App. 2000). "If that knowledge is lacking," the merchant "cannot be held liable." *See id.* Thus, the duration of the dangerous condition's existence allows the jury to infer that, had the merchant been exercising due care, it would have obtained superior knowledge of the condition and assumed the corresponding obligation to remove it or warn its customers. Without actual proof of the duration of the dangerous condition, holding a merchant liable for the injury would transform the customer's negligence claim into one for *res ipsa loquitur*. *But see Hunter*, 232 S.C. at 144, 101 S.E.2d at 265 (noting that South Carolina does not recognize *res ipsa loquitur*).

For example, in *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 122, 165 S.E.2d 627, 629 (1969), the Supreme Court of South Carolina reversed a plaintiff's jury verdict in a slip-and-fall lawsuit involving loose grains of rice, because the plaintiff had failed to introduce "any evidence showing how long the rice had been on the floor." At trial, the plaintiff had relied on evidence suggesting that the grocery store had been understaffed, used inadequate inspection practices, failed to properly maintain its floor, and used multicolored flooring that would make detecting hazards especially difficult. *See id.* None of that evidence mattered to the Supreme Court, however, because the plaintiff had overlooked "the necessity of proof of actual or constructive notice." *Id.* In short, without any evidence showing "that the rice was on the floor at any particular time prior to the actual fall," the jury was wrongly "permitted to speculate that it was on the floor" long enough to infer constructive knowledge. *Id.*

Similarly, in *Norris v. Wal-Mart Stores, East, L.P.*, No. 1:12-02592, 2014 WL 496010, at *6 (D.S.C. Feb. 6, 2014) (Childs, J.), a federal district court applying South Carolina law awarded summary judgment to a merchant because the plaintiff could not show that the hazard—an unidentified oily substance pooled in an aisle—had existed for any particular amount of time before his injury.⁵ In that case, the plaintiff had suggested that “streak marks extending from the substance create[d] an inference that the substance had been on the floor a long enough time” for the merchant to discover it. *Id.* at *5. But the district court rejected that suggestion, recognizing that such evidence “fail[ed] to allow for any estimate of the amount of time that the substance was on the floor prior to” the plaintiff’s fall. *Id.* at *6.

B. Plaintiffs’ proof of constructive knowledge was only speculation.

In this case, Plaintiffs failed to prove Target’s constructive knowledge because, as Plaintiffs’ counsel readily conceded, none of the evidence suggested how long the syringe had been in Target’s parking lot. No witness saw the syringe before Kaileigh picked it up. No photographs showed the syringe’s location before Denise swatted it with her hand. Moreover, no witness suggested that Target employees would have any reason to believe syringes would turn up in the parking lot. Just like the rice in *Wimberly*, there is no evidence whatsoever “which reasonably tends to prove” that the syringe was in the parking lot “at any *particular* time prior to” Denise’s injury. *See Wimberly*, 252 S.C. at 122, 165 S.E.2d at 629 (emphasis added).⁶

To be sure, Clint and Denise each testified that they thought the syringe had been in the parking lot long enough for Target to discover, but their testimony was itself mere speculation. For example, Clint testified that the syringe “had been there a while.” (Tr. 355:11.) His lay

⁵ A copy of the unpublished *Norris* decision is attached to this memorandum as Exhibit 2.

⁶ During arguments on Target’s motion for a directed verdict, Plaintiffs’ counsel admitted that they did not know how long the syringe had been in the parking lot. (See Tr. 449:3-7 (“The defense keeps getting hung up on ‘you don’t know where this needle came from.’ Of course, they don’t. ‘You don’t know how long it’s been there.’ Of course they don’t.”).)

opinion was not informed by viewing the syringe in the parking lot before the incident, but rather by the syringe's proximity to a cigarette butt and piece of twine in a photograph of the spot where the syringe landed after Denise swatted it away. (See Tr. 355:13-20.) Clint did not opine as to how long the cigarette butt or twine had been in the parking lot, let alone suggest that those objects were discarded into the parking lot before or after the syringe. Similarly, Denise testified that she "could tell, obviously it had been there a long time," but offered no basis for her lay opinion. (Tr. 362:22-23.) Clint's and Denise's opinions about how long the syringe was in the parking lot exemplified the kind of "pure speculation" proscribed by South Carolina law. See *Milligan*, 273 S.C. at 121, 254 S.E.2d at 800; *Pennington*, 252 S.C. at 179, 165 S.E.2d at 696; *Wimberly*, 252 S.C. at 122, 165 S.E.2d at 629.

Moreover, the evidence regarding the syringe's physical appearance failed to support any reasonable inference that the syringe had been in the parking lot for any period of time, let alone long enough for Target to discover. Although testimony suggested the syringe appeared "dirty, dingy, and gross," and bore a "weathered" look similar to other pieces of trash in the parking lot, nothing at trial connected those traits to how long the syringe might have been in the parking lot. (Tr. 190:10-11; 355:19-20.) Without any evidence as to how old the other articles of trash were, the comparison to the syringe proved nothing. Neither Clint nor Denise offered any opinion that the weathering they observed occurred in Target's parking lot as opposed to somewhere else. And, nothing in the record suggested how much time or what conditions would create a "weathered" look.

Similarly, Plaintiffs made no attempt to link the appearance of the syringe with any particular events or conditions in the parking lot. Had the syringe borne flecks of paint, for example, such evidence might support an inference that the syringe was in the parking lot during

a recent repainting. Likewise, an expert witness might have offered testimony relating the syringe's appearance to certain weather conditions, locations, or other temporal indicators. *Cf. Reid v. Kohl's Dep't Stores, Inc.*, 545 F.3d 479, 482 (7th Cir. 2008) (applying analogous Illinois premises liability law and rejecting plaintiff's inference that partially melted milkshake must have been on floor long enough to infer constructive knowledge). But without any evidence that would "allow for any estimate of the amount of time" the syringe had been in the parking lot, Plaintiffs offered nothing more than speculation that Target had constructive knowledge. *See Norris*, 2014 WL 496010, at *6.

In short, Plaintiffs failed to show that the syringe was in Target's parking lot long enough to impute constructive knowledge. Without knowledge, Plaintiffs' negligence claim fails. Accordingly, Target is entitled to judgment as a matter of law.

II. Target is entitled to judgment as a matter of law because the only reasonable conclusion the jury could draw from the evidence was that Denise's own negligence was the proximate cause of her injuries.

Even assuming Plaintiffs presented sufficient evidence that Target had constructive knowledge of the syringe, Denise's greater negligence absolved Target of any liability. Specifically, with full appreciation for the dangers associated with discarded syringes, Denise swatted at a visible needle with her bare hand. Her injury was the natural and probable consequence of that negligent action, not the foreseeable outcome of Target's allegedly ineffective cleaning and inspection routines. Because Denise's negligence exceeded that of Target, Target is entitled to judgment as a matter of law.

A. South Carolina law precludes a plaintiff from recovering damages for negligence when the sole reasonable inference from the evidence is that her own negligence exceeded that of the defendant.

South Carolina has adopted a rule of comparative negligence under which a plaintiff will be barred from recovery unless her "own negligence is not greater than that of the defendant."

Bloom v. Ravoir, 339 S.C. 417, 422, 529 S.E.2d 710, 712-13 (2000). A plaintiff can be comparatively negligent when she breaches a duty of care by act or omission, and her breach proximately causes her injuries. *See id.* That breach is considered the proximate cause of her injuries when it is both the factual and legal cause thereof. *See Singleton v. Sherer*, 377 S.C. 185, 203, 659 S.E.2d 196, 206 (Ct. App. 2008). Causation in fact arises when, “but for” the negligent act, the injury would not have resulted. *See id.* Legal causation refers to foreseeability, which “is determined by looking to the natural and probable consequences of the act complained of.” *Vinson v. Hartley*, 324 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct. App. 1996). Although comparative negligence is typically a jury question, a defendant is entitled to judgment as a matter of law “if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” *Bloom*, 339 S.C. at 422, 529 S.E.2d at 713.

B. The sole reasonable inference to be drawn from the evidence is that Denise’s negligence exceeded Target’s.

Like all individuals in South Carolina, Denise was under a general duty to take such reasonable care as called for by the situation she faced. When she swatted at the syringe, she breached her duty to take reasonable care and, in the process, negligently injured herself. *See Jones v. Am. Fid. & Cas. Co.*, 210 S.C. 470, 478, 43 S.E.2d 355, 359 (1947); *see also* Restatement (Second) of Torts § 298 (1965) (defining “the care which an actor is required to exercise to avoid being negligent” as “that which a reasonable man in his position, with his information and competence, would recognize as necessary to prevent the act from creating an unreasonable risk of harm to another”). Denise’s actions reflected unreasonable care and so constituted a breach of that duty.

Not only would a reasonable person be cognizant of the safety risks posed by a discarded syringe, but the evidence showed that Denise was subjectively aware of those risks. During trial,

Plaintiffs emphasized—and Target acknowledged—that, had a Target employee seen the syringe laying in the parking lot, he or she would have had a duty to remove it. (See Tr. 139:18-20, 142:17-20.) That conclusion rests on the common understanding that a discarded syringe might be a hazard to public health. Denise reflected that common knowledge when she recalled that, immediately after hitting the syringe out of her daughter's hand, she told Kaileigh "how dangerous it was," and not to "ever pick anything like that up." (Tr. 361:13-15.)

Importantly, the moment did not call for caution-to-the-wind intervention to keep Kaileigh safe. According to Denise's testimony, she first saw the syringe after Kaileigh had picked it up, walked it around to the front of the car, held it up for her mother to see, and asked, "Mommy, what is this?" (Tr. 361:5.) At that moment, the needle Denise said she saw was "pointing out," not towards Kaileigh. (Tr. 361:7-8.) No evidence suggested that Kaileigh was poised to touch the needle or stab herself with the syringe. Nor did Denise testify that Kaileigh was prone to rash and unpredictable behavior. In fact, the child was holding the syringe up for her mother to see. And, as she repeatedly testified, Denise saw a needle on the end of the syringe. (See Tr. 362:8-10, 363:8-10, 402:6-20.)

Armed with the knowledge of the dangers posed by syringes, the opportunity to avert any harm, and an awareness of the outward-facing needle, Denise nevertheless "swatted" at the syringe with her bare hand. (Tr. 361:9.) The prudent course would have been to calmly tell Kaileigh to drop the syringe on the ground or carefully remove it from the young girl's grasp. Instead, Denise exacerbated the danger posed by the syringe by slapping it, pricking herself in the process, and launching it into the air (where it might well have injured Kaileigh as well).

Denise's unreasonable reaction to the syringe was the proximate cause of her injury. But for her decision to swat at the syringe with her bare hand, Denise would not have sustained a

puncture wound that required medical treatment or faced any of the related stress or emotional issues that ensued. In short, her injury was undoubtedly the natural and probable consequence of swatting at a needle. Thus, the evidence adduced at trial clearly demonstrated that Denise's negligence caused her injury.⁷

In comparison to Target's conduct—even assuming Target ought to have discovered the syringe during its routine cleanings or inspections (which the evidence did not support here)—Denise's negligence clearly exceeded fifty percent. Specifically, although Target's failure to discover the syringe might have been a "but for" cause of the incident, Target's conduct was not the legal cause of her injury. That is, Denise's puncture wound was not "the natural and probable consequence" of Target's negligence. See *Vinson*, 324 S.C. at 400, 477 S.E.2d at 721. Certain injuries might be foreseeable outcomes of a store's failure to maintain its parking lot. So, too, would the issue of comparative negligence be different if Kaileigh had hurt herself with the syringe. But Target could hardly foresee that, by failing to clean and inspect its parking lot more thoroughly, a customer would consciously slap an object she knew to be a biohazard and give herself a puncture wound.

In short, once presented with the syringe by her daughter, Denise had both an opportunity and a duty to respond with care. Her failure to do so was the direct cause of her injury. Whatever Target's responsibility for the syringe, the sole reasonable inference from the evidence

⁷ It is illuminating to contemplate the types of reactions to hazards in more traditional premises liability cases that would be analogous to Denise's reaction to the syringe here. For example, in the *Wimberly* case, where the hazard was spilled rice, a visitor seeing the spilled rice and her daughter standing nearby might have taken any number of reasonable steps to prevent harm: ask the child to move away from the spill; guide the child around the rice; or warn the child to watch her step. But had that visitor responded as Denise did here, that visitor would have jumped with both feet into the pile of rice. The law cannot tolerate the imposition of liability based on constructive knowledge, where the plaintiff has *actual* knowledge of the hazard and takes conscious and voluntary action that transforms a potential risk into actual injury.

was that Denise's negligence contributed far more to her injury than Target's negligence. Accordingly, Target is entitled to judgment as a matter of law.

III. Target is entitled to judgment as a matter of law on the issue of punitive damages, because Plaintiffs failed to present clear and convincing evidence that Target's conduct was willful, wanton, or in reckless disregard of her rights.

Beyond their failure to prove Target's negligence, Plaintiffs failed to show that Target acted recklessly, as required to sustain an award of punitive damages. For starters, the evidence did not support a finding that Target was negligent, much less reckless. Moreover, the evidence of Target's cleaning and inspection practices belied the contention that Target consciously disregarded the safety of its customers. Without any proof of recklessness, let alone clear and convincing evidence thereof, Plaintiffs failed to prove any justification for punitive damages.

A. To receive punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant acted with conscious disregard for her rights.

Punitive damages serve to punish egregious misconduct and deter future wrongdoing. As such, South Carolina imposes a higher burden of proof for punitive awards than compensatory awards. Specifically, a plaintiff seeking punitive damages must present "evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). By law, the plaintiff must prove "such damages by clear and convincing evidence." S.C. Code § 15-33-135. That standard imposes "the highest burden of proof known to the civil law." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004).

Evidence that proves only negligence cannot support an award of punitive damages. Rather, the plaintiff must prove that the defendant behaved recklessly. *See Berberich v. Jack*, 392 S.C. 278, 288, 709 S.E.2d 607, 612 (2011). Negligent conduct becomes reckless if it "was committed in such a manner or under such circumstances that a person of ordinary reason and

prudence would have been conscious of it as an invasion of the plaintiff's rights." *Taylor*, 324 S.C. at 221, 479 S.E.2d at 46. Thus, to recover punitive damages in a negligence action, the plaintiff must prove by clear and convincing evidence that the defendant consciously failed to exercise due care. *See id.*

B. Plaintiffs' evidence failed to show that Target's cleaning and inspection practices demonstrated any conscious disregard for its customers' safety.

As a preliminary matter, Plaintiffs failed to prove Target acted negligently, let alone recklessly. As discussed above, Plaintiffs presented no evidence showing the amount of time the syringe had been in the parking lot before Denise's injury. Without that evidence, Plaintiffs failed to prove Target had constructive knowledge of the syringe, and therefore failed to make out their case for negligence.

Nevertheless, even assuming Target was negligent, Plaintiffs' evidence came nowhere close to showing the recklessness required to justify an award of punitive damages. Specifically, Plaintiffs' theory of liability—that Target should have more frequently or thoroughly canvassed the parking lot for dangerous objects—lacked any proof that Target acted willfully, wantonly, or with reckless disregard for its customers' safety.⁸ For example, no one knew the syringe existed before Denise saw it in Kaileigh's hand, and no evidence suggested how long the syringe was in the parking lot before that moment. Moreover, there was no evidence that anyone had ever seen syringes or any other dangerous objects in the parking lot prior to Denise's injury. In other

⁸ To be clear, the assumption that Target had constructive knowledge of the syringe does not encompass an assumption that Target was consciously aware of the syringe's presence. Although constructive knowledge is a legal substitute for actual knowledge for purposes of premises liability, it is not the same as actual knowledge. *Strother v. Lexington Cty. Recreation Comm'n*, 332 S.C. 54, 63, 504 S.E.2d 117, 122 (1998). Accordingly, proof that a merchant had constructive knowledge of a hazard does not prove that the merchant consciously disregarded the hazard.

words, Plaintiffs failed to introduce any evidence that Target consciously or recklessly disregarded any dangerous conditions on its premises.⁹

In contrast, the evidence adduced at trial demonstrated that Target took many steps to maintain a clean and safe parking lot. For example, Target had the parking lot cleaned at least five times each week. Once a week, during the overnight hours between Thursday and Friday, a third-party vendor used a street-sweeping truck to vacuum the lot. (Tr. 278:14-24.) Every Friday morning, property management technician John Jackson verified that the truck had come by visually inspecting the parking lot. (Tr. 279:12-19.) If the truck did not come or the parking lot appeared dirty, Jackson would take note during his "walk the vibe" inspection. (Tr. 280:8.) According to Jackson's testimony and his inspection records, the parking lot had been cleaned by the truck in the weeks before and after Denise's injury. (Tr. 280:8, 283:6-13.) Moreover, four times weekly during daylight hours, the housekeeping staff cleaned the parking lot of trash and debris, picking up "anything larger than a golf ball." (Tr. 241:22, 242:4-5.) Again, Jackson would have noted any deficiencies in the housekeeping staff's cleaning, and his records revealed no cleaning issues during the pertinent time period. (Tr. 283:6-13.)

In addition to the five weekly cleanings, the parking lot was inspected by Target employees multiple times each day. Jackson's daily "walk the vibe" inspection took him throughout "different parts of the store, interior and exterior," including the parking lot. (Tr. 256:7-10.) While outside, Jackson would "look through the property" to find dangerous

⁹ Clint's testimony regarding an errant bolt that allegedly remained in the parking lot for four months is irrelevant for three reasons. First, Clint allegedly first observed the bolt in April 2016, nearly two years after Denise's injury. Second, no evidence was introduced that any Target employee saw or was aware of the bolt, so its presence cannot be the basis for conscious disregard of a merchant's duty to maintain a safe premises. Third, even if an employee saw the bolt at some point during those four months, its presence hardly merits the same response as an abandoned syringe. At most, the bolt supports the conclusion that Target's cleaning operations were ineffective, not that Target acted in reckless disregard of its customers' safety.

conditions, including "big, large debris" or "trip hazards." (Tr. 234:1-4.) Jackson conducted his inspections without incident in the weeks before and after Denise's injury. (Tr. 282:21-283:13.) Had he seen the syringe in Target's parking lot, he would have removed it. (Tr. 280:20.) Target employees also engaged in ad hoc inspections of the parking lot throughout the day. Shelby Brintnall explained that the store's cart attendants "are told to look for any major debris or anything like that, that would be in the way of a guest." (Tr. 133:11-13.) Although attendants did not have a set schedule for retrieving carts, Brintnall estimated that there was "somebody outside at least an hour, every two hours, depending on how busy" the store might be. (Tr. 134:16-18.) Attendants were expected to tell a manager if they encountered "something that may cause harm." (Tr. 134:1-2.) Had Brintnall been told about a needle in Target's parking lot, "it would be [her] duty to pick that up." (Tr. 139:18-20.)

In light of the foregoing, no reasonable juror could find evidence—much less clear and convincing evidence—that Target consciously disregarded the safety of its customers. At best, the evidence suggested that Target's many methods of keeping its parking lot clean and safe—a weekly visit from a cleaning truck, multiple weekly cleanings by the housekeeping staff, a daily formal inspection by Jackson, and various ad hoc inspections by cart attendants—were simply ineffective in detecting a syringe that may not have arrived at Target until moments before Denise's injury. Evidence of ineffectiveness, however, does not equate to negligence, much less recklessness. Put succinctly, Target's inability to locate the three-inch syringe—a near-literal needle in a haystack—does not constitute clear and convincing evidence of willful, wanton, or reckless conduct. See, e.g., *Martin v. Martin*, 262 S.C. 168, 174-75, 203 S.E.2d 385, 387-88 (1974) (reversing judgment and award of punitive damages when evidence did not suggest the defendant "was conscious of any conduct ... which was an invasion of the rights of the

[plaintiff]"). Plaintiffs' failure to meet that demanding burden precludes any award of punitive damages.

IV. Target is entitled to a new trial absolute or, in the alternative, a new trial nisi remittitur, in light of the jury's excessive and unconstitutional damages awards.

If the Court concludes that Plaintiffs submitted sufficient evidence to find Target liable for Denise's injury, the exorbitant damages awards in this case necessitate a new trial. First, the \$4,618,500 verdict demonstrates that the jury was driven by caprice, passion, or prejudice, rather than a fair and impartial consideration of the evidence. Moreover, the excessive punitive damages award violates Target's right to due process. And, even if the verdict was reached without prejudice and withstands review under the Due Process Clause, the damages awards remain impermissibly large in light of the \$11,000 worth of compensatory damages that Plaintiffs requested at trial. Accordingly, Target is entitled to a new trial absolute or, in the alternative, a new trial nisi remittitur.

A. Target is entitled to a new trial absolute, because the jury's grossly excessive damages betrayed underlying caprice, passion, prejudice, partiality, corruption, or other improper motives.

The jury's discretion to set damages is not unbounded. When a verdict is "so grossly excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of caprice, passion, prejudice, partiality, corruption, or other improper motives," then the trial court must order a new trial absolute. *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). Indeed, South Carolina law recognizes that it is "the duty of the trial judge . . . to set aside the verdict absolutely" if "the amount awarded is so shockingly disproportionate to the injuries." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993). Here, the compensatory award of more than \$100,000 and the punitive award

of more than \$4.5 million each reflect damages that are shockingly disproportionate to the harm suffered by Plaintiffs.

1. **The jury's award of more than \$100,000 in compensatory damages was grossly excessive compared to the Plaintiffs' estimated damages of \$11,000.**

Compensatory damages reimburse a plaintiff "for [her] actual loss or injury." *Austin*, 358 S.C. at 311, 594 S.E.2d at 874. As such, they aim to "simply make good or replace the loss caused by the wrong or injury." *Id.* An award of compensatory damages should therefore be set at "the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that [she] will be in the same position [she] would have been in if there had been no wrongful injury." *Id.* at 358 S.C. at 312, 594 S.E.2d at 874.

During closing arguments, Plaintiffs suggested a precise sum of compensatory damages that would make them whole: \$11,000. (*See* Tr. 485:15.) That figure covered Denise's medical bills, Clint's lost wages, and loss of consortium. (*See id.*) Plaintiffs presented no evidence that they were entitled to any compensatory damages above that amount.

Yet, without any evidentiary support for compensating Plaintiffs beyond the \$11,000 they requested, the jury returned a verdict awarding them more than \$100,000 in actual damages. That compensatory verdict, nearly ten times greater than Plaintiffs sought, was shockingly disproportionate to the harms alleged. Moreover, the compelling evidence of Denise's comparative fault calls into doubt the jury's largesse. The record supported, at most, a fraction of Plaintiffs' \$11,000 request, not ten times that amount. The jury's grossly excessive compensatory damages award suggests that they ignored the evidence and instead set an amount based on "caprice, passion, prejudice, partiality, corruption, or other improper motives." *McCourt ex rel. McCourt*, 318 S.C. at 308, 457 S.E.2d at 607.

In retrospect, the jury's shocking verdict was predictable given the closing arguments of Plaintiffs' counsel. Not fewer than ten times, counsel told the jury that Target saw \$73 billion in revenue in 2015—a fact not offered as evidence during trial. (See Tr. 464:14, 465:2, 466:11-12, 467:1-2; 470:14-15, 478:1-2, 479:10, 486:16-17, 487:13-14, 487:18, 500:19-20, 501:22-23.) He also told the jury that if it did not punish Target, then "[m]aybe next time a little girl gets stuck and she dies of AIDS before she's 21." (Tr. 476:2-4.) And, in his parting words to the jury, Plaintiffs' counsel implored that Target was bigoted against the people of Anderson, South Carolina:

[I]n Minneapolis they don't know where Anderson is on the map. And their perception of Anderson, South Carolina, is probably worse than their ignorance of where we are on the map. But I want your verdict to make them say the words in Minneapolis, "Anderson County."

(Tr. 502:4-11.) "The closing argument invited the jury to base its verdict on passion rather than reason." *Branham v. Ford Motor Co.*, 390 S.C. 203, 234, 701 S.E.2d 5, 22 (2010) (holding that closing arguments "calculated to arouse passion" denied the defendant a fair trial). It is little wonder that, having been asked to repay prejudice with prejudice, the jury did just that.

Because the jury's verdict was not based on the evidence adduced at trial, it cannot stand. Target is entitled to a new trial absolute. *Cf. Allstate*, 314 S.C. at 529, 431 S.E.2d at 557 (reversing denial of new trial absolute when jury returned \$160.20 verdict despite undisputed evidence of more than \$35,000 in actual damages).

2. The jury's award of more than \$4.5 million in punitive damages violated Target's due process rights and was grossly excessive.

Due to the "quasi-criminal" nature of punitive damages, their imposition "is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *James*, 371 S.C. at 194, 638 S.E.2d at 670. Thus, whenever a jury awards punitive damages, a trial court must review that decision "to ensure that the award does not

deprive the defendant of due process.” *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996). That due process review focuses on three factors: (1) “the degree of reprehensibility of the defendant’s conduct”; (2) “the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award;” and (3) “the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 185-86 (2009).¹⁰ If the court determines that the punitive damages award violates the defendant’s due process rights, then the court “must either grant a new trial absolute, or a new trial nisi remittitur.” *Id.* If the award does not violate the defendant’s due process rights, then the court should still consider whether the award is grossly excessive in light of the evidence. *See id.*

Here, review of the underlying evidence makes clear that the \$4.51 million punitive damages award violates Target’s due process rights, so Target is entitled to a new trial absolute.

First, Target’s conduct was not reprehensible. Under South Carolina law, a plaintiff can show that a defendant behaved reprehensibly in a number of ways, none of which applies here. *See Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185 (explaining that reprehensibility may be evinced by the nature of a plaintiff’s injury, the defendant’s indifference or reckless disregard “for the health or safety of others,” the targeting of a financially vulnerable plaintiff, the defendant’s repetitive tortious conduct, or an injury that results from “intentional malice, trickery, or deceit, rather than mere accident”). As already discussed at length, Denise’s minor injury was the result

¹⁰ Before *Mitchell*, South Carolina courts reviewed punitive damages awards using a combination of the eight factors outlined in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991), and the three guideposts announced in *BMW of North America v. Gore*, 517 U.S. 559 (1996). *See, e.g., James*, 371 S.C. at 196, 687 S.E.2d at 671-72. In *Mitchell*, the Supreme Court of South Carolina consolidated those standards into a single, three-factor test. *See* 385 S.C. at 587, 686 S.E.2d at 185.

of her own negligent decision to swat at a syringe that had never been seen in Target's parking lot. The fact that Target's multiple parking lot cleanings and inspections did not uncover the syringe reflected, at worst, well-intentioned but imperfect maintenance routines. Such conduct was not reprehensible so as to warrant an award of punitive damages.

Second, the jury's punitive damages award—more than 400 times greater than the damages Plaintiffs requested at trial and nearly 45 times larger than the compensatory award returned by the jury—was grossly disproportionate to the harm suffered by Denise. As the Supreme Court of the United States has recognized, “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). Moreover, none of the considerations that might warrant a large punitive award under South Carolina law were supported by the evidence. See *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185 (recognizing that the ratio between actual and punitive damages must be reviewed in light of “the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from the conduct; and the defendant’s ability to pay”).¹¹ Because there was no evidence showing that Target should have detected the syringe’s presence, any inference that the problem was likely to recur absent proper deterrence layered conjecture on speculation. Moreover, because the duration of the hazard was unclear, the gap between Target’s maintenance procedures and the care that otherwise might have prevented Denise’s injury remained so theoretical and ambiguous that the jury could not reasonably set an amount of

¹¹ Although courts may consider the defendant’s ability to pay the punitive damages award under *Mitchell*’s second factor, such ability “cannot justify an otherwise unconstitutional punitive damages award.” *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185 (citing *State Farm*, 538 U.S. at 427). Accordingly, despite the entreaty of Plaintiffs’ counsel that the jury keep in mind Target’s financial health, revenue is not a sufficient basis for the imposition of punitive damages.

punitive damages needed for deterrence. Finally, the sheer happenstance of Denise's injury underscores the improbability that such harm would result from Target's conduct in the future.

Third, research reveals no "comparable cases" or civil penalties involving the liability of a merchant for a syringe found in his parking lot, let alone one that might support an award of punitive damages. See *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 186 (instructing a reviewing court to "consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases"). Even if the Court considers the broader universe of traditional slip-and-fall cases, it will be hard-pressed to find useful comparators. See, e.g., *Wintersteen*, 34 S.C. at 34, 542 S.E.2d at 729 (affirming reversal of judgment for plaintiff, including \$500,000 punitive damages award, when merchant was entitled to directed verdict); *Howard v. K-Mart Discount Stores*, 293 S.C. 134, 135, 359 S.E.2d 81, 82 (Ct. App. 1987) (reversing judgment for plaintiff, including \$1,000 punitive damages award, when plaintiff failed to present sufficient evidence of merchant's negligence). And South Carolina does not impose civil penalties on merchants for failing to maintain parking lot safety or cleanliness. In other words, any award of punitive damages in this context would be above and beyond the sanctions a South Carolina merchant might expect if a customer were injured by a syringe found in the store's parking lot.

Importantly, the award of punitive damages "must remain consistent with the principle of penal theory that 'the punishment should fit the crime.'" *Mitchell*, 385 S.C. at 584, 686 S.E.2d at 183 (quoting *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004)). Simply put, Target's well-intentioned but imperfect property maintenance did not warrant a \$4.51 million penalty. In light of the factors this Court must consider in its review of

Plaintiffs' punitive damages award, the jury's verdict violated Target's due process rights. On that basis, Target is entitled to new trial absolute.

Finally, even if the Court concludes that the jury's punitive damages determination did not contravene Target's due process rights, the award was grossly excessive relative to the harms brought out at trial. As explained above, Target's purported negligence in maintaining its parking lot scarcely supported a verdict of any actual damages, let alone an award of more than \$4.5 million in punitive damages. The sheer scale of that award, when compared to the dearth of evidence on Target's culpability, is a powerful indicator that the jury was motivated by "caprice, passion, prejudice, partiality, corruption, or other improper motives." *McCourt ex rel. McCourt*, 318 S.C. at 308, 457 S.E.2d at 607. What is more, the calculated closing arguments of Plaintiffs' counsel invited the jury to return an exorbitant verdict out of spite. Target is therefore entitled to a new trial absolute. See *Branham*, 390 S.C. at 234, 701 S.E.2d at 22 (awarding new trial due to, inter alia, improper closing arguments); *Holtzschetter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 515, 506 S.E.2d 497, 504 (1998) (reversing and remanding for new trial absolute due to, inter alia, punitive damages award not supported by evidence).

B. Target is entitled to a new trial nisi remittitur, because the jury's damages award was unduly liberal and unsupported by the trial evidence.

In the alternative to a new trial absolute, Target is entitled to a new trial nisi remittitur because the jury's damages awards were wholly unsupported by Plaintiffs' evidence. A new trial nisi remittitur is appropriate when the jury's verdict is excessive or "unduly liberal," but not necessarily "actuated by passion, caprice or prejudice" so as to warrant a new trial absolute. *Allstate*, 314 S.C. at 530, 431 S.E.2d at 558. Under such circumstances, the trial court must "consider the adequacy of the verdict in light of the evidence presented." *Howard v. Roberson*, 376 S.C. 143, 155, 654 S.E.2d 877, 883 (Ct. App. 2007) (quotation marks omitted). If the

damages awarded by the jury exceed the amount supported by the evidence, then the court may remit the verdict and offer the plaintiff the opportunity to accept the reduced amount. *See id.* "If the plaintiff chooses not to remit, a new trial is essential." *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984).

The same arguments for granting Target a new trial absolute apply to Target's entitlement to a new trial nisi remittitur, and with greater force. As explained above, the verdict of more than \$100,000 in compensatory damages and more than \$4.5 million in punitive damages suggested the jury was not led by the evidence, but was instead driven by improper motives. Even if the Court cannot discern such prejudice, however, the factual record does not support those damages awards. Plaintiffs aimed their proof at actual damages amounting \$11,000, but received a total nearly ten times greater. And, there was no factual support, much less clear and convincing evidence, showing that Target acted willfully, wantonly, or in reckless disregard of its customers' rights. The punitive damages award of more than \$4.5 million was neither warranted nor appropriately tailored to Target's conduct. Accordingly, if the Court declines to order a new trial absolute, Target is entitled to a new trial nisi remittitur.

V. The Court must reduce the punitive damages award pursuant to Section 15-32-530(A) of the South Carolina Code.

The Court must reduce the jury's punitive damages award, because it violates South Carolina law. The South Carolina legislature has limited punitive damages awards to three times the compensatory award or \$500,000, whichever is greater. *See* S.C. Code § 15-32-530(A). South Carolina's punitive damages cap contains certain exceptions that Plaintiffs have not argued for and, in any event, do not apply here. *See* S.C. Code § 15-32-530(B) (increasing punitive damages cap in certain circumstances when defendant was motivated by unreasonable financial gain or undertook conduct punishable as felony); *id.* § 15-32-530(C) (removing

punitive damages cap in certain circumstances when defendant intended to harm plaintiff, has pled guilty to or been convicted of felony for his conduct toward plaintiff, or harmed plaintiff while under influence of alcohol or drugs).

Instead, Plaintiffs declare, without explanation, that compliance with § 15-32-530 would violate Denise's rights under the South Carolina and United States Constitutions. *See* Plaintiffs' Response to Defendant's Motion for Judgment as a Matter of Law, New Trial Absolute, or New Trial Nisi Remittitur, at 4 (filed Sept. 27, 2016). Plaintiffs are wrong. *See, e.g., Murphy v. Edmonds*, 601 A.2d 102, 107-18 (Md. 1992) (upholding statutory damages cap under state constitution); *Etheridge v. Med. Ctr. Hosps.*, 376 S.E.2d 525, 528-34 (Va. 1989) (upholding statutory damages cap under state and federal constitutions); *Robinson v. Charleston Area Med. Ctr., Inc.*, 414 S.E.2d 877, 886-88 (W. Va. 1991) (upholding statutory damages cap under state constitution); *see also Learmonth v. Sears, Roebuck & Co.*, 710 F.3d 249, 253 (5th Cir. 2013) (upholding Mississippi damages cap against state constitutional challenge); *Smith v. Botsford Gen. Hosp.*, 419 F.3d 513, 519-20 (6th Cir. 2005) (upholding Michigan damages cap against federal constitutional challenge); *Boyd v. Bulala*, 877 F.2d 1191, 1195-97 (4th Cir. 1989) (upholding Virginia damages cap against federal constitutional challenge).

Pursuant to § 15-32-530(A), the Court must reduce the punitive damages award to an amount no greater than \$500,000.

VI. The Court should exercise its discretion under the "thirteenth juror" doctrine to set aside the jury's verdict and order a new trial.

Under South Carolina's "thirteenth juror" doctrine, "a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson*, 324 S.C. at 402, 477 S.E.2d at 722. "The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the

facts.” *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009) (internal quotation marks omitted). In that capacity, “the trial judge can hang the jury by refusing to agree to the jury’s otherwise unanimous verdict.” *Id.* The decision to hang the jury “is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict, and the judge’s view of them.” *Vinson*, 324 S.C. at 404, 477 S.E.2d at 723.

Each of the deficiencies in the jury’s verdict in this case would justify this Court in exercising its discretion to sit as the thirteenth juror and order a new trial. *See Graham*, 282 S.C. at 401, 321 S.E.2d at 45 (recognizing that, when “sitting as the thirteenth juror charged with the duty of seeing that justice is done,” the trial judge has the authority to order a new trial “on the basis of the facts of the case”); *e.g., Lane*, 383 S.C. at 598, 681 S.E.2d at 883 (affirming trial judge’s reversal of verdict due to a capricious damages award).

CONCLUSION

Pursuant to the foregoing, Target respectfully requests that this Court enter judgment as a matter of law in favor of Target, or alternatively grant a new trial absolute or new trial nisi remittitur. If the Court declines to take any of those steps, it must reduce the punitive damages award pursuant to S.C. Code § 15-32-530(A). Finally, in lieu of judgment as a matter of law, new trial absolute, or new trial nisi remittitur, the Court may set aside the jury’s unjustified verdict and order a new trial under the “thirteenth juror” doctrine.

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STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS
Carla Denise Garrison and Clint Garrison,	)	
Plaintiffs,	)	CASE NO. 2014-CP-04-1426
vs.	)	CASE NO. 2015-CP-04-2206
Target Corporation,	)	
Defendant.	)	PLAINTIFFS' RESPONSE
	)	TO DEFENDANT'S
	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF TARGET'S MOTION
	)	FOR JUDGMENT AS A MATTER
	)	OF LAW, NEW TRIAL ABSOLUTE,
	)	OR NEW TRIAL NISI
	)	REMITTITUR AND RELIEF
	)	UNDER THIRTEENTH JUROR
	)	DOCTRINE

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INTRODUCTION

Plaintiffs like Denise and Clint Garrison often get criticized for filing kitchen-sink complaints. This is the reverse of that. Because Defendant Target Corporation is unhappy with the determination of 12 Anderson County jurors, it has thrown every argument it can think of against the wall in hopes that something will stick. All of Target's requests for relief should be denied.

This is not the first time Target has invoked such a scorched-earth strategy. *See Cantrell v. Target Corp.*, Civil Action No. 6:06-2723-BHH, Docket No. 125 (D. S.C. 2008) (attached as Exhibit 1). In October 2008, a South Carolina jury in the Greenville division returned a \$3.1 million dollar verdict against Target. *Id.* at 1. Similar to Denise Garrison in this case, the plaintiff was awarded \$100,000.00 in actual damages and \$3,000,000.00 in punitive damages. *Id.* Target responded by filing the very same motions it has filed here – namely, motions for judgment as a matter of law, for a new trial, and for a remittitur. *Id.*

Each of Target's requests for relief in *Cantrell* were denied. *Id.* at 42. Judge Hendricks stressed, in rejecting Target's arguments, that the court was cognizant of the "substantial amount of money, reputation, and public goodwill at stake" because of the sizeable amount of the jury's verdict. *Id.* at 4. Nonetheless, Judge Hendricks explained that "[t]he jury's sanctity [w]as paramount to the [c]ourt[.]" *Id.* at 4. Like here, "[t]he jurors were attentive and the litigants, witnesses, and attorneys conducted themselves with notable aplomb." *Id.* at 5. The verdict of the 12 jurors who decided this case, just like the verdict of the jurors from the *Cantrell* case, should be respected.

Justice demands nothing less. By virtue of the Constitution and South Carolina law, cases like this one are placed in the hands of the community. *See* S.C. R. Civ. P. 38(a) ("The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate."). Twelve Anderson County residents, jointly selected by the parties, heard three days' worth of testimony and considered numerous pieces of documentary evidence. They weighed the credibility of witnesses and followed this Court's instructions. Target invites this Court to usurp the jury's role, but that invitation should be declined.

BACKGROUND

Target's less than three-page section of "facts" predictably downplays certain facts and omits other facts altogether. See Target Mem. at 3-5. In short, the company merely pays lip service to its obligation to "recite[] the facts in the light most favorable to" the Garrisons. *Id.* at 3 (citing *Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 236 (2002)). A more detailed account of the evidentiary record follows:

The Incident. This case grew out of an incident in Target's parking lot on May 21, 2014. (Tr. 360).¹ Denise Garrison arrived at Target's Clemson Boulevard location with her eight-year-old daughter Kaileigh after 7:00 p.m. (Tr. 140). After parking near one of Target's cart returns, Denise and Kaileigh exited the vehicle. (Tr. 360-61). Kaileigh, without Denise's knowledge, picked up a syringe containing a hypodermic needle. (Tr. 361). Kaileigh asked Denise, "Mommy, what is this[.]" and Denise "immediately reacted" by swatting the syringe out of her daughter's hand. (Tr. 361). The needle punctured Denise's right palm, causing blood to bead out of the wound. (Tr. 365).

Understandably shaken, Denise called her husband Clint Garrison. (Tr. 291-94). Clint suggested she report the incident, so Denise did so after washing her hands. (Tr. 291-94). Target's manager, Shelby Britnall, apologized to Denise, and photographs were taken of the syringe lying among aged trash and debris. (Tr. 366). Britnall encouraged Denise to seek treatment and told her to bring Target her medical bills. (Tr. 366).

Britnall filled out two documents related to the incident, one while Denise was present and another after Denise's departure. (P-2, P-6). Britnall recorded that Denise's right hand had been injured in Target's parking lot by a hypodermic needle, that the area where she was injured was not clean, that the person responsible for the area had not been in the area prior to the injury, and that Denise seemed worried. (P-2, P-6). Target took possession of the syringe that injured Denise. (Tr.178).

The day after the incident, Denise called Britnall about medical care. (Tr. 369). Denise asked if there was a specific provider that she needed to visit, but Britnall told her to go wherever she liked. (Tr. 369). Denise initially chose AnMed Health Medical Center but was referred to Dr. Potts, an infectious disease specialist. (Tr. 369-70). Denise had to undergo blood tests and

¹ Target included the complete trial transcript as an exhibit to its memorandum; the Garrisons utilize that same transcript in this response. The Garrisons also cite to the exhibits entered into evidence at trial, which are being maintained by the Court.

post-exposure prophylaxis, consisting of antiretroviral medications aimed at preventing HIV and hepatitis. (Tr. 370-76). Denise also had to undergo HIV tests every three months. (Tr. 303, 378). The medical care lasted for more than a year. (Tr. 405).

The incident took both physical and emotional tolls on Denise and her family. From a physical standpoint, in addition to the blood-filled wound on her palm, Denise was bedridden and suffered adverse effects from the antiretroviral medications, including lethargy, dizziness, vertigo, nausea, and an upset stomach. (Tr. 333-37, 370-414). She was described as having been in a "zombie-like state" during treatment. (Tr. 377). From an emotional standpoint, the effects were even worse. Denise cried and worried over the incident and suffered from horrible and vivid nightmares. (Tr. 375). The family was deprived of quality time together, Clint missed work, and Clint's mom was forced to assist the family. (Tr. 305, 336, 423). On one occasion, Clint's mom recalled that Kaileigh burst into tears and ran to hug her mother when the incident was mentioned. (Tr. 422). Denise suffered embarrassment from having to ask for help with private matters, such as using the bathroom. (Tr. 333). Denise and Clint were robbed of intimate and close conversations and had to use protection during intercourse. (Tr. 337). In all, the experience was logically described as "traumatic." (Tr. 408).

The Lawsuit. Following the incident, Target began to worry about liability. A Target Investigator sought a recorded statement from Denise, and she complied fully. (Tr. 383-86). During the phone call, Denise explained that she was sick and told him that, rather than being after money, she simply wanted her medical bills paid. (Tr. 383-85). At no time during the phone call did Target's Investigator tell Denise that Target would not pay for her medical care. Instead, Denise learned after Target obtained her recorded statement that she would be responsible for her own treatment. (Tr. 427). Denise and Clint concluded that their only option was to retain counsel and file suit. (Tr. 338).

The first suit came on July 1, 2014, when Denise filed an action for negligence, recklessness, and unfair trade practices. The second suit came on September 21, 2015, when both Denise and Clint filed an action for negligence, recklessness, loss of consortium, and lost wages. After consolidation, claims of negligence, loss of consortium, recklessness, and lost wages were tried to a jury from September 6, 2016 to September 8, 2016. The jury was instructed on both actual and punitive damages. (Tr. 502-32).

The Trial Evidence. At trial, the focus was on Target's responsibility for the Garrisons'

injuries. The jury heard evidence concerning Target's cleaning practices, the condition of the syringe containing the needle, and Target's loss of the needle.

Cleaning Practices. One defense Target mounted was that it consistently cleans and inspects its parking lot. (Tr. 220). But the jurors did not believe the story Target tried to sell them. (Tr. 534-39). Target's failure to support its self-serving testimony with any written confirmation, when combined with the various pieces of documentary and testimonial evidence belying Target's self-serving testimony, demonstrates why the jury rejected Target's defense. The evidence supports the jury's finding that Target acts reckless and with disregard to the safety of its customers.

Britnall, as well as Target's Property Maintenance Technician Jon Jackson, testified that Target utilizes a third party vendor to clean its parking lot with a sweeper truck. (Tr. 138, 235). A central problem with this testimony, however, was that Target had nothing to back it up. No records showing that a third party vendor actually comes, no invoices showing how much Target supposedly pays the third party vendor, and, despite the presence of surveillance cameras throughout Target's premises, no video showing what the third party vendor purportedly cleans. (Tr. 143, 239).

In fact, the affirmative evidence offered at trial permitted the jury to believe that there may not be a third party vendor at all. Jackson – whose whole job is to maintain Target's premises – could not even recall the name of the mysterious third party vendor. (Tr. 235). And, because Target's deposition testimony was that the third party vendor supposedly cleans the parking lot every Thursday night, Clint camped out at Target on a Thursday night prior to trial. (Tr. 307-09). He was able to inform the jury that no sweeper truck ever showed up. (Tr. 307-09). The jury was entitled to disbelieve all of Target's testimony and to credit all of the Garrisons' evidence.

Similar problems of veracity were apparent from Target's testimony that its parking lot is routinely inspected for dangers. (Tr. 141-42). Jackson maintained that he regularly conducts "walk the vibe" inspections, but the two-page log offered to prop up his testimony is suspicious. (D-1). The log, which supposedly is computer-generated, identifies both April 28, 2014 and April 29, 2014 as a "Monday." (D-1). That of course is untrue, just as it could be untrue that Jackson actually performed two inspections on May 21, 2014 as the log indicates. The jury was entitled to believe that Jackson's testimony, along with the log, was at best unreliable and at

worse intentionally falsified.

The great weight of the evidence shows that, contrary to what Target claims, the parking lot is not routinely cleaned. Pictures entered into evidence show old and weathered trash, in addition to other debris in the parking lot. (P-3, P-8, P-12). There also was evidence that Target employees, who supposedly survey the parking lot for dangerous conditions, instead use cell phones and do not pay attention. (Tr. 248-49, 258-59). Brintnall's documentation following the incident indicated that the parking lot was not clean. (P-2, P-6). Target employees testified that the company has no policy in place for ensuring that the parking lot is cleaned regularly or for verifying that cleaning actually takes place. (Tr. 170, 175). And Denise, Clint, and Clint's mom all observed that they have seen "trash everywhere" in Target's parking lot on different occasions. (Tr. 279, 312, 364). The jury was entitled to credit all of this evidence showing that Target fails to maintain its parking lot.

Plus, all of this evidence was buttressed by Clint's testimony about dangerous conditions in Target's parking lot after Denise's injury. (Tr. 312). Jackson was adamant at trial that Target's cleaning practices had not changed from the date of the incident to the date of trial. (Tr. 275). That is significant because Clint testified and provided pictures of a bolt that had fallen from a buggy rack that Target allowed to remain in its parking lot for at least four months. (Tr. 313, P-4, P-7). He also testified that a rod and spring remained in Target's parking lot for at least 13 days. (Tr. 331-32). The jury was entitled to credit the evidence provided by Clint and to reject Target's claim that it routinely cleans its parking lot.

Condition of Syringe. The jury both saw and heard evidence, which proved that the syringe had been in Target's parking lot long enough for Target to remove it. Photos entered into evidence show the syringe's worn and aged condition. (P-3, P-12). Brintnall, who saw the syringe on the night of the incident, testified that the syringe was "dingy, dirty, and gross[.]" that the plunger was broken, and that the syringe did not appear to have been recently dropped. (Tr. 151-52, 179-80, 182). She further testified to seeing dings, divots, and grime on the syringe. (Tr. 151, 183, 213). This testimony was consistent with Denise's testimony, who also testified that she could tell the syringe had been in the parking lot for a long time and that it was dirty and nasty. (Tr. 361-62). Clint further observed for the jury that twine located near the syringe was discolored and appeared to have been run over by a vehicle. (Tr. 355). The jury was entitled to credit all of this evidence, and in fact it was unrebutted.

Loss of the Syringe. Unfortunately, the jury did not have an opportunity to view the actual syringe that injured Denise because Target lost it not only once but twice. (Tr. 183-89). Target took possession of the syringe the night of the incident, with Britnall testifying that she placed it in a container marked "Do Not Touch." (Tr. 179). Britnall testified during her deposition that the syringe was later destroyed by Target employee Michelle Carroll, but Britnall was forced to admit at trial that her deposition testimony was false. (Tr. 183-84). Britnall confessed that the syringe turned up after her deposition; she told the jury, however, that it subsequently was lost again. (Tr. 185). Britnall had no explanation for what happened to the syringe on the second occasion, other than to call it "the great mystery." (Tr. 188).

A spoliation instruction was given to the jury. (Tr. 505-06). It was not, however, aimed solely at Target. (Tr. 505-06). An agent of the Garrisons' attorney had taken pictures of the syringe after Britnall's deposition, but the pictures were irretrievable from the photographer's cell phone. (185-86). The jury was told they could apply an adverse inference to whichever party was to blame for lost or destroyed evidence, and the evidence supports the blame the jury placed on Target.

The Verdict. At the close of the evidence, both parties moved for directed verdict. (Tr. 432-58). This Court denied the Garrisons' motion but granted Target's motion in part. (Tr. 438, 443). In particular, this Court dismissed the Garrisons' unfair trade practices claim and determined that sufficient evidence had been presented for the jury to decide the remaining claims, along with the question of punitive damages. (Tr. 443, 457-58). Closing arguments were presented by counsel, with no objections lodged by either party, and the jury retired to deliberate. (Tr. 463-502).

The jury returned a verdict form containing the following findings: (1) a negligence finding against Target, with no apportionment of fault to Denise, in the amount of \$100,000.00 in actual damages and \$4,510,00.00 in punitive damages; (2) a liability finding against Target on Clint's lost wages claim in the amount of \$3,500.00; and (3) a liability finding against Target on Clint's loss of consortium claim in the amount of \$5,000.00. This Court polled the jury, and all confirmed their unanimous verdict. (Tr. 537-38).

Eight-days later, Target filed bare bones post-judgment motions. Because the motions did not specifically identify the factual or legal grounds supporting the motions, the Garrisons responded in opposition. In particular, the Garrisons explained that, in the context of a post-

judgment motion, "counsel must specifically state the grounds for the motion[.]" *See, e.g., Vaughn v. City of Anderson*, 386 S.E. 2d 297, 301 (S.C. Ct. App. 1989). Target has now supplemented its motions with an extensive memorandum, to which the Garrisons now respond.

ARGUMENT & AUTHORITIES

Target makes three alternative requests for relief: judgment as a matter of law, a new trial, or a remittitur. None of these requests are valid for the reasons addressed in turn.

I. This Court should deny Target's request for judgment as a matter of law on the issue of liability.

Despite the jury's substantial verdict, Target first contends that it, rather than the Garrisons, should be declared the winner. That contention is meritless. The standard protecting a jury verdict is exceptionally high, requiring that the "finding of the jury will not be disturbed unless the record fails to disclose any evidence which reasonably supports the jury's verdict." *See, e.g., Hutson v. Cummins Carolinas, Inc.*, 314 S.E. 2d 19, 22 (S.C. 1984) (emphasis in original). All evidence and inferences must be viewed in the light most favorable to the Garrisons, with this Court concerning itself only "with the existence of evidence and not with its weight." *See Pike v. South Carolina Dep't of Transportation*, 506 S.E. 2d 516, 518 (S.C. 1998) (emphasis added).

The jury found in favor of the Garrisons on three claims: (1) Denise Garrison's negligence claim, (2) Clint Garrison's lost wages claim, and (3) Clint Garrison's loss of consortium claim.² Over the course of the case, this Court denied Target's requests for judgment as a matter of law at both the summary judgment stage and the directed verdict stage. (Tr. 457-58). This Court correctly resolved Target's motions on those two previous occasions, and there is absolutely no reason for this Court to reverse its prior rulings on Target's third request.

As an initial matter, the South Carolina Supreme Court has made clear that the claims at issue in this case, which involve Target's failure to operate a safe parking lot, are to be resolved by a jury and not by judges. In *Dawkins v. Union Hospital District*, 758 S.E. 2d 501, 504 (S.C. 2014), it was acknowledged that actions "for injuries caused by . . . improperly maintained [] parking lots sound in ordinary negligence, and specifically in premises liability." The Supreme

² Target challenges only Denise's negligence claim, not Clint's lost wages or loss of consortium claim. Consequently, Target has waived any challenge to the jury's verdict on those claims. *See, e.g., Vaughn*, 386 S.E. 2d at 301 (S.C. Ct. App. 1989) (explaining, in the context of a post-judgment motion, that "counsel must specifically state the grounds for the motion").

Court was emphatic that such actions do not require expert testimony “because the jurors can easily understand and evaluate the relevant facts and law merely by exercising their common knowledge.”³ See 758 S.E. 2d at 504. Twelve Anderson County jurors evaluated the facts and law in this case, just as the *Dawkins* Court envisioned, and this Court should not permit Target to undermine the application of “their common knowledge.” *Id.* Indeed, there can be no clearer statement of the governing rule than the pronouncement that “[w]hether the defendant has provided reasonably safe premises is a question for the jury.” See *Henderson v. St. Francis Cmty. Hosp.*, 399 S.E. 2d 767, 769 (S.C. 1990) (reversing trial court’s grant of a defendant’s JNOV in a premises liability case).

The substantive elements of this case are straightforward. Under settled law, Target had a duty, as “the operator of a parking lot[,]” to exercise “reasonable care” in keeping its premises “in a reasonably safe condition” for invitees like Denise Garrison. *Id.* at 768. Given that this case centers on injuries arising out of Denise Garrison being stuck by a hypodermic needle, Target’s liability centers on its actual or constructive notice that the needle was present in the parking lot. See, e.g., *Jackson v. OSI Restaurant Partners, LLC*, 2016 WL 4792189 (S.C. Ct. App. Sept. 14, 2016) (reversing trial court’s grant of summary judgment in a premises liability case). A mere “scintilla of evidence” is all that is required to support the jury’s determination on these elements. See *Jones v. Sun Publishing Co.*, 278 S.C. 12 (S.C. 1982) (explaining that “South Carolina adheres to the ‘scintilla of evidence’ rule which requires submission of an issue to a jury whenever there is competent and relevant evidence tending to establish the issue in the mind of a reasonable juror”).⁴

Target attacks the jury’s liability determination on two grounds, specifically notice and proximate causation. Neither argument carries Target where it wants to go.

Notice. It is undeniable that this record contains more than “the smallest trace” of evidence needed to uphold the jury’s finding that Target had sufficient notice of the syringe. See

³ In Target’s memorandum of law, the company argues that there was insufficient evidence on the issue of notice because the Garrisons did not hire an expert witness. See Target Mem. at 11 (“[An expert witness might have offered testimony relating the syringe’s appearance to certain weather conditions, locations, or other temporal indicators.”). But that argument was flatly rejected in *Dawkins*.

⁴ The scintilla standard provides an important distinction between this case and cases like *Norris v. Wal-Mart Stores, East, L.P.*, 2014 WL 496010 (D.S.C. 2014). *Norris*, being a federal court decision, applies the higher “no reasonable juror” standard rather than the lower “mere scintilla of evidence” standard. Unlike the rule applicable to this case, “[t]he rule followed in the federal court system provides that ‘a ‘mere scintilla of evidence’ is not sufficient to withstand [a judgment as a matter of law] challenge.” See, e.g., *Hancock v. Mid-South Management Co.*, 673 S.E. 2d 801, 802 (S.C. 2009).

Bethea v. Floyd, 181 S.E. 721, 724 (S.C. 1935) (defining the scintilla standard). The jury both heard and saw evidence regarding Target's nearly non-existent cleaning practices, the condition of the syringe that injured Denise, and Target's loss or destruction of evidence. Like at the summary judgment and directed verdict stages, this Court should reject Target's notice argument. (Tr. 457-58).

A red herring is Target's failure to properly define the scope of the constructive notice doctrine. Target takes the position that there can only be constructive notice if there is evidence showing precisely how long a dangerous object has remained in the parking lot. See Target Mem. at 9 (arguing that "none of the evidence suggested how long the syringe had been in Target's parking lot"). But that of course cannot be the law since such a rule would eliminate any distinction between "actual notice" and "constructive notice." The Supreme Court recently made clear that "[c]onstructive notice is a legal inference, which substitutes for actual notice." See *Major v. City of Hartsville*, 763 S.E.2d 348, 350 (S.C. 2014) (emphasis added) (reversing grant of summary judgment after "find[ing] a genuine issue of material fact [] as to whether respondent should be charged with constructive notice").

A rule requiring plaintiffs to prove precisely how long a dangerous condition has existed is simply untenable. See, e.g., *Workman v. Wal-Mart Stores East, Inc.*, 2002 WL 500988, *3 (Tenn. Ct. App. 2002) (rejecting Wal-Mart's argument that a plaintiff "must prove exactly how long a [dangerous condition] was present in order to prevail under the constructive notice theory of premises liability" and instead acknowledging that "[w]hat the plaintiff is required to prove is that the dangerous or defective condition existed for such a length of time that the [d]efendant knew or in the exercise of ordinary care should have known of its existence").⁵ Because defendants like Target are in control of both the premises and the evidence upon which notice is based, plaintiffs like Denise do not shoulder the impossible burden of proving exactly how long a dangerous condition has remained in a parking lot. See *Owens v. Publix Supermarkets, Inc.*, 802 So.2d 315, 325 (Fla. 2001) (discussing the rationale for rejecting Target's proposed rule).

Indeed, case law teaches that a variety of circumstances permit a jury to infer that a

⁵ This rule of law is not controversial, as it is the law of the land throughout the country. See, e.g., *Malaney v. Hannaford Bros. Co.*, 861 A.2d 1069, 1075-76 (Vermont 2004) (explaining that a plaintiff's burden does not "entail proving how long [a] hazardous condition existed"); *Lanier v. Wal-Mart Stores, Inc.*, 99 S.W.3d 431, 434-35 (Ky. 2003) (explaining that placing a virtually insurmountable burden on customers to show how long a dangerous condition remained on the premises is inconsistent with proposition that a business owner has duty to keep premises in reasonably safe condition for use of customers).

dangerous object has been on a defendant's premises long enough to satisfy the constructive knowledge requirement. One example would be where "the defendant failed to use a regular maintenance program to remedy" dangerous conditions. See *Major*, 763 S.E.2d 348 at 350. Another example would be where a witness has described the dangerous condition in manner that suggests the condition did not "just happen." See *Evans v. Aydha*, 189 So.3d 1225, 1230 (Miss. Ct. App. 2016) (applying analogous constructive notice principles under Mississippi law). And a further example would be where the defendant has lost or destroyed evidence. See *Woodard v. Wal-Mart Stores East, LP*, 801 F.Supp.2d 1363, 1373 (M.D. Ga. 2011) (applying analogous constructive notice principles under Georgia law); *Robertson's v. Frank's Super Value Foods, Inc.*, 7 So.3d 669, 674-75 (La. App. Ct. 2009) (applying analogous constructive notice principles under Louisiana law). Each of these circumstances support the jury's determination on the constructive notice issue here.

Inadequate Cleaning. The jury was provided much more evidence than was necessary to support a finding that Target does not keep its parking lot "in a reasonably safe condition[.]" See *Henderson*, 399 S.E. 2d at 769. A mountain of evidence contradicted Target's claim that it utilizes a third party vendor to sweep the parking lot once a week, that it regularly inspects the parking lot, and that its employees pick up dangerous objects:

- Target had no records regarding its alleged third party vendor, nor did Target present any surveillance video showing that a third party vendor swept the parking lot at any time prior to Denise's injury (Tr. 144-45, 191-96, 238-39, 247, 260, 263-66, 279, 285-86);
- Target's Property Maintenance Technician did not even remember the name of the third party vendor he alleged cleans once per week (Tr. 235-236);
- Clint testified that no third party vendor ever swept the parking lot on a Thursday night when the vendor was supposed to come (Tr. 306-09);
- Target's "walk the vibe" log was inaccurate and possibly fabricated (Tr. 262-63, D-1);
- Pictures showed old and weathered trash and debris in Target's parking lot, and there was evidence of Target employees using cell phones when they supposedly should have been surveying the parking lot for dangerous conditions (Tr. 150-152, 355-59, P-3, P-12);
- Target's Manger reported that Target's parking lot was not clean at the time of the incident (Tr. 147-152, P-2, P-6);

- Target employees testified that the company has no policy in place for ensuring that the parking lot is cleaned regularly or for verifying that cleaning actually takes place (Tr. 135-36, 244, 273-74);
- Three witnesses observed that they have seen “trash everywhere” in Target’s parking lot on different occasions (Tr. 312, 364, 427); and
- Clint testified that a dangerous bolt remained in Target’s parking lot for at least four months without being removed and that a rod and spring remained in Target’s parking lot for at least 13 days (Tr. 312-15, 331-32, P-4, P-7).

All of this evidence supports the jury’s conclusion that Target “should have discovered” the needle that injured Denise. *See Major*, 763 S.E.2d at 350 (explaining that “[c]onstructive notice arises when a condition has existed for such a period of time that a [defendant] in the use of reasonable care should have discovered the condition”).

Condition of Needle. Likewise, the condition of the needle provides additional support of constructive notice. There is no South Carolina case rejecting the established rule that a jury may determine a dangerous object has remained on the defendant’s premises for a sufficient amount of time that it should have been discovered by evaluating the appearance of the dangerous object. One example of this rule is the *Evans* case, where the Mississippi Court of Appeals stated that it was “quite convinced that the length of time the spot had existed c[ould] be reasonably inferred from the daughter’s testimony describing it as ‘sludge,’ ‘dirty,’ and, in her judgment, at least a few days old.” *See* 189 So.3d at 1230.

The evidence in this case is far greater than what has been deemed sufficient to prove constructive notice in cases like *Evans*. A sample of the evidence includes:

- Photos showing the syringe’s worn and aged condition (P-3, P-12);
- Target’s Manager’s testimony that the syringe was dingy, dirty, and gross (Tr. 151, 190);
- Target’s Manager’s testimony that the syringe’s plunger was broken (Tr. 151, 182);
- Target’s Manager’s testimony that the syringe did not appear to have been recently dropped (Tr. 152);
- Target’s Manager’s testimony that there were dings, divots, and grime on the syringe (Tr. 151);

- Denise's testimony that she could tell the syringe had been in the parking lot for a long time (Tr. 362);
- Denise's testimony that the syringe was dirty and nasty (Tr. 361);
- Clint's testimony that twine located near the syringe was discolored (Tr. 355); and
- Clint's testimony that twine located near the syringe appeared to have been run over by a vehicle (Tr. 355).

All of this evidence supports the jury's conclusion that Target "should have discovered" the needle that injured Denise. See *Major*, 763 S.E.2d at 350 (explaining that "[c]onstructive notice arises when a condition has existed for such a period of time that a [defendant] in the use of reasonable care should have discovered the condition").

Spoliation of Evidence. A corollary to the rule that notice may be proven from the dangerous object's condition is the rule that, if a party prevents the jury from viewing the dangerous object, the jury may infer that the dangerous object's condition was unfavorable to the responsible party. This is the holding of various courts across the country, and there is no South Carolina decision calling these cases into question. See *Schweikart v. Franciscan Health Sys.-W.*, 149 Wash.App. 1038 (Wash. Ct. App. 2009) (explaining, in a premises liability case, that "the fact finder may infer constructive notice if it determines that [the defendant was] responsible for the spoliation of evidence"); *Woodard*, 801 F.Supp.2d at 1373; *Robertson's*, 7 So.3d at 674-75.

Target lost the syringe not only once but twice. (Tr. 183-89). What's more is that the jury learned during trial that Target's Manager provided false testimony during her deposition about what happened to the syringe. (Tr. 183-84). The only explanation Target provided to the jury was that the missing syringe was a "great mystery." (Tr. 188). This Court correctly gave an adverse inference instruction, which permitted the jury to infer that the syringe's condition hurt Target's case.⁶ (Tr. 505-06).

⁶ This case is in stark contrast to *Pringle v. SLR, Inc. of Summerton*, 675 S.E.2d 783, 787 (S.C. Ct. App. 2009), which rejected an adverse inference against a restaurant because there was no evidence that the chair in question "might reasonably have supported [the] presumption [] being requested of the fact finder[.]" The *Pringle* court reasoned that "there was no indication the chair was wobbly, weak, unstable, or otherwise defective immediately prior to its collapse." See 675 S.E.2d at 787. Unlike in *Pringle*, however, this record is full of evidence regarding the syringe's worn condition. Target's Manager testified at trial that the syringe was a central piece of evidence in this case yet Target prevented the jury from physically evaluating it. (Tr. 185).

Each avenue advanced by the Garrisons – Target’s inadequate cleaning practices, the condition of the syringe, and Target’s spoliation of evidence – provides independent support for the jury’s constructive notice finding. Together the three surely are decisive.

Causation: Target’s alternative argument on causation fares no better than its argument on notice. Shockingly, Target maintains that it should be absolved of all liability because – in its view – Denise Garrison was entirely responsible for her own injuries. *See* Target Mem. at 11-15. It is possible that this type of callousness led to the jury’s substantial verdict in the first place, and Target now has repeated it again. Target’s causation argument was rejected by this Court at the directed verdict stage, as well as by the jury, and it should now be rejected for the third time. (Tr. 457-58).

It is well established that “[p]roximate cause is normally a question of fact for determination by the jury, and [that it] may be proved by direct or circumstantial evidence.” *See Player v. Thompson*, 193 S.E.2d 531, 533 (S.C. 1972). Target concedes this point, as it must, on page 12 of its memorandum. Nonetheless, Target takes the position that this case does not represent the “normal” case because “[t]he sole reasonable inference to be drawn from the evidence is that Denise’s negligence exceeded Target’s.” *See* Target Mem. at 12. Such an argument ignores that a “comparison of the plaintiff’s negligence with that of the defendant is a question of fact for the jury to decide.” *See Bloom v. Ravoir*, 529 S.E.2d 710, 713 (S.C. 2000).

Target argues, with no supporting citation, that it “could hardly foresee that, by failing to clean its parking lot more thoroughly, a customer would consciously slap an object she knew to be a biohazard and give herself a puncture wound.” *See* Target Mem. at 14. But this argument misunderstands the concept of foreseeability. As the Supreme Court has explained, a “plaintiff need not prove that the defendant should have contemplated the particular event that occurred.” *See Baggerly v. CSX Transp., Inc.*, 635 S.E.2d 97, 101 (S.C. 2006). Instead, it need only be foreseeable that the defendant’s actions could be a contributing cause to the plaintiff’s injury. *Id.* It is mind-boggling for Target to claim that it was unforeseeable that an aged needle could contribute to the injury of a customer.

Equally outlandish is the “rice” analogy found on page 14 of Target’s memorandum. Target compares Denise’s knee-jerk reaction of knocking a needle out of her young daughter’s hand to someone who sees a spill and then consciously jumps into it with both feet. *See* Target

Mem. at 14 n.7. No citation of legal authority is necessary for this Court to see the differences in those two situations. Target's analogy borders on frivolity.

Suffice it to say that Target has cited no case from South Carolina, or from any other jurisdiction for that matter, where a court has granted judgment as a matter of law on the issue of causation under similar facts. The reason is simple: such a decision would be incompatible with how comparative fault works. When there are conflicting inferences that can be drawn from the evidence, the jury determines the respective degrees of negligence that are attributable to both the plaintiff and the defendant. *See Brown v. Smalls*, 481 S.E.2d 444, 451 (S.C. Ct. App. 1997). A court, however, should not determine the issue as a matter of law. *See Creech v. South Carolina Wildlife and Marine Res. Dep't*, 328 S.C. 24, 491 S.E.2d 571 (S.C. 1997) (explaining that the comparison of negligence between the plaintiff and the defendant is a question of fact for the jury).

Target faults Denise for being a good parent, specifically for knocking the syringe out of her young daughter's hand in an effort to protect her. The jury found that it was Target's fault that the syringe was in the parking lot to begin with, but Target had the right to tell the jury that it believed Denise's actions were unreasonable. Target exercised its right to do so. The jury was not impressed. All of this amounts to a strategic trial mistake, not the stuff of judgment as a matter of law.

Neither argument on the issue of liability — notice or causation — presents a basis for overturning the jury's verdict. Target's motion for judgment as a matter of law should be denied.

II. This Court should deny Target's request for judgment as a matter of law on the issue of punitive damages.

Target next contends that the issue of punitive damages should not have been submitted to the jury. That position, however, similarly is without any merit whatsoever. This Court correctly determined at the directed verdict stage that there was sufficient evidence for the jury to determine the appropriateness of punitive damages, and there is no reason for this Court to reverse its prior determination now. (Tr. 457). South Carolina law is clear that punitive damages are "a factually controlled concept whose determination best rests with the jury." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 638 S.E.2d 650, 661 (S.C. 2006).

Premises liability cases, like this one, are in fact the prototypical type of cases where a

jury gets to decide punitive damages. Retailers like Target owe patrons a “duty of exercising ordinary care to keep the premises in reasonably safe condition[,]” and they are subject to punitive damages “for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness[.]” See *Pennington v. Zayre Corp.*, 165 S.E.2d 695, 696 (S.C. 1969). This Court should not reverse its prior determination that the jury was entitled to decide the question of punitive damages, so long as “more than one reasonable inference can be drawn from the evidence as to whether the defendant’s behavior was reckless, willful, or wanton.” See *Solanki v. Wal-Mart*, 763 S.E. 2d 615, 619 (S.C. Ct. App. 2014) (citing *Graham v. Whitaker*, 321 S.E.2d 40, 43 (1984)).

It is undeniable that this record contains plenty of evidence supporting a “reasonable inference” of reckless conduct on the part of Target. In addition to the evidence recounted in support of the liability determination, the following evidence further supports the jury’s award of punitive damages:

- Target’s Manager acknowledged that mothers are encouraged to shop at the store yet the evidence showed that Target’s parking lot was unsafe (Tr. 146-47, P-1);
- Target’s Manager acknowledged that Target is aware mothers will bring their children with them to shop yet the evidence showed that Target’s parking lot was unsafe (Tr. 146-47, P-1);
- Target’s Manager acknowledged the importance of keeping cleaning records yet she testified that Target maintained no records regarding how often the parking lot is cleaned – either by a third party vendor or by Target employees (Tr. 131, 139-41, 173-75);
- Target’s Manager acknowledged the importance of cart attendants inspecting the parking lot yet the evidence revealed a cart attendant using a cell phone while retrieving carts (133-34, 248-49);
- Target’s Manager confessed at trial that she did not know at her deposition how often the parking lot was cleaned or anything about cleaning procedures (Tr.138-39);
- Target’s Manager saw a cleaning truck on only one occasion during her year-long employment with company in Anderson (Tr. 143);
- Target’s Manager could not verify that the employee responsible for the parking lot was even at work when Denise’s injury occurred (Tr. 168-71, 173, 230, P-6);

- Target's Manager testified that the company has no policy for ensuring the parking lot is regularly cleaned through safety sweeps (Tr. 141; 175);
- Target's Manager testified that the syringe was a central piece of evidence in this case yet Target lost the syringe twice and testified falsely during her deposition when she claimed the syringe had been destroyed by another Target employee (Tr. 184-89);
- Target's Manager testified that the company never addressed Denise's injury through a safety meeting (Tr. 191);
- Target's Manager testified that the company did not review any surveillance videos to determine what, if any, cleaning had been done in the parking lot, even though the company always makes sure that surveillance videos around the cash registers are contained within the camera domes (Tr. 192-96);
- Target's Manager testified that she was unaware of whether Target had a forensic lab that could have evaluated the syringe (Tr. 198);
- Target's Property Maintenance Technician testified that a third party vendor sweeps the parking lot once per week yet he could not identify the name of the alleged vendor (Tr. 235-37);
- Target's Property Maintenance Technician acknowledged the importance reviewing cleaning records yet he testified that Target maintained no records regarding the alleged third party vendor (Tr. 231-33, 237-39);
- Target's Property Maintenance Technician testified that he was unaware whether the alleged third party vendor was even capable of sweeping up a syringe (Tr. 243, 267);
- Target's Property Maintenance Technician acknowledged that Target did not have any records of Target employees cleaning the parking lot (Tr. 243-44);
- The two-page "walk the vibe" log identified both April 28, 2014 and April 29, 2014 as a "Monday," demonstrating that the document was inaccurate and possibly intentionally falsified (Tr. 262-63);
- Target's Property Maintenance Technician acknowledged that cart attendants should be inspecting the parking lot and not on cell phones yet the evidence showed that they are indeed distracted by cell phones (Tr. 248-249, 258-59);
- Target's Property Maintenance Technician was unaware of whether Target had a cell phone policy applicable to cart attendants (Tr. 248);
- Target's Property Maintenance Technician testified that no safety meetings were

conducted after Denise's injury and instead that all of Target's practices remained the same (Tr. 259-61, 275);

- Target's Property Maintenance Technician testified that management did not review any documentation regarding Denise's injury after it occurred (Tr. 260);
- Target's Property Maintenance Technician testified that the purpose of permitting cart attendants to leave early is to save on payroll money yet the cart attendants supposedly are charged with inspecting the parking lot for dangers (Tr. 232-35, 271);
- Target's Property Maintenance Technician did not know why the company failed to preserve the syringe (Tr. 272);
- Target's Property Maintenance Technician testified that Target does not maintain security checklists or maintenance logs (Tr. 273-74);
- Target's Property Maintenance Technician did not review any surveillance footage regarding the cleaning of the parking lot, although he acknowledged that Target would have done so had money been stolen from a cash register (Tr. 266, 274, 285);
- Target's Property Maintenance Technician was unaware of Denise's injury until his deposition (Tr. 287-88);
- Clint testified that no third party vendor ever swept the parking lot on a Thursday night when the vendor was supposed to come (Tr. 306-09);
- Clint testified that trash remained all over the parking, even after Denise's injury (Tr. 309, 311-12);
- Clint observed Target's cart attendant retrieving carts from a broken cart corral yet the attendant did not inform anyone, even though he literally pulled the buggies over the bolt (Tr. 315-16, P-7);
- Clint testified, and provided a picture, of a five-to-six-inch-long dangerous bolt that remained in Target's parking lot for at least four months without being removed (Tr. 313-15, P-7);
- Clint observed a spring and rod in Target's parking lot that remained there for at least 13 days (Tr. 331-32);
- Denise testified that Target obtained a recorded statement from her during the time period when she was sick from the antiretroviral medications (Tr. 383-84); and

- Denise testified that she informed Target of her sickness at the time she complied with the request for a recorded statement (Tr. 383-384).

The just-discussed evidence is indicative of the type of cases where South Carolina courts have entrusted the question of punitive damages to a jury. In one example, *Turner v. Sinclair Refining Co.*, 173 S.E. 2d 356 (S.C. 1970), the evidence was found sufficient to withstand a punitive damages challenge where a company maintained dangerous parking conditions that injured a customer. In another example, *Hundley v. Rite Aid of South Carolina, Inc.*, 529 S.E. 2d 45, 59 (S.C. Ct. App. 2000), the evidence was found sufficient to withstand a punitive damages challenge where a pharmacy misfiled the prescription of a patient. In a final example, *Scott v. Porter*, 530 S.E. 2d 389, 396-96 (S.C. Ct. App. 2000), the evidence was found sufficient to withstand a punitive damages challenge where a doctor did not order an apnea bradycardia monitor or follow-up sodium tests on a patient. All of these cases demonstrate the type of reckless conduct that is apparent from this record.

Plus, Target's loss of the syringe provides its own independent basis to support the punitive damages award. This Court applied the settled rule that an adverse inference is permitted upon the loss or destruction of evidence. See *Wisconsin Motor Corp. v. Green*, 79 S.E.2d 718, 720-21 (S.C. 1954). Such loss or destruction includes the inference of reckless conduct, which triggers the imposition of punitive damages. See, e.g., *Moskovitz v. Mt. Sinai Med. Ctr.*, 635 N.E.2d 331 (Ohio App. 1994) ("If the act of altering and destroying records to avoid liability is to be tolerated in our society, we can think of no better way to encourage it than to hold that punitive damages are not available in this case. We believe that such conduct is particularly deserving of punishment in the form of punitive damages and that a civilized society governed by rules of law can require no less."). The jury was entitled to punish Target for losing the syringe with punitive damages, especially since Target's recklessness in losing the syringe was consistent with its recklessness in preventing the syringe from injuring Denise Garrison in the first place.

The jury also was entitled, contrary to a footnoted suggestion on page 17 of Target's memorandum, to consider Target's response (or lack thereof) after Denise was injured. Significantly, when asked if Target had changed any of its cleaning or inspection practices since Denise's injury, Target's Property Maintenance Technician testified that "[w]e're doing everything the same." (Tr. 275). This testimony demonstrates why Clint never observed a third

party sweeper on the night he camped out at Target, why a dangerous bolt remained in Target's parking lot for at least four months, and why a rod and spring remained in Target's parking lot for at least 13 days. (Tr. 307-09, 313, 331-32, P-7).

Regardless of whether post-injury evidence is relevant to proving the underlying cause of an injury,⁷ it is relevant to the issue of punitive damages. See, e.g., *Coale v. Dow Chem. Co.*, 701 P.2d 885, 890 (Colo. App. 1985) (explaining that evidence of post-injury conduct was relevant to showing that the defendant acted wantonly in connection with a claim of punitive damages).⁸ State and federal courts alike have acknowledged that, because the overall culpability of a defendant's behavior is a crucial factor for determining punitive damages, the jury is entitled to evaluate a defendant's post-injury conduct. See, e.g., *Burkhart v. L.M. Becker & Co. Corp.*, 2004 WL 1920196, *2 (D. Oregon 2004) (explaining that "a jury can consider post-injury acts or omissions when deciding whether to award punitive damages").

The upshot is that Target wants this Court to disregard its duty to consider all facts in the light most favorable to the Garrisons. See *Solanki*, 763 S.E. 2d at 619-20. That request is invalid, as this Court previously recognized at the directed verdict stage. (Tr. 457). When, as here, a court already has determined that the evidence is sufficient to submit the question of punitive damages to a jury, the ordinary course of action is to not renege on the prior decision. See, e.g., *Cantrell*, Civil Action No. 6:06-2723-BHH, Docket No. 125 at 18 (rejecting motion for judgment as a matter of law on the issue of punitive damages where the court previously "denied [Target's] directed verdict motion on punitive damages at trial and submitted the issue with relevant charges to the jury"). More than sufficient evidence existed for the jury to decide the question of punitive damages.

III. This Court should deny Target's request for a new trial.

Target further contends that, if this Court refuses to reverse the jury's determination outright, it ought to be given a second-bite-at-the-apple with a new trial. Such relief is extraordinary, available only when "the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." See, e.g.,

⁷ Under Rule 407 of the South Carolina Rules of Evidence, post-injury actions are certainly relevant to issues such as ownership, control, feasibility of precautionary measures, and impeachment.

⁸ See also *Quest Servs. Corp. v. Blood*, 252 P.3d 1071 (Colo. 2011).

Graham v. Town of Latta, 789 S.E.2d 71, 80 (S.C. Ct. App. 2016) (emphasis added). It is irrelevant whether the jury's verdict is unduly liberal or whether the trial judge would have rendered a lesser amount. See *Elam v. S.C. Dep't of Transp.*, 602 S.E.2d 772, 781 (S.C. 2004); *Rush v. Blanchard*, 426 S.E.2d 802, 805 (1993). Because "[i]t is the duty of the court to sustain a verdict when a logical reason for reconciling the verdict can be found[.]" Target's motion for a new trial must be denied.⁹ See *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 450 S.E.2d 66, 74 (S.C. Ct. App. 1994).

The starting point is the reasonableness of the actual damages awarded. This record is replete with evidence supporting the \$100,000 provided to Denise Garrison. She suffered physical injury in the form of a blood-filled puncture wound, which led to medical treatment by an infectious disease specialist who conducted blood tests and prescribed antiretroviral medications aimed at preventing HIV and hepatitis. (Tr. 333-37, 365, 370-76). She was bedridden and had to undergo HIV tests every three months for more than a year. (Tr. 303, 333, 378). She suffered from lethargy, dizziness, vertigo, nausea, and an upset stomach. (Tr. 333-37, 370-414). She was described as having been in a "zombie-like state" during treatment. (Tr. 377). And then there was Denise's emotional pain and suffering and the damage to her family. She cried and worried over the incident and suffered from horrible and vivid nightmares. (Tr. 368, 375). She suffered the embarrassment of having to get assistance using the bathroom. (Tr. 333). Her family was deprived of quality time together, Clint missed work, and Clint's mom was forced to assist the family. (Tr. 305, 336, 423). Her daughter burst into tears and ran to hug her on an occasion when the Target incident was mentioned. (Tr. 422). She and Clint had to use protection during intercourse and were forced to forego intimate and close conversations. (Tr. 337). "Traumatic" is how it all was described at trial. (Tr. 408).

Ludlam v. School District of Greenville County, 455 S.E.2d 177 (S.C. Ct. App. 1995) provides a reference point. It involved a school district clerk who alleged she was terminated in violation of the South Carolina Whistleblower Act. *Ludlam*, 455 S.E.2d at 178. After a jury awarded the clerk \$150,000 in damages, the school district challenged the verdict as being based "on improper considerations such as sympathy, passion and prejudice." *Id.* at 182. The school district's argument, in particular, was that the verdict suggested passion and prejudice because,

⁹ Target requests a new trial under both procedural law and South Carolina's thirteenth juror doctrine. The response arguments included in this section apply equally to Target's redundant requests.

although the clerk's lost wages were only \$15,800, the jury awarded nearly 10 times that amount in total actual damages. *Id.* The South Carolina Court of Appeals rejected the argument, explaining that, "in addition to her lost wages," the clerk testified to suffering "severe emotional distress, embarrassment, depression, [and] lack of sleep[.]" *Id.*

Actual damages in this case are certainly on par with the actual damages in *Ludlam*. Denise Garrison suffered economic damages in excess of \$4,000 from medical bills.¹⁰ (Tr. 371-79). More importantly, however, is the fact that Denise Garrison suffered noneconomic damages in the form of severe physical pain and emotional distress. (Tr. 289-429). If \$134,200 in noneconomic damages in an employment case does not suggest "passion and prejudice," then \$96,000.00 in non-economic damages for a mother was stuck by a hypodermic needle most certainly does not.

Nor does the punitive damages award suggest any hint of bias. The purposes of punitive damages are threefold – to punish, to deter, and to compensate the injured victim. *See Clark v. Cantrell*, 529 S.E.2d 528, 533 (S.C. 2000). Target has done nothing to undermine the fact that the jury's verdict advances each of these goals. As explained in Section II., Target engaged in extremely reckless behavior both before and after Denise's injury. Included in the record is evidence that Target failed to ensure that its parking lot was consistently cleaned and inspected, that Target failed to maintain records and surveillance video, that Target failed to implement preventative policies and conduct safety meetings, that Target presented false testimony and documents to the jury, that Target lost (or destroyed) evidence central to this case, and that Target continued to permit dangerous conditions on its premises after Denise's injury. *See Hicks v. McCandlish*, 70 S.E.2d 629, 631 (S.C. 1952) (explaining that "negligence may be so gross as to amount to recklessness, and when it does, it ceases to be mere negligence and assumes very much the nature of willfulness"). All of this conduct is on top of Target's acknowledgement that it markets to mothers who bring their young children shopping with them and on top of Target's admission that it pays closer attention to missing money from cash registers than it does to injured patrons. (Tr. 145-47, 194-96, 274).

The amount of the punitive award, \$4,510,000.00, is far lower than what the Supreme Court has held not to be indicative of bias. In *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176, 190

¹⁰ The record shows that the reason Denise's medical bills were not greater than \$4,000 was because she was able to get treated by an infectious disease doctor who was volunteering at a local clinic. (Tr. 299-301).

(2009), the plaintiff was awarded \$186,000.00 in actual damages and \$15,000,000.00 in punitive damages. Despite the staggering punitive award, when compared to the actual damages award, the Supreme Court rejected the argument that the verdict was “the result of passion, caprice, or prejudice[.]” See *Mitchell*, 686 S.E.2d at 190. *Mitchell* stands for the proposition that there must be something more than a large verdict to demonstrate that the jury was colored by passion or prejudice.

The something “more” that Target hangs its hat on is the closing argument of undersigned counsel. It cites to *Branham v. Ford Motor Co.*, 701 S.E.2d 5, 22 (S.C. 2010) for the proposition that closing arguments can impermissibly “arouse passion[.]” but there is a missing link: Target’s counsel did not object to anything said during closing. It is beyond well settled that a failure to contemporaneously object results in waiver. See, e.g., *In re McCracken*, 551 S.E.2d 235, 238-39 (S.C. 2001) (finding issue of improper comments during closing arguments was not preserved absent a contemporaneous objection). Target’s reference to the Garrisons’ closing argument is thus a non-starter.

In fact, not only did Target’s counsel not object, he instead facilitated the very discussion the company now complains about. Target says that its revenue was referenced “[n]ot fewer than ten times,” see Target Mem. at 21, but it fails to mention that its own counsel repeated that Target is worth billions of dollars five times himself. (Tr. 488-97). Target’s counsel then went further by admitting that Target was a “giant company” who would not be impacted by having to pay Denise’s medical bill. (Tr. 496). There is no cause to complain when counsel engages in the very battle he insists is improper. See *State v. Maurer*, 1996 WL 745217, *4 (Minn. Ct. App. 1996) (rejecting closing argument challenge, where “defense counsel did not object and in fact responded in his closing argument”).

Regardless of what was said during closing, though, the jury was instructed that neither Target’s lawyer’s comments nor the Garrisons’ lawyer’s comments were to be considered as “evidence” in the case. (Tr. 104). Jurors are presumed to follow this Court’s instructions. See *State v. Ard*, 505 S.E.2d 328 (S.C. 1998): Any error, therefore, even “if there was one, was cured by the judge in his instructions to the jury that closing arguments by counsel are not evidence.” See *Commonwealth v. Burns*, 455 N.E.2d 449, 450 (Mass. App. Ct. 1983).

In sum, there is no basis for a new trial. The actual and punitive damages awards are within the bounds of what the Supreme Court has deemed permissible. And even if the punitive

award is deemed too high, the proper course of action is a remittitur, not a do-over. *See, e.g., Hollis v. Stonington Dev., LLC*, 714 S.E.2d 904, 915 n.10 (S.C. Ct. App. 2011) (citations omitted) (explaining that, if a punitive damages award is found to be “excessive, South Carolina appellate courts have uniformly reduced the punitive damages award over the option of ordering a new trial”).¹¹ Target preserved no objection that would provide it with any relief under the governing “shock the conscience” standard, and the company in fact prevailed on the overwhelming majority of all objections it made at trial. Denial of the request for a new trial is appropriate.

IV. This Court should deny Target’s request for a remittitur.

Target lastly contends that, if this Court is unwilling to grant any of its other requests, then the jury’s damages award should be reduced. *See James v. Horace Mann Ins. Co.*, 638 S.E.2d 667, 670 (S.C. 2006) (“A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive.”). Arguments are advanced under both the Constitution and South Carolina’s punitive damages caps, but both arguments should be rejected.

Constitutional Challenge. The seminal South Carolina case on punitive damages is *Mitchell*. In *Mitchell*, a jury found that an insurance company unlawfully cancelled the health insurance policy of an insured after the insured was diagnosed with HIV. 686 S.E.2d at 180-81. After a jury awarded the insured \$186,000 in actual damages and \$15,000,000.00 in punitive damages, the insurance company lodged a constitutional challenge to the punitive damages award. *Id.* at 179-88. On appeal to the Supreme Court, it was held that, in reviewing the constitutionality of punitives, courts must consider the following guideposts: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Id.* at 185-86. The Supreme Court ultimately applied these

¹¹ Indeed, the Supreme Court has indicated a new trial is not in order unless there are facts relevant to the punitive damages issue that have yet to be developed. *See Mitchell*, 686 S.E.2d at 187 (finding that, while the jury’s punitive damage award “exceed[ed] due process limits[,] there [was] no need for further findings of fact” where the record contained “ample evidence . . . to support the imposition of punitive damages”). And if there were facts that this Court deemed undeveloped, the proper course would be to give Denise the option of a new trial or a remittitur. *See, e.g., S. Union Co. v. Irvin*, 563 F.3d 788, 793 (9th Cir. 2009) (explaining that courts offer the plaintiff the choice between remittitur or a new trial, so as to end protracted litigation).

guideposts and remitted the punitive damages award to \$10 million. *Id.* at 188.

Reprehensibility. Like the defendant in *Mitchell*, the jury was permitted to infer that Target's conduct was reprehensible. *Mitchell* counsels that reprehensibility turns on five factors, particularly "(i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident." *Id.* at 185. Application of these factors supports the jury's punitive damages award here.

Indeed, Target loses on each and every factor, even though this Court need only balance them. *See Austin v. Stokes-Craven Holding Corp.*, 691 S.E.2d 135, 151 (S.C. 2010) (acknowledging that a plaintiff need not win on every reprehensibility factor). Denise suffered physical injury that required significant medical treatment. (Tr. 359-419). As explained in Section II. and Section III., Target's conduct constitutes extremely reckless behavior. Denise was a financially vulnerable plaintiff, as acknowledged by Target's counsel during closing arguments and as demonstrated by the testimony of both Clint and Denise.¹² The evidence at trial revealed a pattern of Target failing to clean its parking lot both before and after Denise's injury. And Denise's harm resulted from Target's conscious decision to allow its parking lot to become dangerous, not a mere accident or one-time mistake. All of these factors weigh in Denise's favor, and, at a minimum, they do on balance.

Target's entire argument on reprehensibility should be viewed with suspicion, especially considering that the company advances an argument that has been directly rejected by the Supreme Court. At page 22 and 23 of its memorandum, the company argues that its conduct was not reprehensible because "Denise's minor injury was the result of her own negligent decision to swat at a syringe[.]" Target fails to mention, however, that the *Clark* case dispels any notion that alleged comparative fault can be used as a basis for reducing a punitive damages award. *See* 529 S.E.2d at 534. There, the Supreme Court adopted the majority rule across the country: "[T]he

¹² The record contains substantial evidence about Denise's financial vulnerability. For example, she had to get her medical care from a free clinic because there was "no way [she] could afford it" otherwise. (Tr. 299-301). Her family relies on her husband's ability to work overtime because he is the sole breadwinner, making only \$17.80 per hour. (Tr. 304-05, 428). The family had to borrow money from Clint's mother just to pay for the daughter's lunches. (Tr. 429). And Target's counsel confirmed that Denise was "less fortunate" during his closing argument. (Tr. 496).

overwhelming majority of other jurisdictions considering this issue have concluded that an award of punitive damages is not reduced under comparative negligence. Courts uniformly have held that allowing such a reduction would nullify the punishment and deterrence goals underlying punitive damages." See 529 S.E.2d at 534. So it is in this case as well.

Ratio. A glaring flaw in Target's memorandum is its repeated contention that the Garrisons' damages were only \$11,000. See Pl. Mem. at 2, 19-20, and 26. The Garrisons' counsel did not estimate damages at \$11,000,¹³ but such a contention demonstrates a misunderstanding of what makes up actual damages in any event. "Actual" damages include all compensatory damages, whether general or special." See *Shieder v. Southern Ry. Co.*, 65 S.E. 631, 633 (S.C. 1909) (Jones, C.J., concurring). It is irrelevant what the Garrisons' counsel asked for or suggested during closing arguments because "closing arguments by counsel are not evidence." See *Burns*, 455 N.E.2d at 450. Plus, even if it was thought that Denise requested a low amount, that merely demonstrates her "financial vulnerability," which is a factor that weighs in her favor rather than against her. See *Mitchell*, 686 S.E.2d at 185. The record evidence plainly supports the \$100,000 actual damages award, consisting of physical harm, medical bills, lost wages, and extreme emotional distress.

Importantly, though, the ratio this Court must consider is not based upon actual damages alone. The ratio instead includes any "potential harm" as well. *Id.* at 185. Like the insured in *Mitchell*, Target's conduct could have resulted in even greater harm to Denise and others. Thankfully, Denise Garrison did not contract an infectious disease, but the point of *Mitchell* is that she or her daughter could have.¹⁴ Many other patrons are potentially at risk as well because, by its own admission, Target has continued to maintain the same dangerous practices that were in place prior to Denise's injury. (Tr. 275).

In *Mitchell*, there was a ratio of approximately 54:1 between the \$186,000 actual damages award and the remitted \$10,000,000.00 punitive damages award. In this case, the ratio is less, resulting in approximately a 45:1 ratio. Given that both cases involve potential harm from infectious diseases, both ratios are constitutionally permissible. See also *Walston v.*

¹³ Target cherry picks a single portion of undersigned counsel's closing argument, where he uses an example of how the jury might think about damages. At no time did undersigned counsel say that the Garrisons' actual damages were only \$11,000. The cherry picked portion Target repeatedly highlights plainly does not account for physical pain and suffering and emotional distress damages, which are the most substantial damages besides punitives.

¹⁴ In this vein, the "potential harm" would be expensive medical treatment and even possibly death.

Monumental Life Ins. Co., 923 P.2d 456 (Idaho 1996) (approving a 26:1 ratio, where the plaintiff had been unlawfully refused coverage under his cancer insurance policy).

The ratio in question is compatible with other important considerations too, such as “the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant’s ability to pay.” *Id.* Notably, Target’s counsel conceded during closing argument that Target probably was “a \$73 [b]illion dollar-a-year corporation.” (Tr. 489). And it is a matter of public record that Target’s net worth is many billions of dollars. *See, e.g., Cantrell*, Civil Action No. 6:06-2723-BHH, Docket No. 125 at 22 (identifying Target’s net worth as \$17.633 billion, with a projected \$20.91 billion in gross profits during 2007). Just as in the *Cantrell* case, the punitive damages award here is a small fraction of Target’s worth. Anything less than what has been awarded cannot possibly deter Target in future cases because, just as Target’s counsel conceded at trial, Target is a “giant company” who will not be impacted by anything other than a significant award. (Tr. 496).

Comparative Penalty Awards. A survey of premises liability cases from South Carolina, and from jurisdictions across the country, underscore the reasonableness of the jury’s punitive damages award. What follows are pertinent authorities:

- *Hundley ex rel. Hundley v. Rite Aid of S.C., Inc.*, 529 S.E.2d 45, 62 (S.C. Ct. App. 2000) (affirming award of \$20,000 in actual damages and \$1,000,000 in punitive damages—a 50:1 ratio—for plaintiff-parents of seven-year-old who suffered brain damage after being given a prescription incorrectly filled by defendant reasoning that “the amount of punitive damages awarded [was] reflective of the potential harm in this case and in future cases involving similar conduct” and the “ratio of the actual damage award to the punitive damage award, when considered in light of the potential harm, is not grossly excessive such as to offend due process”);
- *Lister v. NationsBank of Delaware, N.A.*, 94 S.E.2d 449, 458-59 (S.C. Ct. App. 1997) (affirming punitive damage award of \$200,000 and compensatory damage award of only \$8,605.08—a 23.24:1 ratio—arising from rental car company’s unauthorized charge of plaintiffs’ credit card finding that the “award [was] reasonably related to the harm likely to result from this conduct if [the rental car company] were not deterred from making unauthorized credit card charges” and that the need for such deterrence, combined with the need for protection of South Carolinians, justified the award);
- *Cantrell v. Target Corp.*, Civil Action No. 6:06-2723-BHH, Docket No. 125 (D. S.C. 2008) (denying post-trial motions challenging \$100,000 actual damages award and \$3,000,000 punitive damages award—a 30:1 ratio—after noting that

“the deterrence value of the punitive award [] is necessarily its traditional purpose” and that “[a] rote comparison of actual to punitive damages [] fails to account for what it takes to influence the behavior of a large corporation[] through money”);

- *Rhyne v. K-Mart Corp.*, 594 S.E.2d 1, 5-6 (N.C. 2004) (affirming jury award of punitive damages in favor of husband and wife on their premises liability claims stemming from their being assaulted by K-Mart security staff while they walked in store parking lot where jury awarded compensatory damages for husband in the amount of \$8,255.00 and for wife in the amount of \$10,730 but remitting the awards of punitive damages totaling \$11,500,000 for each spouse to \$250,000 for each spouse based on applicable statutory cap); and
- *Shiv-Ram, Inc. v. McCaleb*, 892 So. 2d 299, 303-04 (Ala. 2003), *as clarified on denial of reh’g* (Apr. 2, 2004) (affirming award of punitive damages totaling \$500,000.00 as compared to award of compensatory damages totaling \$176,572.82 where plaintiff motel guest injured her leg when she struck a three-inch long sharp metal object protruding from motel room bed as she walked by the bed).

Each of these authorities could be characterized as much more excessive than the punitive award in this case. A common theme in all of them is that the acceptability of the award turns on the status of the tortfeasor. *Cantrell* in particular asked the question, “[W]hat sort of award does it take to deter a 15 billion dollar corporation from engaging in mild to moderately reprehensible conduct?” See Civil Action No. 6:06-2723-BHH, Docket No. 125 at 38. It then attempted to answer that question by considering that Target “makes \$2,293,493 of gross profit *per hour*.” *Id.* (emphasis in original). The \$4,510,00.00 that the jury awarded in this case is unlikely to fully deter Target’s future conduct, but at least it is a start.

Each part of the analysis – reprehensibility, ratio, and comparative awards – justifies the jury’s verdict. Target is a large national retailer who, by its counsel’s own admission, will not be affected by the jury’s verdict. (Tr. 496). There is no constitutional justification for reducing Denise Garrison’s punitive damages award.

Punitive Damages Caps. As an initial matter, Target has doubly waived any application of the punitive damages caps enacted by the South Carolina Legislature in 2011. While Target raised its constitutional challenge to punitive damages in its answers, it did not raise any defenses under South Carolina’s Fairness in Civil Justice Act. Failure to raise an affirmative defense in a responsive pleading results in waiver. See, e.g., *Garner v. Houck*, 312 S.C. 481, 487, 435 S.E.2d

847, 850 (S.C. 1993). Target also did not raise the issue of South Carolina's Fairness in Civil Justice Act at trial prior to entry of the judgment. Case law holds that when, as here, a party does not invoke a damage cap at trial, then relief from the cap is waived. *See, e.g., Interclaim Holdings, Ltd. v. Ness, Motley, Loadholt, Richardson & Poole*, 298 F.Supp.2d 746 (N.D. Ill. 2004) (explaining that "an argument can be made that [the defendant] waived its objection" to the punitive damages bar).

Nonetheless, even if Target had properly raised the issue, South Carolina's punitive damages cap would be unconstitutional as applied to Denise Garrison. Target cites various cases from outside of this jurisdiction that have upheld the constitutionality of punitive damages caps, *see* Target Mem. at 27, but better-reasoned authorities hold the opposite. States such as Missouri have rightly held that punitive damages caps violate a plaintiff's constitutional right to a jury trial. *See Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014) (en banc).

Similar to Section 15-32-530(A) of the South Carolina Code, Missouri's Legislature capped punitive damages "at \$500,000 or five times the judgment amount[.]" *Id.* at 144. The problem with the cap, reasoned the court, was that it failed to take into account "the facts and circumstances of the particular case." *Id.* Just as the Constitution obligates this Court to ensure that the punitive damages award does not violate Target's right to due process, it similarly obligates this Court to consider the fairness to Denise on the specific facts of this case.¹⁵

What's more, though, is that Target attempts to utilize the wrong cap – even if the cap argument had not been waived and even if a cap were constitutional. The relevant cap is not the \$500,000 cap but instead the \$2,000,000.00 cap found in Section 15-32-530(B)(1). Although Target contends that Denise Garrison has "not argued for" the \$2 million dollar cap, *see* Target Mem. at 26, that contention makes little sense. Why would a plaintiff ever "argue for" a cap?

If any cap is applicable, which again Target maintains it is not, the pertinent cap is the \$2,000,000.00 cap. There is no case law analyzing the cap, but the statute's plain language makes clear that it applies where a defendant's conduct was "motivated primarily by unreasonable financial gain" and was known or approved by "the person responsible for making policy decisions on behalf of the defendant[.]" *See* S.C. Code § 15-32-530(B)(1). This is precisely Denise Garrison's theory of the case, precisely what the evidence showed at trial, and

¹⁵ *See also* *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 715 N.E.2d 1062 (Ohio 1999); *Henderson v. Alabama Power Co.*, 627 So.2d 878 (Ala. 1993); *McBride v. GM Corp.*, 737 F. Supp. 1563 (M.D. Ga. 1990).

precisely what the jury found.

From the very start, the Garrisons contended that Target put profits before safety. The testimony from Target's own witnesses proved this theory, as they testified that cart attendants charged with inspecting the parking lot were sometimes sent home early to save money and that the company's review of surveillance video was limited to cash registers and not necessarily to injuries in the parking lot. (Tr. 195-96, 269, 285). Target's Manager, as well as its Property Maintenance Technician charged with ensuring the safety of the premises, were the policymakers providing the testimony. (Tr. 129-289). The jury plainly accepted the Garrisons' theory, and their evidence, since a punitive damages award was returned in excess of the \$2,000,000.00 cap.

To summarize, no caps are applicable because Target waived any possible application of the caps and because the caps are constitutionality infirm. In the alternative only, the \$2 million dollar cap is applicable.

CONCLUSION

This is not a case of a runaway jury, no matter how badly Target wants to portray it as such. There are many "judicial hell holes"¹⁶ across the country, but Anderson County is not one of them. To the contrary, this county has been described by commentators as one of the most conservative venues in this State.¹⁷ This case boils down to the fact that Target engaged in reprehensible conduct that shocked the collective conscience of 12 ordinary South Carolinians.

Target's memorandum stresses that the Garrisons sought very reasonable damages, as if that were a bad thing. It is not. The Garrisons should be applauded for their willingness to accept less than they were entitled to. This case began as an effort to recoup medical bills, but Target turned it into something more. (Tr. 338). In the law, as in life, sometimes it is the meek who are rewarded.

The obligation of this Court is to consider all of the evidence in this case in the light most favorable to the Garrisons and to give them the benefit of every reasonable inference. Through that lens, all of Target's requests for post-judgment relief should be denied. The evidence

¹⁶ For example, the 60 Minutes news program investigated the perceived impropriety of large jury verdicts in certain counties across the nation. See, e.g., *Gales v. CBS Broadcasting, Inc.*, 124 Fed. App'x 275, 276 (5th Cir. 2005).

¹⁷ The state judicial profiles survey, published by US Law Network, Inc., is one such example. The county-by-county survey for South Carolina is included as Exhibit 2.

supports the jury's verdict, and the sanctity of that verdict is "paramount." *See Cantrell*, Civil Action No. 6:06-2723-BHH, Docket No. 125 at 4.

Respectfully submitted,

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COUNSEL FOR PLAINTIFFS

Greenville, South Carolina
October 27, 2016

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Rita Cantrell,

Plaintiff,

vs.

Target Corporation a/k/a Target Stores,
Inc.,

Defendant.

Civil Action No. 6:06-2723-BHH

ORDER

This matter is before the Court on the defendant's renewed motion for judgment as a matter of law or, in the alternative, for a new trial absolute or *nisi remittitur*, pursuant to Federal Rules of Civil Procedure 50 & 59. [Docs. 91, 118.]

In accordance with the provisions of 28 U.S.C. 636(c); Fed. R. Civ. P. 73; and D.S.C.

Local Rule 73.02(B)(1) the parties in this case have consented to have a United States Magistrate Judge conduct all proceedings in this case. Based upon this consent, the case was referred to the undersigned for final disposition by Order of the Honorable R. Bryan Harwell, United States District Judge, filed May 7, 2008.

PROCEDURAL HISTORY

This case was tried by jury, from October 20, 2008 to October 22, 2008. [Docs. 70, 71, 78.] The jury, found in favor of the plaintiff on her sole claim for defamation. It awarded her \$100,000 in actual damages and \$3 million in punitive damages. [Doc. 83.]

The defendant subsequently filed the present motion for judgment as a matter of law or, in the alternative, for a new trial absolute or *nisi remittitur*, on November 5, 2008. [Doc. 91.] By request of the parties, the Court delayed consideration of that motion. A hearing was eventually had regarding the motion, on February 25, 2009. [Doc. 110.]

At the hearing, the Court requested from the parties an omnibus brief, which would both incorporate the substance of previous memoranda submitted to the Court and address

EXHIBIT

1

additional matters raised at the hearing. The parties submitted those supplemental briefs on March 30, 2009. [Docs. 118, 119.]

In rendering its decision, the Court has fully considered all of the briefs submitted by the parties, the trial exhibits, and the transcript of the proceedings.

FACTS IN EVIDENCE

On February 23, 2006, the plaintiff, Rita Cantrell, went to the defendant's retail store on Woodruff Road in Greenville, South Carolina, to make a purchase. (Tr. at 2-55.) At the register, she tendered a \$100 bill. Because the cashier did not have enough cash in his drawer to make change, he took the bill to another cashier. *Id.* That individual raised some concern about the legitimacy of the bill and showed it to Jeff Hemric, the asset protection employee on duty at the time. (Tr. at 3-13.) After consulting with a supervisor by telephone and making a photocopy of the bill, Hemric partnered with the Lead on Duty, Kyle Locke, to determine whether or not the bill would be accepted or declined. *Id.* at 3-14. The two agreed the bill should be declined and Locke returned the bill to the plaintiff and asked for another form of payment. *Id.* Because she had been waiting for quite some time, the plaintiff left the store, rather than continuing with the transaction. *Id.* at 2-55, 2-56 ("[B]y that time, I had already waited ten or fifteen minutes. It was not that important. So I just handed him the receipt and the merchandise and took the hundred dollar bill and said thank you, and I just walked out the door.").

After the plaintiff had left the store, Hemric telephoned the nearby Target store in Greer, South Carolina, and advised its loss prevention personnel to "be on the lookout" for someone fitting the plaintiff's description who was attempting to pass counterfeit currency. One of the defendant's Senior Asset Protection Specialists, Michael Proctor, then sent an e-mail to Douglas Guerry, the coordinator of the Carolina Organized Retail Theft Task Force (CORTTF), which is an association consisting of approximately 75 businesses, government

agencies, and individuals (Pl. Ex. 16; Tr. at 1-221, 3-27, 28). The e-mail stated as follows:

Douglas, The lady pictured attempted to use a counterfeit 100 bill today at 11:40 am, it was an older style bill, series 1974. She had a large Belk's bag with her so she may have hit the mall today.

(Pl. Ex 3.) Proctor attached to the e-mail a still image taken from a store surveillance video. (Tr. 1-103 - 1-105.) Proctor was not present in the store when the plaintiff attempted to pass the bill, and he never saw or felt the bill for himself. (Proctor Dep. at 19.)

On February 24, Guerry forwarded Proctor's e-mail to every single member of the CORTTF list. (Tr. at 3-30.) Several days later, the plaintiff went to a Target store in Greer, again attempting to purchase some clothing for her grandson. (Tr. at 2-56.) After the cashier had accepted the bill and had given the plaintiff change, employee Jasmyn Richardson interrupted the transaction. *Id.* Richardson sent the cashier on a "break" and pulled the \$100 bill, which the plaintiff had used, from the register. *Id.* She informed the plaintiff that the bill was "fake" because it did not have a security thread running down the left side as printed and asked the plaintiff for another form of payment. *Id.* at 2-57. The plaintiff testified that she was conscious of the other people in line and that they were staring at her during the ten- to fifteen-minute episode; she was, not unexpectedly, embarrassed. *Id.* at 2-58.

After this second incident, the plaintiff testified that she took the bill to a bank to have it examined. (Tr. at 2-59.) The bank manager confirmed that the bill was legitimate and gave the plaintiff his business card to pass along to the defendant or anyone else who might question its veracity. *Id.* The plaintiff testified:

My intention was to take this back to Target, get an apology, and have them accept this bill, because there was nothing wrong with it. That was what was in the back of mind.¹

¹ The plaintiff's decision to hold onto the bill and twice attempt to tender it, at two separate Target stores, initially seemed to the Court an out of the ordinary response. Her testimony at trial, however, proved highly persuasive as to her rationale. As will be discussed, the plaintiff is clearly a woman of self-respect and dignity and the perceived affront to her reputation, posed by the incidents, was a serious matter that she was extraordinarily compelled to resolve.

Id.

The plaintiff worked in the ladies' handbag department of a Belk department store. As it would happen, Belk was a participating member of CORTTF, and Michelle Barton, an employee in the loss prevention department at Belk, received Proctor's e-mail. (Tr. at 1-203.) Believing that the individual whose picture was attached to the e-mail was the plaintiff, Barton contacted the defendant for additional information. (Tr. at 1-207.) Proctor and other Target employees scanned footage from other surveillance cameras to provide Barton with a better image of the suspect and an image of the suspect's vehicle, showing its license tag. (Tr. at 1-59, 1-97.)

Based on the information she received from Target, Barton believed that the plaintiff had attempted to pass counterfeit currency and contacted the Secret Service. (Tr. at 1-211, 1-214.) The Secret Service agent, to whom Barton spoke, informed her that he, too, had seen the e-mail and stated that he would be there shortly. *Id.* On or about March 21, 2006, two Secret Service agents took the plaintiff into an office, *Mirandized* her (that is to say, they read her her rights), and questioned her about the bill. (Tr. at 2-62.) The plaintiff showed the agents the \$100 bill, and they agreed that it was genuine. *Id.*

Later that same day, Barton sent an e-mail to Guerry, copying all members of CORTTF and stating that the Secret Service "has tested this bill and found it to be real. Please disregard any prior e-mails on this customer." (Pl. Ex 6.) Approximately an hour later, Guerry forwarded to all members of CORTTF an e-mail with the subject "CORTTF: Counterfeit Note" and stated: "Disregard the counterfeit note e-mail sent out recently. It has been investigated and resolved."

DISCUSSION

As an initial matter, to the Court, the whole matter is a serious one and a particularly close call. There is a substantial amount of money, reputation, and public goodwill at stake. The undersigned has significant respect for the attorneys at bar, the litigants involved, and, most importantly, the verdict returned. The jury's sanctity is paramount to the Court but no

less so is the predictable and constitutional application of the law, which the Court is constrained to evaluate.

It was the Court's observation that the trial was marked largely by fairness, congeniality, and a sense of duty to the law and courtroom participants. The jurors were attentive and the litigants, witnesses, and attorneys conducted themselves with notable aplomb. To that end, the Court regrets such a contentious verdict. Not for any obvious deficiency or error in it, but because an otherwise well-trying lawsuit has ultimately been defined by a sense of uncertainty and criticism unmerited by the performance of its participants. The Court's ruling today, therefore, necessarily to the benefit of one party over the other, should not be interpreted as any comment on the otherwise admirable efforts of counsel and litigants alike.

I. JUDGMENT AS A MATTER OF LAW

The defendant initially contends that it is entitled to judgment as a matter of law on *liability*. In considering Target's motion for judgment as a matter of law, pursuant to Fed. R. Civ. P. 50, the Court must view all of the evidence in the light most favorable to the plaintiff, drawing all reasonable inferences in her favor without weighing the evidence or considering the credibility of the witnesses. See *Sales v. Grant*, 158 F.3d 768, 775 (4th Cir. 1998). "The question is whether a jury, viewing the evidence in the light most favorable to [the plaintiff], could have properly reached the conclusion reached by this jury." *Benesh v. Amphenol Corp. (In re Wildewood Litig.)*, 52 F.3d 499, 502 (4th Cir. 1995). The defendant is entitled to judgment as a matter of law if a reasonable jury could only rule in its favor; if reasonable minds could differ, the defendant's motion must be denied. See *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir. 2001).

A. Qualified Privilege

The defendant's first basis for judgment as a matter of law rests on a belief that the evidence does not support a finding that it abused its qualified privilege.²

It is undisputed that the defendant in a defamation case may raise, as an affirmative defense, a claim that the complained-of communication was privileged and, therefore, not actionable as defamation. See *Swinton Creek Nursery v. Edisto Farm Credit ACA*, 514 S.E.2d 126, 134 (S.C. 1999). The defense applies when (1) the defamatory communication "is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Murray v. Holnam, Inc.*, 542 S.E.2d 743, 748 (S.C. Ct. App. 2001). A statement that would otherwise be actionable as defamation, therefore, is privileged when the defendant has an interest in the subject matter of the communication; that interest is shared by the person or persons who receive the communication; and the communication is made in a good faith effort to protect that mutual interest. See *Bell v. Bank of Abbeville*, 38 S.E.2d 641, 643 (S.C. 1946). A plaintiff, however, may overcome the qualified privilege by either showing (1) abuse of the privilege or (2) actual malice. See *Prentiss v. Nationwide Mut. Ins. Co.*, 181 S.E.2d 325, 328 (1971); *Swinton Creek Nursery*, 514 S.E.2d at 134. The question of whether the privilege applies is one for the court, but the question of whether the privilege has been abused is for the jury. See *id*

By way of background, the defendant raised this defense at summary judgment. The plaintiff, for purposes of the summary judgment motion only, conceded the applicability of the qualified privilege *conditionally*. [Doc. 30 at 7.] That is, the plaintiff did not contest whether or not the circumstances were such that a qualified privilege could apply, assuming that the scope of the privilege was not abused. Rather, she simply argued that the privilege, in fact, had been abused.

² The defendant does not contest whether the evidence was sufficient to support a conclusion that the email in question was, in fact, defamatory or that the plaintiff otherwise failed to establish any of the elements of her defamation claim. Rather, it simply contends that, in spite of the defamatory nature of the email, the defendant was privileged in its ability to send it.

It is the undersigned's view of the district court judge's Order, based on the plaintiff's concession, that he did not make any specific ruling as to whether the case presented circumstances that implicated the privilege in the first instance. *Id.* He essentially assumed that it did. He did, however, conclude that genuine issues of fact existed as to whether any such privilege had been abused. *Id.*

As a result, the undersigned was required to make an express ruling at trial that the qualified privilege conditionally applied and, further, whether the jury would have the opportunity to decide whether its scope had been exceeded. The Court, however, had substantial reservation in concluding that the qualified privilege was even conditionally applicable. Specifically, the undersigned was of the view that the *extent* or *character* of the relationship between the parties who share the common interest is relevant to whether a qualified privilege actually applies. See *Bank of Abbeville*, 38 S.E.2d at 643 ("In determining whether or not the communication was qualifiedly privileged, regard must be had . . . to the relationship of the parties."). In many of the cases surveyed in South Carolina, the common interest was shared between employees or officers within the same company or subscribing and formal members of an association more robust than what the evidence of record suggested about the participating members of CORTTF. See *Bell v. Evening Post Publ'g Co.*, 459 S.E.2d 315, 317 (S.C. Ct. App. 1995) ("Under South Carolina law, communications between servants, business associates, officers, or agents of the same corporation enjoy a qualified privilege."); *Moshtaghi v. The Citadel*, 443 S.E.2d 915, 920 (S.C. Ct. App. 1994) ("The employer-employee privilege does not protect unnecessary defamation."); *Conwell v. Spur Oil Co.*, 240 S.C. 170, 125 S.E.2d 270 (1962) (involving officers and employees of the same corporation). Ultimately, however, the Court concluded that South Carolina had never specifically limited the privilege to employees of the same company. The South Carolina Supreme Court has expressly stated that the privilege is "not restricted within any narrow limits" and may be applicable even where a social or moral interest is involved as opposed to a legal one. *Prentiss*, 181 S.E.2d at 328.

The Court, therefore, charged the jury that the defendant conditionally enjoyed a qualified-privilege and that it was their responsibility to evaluate whether it had been abused or whether the defendant acted with actual malice. Because there was a factual controversy concerning the interest shared among members of CORTTF, the Court believed that the matter remained reasonably within the province of the jury. See *Woodward v. South Carolina Farm Bureau Ins. Co.*, 282 S.E.2d 599, 601 (S.C.1981); see also *Weeks v. Union Camp Corp.*, 2000 WL 727771, at *4 (4th Cir. June 7, 2000). Based on the jury's verdict and the Court's legal instructions, it can be inferred that the jury determined that the scope of the privilege had been exceeded or that it found credible evidence of actual malice. The defendant, of course, now argues that there was insufficient evidence from which such a conclusion could have been drawn.

As stated, the qualified privilege, conditionally recognized, can be lost if abused or if the defendant acts with actual malice. The Court will address each basis in turn.

1. Abuse of the privilege

In exercising its privilege, the publisher must not wander beyond the scope of the occasion. *Murray*, 542 S.E.2d at 749. The privilege does not protect any unnecessary defamation. *Id.* In order for a communication to be privileged, the person making it must be careful to go no further than his interests or his duties require. *Id.* Where the speaker exceeds his privilege and the communication complained of goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory of the plaintiff, he will not be protected. *Id.* The existence of a duty, a common interest, or a confidential relation is not a defense. *Id.*

The Court has no trouble concluding that evidence existed from which a reasonable jury could conclude that the scope of the privilege had been exceeded. The CORTTF list-serve included approximately 75 individuals or entities. (Pl. Ex. 16; Tr. at 1-221.) Its membership included the United States Department of Agriculture (Tr. at 3-37); Mitchell Investigation Reports, a private investigation service (Tr. at 3-39); and Certegy Check Services, a check verification company headquartered in Florida (2-108, 2-109). The

defendant's witness and the principal organizer of CORTTF, Douglas Guerry, conceded that neither the USDA nor Mitchell Investigation would have any interest in the email concerning the plaintiff. (Tr. at 3-38, 3-40.) Kristie Guerry, an Executive Level employee in the defendant's Asset Protection division (Tr. at 1-110) and the wife of Douglas Guerry, also admitted that the Horry County Police Department would have had no interest in receiving the email. (Tr. at 1-54.) Moreover, the plaintiff's witness John Villines, admitted as an expert in retail security and loss prevention (Tr. at 2-106), testified that none of these entities had any interest in the content of the email at issue (Tr. at 2-110).

Villines further testified that recipients of such emails "should be included as a recipient based upon a similarity in the operation that they perform or geographic proximity." *Id.* Villines testified that these entities failed the strictures of both criteria and would have had no legitimate interest in receiving the emails which concerned the plaintiff. (Tr. at 2-110, 2-111.) The Court would note that such criterion – operational similarity and geographic proximity – although not ever expressly delineated by any court of South Carolina, represent reasonable parameters to the notion of a "common interest." Without such limitations, it could be said that almost any two individuals or entities might share a "common interest."

The defendant would argue that the purpose of CORTTF was "to share information relative to the broad category of loss prevention." [Doc. 118 at 12.] The Court thinks this is a sensible articulation of the interest ostensibly shared, but taken to its logical and most generalized limits would result in protection for defamatory statements published essentially to any vendor, retailer, or law enforcement entity, private or public – anywhere. Virtually everyone has an interest in deterring theft.

Regardless, witnesses of both sides indicated that certain members had no interest whatsoever. A reasonable jury could have credited the testimony of the Guerrys and Villines and, thereby, agreed in those witnesses' shared conclusion that certain members of CORTTF lacked a common interest with Target, such that Target should lose the shield

of its qualified privilege to publish defamatory information concerning the plaintiff and the bill at issue.³

Moreover, the jury had evidence to conclude that the email was unnecessarily defamatory in quality, under the circumstances. See *Murray*, 542 S.E.2d at 749; *Swinton Creek Nursery*, 514 S.E.2d at 134. Douglas Guerry expressly admitted that the email was generally "inappropriate and excessive." (Tr. at 3-37.) Kristie Guerry testified that the email was "improper." (Tr. at 1-49.) Further, the email itself stated that the plaintiff "may have hit the mall today" because the plaintiff was carrying a Belk's bag. (Pl. Ex. 3.) This statement necessarily insinuated that the plaintiff had engaged in other nefarious activity. The word "hit" is euphemistic. While the defendant may have had reason to believe that the plaintiff was attempting to pass a counterfeit bill at its stores, it had no reasonable basis to believe that the plaintiff had engaged in criminal conduct elsewhere. And where it might be excusable to decline to accept an ultimately legitimate bill at your own check-out counter for indicia of fraudulence, it was an unrelated and excessive falsehood to imply to others that the plaintiff had attempted to commit the same alleged offense in another establishment, not your own, and beyond the faculties of your own personal awareness. Rote speculation concerning the plaintiff's other activities was not "required to protect any interest or duty covered by the privilege." *Swinton Creek*, 514 S.E.2d at 134. The jury would have been permitted to conclude that the email was not only defamatory, but unnecessarily so, and, as a result, that the defendant had forfeited the protections of its privilege.

³ The Court would note that the defendant has never argued that it is shielded from liability insofar it only published the email to Douglas Guerry, who shared a common interest, and that it was Guerry's republication that actually placed the email into the hands of some without interest. So, that issue is not squarely before the Court. But, the undersigned would be disinclined to find that this fact matters. The defendant remains liable to the extent it intended, and knew, that it would be republished to CORTTF. See *Miller v. City of West Columbia*, 471 S.E.2d 683, 687 (S.C. 1996). The undisputed evidence is that the defendant intended that the email be republished to CORTTF and that, as a matter of course, it was. (See Proctor Dep. at 41.)

2. Malice

As stated, the plaintiff may also overcome the qualified privilege by showing that the defendant acted with actual malice in the making of the defamatory statement.⁴ See *Prentiss*, 181 S.E.2d at 328. To prove actual malice, "the plaintiff must show that [1] the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or [2] that the statements were published with such recklessness as to show a conscious disregard for the plaintiff's rights." *Swinton Creek*, 514 S.E.2d at 134 (emphasis added). Normally, for a libelous statement (one reduced to writing), see *Wilhoit v. WCSC, Inc.*, S.E.2d 397, 399-400 (S.C. Ct. App. 1987), malice is presumed, see *Swinton Creek*, 514 S.E.2d at 134. That presumption, however, is rebutted by the applicability of a qualified privilege, thereby, rendering proof of actual malice necessary even for written defamation. *Id.*

But, because the Court has already determined that there was sufficient evidence from which the jury could conclude that the privilege had been abused, the presumption of actual malice is necessarily restored and that element of the plaintiff's defamation claim would be satisfied by virtue of the written nature of the defamation. But to the extent the Court's determination regarding abuse of the privilege does not survive review on appeal, the Court is convinced that there was sufficient evidence from which the jury could find actual malice.

A reasonable jury could surely find that the defendant's actions showed little to no conscious regard for the plaintiff's rights and well being. See *Swinton Creek*, 514 S.E.2d at 134. It is undisputed that the email contains no qualification whatsoever. Its plainest meaning accuses the plaintiff of "attempt[ing] to use a counterfeit 100 bill." (Pl. Ex. 3.)

⁴ Under South Carolina law, to state a cause of action for defamation, a plaintiff must allege the existence of some message that (1) is defamatory, (2) is published with actual or implied malice, (3) is false, (4) is published by the defendant, (5) concerned the plaintiff, and (6) resulted in legally presumed or in special damages. *Parker v. Evening Post Pub. Co.*, 452 S.E.2d 640, 644 (S.C. Ct. App. 1994).

There is no attempt to hedge in the defendant's view of either the bill or the plaintiff's actions. The email contains the added offense of speculating about other possible improper behavior insofar as it suggests she might "have hit the mall today." *Id.* The language is crass and unqualified. While the email in every respect addresses the concerns that the defendant or another retailer might have, it is plainly absent of any sensitivity to the accused.

Moreover, Michael Proctor, a Senior Asset Protection Specialist of the defendant's and the author of the email, testified that he personally had no knowledge whether the \$100 bill was counterfeit. (Proctor Dep. at 32.) He was not present when the plaintiff attempted to tender the bill. *Id.* at 19. He never saw the bill for himself. *Id.* He examined only a photocopy of the bill. *Id.* at 24-25. Additionally, Proctor harbored no personal belief that the plaintiff was the actual manufacturer of the counterfeit bill, to the extent it was even counterfeit at all. (Proctor Dep. at 54.) He stated, "I mean, she looks like a reputable person to me. She dresses nice. She totally does not fit the profile of somebody that's going to go in there and try to hit [you] for a hundred bucks on a counterfeit bill" *Id.* Further, Proctor had no reason whatsoever to suspect that the plaintiff had "hit the mall" with counterfeit currency.

In spite of such admissions, Proctor chose to send an email to Guerry and ultimately 75 local businesses, including a private investigator, a check-clearing service, and the United States Department of Agriculture, accusing the plaintiff of doing what, he admittedly concedes, he had little basis to conclude she had done. He knew that the Secret Service was included on the CORTFF list and admits to intending that it be made aware of the alleged counterfeiting. (Proctor Dep. at 21.) A jury could easily have found Proctor's expressed intentions for the email and his beliefs about the plaintiff incongruous and, further, that such incongruity was inconsistent with any concern for her rights. The email simply does not account for the very foreseeable effects of its content – that some third-party would directly accuse and detain the plaintiff under suspicion of counterfeiting or shoplifting (with counterfeit currency). And, that is exactly what occurred.

The Court also believes that the jury was entitled to consider evidence that the defendant never sent a retraction email or otherwise attempted to ensure that every recipient of the first email was aware of the truth of the matter or whether the email had been sent to additional individuals outside of the CORTTF group. (Tr. at 1-55, 1-65, 1-84.) This evidence suggests that if the defendant had such little regard for the plaintiff's rights after it was aware of the falsity of the email, then it likely had even less regard at the time the email was prepared.

Accordingly, the Court concludes that there was sufficient evidence, when viewing the record in a light most favorable to the plaintiff, from which the jury could have found that the qualified privilege had been abused or that the defendant acted with actual malice. In either case, a judgment in favor of the defendant on liability would not be in order.

As a final point regarding the privilege, the Court would reemphasize the centrality of the defense and its preeminence, as a legal matter, through the course of the trial. The defamatory nature of the email was never really in dispute. The only basis to avoid liability for it was a claim of privilege. The Court addressed the defense with counsel on several occasions, out of the presence of the jury, and ultimately took argument from both sides as to its applicability and the legal charges related to it. The Court was transparent regarding its own struggle concerning the matter. Notwithstanding the undersigned's reservations, the Court agreed with the defendant that the privilege was operative under the circumstances and charged the jury accordingly.

Even still, the closing arguments were noticeably silent in this regard. The word privilege was not used a single time. The issue of qualified privilege is sufficiently obtuse that the evidence at trial and the legal charges concerning it needed a bridge between them. In the Court's estimation one was never laid. The defendant would now ask the Court to do, on behalf of the jury, what the jury, itself, was never asked to do by the defendant. The Court declines.

B. Proximate Cause

Lastly, the defendant summarily contends that judgment as a matter of law on actual and punitive damages should be granted because the defendant was not the proximate cause of the plaintiff's injuries. Specifically, the defendant argues that Belk's decision to contact the Secret Service was, in fact, the proximate cause of the plaintiff's anxiety and that decision was not foreseeable by the defendant.

First, the plaintiff is not required to demonstrate proximate cause as far as the Court can tell. As discussed, because the statement was libelous, it is considered actionable *per se* and general damages are presumed. See *Parrish v. Allison*, 656 S.E.2d 382, 389 (S.C. Ct. App. 2007). Accordingly, no proof of correlation between the act and any damages is necessary. See *Carey v. Phipps*, 435 U.S. 247, 263 (1978) (stating "[t]his ambiguity in causation, which is absent in the case of defamation *per se* . . ." (emphasis added)). The Court is unaware of any South Carolina case that would dictate an alternative conclusion under circumstances where (1) a qualified privilege defense was initially raised, thereby rebutting the *per se* presumption, but then (2) ultimately rejected. In other words, upon determining that the qualified privilege does not afford any protection to the defendant, it seems that the Court would treat the defamatory statement as it would have, had the privilege never been raised in the first instance. Here, the defamation was written and, therefore, actionable *per se*. See *Parrish*, 656 S.E.2d at 389. Damages are presumed and proof of causation rendered unnecessary.

Second, even to the extent proof of causation is required, it is not credible to contend that Belk's actions were not foreseeable. Belk was a CORTTF member (see Tr. at 1-203, 204) and, therefore, an expressly contemplated recipient of the email. The email, and ultimately CORTTF as an entity, would have no purpose whatsoever if there was not some generalized expectation that its members might take some action in response to emails of the kind at issue in this case. But, more importantly, Proctor has testified that he had an even more specific intention, that the Secret Service might actually involve itself in the

matter. (Proctor Dep. 21.) Both Belk and the Secret Service took reasonably foreseeable actions in response to the email.

Witnesses of the defendant would ridicule or demean the decision of Belk, to call the Secret Service, as not prudent or unprofessional and, therefore, not reasonably foreseeable, although the Court thinks the propriety of that decision is imminently debatable. But, ultimately, foreseeability is not the same as propriety or reasonableness. The defendant is responsible for all *foreseeable* consequences — not just the wise or good ones.

Moreover, the intervention of the Secret Service was not somehow uniquely predicated or dependant on the actions of Belk or any other retailer. The defendant should have (and did) contemplate the Secret Service's involvement, *because they were sent the defamatory email directly*. As stated, the Secret Service agent, to whom Belk spoke, indicated that he had already seen the e-mail concerning the plaintiff. (Tr. at 1-211.)

As the plaintiff notes, "[W]hile foreseeability of some injury from an act or omission is a prerequisite to establishing proximate cause, the plaintiff need not prove that the defendant should have contemplated the particular event that occurred." *See Baggerly v. CSX Transp., Inc.*, 635 S.E.2d 97, 101 (S.C. 2006). In this case, not only *should* the defendant have contemplated Belk's particular reaction, but there is evidence from which a reasonable jury could have concluded that it *did* contemplate it. (See Proctor Dep. at 21.) But even had it not, the defendant cannot say that "some injury" from the email was not foreseeable. *Baggerly*, 635 S.E.2d at 101. Nor must the plaintiff prove that the defendant's act or omission was the sole proximate cause of the injury; it is sufficient for the plaintiff to establish that the defendant's act was "a concurring or contributing proximate cause" of the plaintiff's injury. *See Player v. Thompson*, 193 S.E.2d 531, 534 (S.C. 1972). Whatever blame Belk might bear, if any, does not eliminate the principal and most proximate blame born by the defendant.

It is well-established that proximate cause is ordinarily a question for the jury and the Court has been given no reason to disturb its determination. See *Baggerly*, 635 S.E.2d at 101.

II. NEW TRIAL ABSOLUTE AND NEW TRIAL *NISI REMITTITUR* ON PUNITIVE DAMAGES.

As an alternative to its motion for judgment as a matter of law, the defendant seeks a new trial absolute or *nisi remittitur* pursuant to Rule 59(a) of the Federal Rules of Civil Procedure. The Erie doctrine requires "federal courts sitting in diversity [to] apply state substantive law and federal procedural law." *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 427 (1996). In considering a motion for new trial under Rule 59, therefore, the district court must apply the law of the state in determining whether the verdict is excessive or inadequate.⁵ See *id.* at 437-38.

Under South Carolina law, this court may order a new trial *nisi remittitur* only if the evidence does not justify the amount of the verdict and there are compelling reasons to invade the province of the jury. See *Vinson v. Hartley*, 477 S.E.2d 715, 723 (S.C. Ct. App. 1996). The court may order a new trial absolute only when "the amount of the verdict is so grossly inadequate or excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or other improper motives." *Id.*; see *Swicegood v. Lott*, 665 S.E.2d 211, 215-16 (S.C. Ct. App. 2008). When considering a motion for a new trial based on excessiveness of the verdict, the court must distinguish between verdicts that are merely unduly liberal and those which are actuated by improper motives. See *Elam v. S.C. Dept. of Transp.*, 602 S.E.2d 772, 781 (S.C. 2004). The jury's determination of damages is entitled to substantial deference, and the amount of the verdict should not be disturbed simply because the trial

⁵ The parties have exchanged some argument as to whether the Fourth Circuit's decision in *Atlas Food Systems and Services, Inc. v. Crane National Vendors, Inc.*, 99 F.3d 587 (4th Cir. 1996) is inconsistent with the dictates of *Gasperini*, insofar as it found that a Rule 59(a) motion should be resolved, in a diversity action, "by reference to federal standards developed under Rule 59" *Id.* at 593 (emphasis added). The Court declines to make any specific comment on *Atlas* but, in accord with *Gasperini*, will faithfully apply South Carolina's substantive standard for the determination of whether the punitive damage award, in this case, is excessive.

judge might have rendered a verdict in a different amount. See *Rush v. Blanchard*, 426 S.E.2d 802, 805 (S.C. 1993). Unless the damages in a defamation case are "unreasonable or outrageous," the court should not grant a new trial. *Neal v. Lewis*, 2 S.C.L. (2 Bay) 204 (1798).

While not expressly articulated as such, under South Carolina law, a trial court's review of punitive damages is essentially a four-step process.⁶ See *South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 478 S.E.2d 57, 154 (S.C. 1996); see also *James v. Horace Mann Ins. Co.*, 638 S.E.2d 667, 671 (S.C. 2006). The first three steps are expressly dictated by South Carolina decisional law. See *Love*, 478 S.E.2d at 154. The fourth is imposed by federal constitutional demands. See *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996); *James*, 638 S.E.2d at 671.

The trial court must first determine "whether the defendant's conduct rises to the level of culpability warranting a punitive damages award." *Love*, 478 S.E.2d at 59. If it does not, the issue of punitive damages must not be submitted to the jury. *Id.* In the second stage of review, the trial court must conduct a post-trial review of the punitive damages award pursuant to *Gamble v. Stevenson*, 406 S.E.2d 350 (1991) to ensure that the award does not deprive the defendant of its due process rights. *Love*, 478 S.E.2d at 59. *Gamble* outlines 8 factors to consider in determining the propriety of the punitive award. *Gamble*, 406 S.E.2d at 354. If the punitive damages award violates the defendant's due process rights, the trial court must either grant a new trial absolute or a new trial *nisi remittitur*. *Love*, 478 S.E.2d at 59. Even if the punitive damages award does not violate the defendant's due process rights, the trial court moves to the third inquiry -- "whether, in the exercise of its

⁶ The Court in *Love* refers to it as a "three stage" process. Subsequent South Carolina decisions make it clear, however, that it is a three stage process plus the due process analysis pursuant to *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996). See *James v. Horace Mann Ins. Co.*, 638 S.E.2d 667, 671 (S.C. 2006). As will be discussed, there is an overlap and redundancy in the due process analysis between what is required by the United States Supreme Court, in *Gore*, and what is required by the South Carolina Supreme Court, in *Gamble v. Stevenson*, 406 S.E.2d 350 (1991), that is not clearly explained. Regardless, the Court is convinced it must perform both evaluations.

discretion, it finds the award excessive” *Id.* If in the trial court’s discretion the award is excessive, the trial court may reduce the amount of the award. *Id.*

Even if the award is found to be reasonable after the first three stages, the Court then must also review the award in light of the United States Supreme Court’s decision in *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996). See *James*, 638 S.E.2d at 671.

A. Step 1: Culpable Conduct

The Court has twice performed the first step. The Court denied the defendant’s directed verdict motion on punitive damages at trial and submitted the issue with relevant charges to the jury. Now, again on the defendant’s motion for judgment as a matter of law, the Court has found that sufficient evidence existed from which a reasonable jury could find that the defendant acted with disregard to the rights of the plaintiff – or maliciously.

Under South Carolina law, punitive damages may be awarded to punish only those tortfeasors who have acted in a “reckless, willful, or wanton” manner. *Taylor v. Medénica*, 479 S.E.2d 35, 45 (1996); see also *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450-51 (4th Cir. 2001). Assessment of punitive damages for recklessness is proper only if the wrongful “act is committed in such a manner that a person of ordinary prudence would say that it was [in] reckless disregard of another’s rights.” *Hicks v. McCandlish*, 70 S.E.2d 629, 631 (1952). As discussed above, the Court has found sufficient evidence from which a jury could have concluded that the defendant acted in reckless disregard to the plaintiff’s rights and, therefore, that punitive damages were justified. Proctor did not know whether the bill was counterfeit. (Proctor Dep. at 19, 24-25, 32.) He consciously believed she was *not* a counterfeiter. *Id.* at 54. And, yet, he sent an unqualified email accusing her of trying to pass a counterfeit bill and having tried to do so previously at the mall. This is not negligence or even gross negligence. It was a conscious awareness of her rights that he elected to ignore.

B. Step 2: Gamble Factors

At the second step, the Court must consider the eight factors set forth in *Gamble v. Stevenson*, 405 S.E.2d 350 (S.C. 1991):

- (1) defendant's degree of culpability;
- (2) duration of the conduct;
- (3) defendant's awareness or concealment;
- (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from like conduct;
- (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and
- (8) other factors deemed appropriate.

Id. at 354. The trial court need only make findings as to those factors that are relevant to the individual case. *See id.* ("The trial court is not required to make a finding of fact for each Gamble factor to uphold a punitive damages award."). Additionally, as previously noted, the Court should be extremely reluctant to invade the province of the jury in abrogating its award of punitive damages award.

1. Defendant's degree of culpability

The defendant is clearly culpable for the wrong done to the plaintiff. It "act[ed] through its own employees" in preparing and disseminating the defamatory statements. *Gamble*, 406 S.E.2d at 355 (culpability analysis). That employee, by the estimation of every witness at trial, prepared a reckless and excessive email, keystroked without qualification. (Tr. at 1-49, 3-37.) That same employee had been designated and trained by the defendant for the very purpose of loss prevention and, thereby, was particularly tapped by the defendant to be its interface on these kinds of matters. Moreover, there was evidence

that the defendant provided no training related to counterfeit currency. (Proctor Dep. at 14; Tr. at 1-47 - 1-49.)

Of course, it cannot be said that the email was a product of an institutionalized policy, in the sense that the defendant expressly required such reckless accusations to be made concerning its customers. And, the Court agrees with the defendant that the case does not involve extraordinarily culpable conduct that was the product of some conscious

and deliberate scheme to harm the plaintiff. *Cf. GTR Rental, LLC v. DalCanton*, 547 F. Supp.2d 510, 517 (D.S.C. 2008) (finding an employee exceptionally culpable in intentionally and fraudulently converting the employer's income and property through a series of fraudulent transactions); *James v.*, 638 S.E.2d at 671 (holding that an adjuster's repeated misrepresentations about the applicable law and denial of coverage under an insurance policy based upon those misrepresentations was extremely culpable conduct). But, the fact that the defendant voluntarily and knowingly accepted the benefits of participation in a group like CORTTF it necessarily bore the concomitant responsibilities to counsel its employees in their activity with such an association and, further, to be careful in its information sharing. In at least this instance, it was unequivocally not careful. As has already been discussed, the disregard constituted legal malice. To the Court, culpability is sure although the degree is only moderately severe. The Court will address the quality of the culpability in greater detail in regards to Gore's *reprehensibility* guidepost.

The defendant has applied significant energy in defending the propriety of its employees' initial view that the bill was counterfeit. But, this case is not strictly speaking about the reasonableness of the defendant's belief concerning the bill or the plaintiff's role. In other words, the defendants' employees may well have had good reason to believe the bill was counterfeit and, maybe even, that the plaintiff knew that it was.⁷ But, the issue is about the reasonableness, or rather the recklessness, of the *email* that followed. The defendant was free to decline the plaintiff's bill as often as it liked under a reasonable or unreasonable suspicion that the bill was a fraud. It could not, however, unqualifiedly condemn the bill to others and the plaintiff's association with it and, further, accuse her of other improper behavior. While evidence of an *unreasonable* belief concerning the bill or the plaintiff might buttress the strength of the case against the defendant in regards to

⁷ The fact that the plaintiff declined to offer other payment on her visit to the first Target store, electing to simply leave instead, and the fact that she attempted to re-tender the bill at a separate store a week later could reasonably raise suspicions.

malice or culpability, mere evidence of a *reasonable* belief concerning the bill or the plaintiff cannot, however, absolve the defendant of liability for a subsequently reckless email.

2. Duration of the conduct

The defendant contends that there is no evidence that the defendant's conduct was continuous or that it was anything other than a one-time occurrence. The Court generally agrees. This is not a case where the defendant had repeatedly sent emails of a defamatory nature regarding the plaintiff or other customers. *Cf. GTR Rental, LLC*, 547 F. Supp. 2d at 517 (finding that the employee's conduct in defrauding the employer lasted for over a year).

But, at the same time, the case does not involve a single moment of impropriety. The defendant spent time pulling surveillance footage of the plaintiff. (Proctor Dep. at 37-38; Tr. at 1-59, 1-97.) Additional surveillance footage of the plaintiff was sent to Belk, at its request. (Tr. at 1-209, 210; Pl. Ex. 5.) Hemric telephoned the Target store in Greer and repeated the allegations against the plaintiff, counseling the store's loss prevention personnel to "be on the lookout" for her. Several days later, when the plaintiff attempted to make a purchase at the Greer store, it is undisputed that she was rudely and aggressively accosted by Jasmyn Richardson, an employee of the defendant, after making a purchase with the bill. (Tr. at 1-66 (acknowledging an internal e-mail in which Kristie Guerry described Richardson's confrontation with the plaintiff as "pretty aggressive" and worthy of "concern").) At Belk's, Barton was told by telephone that the plaintiff had "again" attempted to "pass" the bill at the Greer Target store. (Tr. at 1-208.) While not constituting a pattern or a long-standing scheme, it would be a mischaracterization of the events to view the defendant's conduct as simply the momentary instant when Proctor pressed "send" on the email.

3. Likelihood the award will deter the defendant or others from like misconduct

The defendant denies that the award could have any deterrence value insofar as its actions were an unknowing mistake and, thus, cannot be deterred by threat of punishment. It complains, therefore, that the award is unnecessarily chilling. The Court disagrees. First,

the Court has already rejected the view that the email was simply ordinary negligence or oversight; so did the jury. Second, retailers like the defendant *ought* to have a hyper-sensitivity to accusations levied against customers. Retailers should be substantially chilled regarding any decision to make, as of yet, unproven allegations or even routine comments concerning patrons of their stores. The defendant has not proffered a substantial policy basis to conclude otherwise. There was no evidence at trial that groups like CORTTF have any significant effect on loss prevention such that the inherent risks of defamation should be accepted or their ability to share information liberally guarded by the Court.

Third, and as will be discussed in greater detail below, the Court is not wholly convinced that an award of this size may not be, in fact, necessary to deter the specific conduct at issue. As a matter of economics, were the award less, the defendant might elect to pay a nominal settlement or jury verdict on occasion in lieu of actually taking affirmative actions to change the way it operates its business in this regard. The evidence indicates that the defendant makes \$2,293,493 of gross profit per hour. (Tr. at 2-140; Ex. 31.) It is not unreasonable to think that something of the magnitude of the award actually rendered in this case would be necessary to actually deter future conduct of this kind. The Court will discuss this factor in greater detail in regards to *Gore's* proportionality guidepost.

4. Defendant's ability to pay

The defendant does not contest its ability to pay. The plaintiff's expert, Oliver Wood, testified that the defendant was "in excellent financial condition" and that it would be able to respond to a punitive damages award in this case. (Tr. at 2-143.) The \$3 million punitive damages award in this case amounts to less than two ten-thousandths (.0002) of the \$15.633 billion net worth Target reported to the SEC in 2007, and less than fifteen one hundred-thousandths (.00015) of its \$20.91 billion in gross profits that same year. (Tr. at 2-139, 140; Pl. Exs. 30, 31); see, e.g., *Orangeburg Sausage Company v. Cincinnati Ins. Co.*, 450 S.E.2d 66 (S.C. Ct. App. 1993) (affirming a verdict which amounted to 0.003% of the defendant's net worth).

5. Other relevant factors

In addition to the factors enumerated above, the jury was entitled to consider that the defendant never accepted responsibility for its actions and has never deigned to offer a word of apology, (see Tr. at 1-65). See *Smith v. Smith*, 9 S.E.2d 584, 591 (S.C. 1940) (finding relevant, in a slander case, the refusal of the publisher to correct the defamatory statement or to apologize). The defendant made no attempt to cure the wrong committed or mitigate the plaintiff's anxiety over the incident, (see Tr. at 1-65, 2-36). See *Smith*, 9 S.E.2d at 591. And, the defendant has never seriously disciplined Proctor or any other employee associated with the matter, notwithstanding the consistent testimony of various witnesses as to the impropriety of the email and employee conduct. (Tr. at 1-50.) The Court would not mean to suggest that the award somehow legally rests on the remorsefulness or lack thereof of the defendant, although it is a legitimate consideration, see *Smith*, 9 S.E.2d at 591. But, these considerations certainly inform the jury's and, ultimately the Court's, view as to issues of the defendant's culpability, malice, and indifference.

As to the other *Gamble* factors, there was no evidence of purposeful concealment or similar past conduct. The Court will defer consideration of whether the award is reasonably related to the harm likely to result from such conduct until its discussion on the *Gore* guideposts.

For the reasons set forth above and the presence in varying degrees of the *Gamble* factors, the Court is comfortable that the punitive damages award is justified under South Carolina law.

C. Step 3: Excessiveness as a Matter of the Court's Discretion

Even if the punitive damages award does not violate the defendant's due process rights in light of *Gamble*, the trial court may "in the exercise of its discretion . . . find[] the award excessive" *Love*, 478 S.E.2d at 59. If in the trial court's discretion the award is excessive, the trial court may reduce the amount of the award. *Id.*

The Court would not have awarded \$3 million dollars for the conduct at issue in this case had it stood in the jury's place. At the same time, the Court does not find it excessive and, as will be discussed, views it, in some respect, as necessarily proportional and effective. It is not, in the Court's estimation, an award "so grossly . . . excessive as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or other improper motives." See *Vinson*, 477 S.E.2d at 723. The Court, therefore, declines to exercise its discretion to invade the bailiwick of the jury and reduce the amount.⁸

D. Step 4: Constitutionality of the Award in light of the *Gore* Guideposts

Finally, the Court must evaluate the punitive damages award in accord with the United States Supreme Court's decision in *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996). The Supreme Court has concluded that due process principles impose an outer limit on the amount of any given punitive damages award. *Id.* at 568. To that end, the Supreme Court has identified three "guideposts" to aid courts in deciding the constitutionality of punitive damages awards:

- (1) the degree of reprehensibility of the defendant's misconduct;
- (2) the ratio of the actual or potential harm suffered by the plaintiff to the punitive damages award, and
- (3) the difference between the punitive damages awarded by the jury and the civil or criminal penalties authorized for comparable misconduct.⁹

⁸ As a result, the Court declines to grant the defendant's request for new trial absolute on the grounds that the verdict is so excessive as to indicate juror passion, caprice or prejudice. The defendant relies on *Sanders v. Prince*, 403 S.E.2d 640 (1991) in support, which the Court will discuss in greater detail below. But, as will be noted, in *Sanders* there was additional evidence of juror prejudice beyond the facial number of the verdict itself. See *id.* at 642. The jury actually sent a note to the trial judge asking whether they could force the school board member to resign. *Id.* There is no such evidence here, and the Court rejects that the verdict, on its face, is evidence of such prejudice or passion. As stated, it does not shock the Court's conscience. See *Vinson v. Hartley*, 477 S.E.2d 715, 723 (S.C. Ct. App. 1996).

⁹ It seems to the Court that the *Gamble* and *Gore* phases of the analysis could be collapsed. Much in the same way as states interpret their long-arm statutes to reach to the limits of federal due process, thereby transforming an essentially two-part, state-federal analysis into a single inquiry concerning the federal due process demands for the

See *Campbell*, 538 U.S. at 418; *Gore*, 517 U.S. at 574-75. Of these three guideposts, the most important is the degree of reprehensibility of the defendant's conduct, as it reflects the elementary notion that "some wrongs are more blameworthy than others." *Gore*, 517 U.S. at 575. The essential goal of these factors is to determine whether the defendant had adequate notice that its conduct might subject it to an award of punitive damage in the amount returned. See *BMW*, 517 U.S. at 574; *Johansen v. Combustion Engineering, Inc.*, 170 F.3d 1320, 1335 (11th Cir. 1999).

The centerpiece of the defendant's motion, therefore, is to claim that "there has been no notice by South Carolina that a communication such as the one here . . . would be punished" by a \$3 million award of punitive damages. [Doc. 91 at 24.] The defendant contends that the jury's punitive damages award is so far beyond the bounds of what might reasonably have been expected that it violates the Due Process Clause of the United States Constitution.¹⁰ Although, an immeasurably difficult call, the Court declines to find that the *Gore* factors point to some deficiency in notice. The undersigned will address each in turn.

attachment of personal jurisdiction, efficiency could be gained in the area of punitive awards as well. The state *Gamble* factors, although predating the *Gore* factors, essentially serve the same due process considerations. *Gamble* was decided, in part, to effectuate the federal constitutional requirements dictated by *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1 (1991). See *Love*, 478 S.E.2d at 59. It, therefore, necessarily presages the three *Gore* guidons, in its expanded eight factor analysis. Unquestionably the first two *Gore* considerations are served in *Gamble*'s focus on the degree of culpability; duration of the conduct; the defendant's awareness or concealment; existence of similar past conduct; and whether the award is reasonably related to the harm likely to result from such conduct. These factors bear directly on reprehensibility and proportionality – the target of *Gore*'s first two considerations. By simply requiring a *Gore* analysis, South Carolina Courts would ensure that the all of the concerns of *Gamble* are fully treated and that the federal strictures are satisfied as well. As far as the Court can tell, however, no South Carolina case has ever concluded as such. The practice is to perform both analyses. That approach feels somewhat redundant, as reflected in the Court's discussion.

¹⁰ The defendant has not raised any procedural due process objections to the verdict.

1. Reprehensibility

Reprehensibility must be measured in terms of whether (1) the harm was physical as opposed to economic; (2) the defendant's conduct evinced an indifference to, or reckless disregard of, the health or safety of others; (3) the plaintiff was financially vulnerable; (4) the conduct involved repeated actions or was instead an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or instead was mere accident. See *Campbell*, 538 U.S. at 419. Under the Due Process Clause, willful or malicious action taken with a purpose to injure represents an enhanced degree of punishable culpability. *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2622 (2008). Further, heavier punitive damage verdicts are justified when the wrongdoing is hard to detect, increasing the chances of getting away with it. *Id.*

The Court is persuaded that the conduct in this case is of only moderate reprehensibility.

a. Whether the Harm to the Plaintiff was Physical as Opposed to Economic

The injury to the plaintiff was principally physical in nature. See *Sunlight Saunas, Inc. v. Sundance Sauna, Inc.*, 2006 WL 3021109, at *4 (D. Kan. October 23, 2006) (finding that damage to reputation falls "somewhere between physical and economic harm"). She did not lose her job or some other economic opportunity. There was limited evidence of a diminution in her pay as a result of the effect of her anxiety on her work performance¹¹ (Tr. at 2-73, 2-74); but that diminution even if attributable to anxiety caused by the email was nominal and, by the plaintiff's own account, secondary to the physical and emotional impact it had on her. While economic injury can support a large punitive award, deterring behavior that might result in serious physical injury is typically considered a more compelling basis.

¹¹ The plaintiff testified that in the twenty years she had been employed by Belk, she had consistently met her sales goals. (Tr. at 2-74.) She further testified that, following the incident with the defendant, her performance suffered enough to have her pay cut from \$17.50 per hour to \$16.50 per hour. *Id.*

Saunders v. Branch Banking and Trust Company of Virginia, 526 F.3d 142, 152-53 (4th Cir. 2008).

As to the physical and emotional quality of the harm suffered, the plaintiff's loss was not simply reputational. The plaintiff testified that she was "embarrassed" and "ashamed" by what had happened. *Id.* at 2-69. She claimed to suffer from insomnia, constant feelings of being "upset," and nervousness. *Id.* at 2-71. Ultimately, she sought medical attention for her distress, and was prescribed valium to alleviate her symptoms. *Id.* at 2-72. She testified that the physician wrote her a prescription for valium three or four times. *Id.* The plaintiff also testified that she lost roughly 40 pounds over only a few months. *Id.* at 2-78.

It is worth recounting that the plaintiff, without warning, was met by Secret Service agents at her place of employment, *Mirandized*, and questioned about allegations related to a counterfeit bill. (Tr. at 1-62.) This is not an inconsequential experience. Besides the certain embarrassment that the incident would cause, the plaintiff testified that she was literally terrified and assumed she was going to be arrested:

Q: So they gave you your Miranda rights?

A: Yes, Sir.

Q: Rita, what was going through your mind as they were doing this?

A: I couldn't believe this. I could not believe it. I was in shock. I was upset. I was scared.

Q: Did you think that you were going to get arrested?

A: I really did. I didn't know what was going on. I didn't know what was happening.

(Tr. at 2-62.) Further, the incident would more than justify the lingering sense of paranoia the plaintiff suffered concerning the very real possibility that she might be stopped again in another store under the similar suspicions. The defendant did not publish it to one other Target store or one other retailer. The defendant slandered the plaintiff to retailers in the greater community where she lives, shops, and works, and, even, to entities throughout the southeast.

The anxiety here is particularly difficult to qualify. The plaintiff is an older woman whose life undisputedly revolved around her work and church. (See, e.g., Tr. at 2-77.) She is largely unfamiliar with computers and emailing. (Tr. at 2-70, 2-71.) The uncertainty she would have felt about an email she never saw (Tr. at 2-68), accusing her of things she never did, and sent to a large group of people she did not know would have been significant.

The plaintiff's daughter and friend testified that the incident had a demonstrable impact on the quality of her life. (Tr. at 1-192, 1193, 2-42.) Her daughter described her mother's reaction and behavior after the incident in the following ways:

She was devastated when she found out that that e-mail went out. I mean, she is a very dedicated worker. She is loyal. She's been there over 20 years. And just to think that that went to her work place, you know, where people she works with every day and interacts and her friends had come across this information.

(Tr. at 2-42.)

So when she is told an e-mail went out about her, she thought that it was just, you know, there's no telling who could see it. . . . And then a lot of our friends at church, they work in retail stores, too. So if it was forwarded to their store, had they found out about it, too? Our close friends and people at church.

(Tr. at 2-43.)

. . . you could just tell she was real distant. She didn't want to talk to anybody. She was very paranoid. We would go and normally we sit right there together. And she was always looking around staring, and wouldn't really talk to anyone after church, was just ready to hurry up and get in the car and let's go.

(Tr. at 2-44.)

I know several months went by before we ever went shopping or anything. And the same thing there, you know, looking around. She would tell me, I've got to get back home. She said, I'm just so upset. My nerves are tore up.

Id.

She had always been a hard worker and dedicated to work. So she didn't let that stop her. She kept going to work. But outside of that, and to go to church and come straight home, she didn't go anywhere else.

(Tr. at 2-46.)

It completely changed my mother's personality. She's not the person that she used to be.

(Tr. at 2-48 (emphasis added).)

And, what cannot be mediated either by this Order or the press accounts or any other attempt to retranslate the evidence at trial, was the compelling testimony of the plaintiff and her daughter. The Court, of course, has no idea how the jury actually viewed it. But, in the Court's estimation a reasonable jury could have been substantially compelled by the measured and credible depiction of the emotional consequences the plaintiff allegedly experienced as a result of the incident. Precisely because the record was devoid of any serious medical evidence in that regard, the temptation upon direct examination to embellish through melodrama or histrionics would have been great. As far as the Court observed, however, neither the plaintiff nor her daughter succumbed. They were both believable and balanced. The plaintiff's testimony reflected a predictable and conscientious life, not destroyed, but significantly disrupted. Any reasonable jury could have calculated an actual damages award of the magnitude given here, without resort to conjecture or speculation. And for these same reasons, it is reasonable for the Court to conclude that the harm to the plaintiff was significant, even in the absence of voluminous medical records which would necessarily better quantify it.

The plaintiff is simply not a complainer. (See Tr. at 2-80.) Her conduct is not consistent with someone attempting to build a large economic case against a corporate defendant:

I don't go to the doctor unless I really feel like I have to. I try to keep everything inside and as long as I am able to function, to work, to do what I feel like I have to do, I do not go to the doctor.

Id. The absence of medical records is to her credit not her critique. The jury seems to have agreed.

The plaintiff was physically and emotionally harmed as a result of the defendant's conduct. She suffered from intrusive thoughts, she constantly felt she was being watched,

and feared going shopping. (Tr. at 2-78, 79.) She suffered all of the difficult emotions that accompany the prospect of being arrested, in her place of employment no less. These are real and credible consequences, although ones that would not necessarily require or justify a tremendous amount of medical treatment. The plaintiff testified to fears, private thoughts, aversions, and loss of reputation which would reasonably be expected to flow from this type of experience.¹²

Moreover, the Court must also consider the potential harm posed to the plaintiff, even if that harm was not actually suffered. See *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460-61 (1993) (holding that potentially massive economic harm that would have resulted if the defendant's scheme had been successful was relevant in evaluating an award of punitive damages). While the plaintiff did not lose her job, she could easily have done so. But for the fact that the plaintiff held onto the bill in question – instead of spending it elsewhere or making change for it – the consequences could have been much more burdensome and devastating. Providentially or to the plaintiff's credit, she just happened to still have the bill in her possession when she was questioned by the Secret Service at Belk. As a result, the bill and her conduct were easily and swiftly vindicated. In the absence of the bill, however, it is certainly possible that the Secret Service may have been compelled to perform a more involved investigation into the allegations. Of course, the plaintiff is, in fact, not a counterfeiter and, therefore, there would have been no other evidence of such activity. She was never in any real danger of some kind of serious prosecution. But a more invasive and damaging investigation was well within the realm of possibility and the specter of such allegations may have been enough for Belk to excuse

¹² For all of the reasons discussed above, the Court declines to grant a *nisi remittitur* as to the *actual damages* award. There was sufficient testimony and evidence to support an award of \$100,000 for emotional damages. As the jury was instructed, mental anguish and distress have no market price. See *Fennell v. Littlejohn*, 125 S.E.2d 408, 414 (S.C. 1962), *superseded by statute on other grounds*. They are not capable of exact measurement, and there is no fixed rule or standard whereby damages for them can be measured. See *Leppard v. Western Union Tel. Co.*, 70 S.E. 1004, 1005 (S.C. 1911). Therefore, the amount of damages to be awarded for mental anguish and distress is left to the judgment the jury.

her from employment. She would have never been able to prove the negative – that unequivocally the bill in question was not counterfeit or that she did not know that it was.

This entirely plausible scenario would have resulted in significantly more emotional and economic damage and frankly was even more likely than the events which actually transpired. The chances of an accused customer still having the bill weeks later were slim. Without the swift vindication that the bill's presence ensured, the plaintiff might have continued under a cloud of suspicion at church and in her community and with her present and future employers, were she dismissed from Belk.

The actual and potential harm, while not life-threatening, were significant and justify the deterrence value a substantial punitive award provides. As our society increases in public surveillance, retailers cannot be deliberately indifferent to rights of their customers and must be encouraged to guard against the foreseeable injury to individuals reputation if technology and information are mishandled recklessly. The South Carolina Supreme Court has emphasized that a person's reputation is invaluable. *Miller v. City of West Columbia*, 471 S.E.2d 683, 687 (1996).

b. Indifference to health and safety of others

As has been traced, the tone of the defendant's conduct both in the drafting of the email and subsequently has been one of almost complete indifference. As the plaintiff contends, it has been a rather notable quality of its posture. The defendant unequivocally accused the plaintiff of trying to pass a counterfeit bill and having attempted to do so on other occasions. Upon learning of the falsity of its accusations, it did not retract the email or otherwise attempt to mitigate the wrong (Tr. at 2-36, 1-55, 1-84). See *Saunders*, 526 F.3d at 153 (noting that a defendant's refusal to remedy or correct the effects of wrongful conduct is more reprehensible than a mistake followed by swift correction). It did not communicate with the plaintiff to alleviate any concerns. (Tr. at 1-65.) It did not offer any apology. See *Smith*, 9 S.E.2d at 591. It did not seriously discipline any employee connected with the incident.

The Court believes that the focus of this factor should be largely on the indifference shown prior to, or during the commission of, the predicate act, here, the email. And, this, of course, is not a circumstance where the defendant purposefully concealed, ahead of time, information about a dangerous product, which poses a threat to physical health and safety, for example. But the Court believes that it can look at the incident in its totality. The facts certainly evidence an indifference to the risk of emotional harm such unfounded allegations would pose.

c. Financial vulnerability

The plaintiff makes a compelling argument that this factor weighs substantially in her favor. The defendant is a multi-billion dollar, Fortune 40 company, with thousands of employees and stores all across the country. (Tr. at 2-138 - 2-140.) On average, the defendant makes \$2,293,493 every hour, 24 hours a day, 7 days a week. (Tr. at 2-140; Pl. -Ex. 31.) The plaintiff, in contrast, is an unmarried, middle-aged grandmother who has lived at home with her parents her entire life (Tr. at 2-46). While the defendant's CEO earned over \$36 million in 2006 (Tr. at 141), the plaintiff earns no more than \$35,000 per year working as a salesperson in the ladies' handbag department at Belk.

The plaintiff rightly points to the recent Fourth Circuit decision in *Saunders v. Branch Banking & Trust Co. of Virginia*, 526 F.3d 142 (4th Cir. 2008), as particularly relevant. There, the plaintiff obtained a loan from a car dealership which was subsequently assigned to the defendant, BB&T. *Id.* at 145. BB&T, however, failed to enter the loan on its books, with the consequence that the plaintiff, who made repeated inquiries, was consistently told he owed nothing. *Id.* Several months later, BB&T suddenly informed the plaintiff that the loan was in default and that he owed the entire balance of over \$20,000 plus penalties and late fees. *Id.* at 145-46. Ultimately, despite acknowledging its error in failing to record the loan on its books, BB&T reported the account as "a profit and loss writeoff," resulting in significant damage to the plaintiff's credit score. *Id.* at 146-47. A jury awarded Saunders \$1,000 in statutory damages under the Fair Credit Reporting Act ("FCRA"), plus \$80,000 in punitive damages. *Id.* at 147.

The Fourth Circuit affirmed the award despite the 80:1 ratio of punitive to actual damages. In so doing, the court noted that the only factor supporting a finding of reprehensibility was the plaintiff's financial vulnerability; BB&T had not repeatedly or maliciously violated the FCRA, and the plaintiff suffered only economic, and perhaps some emotional, harm. *Id.* at 153. The Fourth Circuit emphasized: "Saunders has a modest income and limited resources compared to BB&T." *Id.* As the court noted, however, "[t]he third factor [financial vulnerability] is certainly present, and a single factor can provide justification for a substantial award of punitive damages." *Id.*

Here, the plaintiff was also at the mercy of the more significant financial and technological resources of the defendant. The defendant's actions put at risk an individual without the wherewithal to combat the injury done to her reputation. She was at a disadvantage, in nearly every respect, to understand what the defendant had done and how she might go about either rectifying the damage or forcing the defendant to rectify it. The United States Supreme Court has recognized that certain parties are necessarily more vulnerable to defamation than others and, therefore, entitled to greater protection. See *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157, 164 (1979) (public figures require less protection from defamation than private individuals). As a non-public individual the plaintiff was more vulnerable financially and otherwise to accusations levied by a corporation of the defendant's size and influence. *Sunlight Saunas*, 2006 WL 3021109, at *4. It is a reasonable use of punitive awards to deter corporations holding such an advantage from jeopardizing the reputations of non-public figures who lack the ability to guard their own standing in the community.

d. Whether conduct was isolated or repeated

The Court considers this an isolated incident. While certainly capable of repetition, there was no evidence at trial that the defendant is a recidivist in having defamed other customers as a result of its participation in CORTTF, much less evidence that they had done so with any regularity. See *Campbell*, 538 U.S. at 423-24. "Because the [plaintiff] ha[s] shown no conduct by the [defendant] similar to that which harmed [her], the conduct

that harmed [her] is the only conduct relevant to the reprehensibility analysis." *Id.* While the plaintiff's attempt to tender the bill was rejected twice and while there were at least two emails sent concerning her and multiple employees involved, the Court believes that the incident *in toto* must be considered isolated.¹³

e. **Intentional malice, trickery, deceit or mere Accident**

The Court would not characterize the defendant's actions as a mere accident. Its recklessness rises to the level of legal malice, as discussed. But, the Court would reject that this case somehow involves a scheme of serious artifice as involved in other cases. *Cf. TXO*, 509 U.S. at 462 (involving evidence of a "malicious and fraudulent course"). It was not the intent of the defendant to scam or manipulate the plaintiff.

Therefore, based on the foregoing considerations, and as in *Saunders*, the defendant's conduct was "not extraordinarily blameworthy but it is sufficiently reprehensible to justify an award of punitive damages." *Saunders*, 526 F.3d at 153. Here, like in *Saunders*, the third factor is present, and "a single factor can provide justification for a substantial award of punitive damages." *Id.* While the third factor in this case is arguably not as strong as in *Saunders*, considered in conjunction with the presence of the first factor – physical and psychological harm to the plaintiff, and potentially the second, the Court is comfortable that the conduct involves sufficient legal reprehensibility to satisfy the first *Gore* guidepost.

2. **Ratio of punitive to actual damages**

Although the Supreme Court has instructed that reprehensibility is the most important consideration, the Court has wrestled most with the second *Gore* guidepost – the disparity between the actual or potential harm suffered and the punitive damages awarded. In this case, the jury awarded \$3 million in punitive damages but only \$100,000 in actual damages, for a ratio of 30:1. The United States Supreme Court has made it clear that

¹³ The Court does not consider this conclusion directly at odds with its prior determination regarding the duration of the conduct under *Gamble*. While the incident is isolated, it was not momentary. It was an isolated act of the defendant but lasting of some notable duration.

punitive awards that exceed a single-digit multiplier of the actual damages raise serious questions of constitutionality. See *TXO*, 509 U.S. at 459; *Haslip*, 499 U.S. at 23. But, the Supreme Court has been equally consistent in emphasizing that the ratio does not pose any sort of immovable ceiling on punitive awards. See *Gore*, 517 U.S. at 582. The Court has expressly "decline[d] . . . to impose a bright-line ratio which a punitive damages award cannot exceed." *Campbell*, 538 U.S. at 425. At the same time, the Supreme Court has cautioned that, "in practice, few awards exceeding a single digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* In fact, the Court has suggested that "four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Id.* The purpose ultimately is to ensure that "a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that a State may impose." *Gore*, 517 U.S. at 574. The more a punitive award becomes out of step with the actual damages suffered, the less likely the actor would have had notice that his conduct would warrant a penalty of that size.

The 30:1 ratio at issue in this case, therefore, automatically raises a sort of quasi-presumption against the legitimacy of the award. See *TXO*, 509 U.S. at 481 (noting that a 500:1 ratio must "raise a suspicious judicial eyebrow"). So, while the 30:1 ratio does not determinatively "foreclose the punitive damage award here," the Court is constrained to seriously evaluate it for excessiveness. *Saunders*, 526 F.3d at 154.

As the Fourth Circuit did in *Saunders*, the Court would start "by comparing the award to other cases involving similar claims." *Id.* A survey of South Carolina defamation cases, however, reveals few comparable awards, either in amount or proportion which have been sustained. See, e.g., *Miller v. City of West Columbia*, 471 S.E.2d 683, (S.C. 1996) (concluding a damage award of \$250,000 actual and \$500,000 punitive for defamation was not grossly excessive, where defamatory statement effectively destroyed plaintiff's reputation and ended his distinguished 25-year law enforcement career, and where, after resigning from police department, he had difficulty obtaining employment). The plaintiff would emphasize the defamation cases of *Elder v. Gafney Ledger, Inc.*, 511 S.E.2d 383

(S.C. Ct. App. 1999) (upholding a 30:1 ratio) and *Wilhoit*, 358 S.E.2d 397 (S.C. Ct. App. 1986) (upholding 45,000:1 – \$45,000 punitive award, \$1 actual award). *Wilhoit*, however, was pre-*Gamble* and *Gore* and involved a nominal award of \$1 for actual damages, while *Elder* was reversed by the South Carolina Supreme Court, see *Elder v. Gaffney Ledger*, 533 S.E.2d 899 (S.C. 2000).

In *Sanders v. Prince*, 403 S.E.2d 640 (S.C. 1991), the South Carolina Supreme Court found the verdict, in a defamation action, awarding each plaintiff \$1,250,000 in actual damages and \$750,000 in punitive damages, was so grossly excessive as to indicate passion, prejudice or other improper motive. *Id.* at 642. In that case, one school board member called a press conference and accused two other school board members of a pattern of fraud, kickbacks, and bribery. *Id.* The case is distinguishable from the present case insofar as the court, in *Sanders*, actually had some evidence of juror caprice. *Id.* But, the case remains relevant to the extent there was similarly limited evidence of an intentional scheme and the actual damages sustained were minimal. *Id.* The case certainly does not deepen the ledger in favor of sustaining the award in this present case. Although not dispositive, the Court has failed to find any defamation case in South Carolina, post-*Gore* and *Gamble*, involving a ratio between punitive and actual damages in a defamation context of the kind at issue in this case. And, the parties have not directed the Court's attention to any.

The plaintiff has identified some post-*Gore*, non-defamation suits in South Carolina involving fairly significant ratios. See *Hundley v. Rite Aid of S.C.*, 529 S.E.2d 45 (S.C. Ct. App. 2000); *Lister v. Nationsbank*, 494 S.E.2d 449 (S.C. Ct. App. 1997); *Gamble* itself affirmed a ratio of 35:1. *Gamble*, 406 S.E.2d at 352. Although involving much more serious potential harm than what is at issue here, *Hundley v. Rite Aid* does bear some similarities to the case at bar.

In *Hundley*, the court upheld a ratio of 50:1 where the defendant had incorrectly filled a prescription. *Hundley*, 529 S.E. 2d at 62. The jury rendered a verdict of \$20,000 in actual damages and \$1,000,000 punitive damages. *Id.* Similar to the present case, the

court found that the defendant's wanting approach to "quality assurance reflected a conscious indifference to the safety of others." *Id.* In other words, it was largely a matter of recklessness as opposed to intentionality, as in the present matter. Notwithstanding, a significant ratio was affirmed.

It is long-standing that punitive damages are available for defamation. *Hogg v. Wilson*, 10 S.C.L. (1 Nott & McCord) 216 (1818). This fact, in conjunction with the affirmation of some rather substantial ratios in other types of cases in South Carolina, should have placed the defendant on fairly general notice of the availability of a fairly significant award and disparate ratio.

Turning to the due process treatment of large punitive awards generally by federal courts, the plaintiff would emphasize that larger ratios than the one at issue in this case have been upheld. See, e.g., *Haslip*, 499 U.S. 1 (involving 200:1); *TXO*, 509 U.S. 443 (involving 526:1); *Saunders*, 526 F.3d 142 (involving 80:1); see also *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1338-39 (11th Cir.1999) (allowing \$4.35 million punitive damages award despite "100:1 ratio of the punitive to the actual damages," because compensatory damages "are quite small" and "a bigger award is needed to attract the attention of a large corporation" (quotations and alterations omitted)); *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003) (involving 37:1).

As discussed, *Saunders*, affirmed a punitive damages award with a ratio of 80:1, where the only reprehensibility factor was the plaintiff's financial vulnerability and only economic damages were suffered. Here, in contrast, the plaintiff suffered significant emotional distress and weight loss and had her routine of life was markedly altered.

The Court's greatest difficulty with this portion of the analysis is how to honor the proportionality guidelines, prescribed by the United States Supreme Court, while simultaneously ensuring the deterrence value of the punitive award, which is necessarily its traditional purpose, *Saunders*, 526 F.3d at 154. A rote comparison of actual to punitive damages, which is obviously not the entire analysis, fails to account for what it takes to influence the behavior of a large corporation, through money. Even conceding that the

actions of the defendant are of mild to moderate reprehensibility, what sort of award does it take to deter a 15 billion dollar corporation from engaging in mild to moderately reprehensible conduct? The undisputed evidence was that the defendant makes \$2,293,493 of gross profit *per hour*. (Tr. at 2-140; Pl. Ex. 31.) Accordingly, the defendant makes the full amount of this punitive award in roughly an hour and a half. Rhetorically speaking, therefore, does the defendant ensure the avoidance of reckless participation in CORTTF as a result of a \$100,000 award? A \$500,000 award? A million dollar award? As discussed in regards to the *Gamble* factors, a small but proportional award permits the defendant to make an economic decision simply to "pay" to continue in the same reprehensible, albeit mildly or moderately so, conduct. See *Johansen*, 170 F.3d at 1338 (affirming 100:1 ratio in part to deter defendant from a "pollute and pay" environmental policy).

At the hearing, the defendant posed a question to the Court as to whether a large, multi-national corporation should be treated differently, punitively speaking, than a "mom and pop" store for the *same conduct*. And, the answer, under the law, is unequivocally yes. It is firmly rooted that, in promoting deterrence, the economic wealth of a tortfeasor may be considered. *TXO*, 509 U.S. 443, 462 & n.28. A bigger award is necessarily needed to "attract the . . . attention" of a large corporation. *Continental Trend Resources, Inc. v. OXY USA, Inc.*, 101 F.3d 634, 641 (10th Cir. 1996).

The amount of money which would deter the mom and pop store from defamatory conduct would go unnoticed by a billion dollar, fully capitalized corporation: "It is not unlikely that having to pay \$4.35 million in punitive damages *would not make the company newsletter.*" *Johansen, Inc.*, 170 F.3d at 1338 (emphasis added). In contrast, the monetary award sufficient to deter that same corporation would instantly swamp the mom and pop into bankruptcy. If the jury concludes that the conduct ought to be deterred in the first instance, then it seems that the award should be constitutionally permitted to rise to a level that the defendant will actually notice.

The United States Supreme Court has stated that a departure from the traditional ratio constraints is particularly appropriate where "for example, a particularly egregious act has resulted in only a small amount of economic damages. *Gore*, 517 U.S. at 582. This case does not cleanly fit that exception. The conduct is legally reprehensible and could have resulted in more damage than it did. But it is not nearly of the most reprehensible kind. There was no risk of death or serious permanent injury. There was no evidence of purposeful scheming. Second, the actual damage award is fairly robust for the quantitative evidence presented. \$100,000 is not a nominal or symbolic award, although neither is it excessive or unreasonable, in light of the evidence.

Rather, the case poses circumstances of moderate reprehensibility but an unusually deterrent-proof defendant. The defendant makes, in gross profit, the entire sum of the award *in less than 2 hours*. It seems to the Court that cases like *Saunders* and *Johansen* make space for the affirmation of a large punitive award and substantial ratio under such circumstances. "A punitive damages award may exceed the normal single digit ratio [where] a smaller amount would utterly fail to serve the traditional purposes underlying an award of punitive damages." *Saunders*, 526 F.3d at 154.

Additionally, the conduct at issue here is of a nature that is necessarily hard to detect. See *Exxon*, 128 S. Ct. at 2622; *Gore*, 517 U.S. 559, 582. The Supreme Court has stated that "[a] higher ratio may also be justified in cases in which the injury is hard to detect." *Id.* While there is no evidence that the defendant purposefully concealed its participation in CORTTF, by the conduct's very nature, a customer will seldom know whether they have been defamed. The customer is unaware of the surveillance, the private conclusions of loss prevention, and then, ultimately, of the information specifically shared with other entities and individuals. The defendant may have acted similarly reckless towards innumerable other customers and, in the absence of a substantial deterrent, might have continued to do so. The likelihood of any individual customer becoming aware of a defamatory communication to the CORTTF group seems fairly low. This consideration

makes more urgent the need to deter the defendant from such conduct in a case where the conduct is, in that rare occasion, exposed.

Many, including the defendant, may interpret this conclusion as punishing the defendant *because* it is wealthy. That perspective, however, would be a perversion of the law and this Court's reasoning. It is not the wealth that justifies the punishment. It is the conduct. The wealth is simply the consideration that demands proportionality in the magnitude of the punishment. Said differently, it would be a windfall to the defendant to have to pay only the penalty sufficient to deter a mom and pop for like conduct. In spite of the defendant's complaints to the contrary, it is precisely a sense of fairness that weighs against remitting the award to an amount completely inconsequential to the defendant. The same slap that might readily move an obstinate dog from underfoot would solicit merely a tail-swat in return from an elephant.

One should not confuse what would undoubtedly be a "big" number, to a single individual, with sending a "big" message to the defendant. In real terms, 3 million dollars is simply a moderate message sent to curb moderate reprehensibility. To put those numbers into perspective, based on the defendant's net worth, the punitive damages verdict awarded by the jury would be equivalent a \$1,000 fine to a person with a net worth of \$5 million, or a fine of \$150 for someone with an annual gross income of \$1 million. (See Tr. at 2-139, 140; Pl. Exs. 29-31.) For a middle class wage earner like Ms. Cantrell, who makes \$17.00 per hour, it is the equivalent of a fine of \$5.30.

3. **Comparable penalties**

The plaintiff argues that the closest comparable penalty, under South Carolina law, is that which is levied for falsely reporting a felony. The offense is punishable by up to five years in prison and a fine of up to \$1,000. See S.C. Code § 16-17-722. The Court, however, does not believe that the email, in question, would be criminally actionable because the statute concerns the filing of a false police report. See S.C. Code § 16-17-722(A). The parties have not directed the court to any other civil or criminal penalty for similar conduct. This is relevant because, in the absence of a civil or criminal penalty

covering the same conduct, there is no reason to believe that there exists "a more modest sanction . . . sufficient to motivate" the defendant to cease the conduct. *Gore*, 517 U.S. at 585. There is no evidence of a "lesser deterrent" than the punitive award rendered to protect customers of the defendant from similar, future conduct. *Id.* In other words, a jury verdict is the only available policing mechanism.

In sum, the Court finds that the three *Gore* guideposts weigh in favor of concluding that the defendant had sufficient generalized notice of a punitive award of this size, such that the constitutional sensibilities of due process are not offended. As stated, punitive awards are permissible in defamation cases under South Carolina law. See *Hogg v. 10 S.C.L. (1 Nott & McCord) 216*. Large awards have been affirmed on both the state and federal level, involving sufficiently similar circumstances, to apprise the defendant of its risk of exposure. Critically, the defendant engaged in moderately reprehensible behavior, which can only be deterred through an award of a moderately large magnitude. Because of the defendant's financial strength, a number not unlike the one returned by the jury seems necessary to accomplish that end.

The Court recognizes the very real possibility that the Fourth Circuit may view this case quite differently. But, this trial was notable for its propriety. There was no evidence of jury prejudice or malfeasance. The jurors were dutiful and attentive in all respects. They rendered what was surely, in their estimation, a reasonable and responsible judgment. Therefore, to the extent the Court has seen a possible accommodation of the award under applicable law it will decline the invitation to interject itself to affect it.

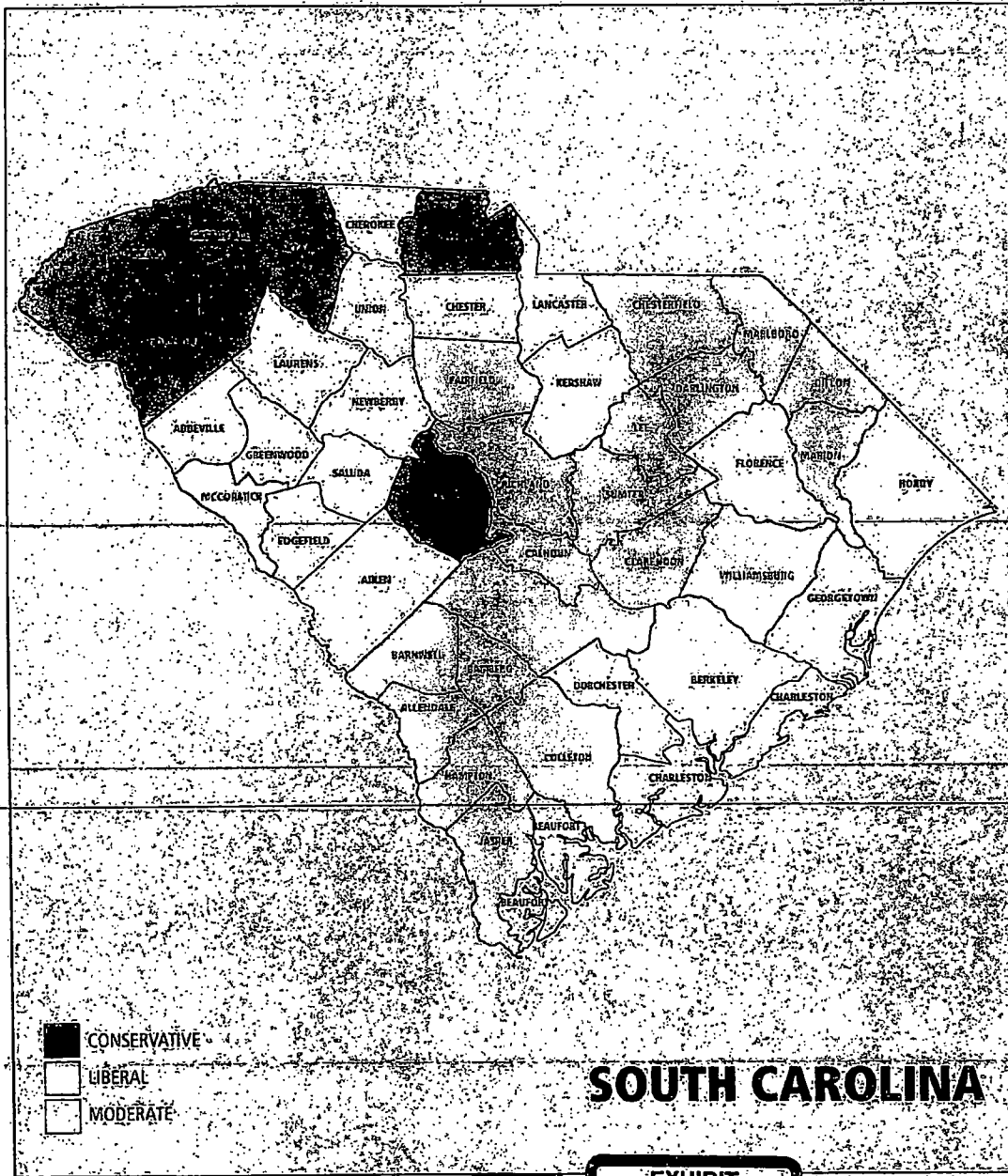
CONCLUSION

Wherefore, based upon the foregoing, it is ORDERED that the defendant's motion for judgment as a matter of law or, in the alternative, for a new trial [Docs. 91], in all its requests for relief, is hereby DENIED.

IT IS SO ORDERED.

s/Bruce Howe Hendricks
United States Magistrate Judge

May 15, 2009
Greenville, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-01426

CASE NO. 2015-CP-04-02206

PLAINTIFFS' EXPEDITED RULE
59(E) MOTION

Plaintiffs Denise and Clint Garrison respectfully move, pursuant to this Court's instructions, to amend the January 26, 2017, order. This Court's order denied the Garrisons' requests for costs under Rule 54(d) because it was unaware that affidavits had been submitted in support, and this Court did not address the Garrisons' request for pre-judgment interest and costs under Rule 68 at all. Rule 59(e) authorizes this Court to revisit these issues. *See Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24 (2004) ("A party may wish to file [] a [Rule 59(e)] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.").

In support of this motion, the Garrisons provide the Court with the following exhibits: (A) Plaintiffs' motion to tax costs and interest against the Defendant, (B) Defendant's reply to Plaintiffs' motion to tax costs and interest, and (C) Plaintiffs' rebuttal in support of motion to tax costs and interest.

The Garrisons do not seek a hearing on this motion because these issues already were argued orally before the Court on November 3, 2016. In order to avoid any confusion regarding the deadline for the forthcoming appeal,¹ the Garrisons respectfully request an expedited ruling on this motion.

¹ Despite previously denying Target's directed verdict motion on the issue of punitive damages, the January 27 order granted Target's subsequent motion for judgment as a matter of law, "finding punitive damages unconstitutional in this case[.]" If this portion of the order remains, the Garrisons intend to appeal because they believe that the record amply supports, as the jury found, an inference of wantonness, willfulness, or recklessness on the part of Target.

For these reasons, the Garrisons respectfully request that this Court amend its January 27 order and award them all costs and interest requested in their original motion.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No: 78470

1225 South Church Street

Greenville, South Carolina 29605

Phone: (864) 275-8142

Fax: (864) 752-0911

josh@jthawkinslaw.com

Attorney for Plaintiffs

Greenville, South Carolina
January 31, 2017

PD.20829778.1

MOTION FEE PAID

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiffs,

vs.

Target Corporation

Defendants.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

CIVIL ACTION NO. 2014-CP-04-1426

Plaintiff's Attorney:
Joshua T. Hawkins, Bar No. 78470
Address: 1225 South Church Street,
Greenville, South Carolina 29605
Phone: 864-275-8142 Fax: 864-752-0911
E-mail: josh@jthawkinslaw.com Other:

Defendant's Attorney:
Knox Haynsworth

A TRUE COPY

SEP 15 2016

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Tax Costs and Interest

Estimated Time Needed: fifteen (15) minutes

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion and proposed order attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted: 9/14/16

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by: AMV Date Filed: 9/15/16

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

Exhibit A

ELECTRONICALLY FILED - 2015 SEP 15 10:28 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

Common Pleas
Clerk : Richard A. Shirley
100 South Main Street
Anderson, SC 29622

Phone:(864) 260-4053 Fax:(864) 260-4715

MOTION FEE PAID

DUPLICATE

Received From: Hawkins, Joshua Thomas
1225 S. Church Street
Greenville, SC 29605
Paying for: Garrison, Carla Denise
Transaction Type: Payment
Payment Type: Check
Total Paid:

Date: 9/15/2016
Receipt #: 94921
Clerk: c04avoigt
Reference #: 1550
Comment:
Non-Refundable

You may check the status of your Anderson case at:
<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2014CP0401426	Carla Denise Garrison VS Target Corporation	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00

ReceiptSingleCase.rpt V6.1

ELECTRONICALLY FILED - 2017 Jan 31 4:30 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

**MOTION TO TAX COSTS AND
INTEREST AGAINST DEFENDANT**

A TRUE COPY

SEP 15 2016

Adrian L. King
ANDERSON CLERK OF COURT

Plaintiffs Carla Denise Garrison and Clint Garrison move, pursuant to Rules 68 and 54 of the South Carolina Rules of Civil Procedure and pursuant to the South Carolina Code of Laws, to tax costs and interest in this case against Defendant Target Corporation. In support, Plaintiffs would show the following:

1. Plaintiff Carla Denise Garrison made an offer of judgment in the amount of \$12,000 to Defendant on February 13, 2015 in this action. A copy of the offer of judgment and proof of service are attached as Exhibit A. Defendant mailed its motion to consolidate *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, on May 19, 2016, with knowledge that an offer of judgment had been made in this action. A copy of Defendant's motion to consolidate is attached as Exhibit B. Defendant did not file a written acceptance of the offer of judgment, as contemplated under Rule 68(a) of the South Carolina Rules of Civil Procedure, "[w]ithin twenty days after service of the offer of judgment or at least ten days prior to the trial date[.]" See also S.C. Code § 15-35-400(B).

2. This Court entered a final judgment in favor of Plaintiffs on September 8, 2016, in the amount of \$4,618,500.00. A copy of the judgment notice from this Court's website is attached as Exhibit C.¹ Plaintiff Denise Garrison obtained a verdict of \$100,000.00 in actual damages and a verdict of \$4,510,000.00 in punitive damages. Plaintiff Clint Garrison obtained a verdict of \$8,500.00 in actual damages. A copy of the returned verdict form is attached as Exhibit D.

¹ Plaintiffs have attempted to obtain a signed copy of the judgment from the Clerk's Office, but, to date, the Clerk's Office has not made a signed copy of the judgment available.

3. As prevailing parties, Plaintiffs are entitled to recover interest and costs from Defendant. Plaintiffs are entitled to "eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment" and to "any administrative, filing, or other court costs from the date of the offer until the entry of the judgment" under Rule 68(b) of the South Carolina Rules of Civil Procedure. Plaintiffs also are entitled to the costs outlined in Rule 54(e)(1)-(6) of the South Carolina Rules of Civil Procedure. Plaintiffs further are entitled to post-judgment interest as mandated by Section 34-31-20 of the South Carolina Code of Laws.

4. What follows is an itemized list of pre-judgment interest and costs:

a) Pre-judgment interest in accordance with South Carolina Rule of Civil Procedure 68: \$579,021.00 (The eight percent interest computed on the amount of the verdict from the date of the offer to the entry of judgment for Plaintiff Carla Garrison is \$577,955.00; the eight percent interest computed on the amount of the verdict from the date of the offer to the entry of judgment for Plaintiff Clint Garrison is \$1,066.00);

b) Administrative, filing, or other court costs from February 13, 2015 to September 8, 2016 in accordance with South Carolina Rule of Civil Procedure 68 as well as Costs Authorized by Statute and Sanctions Imposed in Favor of Prevailing Party, Fees of the Clerk, Fees of the Sheriff, Fees Incurred in Service of Process, Witnesses' Fees, and Fees for Exemplification and Copies of Papers Necessarily Obtained for Trial from the initiation of this action to the entry of judgment in accordance with South Carolina Rule of Civil Procedure 54: \$1,284.99.

<u>Date</u>	<u>Description</u>	<u>Check</u>	<u>Amount</u>
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
9/15/15	Jackson and Clint Garrison depositions	1267	\$261.60
9/17/15	civil action filing fee for 2015-CP-04-02206	1269	\$150.00

service on registered agent and CEO—return receipt		\$14.36
		\$0.49
4/20/16 postage—letter to Knox		
4/29/16 filing fee—motion to compel mediation	1466	\$25.00
5/10/16 Carla Garrison deposition transcript—EveryWord	1472	\$196.35
5/10/16 postage for payment to EveryWord		\$0.47
5/19/16 postage—letter to Knox		\$0.47
5/24/16 postage—Margaret Garrison affidavit		\$0.94
5/25/16 postage—Brintnall and Jackson subpoenas to Knox		\$0.47
5/27/16 postage—letters to Shirley and Knox		\$1.36
5/27/16 APS Legal Ease—Margaret's deposition	1486	\$215.10
5/27/16 postage—payment to APS Legal Ease		\$0.47
6/7/16 postage—letter to Richard Shirley		\$0.47
8/19/16 mileage for trial preparation (60 miles/round trip)		\$32.40
8/24/16 postage—Brintnall and Jackson subpoenas to Knox		\$0.47
8/24/16 postage—NoD to Annie Vieira		\$0.47
8/26/16 mileage for trial preparation (60 miles/round trip)		\$32.40
9/5/16 enlargements of Target photos		\$5.55
9/6/16 mileage for trial (60 miles/round trip)		\$32.40
9/7/16 mileage for trial (60 miles/round trip)		\$32.40
9/8/16 mileage for trial (60 miles/round trip)		\$32.40

5. The above-referenced pre-judgment interest is mandated by law.

6. The above-referenced costs were necessarily incurred in this case. In some instances, the costs Plaintiffs are entitled to under Rules 68 and 54 of the South Carolina Rules of Civil Procedure may overlap. Plaintiffs seek all costs to which they are entitled under both rules.

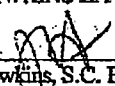
7. In addition to the above-referenced pre-judgment interest and costs, Plaintiffs are entitled to post-judgment interest. This Court should set the post-judgment interest rate as mandated by Section 34-31-20(b) of the South Carolina Code of Laws. According to the South Carolina Supreme Court, "for the period January 15, 2016, through January 14, 2017, the legal rate of interest for judgments and money decrees is 7.50% compounded annually."

8. Affidavits supporting this motion are attached as Exhibit E, including the affidavits of the Plaintiffs and the affidavit of Plaintiff's counsel.

For these reasons, Plaintiffs request that the Court (1) award pre-judgment interest to the Plaintiffs in the amount of \$579,021.00, (2) tax costs against Defendant and in favor of Plaintiffs in the amount of \$1,284.99, and (3) set the post-judgment interest rate in accordance with law. Plaintiffs further request any other relief as the Court deems just and appropriate and to which Plaintiffs are entitled to by law.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC.


Joshua T. Hawkins, S.C. Bar No: 78470
1225 South Church Street
Greenville, South Carolina 29605
864.275.8142 Fax 864.752.0911
josh@jthawkinslaw.com

Attorney for Plaintiff

Greenville, South Carolina

9/14, 2016

The J.T. Hawkins Law Firm, LLC

1225 South Church Street
Greenville, South Carolina 29605

Phone: (864) 275-8142

Fax: (864) 752-0911

josh@jthawkinslaw.com

February 13, 2015

The Honorable Richard A. Shirley
Anderson County Clerk of Court
Post Office Box 8002
Anderson, South Carolina 29622-8002

Re: *Curia Denise Garrison vs. Target Corporation*
C.A. No.: 2014-CP-04-1426

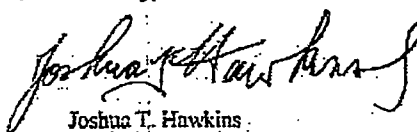
Dear Mr. Shirley:

Enclosed for filing please find the original and one copy of Plaintiff's Offer of Judgment in the above referenced case. I would appreciate your filing the original and returning a clocked copy to me in the stamped, self-addressed envelope provided.

By copy of this letter and as evidenced by the attached Certificate of Service, we have served a copy of our Offer of Judgment on Knox L. Haynsworth, III as attorney for Defendant.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,



Joshua T. Hawkins

JTH/blm
Enclosure
cc: Knox L. Haynsworth, III

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

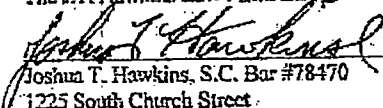
OFFER OF JUDGMENT

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT.

Pursuant to Rule 68 SCRCP, the plaintiff hereby offers judgment of \$12,000.00. If this offer is rejected, or if this offer is not accepted within 20 days, and a verdict of at least this amount is awarded to the plaintiff, all costs incurred subsequent to the making of this offer shall be taxed against the defendant, along with interest accrued from this point forward.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC


Joshua T. Hawkins, S.C. Bar #78470

1225 South Church Street
Greenville, SC 29605
(864) 275-8142
(864) 752-0911 (Fax)
josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

OFFER OF JUDGMENT

TO: KNOX HAYNESWORTH, ATTORNEY FOR THE DEFENDANT,

Pursuant to Rule 68 SCRPC, the plaintiff hereby offers judgment of \$12,000.00. If this offer is rejected, or if this offer is not accepted within 20 days, and a verdict of at least this amount is awarded to the plaintiff, all costs incurred subsequent to the making of this offer shall be taxed against the defendant, along with interest accrued from this point forward.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC

Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar #78470
1235 South Church Street

Greenville, SC 29605

(864) 275-8142

(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
)
) C.A. NO.: 2014-CP-04-1426
)

Carla Denise Garrison,
Plaintiff,

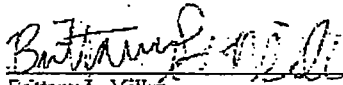
vs.

Target Corporation,
Defendant.

CERTIFICATE OF SERVICE

I, Brittany L. Miller, this day, February 13, 2015, mailed a copy of the foregoing Plaintiff's
Offer of Judgment to the addresses below via United States Mail with sufficient postage attached.

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod & Haynsworth, LLC
Post Office Box 2464
Greenville, South Carolina 29602


Brittany L. Miller
Legal Assistant to Joshua T. Hawkins

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

OFFER OF JUDGMENT

TO: KNOX HAYNESWORTH ATTORNEY FOR THE DEFENDANT.

Pursuant to Rule 68 SCRPC, the plaintiff hereby offers judgment of \$12,000.00. If this offer is rejected, or if this offer is not accepted within 20 days, and a verdict of at least this amount is awarded to the plaintiff, all costs incurred subsequent to the making of this offer shall be taxed against the defendant, along with interest accrued from this point forward.

Respectfully submitted,

The J.T. Hawkins Law Firm, LLC

Joshua T. Hawkins
Joshua T. Hawkins, S.C. Bar #78470
1225 South Church Street

Greenville, SC 29605

(864) 275-8142

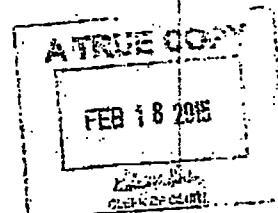
(864) 752-0911 (Fax)

josh@jthawkins.com

Attorney for Plaintiff

Greenville, South Carolina

2/13, 2015



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF COMMON PLEAS
)
) C.A. NO.: 2014-CP-04-1426
)

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

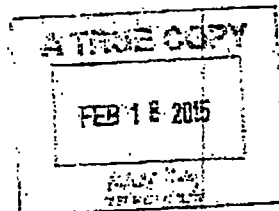
Defendant.

CERTIFICATE OF SERVICE

I, Brittany L. Miller, this day, February 13, 2015, mailed a copy of the foregoing Plaintiff's
Offer of Judgment to the addresses below via United States Mail with sufficient postage attached.

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod & Haynsworth, LLC
Post Office Box 2464
Greenville, South Carolina 29602

Brittany L. Miller
Brittany L. Miller
Legal Assistant to Joshua T. Hawkins



R. David Massey
E. Douglas E. Evans
Stanley E. McLeod
Knox L. Haynsworth, III
E. Zachary Brown
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC

ATTORNEYS AT LAW
POST OFFICE BOX 1164
GREENVILLE, SOUTH CAROLINA 29602

106 WILLIAMS STREET
TELEPHONE (864) 371-7124
FAX (864) 242-6469
WEBSITE: bme.com

OF COUNSEL
C. Vincent Brown

May 19, 2016

The Honorable Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622-8002

Re: *Carla Denise Garrison vs. Target Corporation*
C.A. No.: 2014-CP-04-1426

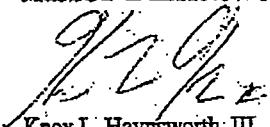
Dear Mr. Shirley:

Enclosed for filing please find the original and one copy of a Notice of Motion and Motion to Consolidate in the above matter along with a motion cover slip and our firm's check in the amount of \$25.00 representing the filing fee. I would appreciate your filing the original and returning a clocked copy to me in the stamped, self-addressed envelope provided. By copy of this letter and as evidenced by the attached certificate of service, we have served a copy of the motion on Joshua T. Hawkins as attorney for plaintiff.

Thank you for your assistance in this regard.

Sincerely,

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**


Knox L. Haynsworth, III

KLH/lab

Enclosure

cc: Joshua T. Hawkins, Esquire.

Exhibit B

ELECTRONICALLY FILED - 2017 Jan 31 4:30 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Carla Denise Garrison
☐ Plaintiff

v.

Target Corporation
☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-04-1426

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:		Defendant's Attorney: Knox L. Haynsworth, III, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424, fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: MOTION TO CONSOLIDATE Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE	
		CODE: Date:	
CLERK'S VERIFICATION			
Date Filed:			
Collected by: _____			
☐ MOTION FEE COLLECTED: _____			
☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (1/2003)

ELECTRONICALLY FILED - 2017 Jan 31 4:30 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2014-CP-04-1426

NOTICE OF MOTION AND MOTION
TO CONSOLIDATE

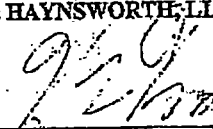
TO: JOSHUA T. HAWKINS, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that defendant will move on the tenth day following service hereof, or as soon thereafter as counsel may be heard for an order consolidating the present action with the related action entitled: Carla Garrison and Clint Garrison vs. Target Corporation C.A. No.: 2015-CP-04-2206. The grounds for the foregoing motion are as follows: In the above matter the plaintiff Carla Garrison instituted an action against Target regarding injuries she allegedly sustained in the parking lot of Target's Anderson, South Carolina store. During discovery in the above action, the undersigned counsel took the deposition of Ms. Garrison as well as her husband Clint, during which time Ms. Garrison discussed her injuries and damages and her husband, Clint discussed his injuries and damages caused by virtue of the injuries allegedly sustained by his wife. Subsequently on September 21, 2015 the action involving both Clint and Carla Garrison was filed and ultimately served on Target.

Based upon the correspondence exchanged between counsel for Target and counsel for plaintiffs, collectively attached hereto as Exhibit A, defendant believed a consent order would be executed between the parties consolidating the two actions for purposes of trial. However, it has recently been determined that plaintiffs do not intend to consolidate these actions and, in fact, have moved the court to compel Target to mediate the latter filed action. In light of plaintiffs' new position relative to consenting to consolidating the two actions, Target files this motion requesting the court consolidate both actions.

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**


Knox L. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424
Attorney for Defendant

Greenville, South Carolina

May 19, 2016

EXHIBIT

A

Knox Haynsworth

From: Josh Hawkins <josh@jthawkinslaw.com>
Sent: Thursday, April 14, 2016 11:49 AM
To: Knox Haynsworth
Cc: Paralegal
Subject: RE: Garrison v. Target

Alright, we will send a consent order to you.

Sincerely,

Joshua T. Hawkins
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, South Carolina 29605
Telephone: (864) 275-8142
Facsimile: (864) 752-0911

From: Knox Haynsworth [mailto:knoxhaynsworth@bmemhlaw.com]
Sent: Thursday, April 14, 2016 11:48 AM
To: Josh Hawkins
Cc: Paralegal
Subject: RE: Garrison v. Target

Since we probably ought to do one anyway, do you want to prepare a consent Order consolidating the two cases? Not sure how that works as far as whether that still keep separate case numbers, etc., seems to me if they are consolidated, that may solve the 2nd mediation issue.

Knox L. Haynsworth, III, Esquire
Brown, Massey, Evans, McLeod & Haynsworth, LLC
105 Williams Street
Greenville, SC 29601
P.O. Box 2454
Greenville, SC 29602
(864) 271-7424 Ext. 105 - Phone
(864) 242-6469 - Fax
knoxhaynsworth@bmemhlaw.com

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IT IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, REVIEW, RE-TRANSMISSION, DISSEMINATION, DISTRIBUTION OR REPRODUCTION OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS IN ERROR, PLEASE DELETE IT FROM YOUR COMPUTER AND NOTIFY BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC, IMMEDIATELY BY PHONE OR E-MAIL. THANK YOU.

From: Josh Hawkins [mailto:josh@jthawkinslaw.com]
Sent: Monday, April 11, 2016 1:43 PM
To: Knox Haynsworth <knoxhaynsworth@bmemhlaw.com>

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below a Notice of Motion and Motion to Consolidate by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605


Laura Barry

Greenville, South Carolina
May 19, 2016



Anderson County Tenth Judicial Circuit Public Index



Anderson County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

Carla Denise Garrison VS Target Corporation					
Case Number:	2014CP0401426	Court Agency:	Common Pleas	Filed Date:	07/01/2014
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Jury Trial	Disposition Date:	09/08/2016	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP0401426	Court Roster:	JURY SEPTEMBER 6-9, 2016 9:30 AM		

Case Parties								Judgments	Tax Map Information	Associated Cases	Actions	Financials
For:	Garrison, Carla Denise		Against:	Target Corporation	Judg. Amount:	\$4,618,500.00	Judgment Date:	09/08/2016				
Description:	Judgment/Judgment		Disposition:		Disp. Date:		Date Entered/Last Changed	09/08/2016				
Notes:	None											
Judgment Details												
Claims Code		Detail Desc.			Detail Amount		Detail Date					
None												
For:	Garrison, Clinton Michael		Against:	Target Corporation	Judg. Amount:	\$4,618,500.00	Judgment Date:	09/08/2016				
Description:	Judgment/Judgment		Disposition:		Disp. Date:		Date Entered/Last Changed	09/08/2016				
Notes:	None											
Judgment Details												
Claims Code		Detail Desc.			Detail Amount		Detail Date					
None												

CaseWeb 6.1.0 2012 South Carolina Judicial Department - All rights reserved.

Exhibit C

<http://publicindex.sccourts.org/Anderson/PublicIndex/CaseDetails.aspx?County=04&Cour...> 9/14/2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Michael Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

VERDICT

COMMON PLEAS AND
GENERAL SESSIONS

2016 SEP -8 PM 2:36

FILED-CLERK'S OFFICE
ANDERSON SC

1. Do you, the jury, find that the Defendant, Target Corporation, was negligent and that such negligence caused the Plaintiff, Carla Denise Garrison's, injuries?

☒ YES: If you answer yes, GO TO QUESTION 2

☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

2. Do you find that the Plaintiff, Carla Denise Garrison, was negligent and that such negligence proximately caused her injuries?

☒ YES: If you answer yes, GO TO QUESTION 3

☐ NO: If you answer no, GO TO QUESTION 4

3. If your answers to both question number 1 and question number 2 are YES, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff, Carla Denise Garrison's, injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, Target Corporation?

Exhibit D

A TRUE COPY

SEP 12 2016

Debra K. Kline
ANDERSON CLERK OF COURT

FILED CLERK'S OFFICE
ANDERSON SC
SEP - 8 PM 2:36

2016
SEP 21 DES

COMMON PLEAS AND
GENERAL SESSIONS

NEGLIGENCE PERCENTAGES REQUIRED TO ADD UP TO 100%

Plaintiff _____ %
Defendant _____ %
Total _____ 100%

If the Plaintiff's percentage of the combined negligence is greater than 50%,
DELIBERATE NO FURTHER.

If the Plaintiff's percentage of the combined negligence is 50% or less, **GO TO QUESTION 4.**

4. Please state the total amount of actual damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Carla Denise Garrison.

\$ 100,000.00 *one hundred thousand*

NOTE: If your answer to question number 2 was YES, do not reduce the plaintiff's damages above by the percentage of negligence attributed to her in question number 3.

ONLY GO ON TO THE NEXT QUESTIONS IF YOU AWARDED ACTUAL DAMAGES TO THE PLAINTIFF IN QUESTION 4

5. Do you, the jury, find by clear and convincing evidence that the Defendant, Target Corporation, acted willfully, wantonly, maliciously, or with reckless disregard of the plaintiff's rights?

☒ YES: If you answer yes, **GO TO QUESTION 6**

☐ NO: If you answer no, **GO TO QUESTION 7**

6. Please state the total amount of punitive damages, if any, that you, the jury, have found by clear and convincing evidence were sustained by the Plaintiff, Carla Denise Garrison.

for \$ 4,510,000.00 (plus)
\$ 4,510,000.00 4 million five hundred ten thousand and no/100

**PLEASE ANSWER THE FOLLOWING QUESTIONS EVEN IF YOU DID NOT
AWARD PUNITIVE DAMAGES TO THE PLAINTIFF IN QUESTIONS 5 & 6**

NOTE: If you answered NO to question 1, DO NOT answer the following questions

Lost Wages:

7. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable for the lost wages of the Plaintiff, Clint Michael Garrison?
- ☒ YES: If you answer yes, GO TO QUESTION 8
- ☐ NO: If you answer no, GO TO QUESTION 9

8. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of his wages.

\$3,500 three thousand five hundred

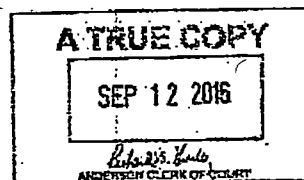
Loss of Consortium:

9. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable to the Plaintiff, Clint Michael Garrison, for loss of consortium?
- ☒ YES: If you answer yes, GO TO QUESTION 10
- ☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

10. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of consortium in this case.

\$5000 five thousand

WHEN YOU HAVE FINISHED DELIBERATING,
PLEASE SIGN ON THE FOLLOWING PAGE



ELECTRONICALLY FILED - 2017 Jan 31 4:30 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

FILED-CLERK'S OFFICE
ANDERSON SC

2016 SEP - 8 PM 2:36

COMMON PLEAS AND
GENERAL SESSIONS

David E. Ego
FOREPERSON

September 8th, 2016
Anderson, SC

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE NOTIFY THE BAILIFF

A TRUE COPY

SEP 12 2016

Debra S. Kuntz
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

CLINT GARRISON'S AFFIDAVIT
IN SUPPORT OF MOTION TO TAX
COSTS AND INTEREST

PERSONALLY APPEARING BEFORE ME, Clint Garrison, deposes and swears the following:

1. My name is Clint Garrison, I am a plaintiff in this action, suffer from no disabilities, and I have personal knowledge in connection with the motion to recover costs and interest.
2. The Court entered a final judgment in Plaintiffs' favor on September 8, 2016.
3. I state that the following is an accurate list of the costs incurred by Plaintiffs: \$1,284.99

1

Exhibit E

Date	Description	Check	Amount
6/27/14	civil action filing fee for 2014-CP-04-01426	1021	\$150.00
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
uncertain	mileage—round trip to Anderson (60 miles/round trip)		\$34.50
5/28/15	depositions—EveryWord	1192	\$248.95
9/15/15	Jackson and Clint Garrison depositions	1267	\$261.60
9/17/15	civil action filing fee for 2015-CP-04-02206	1269	\$150.00
	service on registered agent and CEO—return receipt		\$14.36
4/20/16	postage—letter to Knox		\$0.49
4/29/16	filing fee—motion to compel mediation	1466	\$25.00
5/10/16	Carla Garrison deposition transcript—EveryWord	1472	\$196.35
5/10/16	postage for payment to EveryWord		\$0.47
5/19/16	postage—letter to Knox		\$0.47
5/24/16	postage—Margaret Garrison affidavit		\$0.94
5/25/16	postage—Brintnall and Jackson subpoenas to Knox		\$0.47
5/27/16	postage—letters to Shirley and Knox		\$1.36
5/27/16	APS Legal Ease—Margaret's deposition	1486	\$215.10
5/27/16	postage—payment to APS Legal Ease		\$0.47
6/7/16	postage—letter to Richard Shirley		\$0.47
8/19/16	mileage for trial preparation (60 miles/round trip)		\$32.40
8/24/16	postage—Brintnall and Jackson subpoenas to Knox		\$0.47
8/24/16	postage—NoD to Annie Vieira		\$0.47
8/26/16	mileage for trial preparation (60 miles/round trip)		\$32.40
9/5/16	enlargements of Target photos		\$5.55
9/6/16	mileage for trial (60 miles/round trip)		\$32.40
9/7/16	mileage for trial (60 miles/round trip)		\$32.40
9/8/16	mileage for trial (60 miles/round trip)		\$32.40

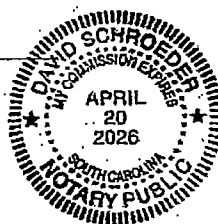
4. I believe interest, calculated at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, is \$579,021 for both parties and \$1,066 for the jury award related to my damages.
5. Defendant mailed its motion to consolidate the action *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action for filing on May 19, 2016, after Plaintiff Denise Garrison's offer of judgment in the existing action.
6. The above costs were necessarily incurred in this action.

7. I believe Plaintiffs are also entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016, as contemplated by S.C. Code 34-31-20(B).

Clint Garrison
Clint Garrison

SWORN TO before me this fourteenth day of September, 2016.

David S. Schroeder
Notary Public for South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

**DENISE GARRISON'S AFFIDAVIT
IN SUPPORT OF MOTION TO TAX
COSTS AND INTEREST**

PERSONALLY APPEARING BEFORE ME, Denise Garrison, deposes and swears the following:

1. My name is Denise Garrison, I am a plaintiff in this action, suffer from no disabilities, and I have personal knowledge in connection with the motion to recover costs and interest.
2. The Court entered a final judgment in Plaintiffs' favor on September 8, 2016.
3. I state that the following is an accurate list of the costs incurred by Plaintiffs: \$1,284.99.

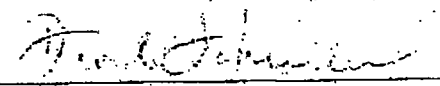
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9/8/16	mileage for trial (60 miles/round trip)		\$32.40

4. I believe interest, calculated at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, is \$579.021 for both parties, and \$577.955 for the jury award related to my damages.
5. Defendant mailed its motion to consolidate the action *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action for filing on May 19, 2016, after Plaintiff Denise Garrison's offer of judgment in the existing action.
6. The above costs were necessarily incurred in this action.

7. I believe Plaintiffs are also entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016, as contemplated by S.C. Code 34-31-20(B).


Denise Garrison

SWORN TO before me this fourteenth day of September, 2016.


Notary Public for South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison,

Plaintiff,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

AFFIDAVIT IN SUPPORT OF
MOTION TO TAX COSTS AND
INTEREST

PERSONALLY APPEARING BEFORE ME, Joshua T. Hawkins, deposes and swears the following:

1. I am the attorney for the plaintiffs in this action, suffer from no disabilities, and I have personal knowledge in connection with the plaintiffs' motion to recover costs.
2. The Court entered a final judgment in the plaintiffs' favor on September 8, 2016, which is attached to the plaintiffs' motion, and incorporated herein by reference.
3. I state that the following is an accurate list of the costs incurred by the plaintiff: \$1,284.99.

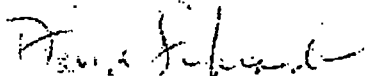
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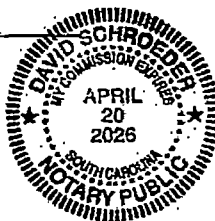
4. My office has calculated interest at 8 per cent per annum from the date of the offer February 13, 2015, to the date of the entry of judgment September 8, 2016, and I believe that amount is \$579.021. Eight per cent interest for Denise Garrison is \$577.955. Eight per cent interest for Clint Garrison is \$1.066.
5. Defendant mailed its motion to consolidate *Carla Garrison and Clint Garrison v. Target Corporation*, 2015-CP-04-2206, with this action was filed on May 19, 2016, after Carla Denise Garrison's offer of judgment in the existing action.

6. The above costs were necessarily incurred in this action.
7. I believe Plaintiffs are entitled to recover post-judgment interest, to be calculated from the date of the entry of judgment September 8, 2016


Joshua T. Hawkins

SWORN TO before me this fourteenth day of September, 2016.


Notary Public for South Carolina



R. David Massey
F. Douglas E. Evans
Stanley E. McLeod
Knox L. Haynsworth, III
Tyler E. McLeod

BROWN, MASSEY, EVANS, MCLEOD & HAYNSWORTH, LLC

ATTORNEYS AT LAW
POST OFFICE BOX 2464
GREENVILLE, SOUTH CAROLINA 29602

105 WILLIAMS STREET
TELEPHONE (864) 211-7424
FAX (864) 242-6469
WEBSITE: brownllaw.com
OF COUNSEL
C. Vincent Brown

September 26, 2016

The Honorable Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622-8002

Re: *Carla Denise Garrison and Clint Garrison vs. Target Corporation*
C.A. No.: 2014-CP-04-1426
C.A. No.: 2015-CP-04-2206

Dear Mr. Shirley:

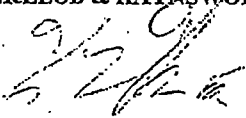
Enclosed please find the original and one copy of Target Corporation's reply to plaintiffs' motion to tax costs and interest. I am also enclosing our firm's check in the amount of \$25.00 representing the motion fee as well as a motion cover slip. I would be most appreciative if you would file the original of our enclosed motion and stamp a clocked copy for our files.

By copy of this letter and as evidenced by the attached certificate of service, we have served a copy of our motion on Josh Hawkins, as attorney for plaintiffs.

Thank you for your assistance in this regard.

Sincerely,

**BROWN, MASSEY, EVANS,
MCLEOD & HAYNSWORTH, LLC**


Knox L. Haynsworth, III

KLH/lab
Enclosure

cc: Joshua T. Hawkins, Esquire

Exhibit B

ELECTRONICALLY FILED - 2017 Jan 31 4:30 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Garrison

☐ Plaintiff

v.

Target Corporation

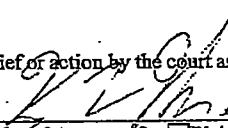
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-04-2206

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: Joshua T. Hawkins, Esquire, Bar No. Address: 1225 South Church Street Greenville, SC 29605 phone: (864) 421-0036 fax: e-mail: other:	Defendant's Attorney: Knox L. Haynsworth, Iii, Bar No. 010275 Address: P.O. BOX 2464 GREENVILLE, SC 296020 phone: 864-271-7424 fax: 864-271-3192 e-mail: knoxhaynsworth@bmemhlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Reply to plaintiffs' motion for costs and interest pursuant to SCRCP Rule 68 Estimated Time Needed: 15 MINUTES Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant 1/24/16 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	C.A. NO.: 2014-CP-04-1426
	)	C.A. NO.: 2015-CP-04-2206
Carla Denise Garrison and	)	
Clint Garrison	)	
Plaintiff	)	REPLY TO PLAINTIFFS' MOTION
	)	TO TAX COSTS AND INTEREST
vs.	)	
	)	
Target Corporation	)	
	)	
Defendant.	)	

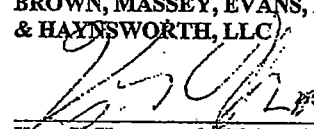
Defendant Target Corporation, by counsel, opposes Plaintiffs' Motion to Tax Costs and Interest. Specifically, the Court should deny the Motion on the following grounds:

1. Target's post-trial motions remain pending, thus any assessment of costs and interest is premature. Until such time as the Court has ruled on those motions, the amount of any judgment has not been finally determined.
2. Plaintiff Clint Garrison is not entitled to prejudgment interest because he made no offer of judgment, either before or after his action was consolidated with the action initiated by his wife, Plaintiff Carla Denise Garrison.
3. Any interest calculation relative to any final verdict in this action should not be calculated based upon any amount of punitive damages.

This reply is further supported by the pleadings on file with the Court, any applicable previously filed motions, as well as a memorandum of law to be submitted and such other and further materials as the Court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**



Knox T. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424

Attorney for Defendant

Greenville, South Carolina

September 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and
Clint Garrison

Plaintiff

vs.

Target Corporation

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2014-CP-04-1426

C.A. NO.: 2015-CP-04-2206

CERTIFICATE OF SERVICE

This is to certify that I am an employee in the firm of **BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC** attorneys for Defendant Target Corporation, and that I have this day caused to be served upon the person(s) named below Target Corporation's reply to plaintiffs' motion to tax costs and interest by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Joshua T. Hawkins, Esquire
The J.T. Hawkins Law Firm, LLC
1225 South Church Street
Greenville, SC 29605


Laura Barry

Greenville, South Carolina
September 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

A TRUE COPY

OCT - 5 2016

FILED
CLERK OF COURT
ANDERSON

THE COURT OF COMMON PLEAS

Carla Denise Garrison and Clint Garrison,

CASE NO. 2014-CP-04-1426

CASE NO. 2015-CP-04-2206

Plaintiffs,

vs.

Target Corporation,

Defendant.

**PLAINTIFFS' REBUTTAL IN
SUPPORT OF MOTION TO TAX
COSTS AND INTEREST AGAINST
DEFENDANT**

After the jury returned its verdict, and after this Court entered judgment, Plaintiffs Carla Denise Garrison and Clint Garrison filed a motion for the costs and interest mandated by the South Carolina Rules of Civil Procedure and the South Carolina Code of Laws. Defendant Target Corporation has opposed the Garrisons' request on three grounds, specifically arguing (1) that the Garrisons' motion is premature because of Target's pending post-judgment motions, (2) that Plaintiff Clint Garrison is not entitled to pre-judgment interest because he did not file an offer of judgment under Rule 68, and (3) and that any interest calculation should not encompass the jury's punitive damages award. Each of these arguments fail for the reasons addressed below.

First, the Garrisons' motion for costs and interest certainly is not "premature." With respect to "costs" mandated by Rule 54, the Garrisons were required to make their motion "within 10 days of the receipt of written notice of the entry of [the September 8, 2016] final judgment." See SCRCP 54(d). With respect to "costs" and "prejudgment interest" mandated by Rule 68, Target's post-judgment motions are entirely irrelevant. Rule 68 does not tie such amounts to the judgment -- remitted or otherwise. Instead, the plain language of the rule ties such amounts to "the amount of the verdict[.]" See SCRCP 68. The Garrisons' motion for costs and interest is timely.

Second, Target's voluntary act of consolidating Clint Garrison's lawsuit with Carla Denise Garrison's lawsuit, at a time when Target knew Carla Denise Garrison had made an offer of judgment, makes Target liable to Clint Garrison for the costs and interest amounts mandated

Exhibit C

by Rule 68. Even if that were not the case, though, Clint Garrison's pre-judgment interest amount is only \$1,066.00 – a mere fraction of the \$579,021.00 amount owed to Carla Denise Garrison. Clint Garrison plainly is entitled to the "costs" mandated by Rule 54, regardless of whether he also is entitled to relief under Rule 68.

Third, Target's argument that the Garrisons' interest amounts should not encompass the jury's punitive damage award is unfounded. Again, the plain language of Rule 68 ties prejudgment interest to "the amount of the verdict[.]" without making any distinction between actual and punitive damages. *See* SCRCP 68. Plus, the central purposes underlying Rule 68's enactment – to encourage settlement and to avoid protracted litigation – support the inclusion of punitive damages into the calculation of interest. No South Carolina decision endorses Target's argument, and, in fact, other courts have flatly rejected it. *See, e.g., Demarest v. Progressive Am. Ins. Co.*, 552 So.2d 1329 (5th Cir. 1989) (holding that prejudgment interest is recoverable on an award of exemplary damages); *Latham Seed Co. v. Nickerson Am. Plant Breeders, Inc.*, 978 F.2d 1493 (8th Cir. 1992) (holding that the Michigan Supreme Court would treat an exemplary award as a "money judgment").

For these reasons, the Garrisons reiterate their request for costs, for pre-judgment interest, and for this Court to set the post-judgment interest rate in accordance with law.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC


Joshua T. Hawkins, S.C. Bar No: 78470
1225 South Church Street
Greenville, South Carolina 29604
864.275.8142 Fax 864.752.0911
josh@jthawkinslaw.com

Attorney for Plaintiffs

Greenville, South Carolina
10/13/2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	C.A. NO.: 2014-CP-04-1426
Carla Denise Garrison and	)	C.A. NO.: 2015-CP-04-2206
Clint Garrison,	)	
Plaintiffs,	)	REPLY TO PLAINTIFFS'
vs.	)	EXPEDITED RULE 59(E) MOTION
Target Corporation,	)	
Defendant.	)	

Defendant Target Corporation, by counsel, opposes Plaintiffs' Expedited Rule 59(e) Motion, and incorporates by reference its previous September 26, 2016 opposition to Plaintiffs' Motion to Tax Costs and Interest. Such opposition includes but is not limited to the fact that Plaintiff Clint Garrison is not entitled to prejudgment interest on his portion of the judgment because he never made a written offer of judgment under S.C. R. Civ. P. 68(a).

Target also respectfully submits that, should post-judgment interest be awarded in this action, the legal interest rate is 7.5 percent per annum. *See* S.C. Code § 34-31-20(B); *In re Interest Rate on Money Decrees and Judgments*, 415 S.C. 53 (2016).

Respectfully submitted,

**BROWN, MASSEY, EVANS, McLEOD
& HAYNSWORTH, LLC**

February 3, 2017
Greenville, South Carolina

s/ Knox L. Haynsworth, III
Knox L. Haynsworth, III, Esquire
S.C. Bar No.: 010275
P.O. Box 2464
Greenville, SC 29602
(864) 271-7424

Attorney for Defendant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-04-1426
Consolidated with
Case No. 2015-CP-04-2206

RECEIVED
FEB 13 2017
SC Court of Appeals

Carla Denise Garrison and Clint Garrison,

Appellants,

v.

Target Corporation,

Respondent/Appellee.

NOTICE OF APPEAL

Carla Denise Garrison and Clint Garrison appeal the January 26, 2017 order of Judge R. Keith Kelly, which granted Target Corporation's motion for judgment as a matter of law with respect to punitive damages. The Garrisons received electronic notice of the order on January 26, 2017. Carla Denise Garrison and Clint Garrison also appeal the February 9, 2017 order of Judge R. Keith Kelly, which limited their recovery of prejudgment interest to the reduced award included the January 26, 2017 order rather than the jury's award. The Garrisons received electronic notice of the order on February 9, 2017.

The names, mailing addresses, and telephone numbers of the all attorneys who will be served are listed below, along with an identification of the party whom each attorney represents. Also listed is information concerning the trial court.

Enclosed with this notice of appeal is a copy of the jury verdict form, the trial court's judgment, the trial court's January 26 order, and the trial court's February 9 order. Proofs of service showing that this notice has been served on the interested parties will be included with filing. The filing fee as set by order of the Supreme Court will be paid on behalf of the Garrisons.

PD.20812620.1

This appeal seeks review of Judge Kelly's January 26 and February 9 orders as well as any other appealable orders, decisions, or rulings affecting the rights of the Garrisons.

Dated: February 13, 2017.

Target's Counsel of Record:

Knox L. Haynsworth

BROWN, MASSEY, EVANS, McLEOD & HAYNSWORTH, LLC

P.O. Box 2464

Greenville, SC 29602

9864) 271-7424

Lewis F. Powell III

George P. Sibley, III

Kevin S. Elliker

HUNTON & WILLIAMS LLP

Riverfront Plaza, East Tower

951 E. Byrd Street

Richmond, VA 23219

(804) 788-8200

(804) 788-8488

Court of Common Pleas:

The Honorable R. Keith Kelly

125 E. Baker Blvd.

Gaffney, SC 29340

(864) 487-2581

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC

BY: 

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Email: butlert@phelps.com
(Admitted Pro Hac Vice)

**COUNSEL FOR PLAINTIFFS-
APPELLANTS**

PD.20812620.1

3

925

1275

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison and Clint Michael Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

VERDICT

COMMON PLEAS AND
GENERAL SESSIONS

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ANDERSON SC

1. Do you, the jury, find that the Defendant, Target Corporation, was negligent and that such negligence caused the Plaintiff, Carla Denise Garrison's, injuries?

☒ YES: If you answer yes, GO TO QUESTION 2

☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

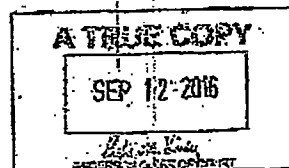
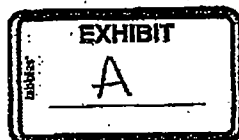
2. Do you find that the Plaintiff, Carla Denise Garrison, was negligent and that such negligence proximately caused her injuries?

☒ YES: If you answer yes, GO TO QUESTION 3

☐ NO: If you answer no, GO TO QUESTION 4

3. If your answers to both question number 1 and question number 2 are YES, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff, Carla Denise Garrison's, injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, Target Corporation?



NEGLIGENCE PERCENTAGES REQUIRED TO ADD UP TO 100%

Plaintiff _____ %
 Defendant _____ %
 Total _____ 100%

If the Plaintiff's percentage of the combined negligence is greater than 50%,
DELIBERATE NO FURTHER.

If the Plaintiff's percentage of the combined negligence is 50% or less, **GO TO QUESTION 4.**

4. Please state the total amount of actual damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Carla Denise Garrison:
- \$ 100,000.00 one hundred thousand

NOTE: If your answer to question number 2 was YES, do not reduce the plaintiff's damages above by the percentage of negligence attributed to her in question number 3.

ONLY GO ON TO THE NEXT QUESTIONS IF YOU AWARDED ACTUAL DAMAGES TO THE PLAINTIFF IN QUESTION 4:

5. Do you, the jury, find by clear and convincing evidence that the Defendant, Target Corporation, acted willfully, wantonly, maliciously, or with reckless disregard of the plaintiff's rights?

☒ YES: If you answer yes, **GO TO QUESTION 6**
☐ NO: If you answer no, **GO TO QUESTION 7**

6. Please state the total amount of punitive damages, if any, that you, the jury, have found by clear and convincing evidence were sustained by the Plaintiff, Carla Denise Garrison.

for \$ 4,510,000.00 (four million five hundred ten thousand and no/100)

COMMON PLEAS AND
 GENERAL SESSIONS

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**PLEASE ANSWER THE FOLLOWING QUESTIONS EVEN IF YOU DID NOT
AWARD PUNITIVE DAMAGES TO THE PLAINTIFF IN QUESTIONS 5 & 6**

NOTE: If you answered NO to question 1, DO NOT answer the following questions:

Lost Wages:

7. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable for the lost wages of the Plaintiff, Clint Michael Garrison?

☒ YES: If you answer yes, **GO TO QUESTION 8**

☐ NO: If you answer no, **GO TO QUESTION 9**

8. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of his wages:

\$3,500 three thousand five hundred

Loss of Consortium:

9. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable to the Plaintiff, Clint Michael Garrison, for loss of consortium?

☒ YES: If you answer yes, **GO TO QUESTION 10**

☐ NO: If you answer no, **STOP AND DELIBERATE NO FURTHER**

10. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of consortium in this case:

\$5,000 five thousand

**WHEN YOU HAVE FINISHED DELIBERATING,
PLEASE SIGN ON THE FOLLOWING PAGE**

A TRUE COPY

SEP 12 2015

Patricia A. Hulse
ANDERSON COUNTY CLERK

FILED-CLERK'S OFFICE
ANDERSON SC

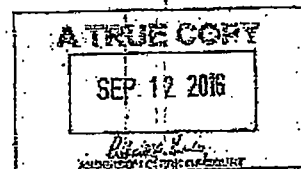
COMMON PLEAS AND
GENERAL SESSIONS
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Andrew G. G.
FOREPERSON

September 8th, 2016
Anderson, SC

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE NOTIFY THE BAILIFF

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ANDERSON, SC
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COMMON PLEAS AND
GENERAL SESSIONS





Anderson County Tenth Judicial Circuit Public Index



Anderson County Home Page South Carolina Judicial Department Home Page SC GOV Home Page

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Carla Denise Garrison VS Target Corporation

Case Number:	2014CP0401426	Court Agency:	Common Pleas	Filed Date:	07/01/2014
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	Fila Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C.P., G.S., And Family Court	Disposition Judge:	Clerk Of Court C.P., G.S., And Family Court
Disposition:	Ended by Jury Trial	Disposition Date:	09/08/2016	Disposition Judge:	Clerk Of Court C.P., G.S., And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP0401426	Court Roster:	JURY SEPTEMBER 6-9, 2016 9:30 AM		

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials
For:	Garrison, Carla Denise	Against:	Target Corporation	Judg. Amount:	\$4,518,500.00
Description:	Judgment/Judgment Disposition:			Disp. Date:	
Notes:	None				
Judgment Details					
Claims Code	Detail Desc.		Detail Amount		Detail Date
None					
For:	Garrison, Clinton Michael	Against:	Target Corporation	Judg. Amount:	\$4,518,500.00
Description:	Judgment/Judgment Disposition:			Disp. Date:	
Notes:	None				
Judgment Details					
Claims Code	Detail Desc.		Detail Amount		Detail Date
None					

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<http://publicindex.sccourts.org/Anderson/PublicIndex/CaseDetails.aspx?County=04&Cour...> 9/14/2016

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison, and
 Clint Garrison

Plaintiffs,

v.

Target Corporation,

Defendant.

)
) IN THE COURT OF COMMON PLEAS
)

CASE NO. 2014-CP-04-1426

CASE NO. 2014-CP-04-2206

ORDER

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Defendant timely moved for Judgment as a Matter of Law, New Trial Absolute, New Trial *Nisi Remittitur*, relief under the Thirteenth Juror Doctrine, and, alternately, reduction of the punitive damages award pursuant to the cap imposed by Section 15-32-530(A) of the South Carolina Code. Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Elliker, both of the Virginia bar, also admitted *pro hac vice*.

Upon hearing the oral arguments of the parties and reviewing their written submissions, the Court hereby denies Defendant's motion for Judgment as a Matter of Law as to the actual damages award only, and Defendant's motions for New Trial Absolute, New Trial *Nisi Remittitur*,

Page 1 of 12.



and relief under the Thirteenth Juror Doctrine, along with Plaintiff's Motion for Costs. However, the Court hereby grants Defendant's motion for Judgment as a Matter of Law as to the punitive damages award and Plaintiff's Motion for interest on the judgment for the reasons stated herein.

STATEMENT OF RELEVANT FACTS

On the evening of May 21, 2014, Denise Garrison drove to a Target retail store in Anderson, South Carolina, with her daughter Kaleigh. Before entering the store, Mrs. Garrison stopped to examine her coupon book on the hood of the car. As she was doing so, Mrs. Garrison heard her daughter say, "Mommy, what is this?" She testified that she looked up to see her daughter holding a syringe with a small needle "pointing out." Rather than instructing her daughter to put the syringe down, Mrs. Garrison instinctively reacted and swatted the syringe out of her daughter's hand onto the pavement of the parking lot.

Mrs. Garrison then looked down to see "a tiny bead of blood and a puncture wound." She hurried to the restroom of the store and washed her hands repeatedly. She then called her husband, Clint Garrison, who suggested that she speak with a Target employee. Mrs. Garrison spoke with Shelby Brintnall, who was the "lead-on-duty" at the store for the evening. Ms. Brintnall followed Mrs. Garrison to the parking lot, where she photographed the syringe, which appeared "dingy, dirty, and gross." However, the needle was nowhere to be found. Ms. Brintnall collected the plastic tube of the syringe and brought it into the store.

Before she left the store that evening, Mrs. Garrison spoke with Ms. Brintnall about the incident and Ms. Brintnall completed an incident report. She wrote: "Guest's daughter picked up needle. [Mrs. Garrison's] first reaction was to smack the needle out of her hand. And when she did it stuck, it stuck her in the right hand." After Mrs. Garrison left the store that evening, Ms. Brintnall completed another report, describing the investigation and noting her impressions. In

that report, Ms. Brintnall noted that she could not locate a needle, and only the plastic tube of the syringe was recovered.

The next day, Mrs. Garrison went to the emergency room where she was treated for a needle stick. She was referred to an infectious disease specialist and was prescribed HIV medication and antibiotics. Her medication reportedly caused severe dizziness, nausea, vertigo, and extreme nightmares. Due to his wife's "zombie-like state" while on the medication, Clint Garrison had to take several days off work. As Mrs. Garrison is a stay-at-home mother, the family depends entirely on Mr. Garrison's income. Mrs. Garrison was able to change her medication after a few weeks and many of the side effects subsided, but she continued to experience nausea. To date, Mrs. Garrison has received four blood tests for HIV, but there is no evidence that she contracted any infectious disease — either HIV or otherwise — as a result of this incident.

Mrs. Garrison filed suit against Target in 2014. Mr. Garrison filed his own lawsuit shortly thereafter, and the two actions were consolidated for trial in this case. The trial was conducted from September 6 to September 8, 2016, in Anderson, South Carolina. After hearing testimony from multiple witnesses including Ms. Brintnall, Mrs. Garrison, and Mr. Garrison, the jury returned a verdict in favor of Plaintiffs, awarding Denise Garrison \$100,000 in actual damages and \$4,510,000 in punitive damages, and awarding Clint Garrison \$3,500 in lost wages and \$5,000 for loss of consortium.

DISCUSSION

As an initial matter, to the Court, the instant matter is one that has required the utmost thought and consideration. Though there is a sizeable amount of money at stake, the public goodwill and reputations of the parties and counsel involved is even more important. The sanctity of the jury is of paramount importance to the Court in this matter, but so is the proper application.

of South Carolina and federal law to the facts of this case. Each of the post-trial motions made by Plaintiffs and Defendant have been addressed, in turn, below.

I. JUDGMENT AS A MATTER OF LAW

The defendant first contends it is entitled to judgment as a matter of law—also known as a judgment notwithstanding the verdict—pursuant to Rule 50 of the South Carolina Rules of Civil Procedure. Judgment as a matter of law is appropriate if the evidence as a whole is susceptible to only one reasonable inference, such that no jury issue is created. *Bloom v. Ravoir*, 339 S.C. 417 (2000), cited in *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32 (2001). When ruling on such a motion, the trial judge must view the evidence in the light most favorable to the non-moving party. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316 (2003); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). Importantly, the jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. *Curcio*, 355 S.C. 316. Further, the motion should not be granted where the evidence yields more than one inference or its inference is in doubt. *Daves v. Cleary*, 355 S.C. 216 (Ct. App. 2003); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178 (Ct. App. 2005).

Here, Defendant's motion for judgment as a matter of law cannot be granted regarding the award of actual damages. When viewed in the light most favorable to Plaintiffs, the evidence leads to more than one reasonable inference on the issues of constructive knowledge and proximate causation. However, finding punitive damages unconstitutional in this case, the Court finds judgment as a matter of law is appropriate as to that aspect of the award alone.

1. Constructive Knowledge

Under South Carolina law, in order to recover from a merchant following an injury in a store, a customer must prove either that (1) her injury was caused by a dangerous condition specifically created by the merchant; or (2) that the merchant "had actual or constructive

knowledge of the dangerous condition and failed to remedy it." *Wintersteen*, 344 S.C. at 35. Since there is no allegation that Target created the dangerous condition, the latter prong is the only one at issue here.

In order to prove constructive knowledge, the plaintiff must prove that the dangerous condition preexisted her injury long enough for the merchant to "have discovered and remedied it." *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77 (1971). Here, although there was no direct evidence as to the exact length of time the syringe had been in the parking lot, witnesses testified the syringe was "dingy, dirty and gross," and bore a "weathered" look similar to other items of trash in the parking lot. That testimony, when viewed in the light most favorable to Plaintiffs, leads to the reasonable inference that the syringe was in Target's parking lot long enough to impute constructive knowledge. Thus, judgment as a matter of law is not appropriate on the constructive knowledge issue.

2. Proximate Causation

South Carolina is a comparative negligence state, meaning that a plaintiff must prove her "own negligence is not greater than that of the defendant" in order to recover. *Bloom v. Ravoir*, 339 S.C. 417 (2000). A plaintiff can be comparatively negligent when she breaches a duty of care by act or omission, and her breach proximately causes her own injuries. *See id.* Comparison of the plaintiff's negligence with that of the defendant is ordinarily a question of fact for the jury to decide. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32 (1997); *cited in Bloom*, 339 S.C. at 422. In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Bloom*, 339 S.C. 422; *citing Creech*, 328 S.C. at 33. Judgment as a matter of law is generally not appropriate in a comparative

negligence case. *Id.*

In the instant matter, Mrs. Garrison saw the syringe in her daughter's hand, immediately reacted, and struck it to the ground. Though that action caused the needle stick injury, the action could reasonably be viewed as an impulse reaction motivated by a mother's instinct to protect her child. As the Supreme Court of this state held in *Bloom*, a comparative negligence determination is soundly within the purview of the jury where there is more than one reasonable inference. Therefore, judgment as a matter of law as to proximate causation is not appropriate here.

3. Punitive Damages

"[P]unitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379 (2000). The South Carolina Supreme Court has articulated three "guideposts" to be applied in conducting a post-judgment review of punitive damages. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 52 (2010). Those guideposts are as follows: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570 (2009); cited in *Austin*, 387 S.C. at 52. These guideposts incorporate the relevant factors set forth by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and the South Carolina Supreme Court in *Gamble v. Stevenson*, 305 S.C. 104 (1991)¹ (though the

¹ The *Gamble* opinion identified eight considerations that trial courts should apply when reviewing the constitutionality of punitive damages awards: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the

Gamble factors may still be used to supplement the guideposts as needed). *Mitchell*, 385 S.C. at 585-587.

a. *Reprehensibility*

Significantly, the United States Supreme Court remarked in *Gore* that the degree of reprehensibility of a defendant's conduct is "perhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 565. In a reprehensibility analysis, a court should consider factors such as whether:

The harm caused was physical opposed to economic; the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others;² the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003).

Though there is evidence supporting the actual damages award in this case as discussed hereinabove, that evidence does not justify the jury's award of punitive damages. Defendant Target's conduct -- albeit negligent by determination of the jury -- did not involve repeated actions, and was not intentional, malicious, or deceitful. Further, Defendant's conduct does not evince a reckless disregard for the health or safety of others. The incident at issue here was an isolated incident that resulted from Defendant's failure to make the parking lot safe. There is no evidence that Defendant engaged in a pattern of reckless, willful, or wanton conduct that is sufficiently reprehensible to justify the punitive damages award here.

existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble*, 305 S.C. at 111-112.

² South Carolina law mirrors this requirement. A plaintiff seeking punitive damages in this state must present "evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221 (1996).

b. *Disparity of Harm*

The second *Mitchell* guidepost requires trial courts to weigh the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award. *Mitchell*, 385 S.C. at 585. "The ratio of actual or potential harm to the punitive damages award is perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award." *Id.* at 588; citing *Gore*, 517 U.S. at 580. Though the United States Supreme Court has consistently declined to adopt a bright line ratio or mathematical test, the Court has noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* Citing *Campbell*, 538 U.S. at 425. Here, the punitive damages award was \$4,510,000, and the actual damages awarded to Mrs. Garrison were in the amount of \$100,000. Thus, the ratio is in excess of 45:1. This ratio should not stand in the light of the *Campbell* decision, and cannot stand under the statutory cap placed on punitive damages by the South Carolina General Assembly in South Carolina Code Ann. § 15-32-530. However, since Defendant Target's conduct was not sufficiently reprehensibly to justify punitive damages in this case, the disparity of harm and the ratio of punitive damages to actual damages awarded need not be discussed any further.

c. *Comparable Penalties*

The third and final *Mitchell* guidepost requires the trial court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. "When identifying 'comparable cases' a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Mitchell*, 385 S.C. at 588-589. In the instant matter, there is no

evidence that Mrs. Garrison contracted any form of infectious disease. The actual damages awarded to Plaintiffs adequately account for Mrs. Garrison's medical bills, pain and suffering, emotional anguish, and her husband's loss of consortium and lost wages. Thus, comparable penalties need not be considered in great depth.

II. NEW TRIAL ABSOLUTE AND THIRTEENTH JUROR DOCTRINE

Defendant next contends it is entitled to a new trial absolute, or in the alternative, a new trial under the "thirteenth juror" doctrine. A new trial absolute must be granted if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. General Ins. Co.*, 321 S.C. 1 (1996); *Vinson v. Hartley*, 324 S.C. 389 (Ct. App. 1996). Similarly, under South Carolina's "thirteenth juror" doctrine, "a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson*, 324 S.C. at 402. "The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597 (2009) (internal quotation marks omitted).

Defendant contends that the jury's award of more than \$100,000 in actual damages was "shockingly disproportionate to the harms alleged," such that a new trial absolute is necessary. The Court disagrees. It is well established in South Carolina law that a jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375 (1993). Here, though the punitive damages award violated Defendant's constitutional Due Process rights, the Court finds the actual damages award is not shocking to the conscience. Mrs. Garrison sustained several thousand dollars in medical bills as a result of this incident. Further, her husband — the

family's sole breadwinner — was forced to miss multiple days of work due to her injury. Additionally, Mrs. Garrison suffered extreme emotional anguish, coupled with weeks of nausea and horrific nightmares due to the HIV medications she was prescribed. Based on this evidence, the Court finds the jury's award of actual damages does not shock the conscience and a new trial absolute shall not be granted as a result. Further, the Court finds that the evidence justifies the verdict and actual damages award in this case, so a new trial absolute shall not be granted under the "thirteenth juror" doctrine.

III. NEW TRIAL *NISI REMITTITUR*

Defendant's final contention is that it is entitled to a new trial *nisi remittitur*. A new trial *nisi remittitur* is appropriate when the jury's verdict is excessive or "unduly liberal," but not necessarily "actuated by passion, caprice, or prejudice" sufficient to warrant a new trial absolute. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531 (1993). Ruling on a new trial *nisi remittitur* "requires the court to consider the adequacy of the verdict in light of the evidence presented." *Waring v. Johnson*, 341 S.C. 248, 256 (Ct. App. 2000). The critical inquiry is whether the award excessively compensates the injured party. *Graham v. Whitaker*, 282 S.C. 393 (1984).

Defendant contends the actual damages award is grossly excessive and requires the grant of a new trial *nisi remittitur*. Again, the Court disagrees. "The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *Proctor v. Dept. of Health and Environmental Control*, 268 S.C. 279, 320 (Ct. App. 2006); citing *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 89 (Ct. App. 2005). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. *Id.* See also *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 61 (1993). Under the circumstances, the Court does not find compelling reasons to invade the province of the jury by granting a new trial *nisi* in this

matter. The Court has substantially altered the overall verdict by eliminating the punitive damages award. Under the circumstances, a new trial would amount to a sizeable waste of the resources of both South Carolina and Anderson County. Therefore, Defendant's motion for a new trial *nisi remittitur* is denied.

IV. PLAINTIFFS' MOTIONS FOR COSTS AND INTEREST

Costs may be granted to the prevailing party in a lawsuit pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-37-10. However, under the plain language of Rule 54(d), the Court has the discretion to rule otherwise. Rule 54(d) requires the prevailing party to submit an itemized affidavit of costs with its motion. Further, a party must point to a specific statute or rule of court to support each of his or her claims for costs, fees, and disbursements. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223 (Ct. App. 1993). Since Plaintiffs have done neither, Plaintiffs' motion as to costs is hereby denied.

Pursuant to South Carolina Code Ann. § 34-31-20, a judgment must draw interest according to law, and the legal interest rate is 8.75 percent per annum. Thus, Plaintiffs' motion for interest on the judgment is granted. Plaintiffs are entitled to interest on the actual damages award at the statutory rate of 8.75 percent, beginning the date the verdict was issued. That date is September 8, 2016.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Defendant's Motions for Judgment as a Matter of Law as to the actual damages, New Trial Absolute, New Trial *Nisi Remittitur*, and Judgment under the Thirteenth Juror Doctrine are hereby denied. Plaintiffs' Motion to Tax Costs is also denied. However, Defendant's Motion for Judgment as a Matter of Law as to the punitive damages award is granted. Plaintiffs' Motion for Interest is hereby granted as well.

AND IT IS SO ORDERED.

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Page 12 of 12



Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation
Case Number: 2014CP0401426
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-01-26 13:39:22 page 13 of 13

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ELECTRONICALLY FILED - 2017 Jan 26 2:07 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Carla Denise Garrison, and
 Clint Garrison

Plaintiffs,

v.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

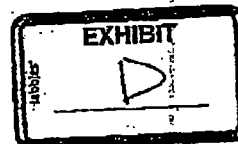
CASE NO. 2014-CP-04-2206

ORDER ON PLAINTIFFS' MOTION
 TO TAX COSTS AND INTEREST

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Elliker, both of the Virginia bar, also admitted *pro hac vice*.

After the hearing, the Court in its January 26, 2017 order denied Plaintiffs' motion for costs and limited its grant of interest to post-judgment interest alone. In their January 31, 2017 motion, Plaintiffs timely moved for the Court to reconsider its decision pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The undersigned, upon review of Plaintiffs' current motion and previous filings, coupled with Defendant's response, has reconsidered its decision and hereby grants Plaintiffs' motions in full for the reasons discussed below.

Page 1 of 5



STANDARD OF REVIEW

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, a party may move for the trial court to reconsider its prior decision within 10 days of the entry of the judgment. A motion under Rule 59(e) has long been viewed as a motion for reconsideration despite the absence of those words from the rule. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 91 (2004). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Id.* Trial courts retain jurisdiction to alter judgments on their own initiative for ten (10) days if a Rule 59(e) motion is filed. *Ness v. Eckard Corp.*, 350 S.C. 399 (Ct. App. 2002). However, after ten days that jurisdiction is lost. *Id.* A party may file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam*, 361 S.C. at 24. The proper procedure for correcting factual errors in an order is to file a motion to alter or amend pursuant to Rule 59(e). *Doe v. Doe*, 322 S.C. 492 (Ct. App. 1996). Further, an inaccuracy in the trial court's order must be raised to the trial court by way of a Rule 59(e) motion to alter or amend a judgment before the inaccuracy may be challenged on appeal. *Nettles v. Spartanburg School Dist. #7*, 341 S.C. 580 (Ct. App. 2000).

FACTUAL FINDINGS

Before making any conclusions of law, the Court makes the following findings of fact:

1. Plaintiffs timely filed their Motion to Tax Costs and Interest (the "Motion").
2. Plaintiffs' Motion was properly filed within the scope of Rules 54 and 68 of the South Carolina Rules of Civil Procedure, complete with the requisite supporting affidavits and list of itemized costs.
3. The Court was unaware of the Plaintiffs' written Motion at the time of the issuance of its

January 26, 2017 Order.

4. The January 26, 2017 Order was issued without knowledge of Plaintiffs' full compliance with the rules.

LEGAL ANALYSIS

Reconsideration under Rule 59(c) is appropriate where factual errors were made in the previous judgment. *See Doe*, 322 S.C. 492. Though the Court was unaware of the Plaintiffs' properly filed Motion at the time of its Order, the undersigned hereby takes notice of that fact and has reconsidered its ruling accordingly.

A. Costs

Plaintiffs have moved for costs pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure. Pursuant to the plain language of the Rule, costs are allowed as a matter of course to the prevailing party, provided the motion for costs is coupled with an affidavit of costs that are correct and were necessarily incurred in the action. Plaintiffs provided such an affidavit and an itemized list of costs incurred with their Motion, and aver that their costs are in the amount of \$1,284.99. Thus, Plaintiffs are entitled to \$1,284.99 in costs here.

B. Interest

Further, Plaintiffs have moved for pre-judgment interest pursuant to Rule 68 of the South Carolina Rules of Civil Procedure, along with post-judgment interest under South Carolina Code Ann. § 34-31-20(b).

As to the pre-judgment interest, Plaintiff Carla Denise Garrison made an offer of judgment in the amount of \$12,000 to Defendant on February 13, 2015. Plaintiff appended a copy of the offer and proof of service to its Motion. Defendant did not file a written acceptance of that offer within twenty days as required by Rule 68(a) of the South Carolina Rules of Civil Procedure. "If

an offer is of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment." Rule 68(b), SCRCP. This Court's Order struck punitive damages, so the total amount of the verdict in favor of Mrs. Garrison is \$100,000. Thus, pursuant to Rule 68(b), Plaintiff Carla Garrison is entitled to eight percent interest computed on the verdict amount of \$100,000 from the date of the offer, which is February 13, 2015.

Plaintiff Clint Garrison moved for pre-judgment interest as well. However, Mr. Garrison is not entitled to pre-judgment interest since he did not file an offer of judgment either before or after his action was consolidated with his wife's.

Plaintiffs have also moved for post-judgment interest. Since the Order granted post-judgment interest to Plaintiffs on the whole of the remaining verdict -- \$100,000 to Carla Garrison and \$8,500 to Clint Garrison -- post-judgment interest need not be addressed in great detail here. Plaintiffs are entitled to post-judgment interest in the amount prescribed by law. By order of the South Carolina Supreme Court dated January 4, 2016, "for the period January 15, 2016, through January 14, 2017, the legal rate of interest for judgments and money decrees is 7.50% compounded annually." Additionally, by order of the South Carolina Supreme Court dated January 4, 2017, "for the period January 15, 2017, through January 14, 2018, the legal rate of interest for judgments and money decrees is 7.75% compounded annually." Plaintiffs are entitled to interest in accordance with those rates.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Plaintiff's Motion to Tax Costs and Interest has been reconsidered and has been granted in full as to Plaintiff Carla Garrison. Plaintiff Clint Garrison is entitled to post-judgment interest in this matter as well.

AND IT IS SO ORDERED.

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Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation
Case Number: 2014CP0401426
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It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2017-02-08 16:20:36 page 6 of 6

ELECTRONICALLY FILED - 2017 Feb 13 3:57 PM - ANDERSON - COMMON PLEAS - CASE#2014CP0401426
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-04-1426
Consolidated with
Case No. 2014-CP-04-2206

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SC Court of Appeals

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FEB 13 2017

SC Court of Appeals

Carla Denise Garrison and Clint Garrison,

Appellants,

v.

Target Corporation,

Respondent/Appellee.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Target Corporation by personally delivering a copy of it to Target's attorney of record, Knox L. Haynsworth, at his office at 106 Williams Street, Greenville, South Carolina 29601, on February 10, 2017. I also served the Notice of Appeal on Target Corporation by depositing a copy of it in the United States Mail, postage prepaid, on February 10, 2017, addressed to Target's other attorneys of record - Lewis F. Powell III, George P. Sibley, III, and Kevin S. Elliker - at HUNTON & WILLIAMS LLP, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, VA 23219.

Dated: February 10, 2017.

Respectfully submitted,

THE J.T. HAWKINS LAW FIRM, LLC.

BY:


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PD20908028.1

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APPELLANTS**

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge

Case No. 2014-CP-04-1426
(Consolidated with Case No. 2015-CP-04-2206)

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FEB 23 2017
SC Court of Appeals

Carla Denise Garrison and Clint Garrison, Appellant-Respondents,

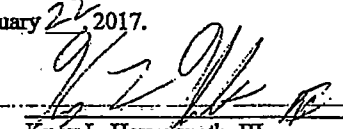
v.

Target Corporation, Respondent-Appellant.

NOTICE OF APPEAL

Respondent-Appellant Target Corporation hereby appeals from the jury's verdict dated September 8, 2016, and from the Order of the Honorable R. Keith Kelly dated January 26, 2017. Respondent-Appellant received a Notice of Appeal from Appellant-Respondents Carla Denise Garrison and Clint Garrison on February 10, 2017.

February 22, 2017.


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Counsel for Appellant-Respondents
Carla Denise Garrison and Clint Garrison

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON:

Carla Denise Garrison and Clint Michael Garrison,

Plaintiffs,

vs.

Target Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-04-1426

VERDICT

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SC Court of Appeals

COMMON PLEAS AND
GENERAL SESSIONS

FEB 23 2017

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1. Do you, the jury, find that the Defendant, Target Corporation, was negligent and that such negligence caused the Plaintiff, Carla Denise Garrison's injuries?

☒ YES: If you answer yes, GO TO QUESTION 2

☐ NO: If you answer no, STOP AND DELIBERATE NO FURTHER

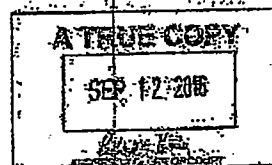
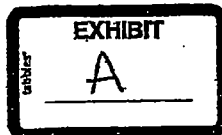
2. Do you find that the Plaintiff, Carla Denise Garrison, was negligent and that such negligence proximately caused her injuries?

☐ YES: If you answer yes, GO TO QUESTION 3

☒ NO: If you answer no, GO TO QUESTION 4

3. If your answers to both question number 1 and question number 2 are YES, then answer this question.

Taking the combined negligence that proximately caused the Plaintiff, Carla Denise Garrison's, injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Plaintiff and what percentage is attributable to the Defendant, Target Corporation?



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NEGLIGENCE PERCENTAGES REQUIRED TO ADD UP TO 100%

Plaintiff	_____ %
Defendant	_____ %
Total	_____ 100%

COMMON PLEAS AND
GENERAL SESSIONS

If the Plaintiff's percentage of the combined negligence is greater than 50%,
DELIBERATE NO FURTHER.

If the Plaintiff's percentage of the combined negligence is 50% or less, GO TO
QUESTION 4.

4. Please state the total amount of actual damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Carla Denise Garrison:
\$ 100,000.00 one hundred thousand

NOTE: If your answer to question number 2 was YES, do not reduce the plaintiff's damages above by the percentage of negligence attributed to her in question number 3.

ONLY GO ON TO THE NEXT QUESTIONS IF YOU AWARDED ACTUAL DAMAGES TO THE PLAINTIFF IN QUESTION 4

5. Do you, the jury, find by clear and convincing evidence that the Defendant, Target Corporation, acted willfully, wantonly, maliciously, or with reckless disregard of the plaintiff's rights?

☒ YES: If you answer yes, GO TO QUESTION 6
☐ NO: If you answer no, GO TO QUESTION 7

6. Please state the total amount of punitive damages, if any, that you, the jury, have found by clear and convincing evidence were sustained by the Plaintiff, Carla Denise Garrison.

\$ 4,500,000.00
\$ 4,500,000.00 4 million five hundred ten thousand
and no/100

**PLEASE ANSWER THE FOLLOWING QUESTIONS EVEN IF YOU DID NOT
AWARD PUNITIVE DAMAGES TO THE PLAINTIFF IN QUESTIONS 5 & 6**

NOTE: If you answered NO to question 1, DO NOT answer the following questions:

Lost Wages:

7. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable for the lost wages of the Plaintiff, Clint Michael Garrison?
- ☒ **YES: If you answer yes, GO TO QUESTION 8.**
- ☐ **NO: If you answer no, GO TO QUESTION 9.**

8. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of his wages.

\$3500 three thousand five hundred

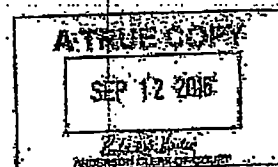
Loss of Consortium:

9. Do you find by a preponderance of the evidence that the Defendant, Target Corporation, is liable to the Plaintiff, Clint Michael Garrison, for loss of consortium?
- ☒ **YES: If you answer yes, GO TO QUESTION 10.**
- ☐ **NO: If you answer no, STOP AND DELIBERATE NO FURTHER.**

10. Please state the total amount of damages, if any, that you, the jury, have found by a preponderance of the evidence were sustained by the Plaintiff, Clint Michael Garrison, for loss of consortium in this case.

\$5000 five thousand

**WHEN YOU HAVE FINISHED DELIBERATING,
PLEASE SIGN ON THE FOLLOWING PAGE**



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And O. E. Co.
FOREPERSON

September 8th, 2016
Anderson, SC

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COMMON PLEAS AND
GENERAL SESSIONS

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE NOTIFY THE BAILIFF

A TRUE COPY

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Anderson County Tenth Judicial Circuit Public Index

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Carla Denise Garrison VS Target Corporation					
Case Number:	2014CP0401426	Court Agency:	Common Pleas	Filed Date:	07/01/2014
Case Type:	Common Pleas	Case Sub-Type:	Real Prop/Other Prop	Suit Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C.F. G.S. and Family Court	Disposition Judge:	Clerk Of Court C.F. G.S. and Family Court
Disposition:	Ended by Jury Trial	Disposition Date:	09/08/2016		
Original Source Doc:		Original Case #:			
Judgment Number:	2014CP0401426	Court Number:	JURY-SEPTEMBER 6-8, 2016 2:30 PM		

Case Parties	Judgments	Payment Information	Associated Cases	Actions	Finalists
For: Garrison, Carla Denise	Against: Target Corporation	Judge: Judge G.S. G.S.	Judgment Amount: \$4,518,500.00	Judgment Date: 09/08/2016	
Description: Judgment/Judgment Disposition:		Disposition Date: 09/08/2016			
Notes: None					
Judgment Details					
Claims Code	Detail Desc	Detail Amount	Detail Date		
None					
For: Garrison, Carla Denise	Against: Target Corporation	Judge: Judge G.S. G.S.	Judgment Amount: \$4,518,500.00	Judgment Date: 09/08/2016	
Description: Judgment/Judgment Disposition:		Disposition Date: 09/08/2016			
Notes: None					
Judgment Details					
Claims Code	Detail Desc	Detail Amount	Detail Date		
None					

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Carla Denise Garrison, and	)	CASE NO. 2014-CP-04-1426
Clint Garrison	)	CASE NO. 2014-CP-04-2206
	)	
Plaintiffs,	)	
	)	ORDER
v.	)	
Target Corporation,	)	RECEIVED
	)	FEB 23 2017
Defendant.	)	SC Court of Appeals

THIS MATTER came before the Court on hearing of the parties' post-trial motions. This case was tried before a jury beginning September 6, 2016, and concluding September 8, 2016. The jury returned a substantial verdict in favor of Plaintiffs. Following trial, Defendant timely moved for Judgment as a Matter of Law, New Trial Absolute, New Trial *Nisi Remittitur*, relief under the Thirteenth Juror Doctrine, and, alternately, reduction of the punitive damages award pursuant to the cap imposed by Section 15-32-530(A) of the South Carolina Code. Plaintiffs timely moved for costs and interest on the judgment. The motion hearing was conducted on November 3, 2016 in Spartanburg, South Carolina. Present for the Plaintiffs were Joshua Hawkins, Esquire of the Greenville bar and Todd Butler, Esquire, of the Mississippi bar, admitted *pro hac vice*. Present at the hearing for Defendant was Knox Haynsworth, Esquire of the Greenville bar, along with George Sibley, III and Kevin Bliker, both of the Virginia bar, also admitted *pro hac vice*.

Upon hearing the oral arguments of the parties and reviewing their written submissions, the Court hereby denies Defendant's motion for Judgment as a Matter of Law as to the actual damages award only, and Defendant's motions for New Trial Absolute, New Trial *Nisi Remittitur*,



and relief under the Thirteenth Juror Doctrine, along with Plaintiff's Motion for Costs. However, the Court hereby grants Defendant's motion for Judgment as a Matter of Law as to the punitive damages award and Plaintiff's Motion for interest on the judgment for the reasons stated herein.

STATEMENT OF RELEVANT FACTS

On the evening of May 21, 2014, Denise Garrison drove to a Target retail store in Anderson, South Carolina, with her daughter Kaleigh. Before entering the store, Mrs. Garrison stopped to examine her coupon book on the hood of the car. As she was doing so, Mrs. Garrison heard her daughter say, "Mommy, what is this?" She testified that she looked up to see her daughter holding a syringe with a small needle "pointing out." Rather than instructing her daughter to put the syringe down, Mrs. Garrison instinctively reacted and swatted the syringe out of her daughter's hand onto the pavement of the parking lot.

Mrs. Garrison then looked down to see "a tiny bead of blood and a puncture wound." She hurried to the restroom of the store and washed her hands repeatedly. She then called her husband, Clint Garrison, who suggested that she speak with a Target employee. Mrs. Garrison spoke with Shelby Brintnall, who was the "lead-on-duty" at the store for the evening. Ms. Brintnall followed Mrs. Garrison to the parking lot, where she photographed the syringe, which appeared "dingy, dirty, and gross." However, the needle was nowhere to be found. Ms. Brintnall collected the plastic tube of the syringe and brought it into the store.

Before she left the store that evening, Mrs. Garrison spoke with Ms. Brintnall about the incident and Ms. Brintnall completed an incident report. She wrote: "Guest's daughter picked up needle. [Mrs. Garrison's] first reaction was to smack the needle out of her hand. And when she did it stuck, it stuck her in the right hand." After Mrs. Garrison left the store that evening, Ms. Brintnall completed another report, describing the investigation and noting her impressions. In

that report, Ms. Brintnall noted that she could not locate a needle, and only the plastic tube of the syringe was recovered.

The next day, Mrs. Garrison went to the emergency room where she was treated for a needle stick. She was referred to an infectious disease specialist and was prescribed HIV medication and antibiotics. Her medication reportedly caused severe dizziness, nausea, vertigo, and extreme nightmares. Due to his wife's "zombie-like state" while on the medication, Clint Garrison had to take several days off work. As Mrs. Garrison is a stay-at-home mother, the family depends entirely on Mr. Garrison's income. Mrs. Garrison was able to change her medication after a few weeks and many of the side effects subsided, but she continued to experience nausea. To date, Mrs. Garrison has received four blood tests for HIV, but there is no evidence that she contracted any infectious disease—either HIV or otherwise—as a result of this incident.

Mrs. Garrison filed suit against Target in 2014. Mr. Garrison filed his own lawsuit shortly thereafter, and the two actions were consolidated for trial in this case. The trial was conducted from September 6 to September 8, 2016, in Anderson, South Carolina. After hearing testimony from multiple witnesses including Ms. Brintnall, Mrs. Garrison, and Mr. Garrison, the jury returned a verdict in favor of Plaintiffs, awarding Denise Garrison \$100,000 in actual damages and \$4,510,000 in punitive damages, and awarding Clint Garrison \$3,500 in lost wages and \$5,000 for loss of consortium.

DISCUSSION

As an initial matter, to the Court, the instant matter is one that has required the utmost thought and consideration. Though there is a sizeable amount of money at stake, the public goodwill and reputations of the parties and counsel involved is even more important. The sanctity of the jury is of paramount importance to the Court in this matter, but so is the proper application

of South Carolina and federal law to the facts of this case. Each of the post-trial motions made by Plaintiffs and Defendant have been addressed, in turn, below.

I. JUDGMENT AS A MATTER OF LAW

The defendant first contends it is entitled to judgment as a matter of law – also known as a judgment notwithstanding the verdict – pursuant to Rule 50 of the South Carolina Rules of Civil Procedure. Judgment as a matter of law is appropriate if the evidence as a whole is susceptible to only one reasonable inference, such that no jury issue is created. *Bloom v. Ravotira*, 339 S.C. 417 (2000), cited in *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32 (2001). When ruling on such a motion, the trial judge must view the evidence in the light most favorable to the non-moving party. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316 (2003); *Welch v. Epstein*, 342 S.C. 279 (Ct. App. 2000). Importantly, the jury's verdict must be upheld unless no evidence reasonably supports the jury's findings. *Curcio*, 355 S.C. 316. Further, the motion should not be granted where the evidence yields more than one inference or its inference is in doubt. *Daves v. Cleary*, 355 S.C. 216 (Ct. App. 2003); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178 (Ct. App. 2005).

Here, Defendant's motion for judgment as a matter of law cannot be granted regarding the award of actual damages. When viewed in the light most favorable to Plaintiffs, the evidence leads to more than one reasonable inference on the issues of constructive knowledge and proximate causation. However, finding punitive damages unconstitutional in this case, the Court finds judgment as a matter of law is appropriate as to that aspect of the award alone.

1. Constructive Knowledge

Under South Carolina law, in order to recover from a merchant following an injury in a store, a customer must prove either that (1) her injury was caused by a dangerous condition specifically created by the merchant; or (2) that the merchant "had actual or constructive

knowledge of the dangerous condition and failed to remedy it." *Wintersteen*, 344 S.C. at 35. Since there is no allegation that Target created the dangerous condition, the latter prong is the only one at issue here.

In order to prove constructive knowledge, the plaintiff must prove that the dangerous condition preexisted her injury long enough for the merchant to "have discovered and remedied it." *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 77 (1971). Here, although there was no direct evidence as to the exact length of time the syringe had been in the parking lot, witnesses testified the syringe was "dingy, dirty and gross," and bore a "weathered" look similar to other items of trash in the parking lot. That testimony, when viewed in the light most favorable to Plaintiffs, leads to the reasonable inference that the syringe was in Target's parking lot long enough to impute constructive knowledge. Thus, judgment as a matter of law is not appropriate on the constructive knowledge issue.

2. Proximate Causation

South Carolina is a comparative negligence state, meaning that a plaintiff must prove her "own negligence is not greater than that of the defendant" in order to recover. *Bloom v. Ravotru*, 339 S.C. 417 (2000). A plaintiff can be comparatively negligent when she breaches a duty of care by act or omission, and her breach proximately causes her own injuries. *See id.* Comparison of the plaintiff's negligence with that of the defendant is ordinarily a question of fact for the jury to decide. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32 (1997); *cited in Bloom*, 339 S.C. at 422. In a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. *Bloom*, 339 S.C. 422; *citing Creech*, 328 S.C. at 33. Judgment as a matter of law is generally not appropriate in a comparative

negligence case. *Id.*

In the instant matter, Mrs. Garrison saw the syringe in her daughter's hand, immediately reacted, and struck it to the ground. Though that action caused the needle stick injury, the action could reasonably be viewed as an impulse reaction motivated by a mother's instinct to protect her child. As the Supreme Court of this state held in *Bloom*, a comparative negligence determination is soundly within the purview of the jury where there is more than one reasonable inference. Therefore, judgment as a matter of law as to proximate causation is not appropriate here.

3. Punitive Damages

"[P]unitive damages serve at least three important purposes: punishment of the defendant's reckless, willful, wanton, or malicious conduct; deterrence of similar future conduct by the defendant or others; and compensation for the reckless or willful invasion of the plaintiff's private rights." *Clark v. Cantrell*, 339 S.C. 369, 379 (2000). The South Carolina Supreme Court has articulated three "guideposts" to be applied in conducting a post-judgment review of punitive damages. *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 52 (2016). Those guideposts are as follows: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570 (2009); cited in *Austin*, 387 S.C. at 52. These guideposts incorporate the relevant factors set forth by the United States Supreme Court in *BMW of North America v. Gore*, 517 U.S. 559 (1996) and the South Carolina Supreme Court in *Gamble v. Stevenson*, 305 S.C. 104 (1991)¹ (though the

¹ The *Gamble* opinion identified eight considerations that trial courts should apply when reviewing the constitutionality of punitive damages awards: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the

Gamble factors may still be used to supplement the guideposts as needed). *Mitchell*, 385 S.C. at 585-587.

a. *Reprehensibility*

Significantly, the United States Supreme Court remarked in *Gore* that the degree of reprehensibility of a defendant's conduct is "perhaps the most important indicium of the reasonableness of a punitive damages award." *Gore*, 517 U.S. at 565. In a reprehensibility analysis, a court should consider factors such as whether:

The harm caused was physical opposed to economic; the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others;² the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003).

Though there is evidence supporting the actual damages award in this case as discussed hereinabove, that evidence does not justify the jury's award of punitive damages. Defendant Target's conduct -- albeit negligent by determination of the jury -- did not involve repeated actions, and was not intentional, malicious, or deceitful. Further, Defendant's conduct does not evince a reckless disregard for the health or safety of others. The incident at issue here was an isolated incident that resulted from Defendant's failure to make the parking lot safe. There is no evidence that Defendant engaged in a pattern of reckless, willful, or wanton conduct that is sufficiently reprehensible to justify the punitive damages award here.

existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble*, 305 S.C. at 111-112.

² South Carolina law mirrors this requirement. A plaintiff seeking punitive damages in this state must present "evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221 (1996).

b. *Disparity of Harm*

The second *Mitchell* guidepost requires trial courts to weigh the disparity between the actual and potential harm suffered by the plaintiff and the amount of the punitive damages award. *Mitchell*, 385 S.C. at 585. "The ratio of actual or potential harm to the punitive damages award is perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award." *Id.* at 588; citing *Gore*, 517 U.S. at 580. Though the United States Supreme Court has consistently declined to adopt a bright line ratio or mathematical test, the Court has noted that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* Citing *Campbell*, 538 U.S. at 425. Here, the punitive damages award was \$4,510,000, and the actual damages awarded to Mrs. Garrison were in the amount of \$100,000. Thus, the ratio is in excess of 45:1. This ratio should not stand in the light of the *Campbell* decision, and cannot stand under the statutory cap placed on punitive damages by the South Carolina General Assembly in South Carolina Code Ann. § 15-32-530. However, since Defendant Target's conduct was not sufficiently reprehensibly to justify punitive damages in this case, the disparity of harm and the ratio of punitive damages to actual damages awarded need not be discussed any further.

c. *Comparable Penalties*

The third and final *Mitchell* guidepost requires the trial court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. "When identifying 'comparable cases' a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Mitchell*, 385 S.C. at 588-589. In the instant matter, there is no

evidence that Mrs. Garrison contracted any form of infectious disease. The actual damages awarded to Plaintiffs adequately account for Mrs. Garrison's medical bills, pain and suffering, emotional anguish, and her husband's loss of consortium and lost wages. Thus, comparable penalties need not be considered in great depth.

II. NEW TRIAL ABSOLUTE AND THIRTEENTH JUROR DOCTRINE

Defendant next contends it is entitled to a new trial absolute, or in the alternative, a new trial under the "thirteenth juror" doctrine. A new trial absolute must be granted if the amount of the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1 (1996); *Vinson v. Hartley*, 324 S.C. 389 (Ct. App. 1996). Similarly, under South Carolina's "thirteenth juror" doctrine, "a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict." *Vinson*, 324 S.C. at 402. "The doctrine entitles the judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Lane v. Gilbert Constr. Co.*, 383 S.C. 590, 597 (2009) (internal quotation marks omitted).

Defendant contends that the jury's award of more than \$100,000 in actual damages was "shockingly disproportionate to the harms alleged," such that a new trial absolute is necessary. The Court disagrees. It is well established in South Carolina law that a jury's determination of damages is entitled to substantial deference. *Rush v. Blanchard*, 310 S.C. 375 (1993). Here, though the punitive damages award violated Defendant's constitutional Due Process rights, the Court finds the actual damages award is not shocking to the conscience. Mrs. Garrison sustained several thousand dollars in medical bills as a result of this incident. Further, her husband – the

family's sole breadwinner – was forced to miss multiple days of work due to her injury. Additionally, Mrs. Garrison suffered extreme emotional anguish, coupled with weeks of nausea and horrific nightmares due to the HIV medications she was prescribed. Based on this evidence, the Court finds the jury's award of actual damages does not shock the conscience and a new trial absolute shall not be granted as a result. Further, the Court finds that the evidence justifies the verdict and actual damages award in this case, so a new trial absolute shall not be granted under the "thirteenth juror" doctrine.

III. NEW TRIAL *NISI REMITTITUR*

Defendant's final contention is that it is entitled to a new trial *nisi remittitur*. A new trial *nisi remittitur* is appropriate when the jury's verdict is excessive or "unduly liberal," but not necessarily "actuated by passion, caprice, or prejudice" sufficient to warrant a new trial absolute. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531 (1993). Ruling on a new trial *nisi remittitur* "requires the court to consider the adequacy of the verdict in light of the evidence presented." *Waring v. Johnson*, 341 S.C. 248, 256 (Ct. App. 2000). The critical inquiry is whether the award excessively compensates the injured party. *Graham v. Whitaker*, 282 S.C. 393 (1984).

Defendant contends the actual damages award is grossly excessive and requires the grant of a new trial *nisi remittitur*. Again, the Court disagrees. "The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *Proctor v. Dept. of Health and Environmental Control*, 268 S.C. 279, 320 (Ct. App. 2006); citing *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 89 (Ct. App. 2005). Compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. *Id.* See also *Pelican Bldg. Ctrs. V. Dutton*, 311 S.C. 56, 61 (1993). Under the circumstances, the Court does not find compelling reasons to invade the province of the jury by granting a new trial *nisi* in this

matter. The Court has substantially altered the overall verdict by eliminating the punitive damages award. Under the circumstances, a new trial would amount to a sizeable waste of the resources of both South Carolina and Anderson County. Therefore, Defendant's motion for a new trial *nisi remittitur* is denied.

IV. PLAINTIFFS' MOTIONS FOR COSTS AND INTEREST

Costs may be granted to the prevailing party in a lawsuit pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure and South Carolina Code Ann. § 15-37-10. However, under the plain language of Rule 54(d), the Court has the discretion to rule otherwise. Rule 54(d) requires the prevailing party to submit an itemized affidavit of costs with its motion. Further, a party must point to a specific statute or rule of court to support each of his or her claims for costs, fees, and disbursements. *Black v. Roche Biomedical Laboratories*, 315 S.C. 223 (Ct. App. 1993). Since Plaintiffs have done neither, Plaintiff's motion as to costs is hereby denied.

Pursuant to South Carolina Code Ann. § 34-31-20, a judgment must draw interest according to law, and the legal interest rate is 8.75 percent per annum. Thus, Plaintiffs' motion for interest on the judgment is granted. Plaintiffs are entitled to interest on the actual damages award at the statutory rate of 8.75 percent, beginning the date the verdict was issued. That date is September 8, 2016.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, Defendant's Motions for Judgment as a Matter of Law as to the actual damages, New Trial Absolute, New Trial *Nisi Remittitur*, and Judgment under the Thirteenth Juror Doctrine are hereby denied. Plaintiffs' Motion to Tax Costs is also denied. However, Defendant's Motion for Judgment as a Matter of Law as to the punitive damages award is granted. Plaintiff's Motion for Interest is hereby granted as well.

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AND IT IS SO ORDERED.

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Anderson Common Pleas

Case Caption: Carla Denise Garrison VS Target Corporation
Case Number: 2014CP0401426
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge

Case No. 2014-CP-04-1426
(Consolidated with Case No. 2015-CP-04-2206)

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FEB 23 2017

SC Court of Appeals

Carla Denise Garrison and Clint Garrison, Appellant-Respondents,

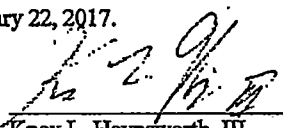
v.

Target Corporation, Respondent-Appellant.

PROOF OF SERVICE

I certify that I served Target's Notice of Appeal on Appellant-Respondents by having the same delivered to their counsel of record, Joshua T. Hawkins, at 1225 South Church Street, Greenville, South Carolina 29601, on February 22, 2017. I also served the Notice of Appeal on Appellant-Respondents by sending a copy via United States Mail on February 22, 2017, to their counsel of Record, G. Todd Butler, at P.O. Box 16114, Jackson, Mississippi, 39236.

February 22, 2017.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly, Circuit Court Judge

Appellant Case No. 2017-000267

Carla Denise Garrison and Clint Garrison,

Appellants / Respondents,

v.

Target Corporation

Respondent / 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.

Signature block on following page.

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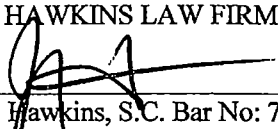
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AUG 03 2017

SC Court of Appeals

Respectfully submitted,

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July 25, 2017