The State of South Carolina
In the Court of Appeals

APPEAL FROM
THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT,
COUNTY OF RICHLAND

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2020-000619
Civil Action No. 2017-CP-40-06621

R. WAYNE TODD, derivatively on behalf of
SCANA CORPORATION,

Plaintiff,

v.

KEVIN MARSH, GREGORY ALIFF,
JAMES BENNETT, JOHN CECIL,
SHARON DECKER, MAYBANK HAGOOD,
LYNNE MILLER, JAMES ROQUEMORE,
MACEO SLOAN, ALFREDO TRUJILLO,
JIMMY ADDISON, and STEVE BYRNE,

Defendants,

And

SCANA CORP.,

Nominal Defendant.

TERESA PARLER, derivatively on behalf of
SCANA CORPORATION,

Plaintiff,

v.

KEVIN MARSH, GREGORY ALIFF,
JAMES BENNETT, JOHN CECIL,
SHARON DECKER, MAYBANK HAGOOD,
LYNN MILLER, JAMES ROQUEMORE,
MACEO SLOAN, ALFREDO TRUJILLO,
JIMMY ADDISON, and STEVE BYRNE,

Defendants,

And

SCANA CORP.,

Nominal Defendant,

Of Which SCANA CORPORATION, KEVIN MARSH, GREGORY ALIFF, JAMES BENNETT, JOHN CECIL, SHARON DECKER, MAYBANK HAGOOD, LYNN MILLER, JAMES ROQUEMORE, MACEO SLOAN, ALFREDO TRUJILLO, JIMMY ADDISON, and STEVE BYRNE are *Appellants*,

And

TERESA PARLER, derivatively on behalf of SCANA CORPORATION is the *Respondent*.

PETITION FOR REHEARING
UNDER RULE 221(a)

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INTRODUCTION

This appeal's dismissal merits rehearing under Rule 221(a), SCACR, because the dismissal order overlooked or misapprehended that the *substance* of the appealed order—rather than its *form*—determines whether that order is appealable. The dismissal order addressed a single basis for dismissal: that the appealed order was, *in form*, the denial of a motion for judgment on the pleadings. That approach—judging the book by its cover—conflicts with this Court's holding that it is "the nature and effect of the order, not merely its label," that makes an order appealable under S.C. Code Ann. § 14-3-330. *Tillman v. Tillman*, 420 S.C. 246, 250, 801 S.E.2d 757, 760 (Ct. App. 2017). The dismissal order truncated the appealability determination before the necessary "case-by-case" inquiry into appealability, *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019), and thus overlooked the compelling reasons—never rebutted or even addressed by the respondent—why the nature and effect of the order make it immediately appealable.

This appeal is from an unprecedented order permitting a non-shareholder to seize control of a shareholder derivative action belonging to a corporation in which she holds no shares. In substance, the trial court's order both "involv[es] the merits" and denies SCANA Corp. ("SCANA") a "substantial right" under § 14-3-300(1)-(2) because it strips SCANA of the right to control its own litigation or, at least, to have that litigation controlled by a *current* shareholder. The trial court's refusal to apply the binding South Carolina law in *Johnson v. Baldwin*, 221 S.C. 141, 149, 69 S.E.2d 585, 588 (1952), that vests such control only in current shareholders is also like other

appealable orders that effectively deny a party its choice of counsel, *Hagood v. Sommerville*, 362 S.C. 191, 197–98, 607 S.E.2d 707, 710 (2005), or deny a party its right to choose its own defendants, *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). For the same reasons that saddling a party with unchosen attorneys or undesired defendants throughout the trial court litigation affects substantial rights and makes an order immediately appealable, the decision here is appealable because of its impact on SCANA's substantial rights (and those of its sole shareholder Dominion Energy, Inc. ("Dominion")). This Court should grant rehearing and address the merits of the trial court's order flouting the South Carolina Supreme Court's long-established, common-sense holding that only a shareholder can maintain a shareholder derivative lawsuit. *See Johnson*, 221 S.C. at 149, 69 S.E.2d at 588.

The importance of this underlying fundamental question of South Carolina corporate law requires getting this appealability determination right, and without delay. *See Ark. Teacher Ret. Sys. v. Mozilo*, 705 F.3d 973, 975 (9th Cir. 2013) (certifying a derivative standing question to a state Supreme Court because "disputes regarding shareholder derivative standing implicate significant issues of state public policy best resolved by reference to clear rules of state law"). The unprecedented ruling below invites non-shareholders who are at best indifferent to the interests of South Carolina corporations and their shareholders to hijack derivative litigation for the non-shareholders' own ends. Naturally, those non-shareholders will discount or ignore harms to the company flowing from that derivative litigation, like running up

indemnified litigation expenses, eroding insurance otherwise available to satisfy the claims of shareholders who have standing, and fostering litigation against the company *itself* in related non-derivative cases. And there will be no remedy for the harms caused by that usurpation of corporate claims even if non-shareholders are ultimately found to lack derivative standing on appeal after final judgment. The trial court's ruling thus threatens to make South Carolina companies worse off and turns the purpose of a derivative action on its head. That inversion of foundational South Carolina corporate law deserves rehearing so that this Court can address whether South Carolina companies have any practical remedy for the unwarranted transfer of their litigation assets into hostile hands.

BACKGROUND

After SCANA's shareholders overwhelmingly approved its merger with Dominion and received Dominion common stock in exchange for their SCANA shares, [R. p. _; Ex. A. to Defs.' Mot. for Judgment on the Pleadings ("Mot. for Judgment") pp. 1-2, 9], SCANA and the other defendants moved to end derivative litigation arising from unsuccessful efforts to construct two new nuclear power units. Defendants explained that because the putative derivative plaintiffs were no longer SCANA shareholders, they lacked derivative standing under *Johnson*. [R. p. __; Mot. for Judgment pp. 1–2.] In the parallel federal derivative action, the District of South Carolina agreed and granted the defendants' motion for judgment on the pleadings following *Johnson*. Yet the trial court allowed a non-shareholder to intervene and denied the derivative standing motion, improperly casting *Johnson* as "just one

equitable rule" relevant to derivative plaintiff standing—rather than *the* controlling rule in South Carolina. [R. p._; Order p. 7.]

Defendants timely served a notice of appeal and then electronically filed and served their Initial Brief on June 8, 2020. That Brief included a Jurisdictional Statement explaining why this Court has jurisdiction under S.C. Code Ann. § 14-3-330(1)-(2). The day after the deadline for the Initial Appellants' Brief, Respondent Teresa Parler served a four-page motion to dismiss the appeal that ignored the Jurisdictional Statement. This Court granted Parler's motion on July 29, 2020. In its brief order, the Court stated that the trial court's order was not immediately appealable under § 14-3-330, citing a decision finding the denial of a motion for judgment on the pleadings not immediately appealable. Order at 2 (citing *Rose v. Thrash*, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987)).

Defendants also petitioned the Supreme Court of Carolina for a writ of certiorari. *See Parler v. SCANA Corp.*, Appellate Case No. 2020-000616 (S.C. filed Apr. 16, 2020). The Supreme Court denied the petition on August 7, 2020, stating that this appeal "is currently pending" in this Court. Ex. 1.

ARGUMENT

By dismissing this appeal, this Court overlooked the rule that an order's "nature and effect," not its label, determine its appealability. *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. Because of that threshold error, the Court also overlooked or misapprehended the reasons why the trial court's order is immediately appealable. Rehearing should be granted because the trial court's decision allowing a non-

shareholder to pursue derivative claims on behalf of a corporation in which she does not hold shares involves the merits and denies SCANA's substantial right to control its litigation asset, or at least have a properly aligned current shareholder exercise control. The decision below also parallels the kinds of orders held appealable under § 14-3-330, including those in which a party is denied its substantial rights to select its counsel and its defendants. Rehearing is warranted to address whether SCANA must wait until *after* lawyers it has not chosen have fully litigated SCANA's claims against defendants it has not sued, before SCANA may appeal the denial of those substantial rights.

I. The dismissal order overlooks that an order's substance, rather than its label, makes an order appealable.

South Carolina courts decide whether an order is immediately appealable by examining "the nature and effect of the order" to determine whether the order fits S.C. Code Ann. §14-3-330's parameters. *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. That provision grants this Court jurisdiction over appeals from:

> (1) Any intermediate judgment, order or decree in a law case involving the merits . . . .; [and]
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

Nothing in the text or application of § 14-3-330 excludes any one procedural variety of order from its scope. Instead, the statute's terms look to an order's *substance*—whether the order "affect[s] a substantial right" and is thus immediately

appealable. *Id.* Because the appealability of an order hinges on its "nature and effect" rather than on its title, *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760, "the question of whether an order is immediately appealable is determined on a case-by-case basis." *Stone*, 426 S.C. at 295, 826 S.E.2d at 870. Courts must evaluate "the particular circumstances" of each order and case to decide an order's appealability. *See id.*

This Court overlooked these guiding principles by substituting a truncated inquiry based on the label assigned to the trial court's order. The Court treated orders denying motions for judgment on the pleading as a categorical exclusion from § 14-3-330's jurisdiction. And so it did not even ask the required question: whether the particular circumstances of the decision below or the nature and effect of that decision make it appealable.

Section 14-3-330's case-by-case inquiry does not permit such blanket treatment based on the label assigned to an underlying order. *Stone*, 426 S.C. at 295, 826 S.E.2d at 870. That label cannot and does not decide appealability under §14-3-330—the specific nature and circumstances of the trial court's order do. *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. Even if the denial of certain motions is presumptively not appealable, *see Kubic v. MERSCORP Holdings, Inc.,* 416 S.C. 161, 167, 785 S.E.2d 595, 598 (2016) ("The denial of a motion to dismiss is *ordinarily* not immediately appealable[.]" (emphasis added)), § 14-3-300 requires analyzing whether the nature

and effect of any *particular* order rebuts that presumption. Rehearing should be granted because the dismissal order here overlooked that necessary analysis.

II. The dismissal order's threshold error caused it to overlook why the nature and effect of the trial court's order make it appealable.

Because the dismissal order overlooked and misapprehended the relevant appealability inquiry of *substance* rather than *form*, it further overlooked why the nature and effect of the trial court's order make it appealable. Three aspects of the decision require this Court to exercise its jurisdiction over this appeal. The dismissal order's failure to evaluate these case-specific issues warrants rehearing.

A. The trial court's decision allowing a non-shareholder to pursue the derivative action involves the merits and denies SCANA's substantial right to control its litigation asset.

The dismissal order overlooked that the trial court's order is immediately appealable because it both involves the merits and impacts a substantial right. By allowing a non-shareholder to pursue the derivative action meant to benefit SCANA, the trial court stripped SCANA and Dominion, SCANA's only current shareholder, of control over that asset and gave that control to a party who does not represent SCANA's interests. That decision involves the merits and deprives SCANA of the substantial right to control its own litigation, or at least to have a properly aligned current shareholder exercise control.

By its nature, a derivative action contemplates that a corporation will not always have exclusive control over its asset. But even if the corporation is not actively exercising its right of control, the corporation remains "the real party in interest" in the derivative action. *Johnson*, 221 S.C. at 149, 69 S.E.2d at 588. As a result, only a

party with the necessary interest in the corporation's recovery can exercise control over its derivative asset, because only that party will use the asset to the company's benefit. And the only party with that necessary interest is a current shareholder. Here, Dominion, SCANA's sole remaining shareholder, is the singular party that can adequately represent SCANA's interests. In contrast, a non-shareholder lacks *any* "interest, present or potential," in the company's wellbeing. *Id.* As a result, a derivative action pursued by a non-shareholder is a mere "gratuitous inquisition into the business of another," one "fraught . . . with the dangerous possibilities always inherent in irresponsibility." *Id.* (quoting *Kehaya v. Axton*, 32 F. Supp. 266, 268 (S.D.N.Y. 1940)).

The trial court's order permits just such a fraught inquisition into SCANA's business by an adverse party untethered to SCANA or its interests. It thereby takes from SCANA its right to control its litigation asset, or at the very least, to benefit from a current shareholder's use of that asset on SCANA's behalf. And it gives that control to a non-shareholder that, unlike SCANA's sole shareholder Dominion, lacks any interest in the company's potential recovery.

That transfer of the right to control the company's litigation cannot be remedied by an appeal after final judgment. *See Hagood*, 362 S.C. at 197, 607 S.E.2d at 710 (holding an order appealable where "an appeal after final judgment would not adequately protect a party's interests"). The pre-existing *de rigueur* agreement to indemnify SCANA's former officers and directors survived the merger. So Plaintiff's decision to pursue these derivative claims means that SCANA—which is supposed to

benefit from those claims—may be on the hook for the cost of defending against them. And even worse, Plaintiff's counsel has already sued Dominion over the same allegations as in this case. *See* Complaint, *Metzler Asset Mgmt. GmbH v. Aliff*, Doc. No. 1-1, No. 3:18-cv-505 (D.S.C. Feb. 21, 2018). And that same counsel is currently pursuing two lawsuits over the same allegations against SCANA's indemnitees. *See In re SCANA Corporation Public Shareholder Litig.*, No. 3:18-cv-505 (D.S.C.); *KBC Asset Mgmt. NV v. Marsh*, No. 2019-CP-40-02522 (Richland County). There is no doubt that the prosecution of these derivative claims will be used to help the same counsel prosecute direct claims that may be SCANA's obligation to pay. The company and its shareholders will thus pay the hefty price for the trial court's error unless this Court grants rehearing and reverses.

The novelty and significance of the trial court's decision to vest control of SCANA's litigation in a non-shareholder confirm that this Court can and should exercise jurisdiction. *See State v. Register*, 308 S.C. 534, 536 n.1, 419 S.E.2d 771, 772 n.1 (1992) ("[B]ecause we are dealing with a novel issue . . . we have chosen to address the merits of the petition."). The trial court acknowledged that this matter of derivative standing is an "[i]mportant question[] of novel impression." [R. p. __; Order p. 8 n.8.] Indeed, the trial court is the first South Carolina court to permit a non-shareholder to maintain a derivative action, upending decades of precedent and threatening to embroil derivative actions in novel standing disputes. The trial court also created a direct split of authority with the District of South Carolina on this

important question of South Carolina law. Rehearing is needed to address how these overlooked effects of the trial court's order render it appealable.

B. The trial court also effectively denied SCANA the right to select its counsel.

The dismissal order also overlooked that the trial court effectively denied SCANA and its sole shareholder Dominion the right to choose the counsel that will litigate a derivative action meant to benefit the company. *See Johnson*, 221 S.C. at 149, 69 S.E.2d at 588 (a derivative action is by nature "an asset of the corporation," which is the "real party in interest"). The Supreme Court held in *Hagood* that denial of the substantial right to representation by an attorney of one's choosing is immediately appealable. The Court reasoned that "the right to be represented by one's preferred attorney is closely related to the right to a particular mode of trial, a well-established right." 362 S.C. at 198, 607 S.E.2d at 710. Further, denying this right "would affect the attorney-client relationship, which is extremely important in our adversarial system." *Id.* And a later appeal of the denial "would not adequately protect a party's interests because it would be difficult or impossible . . . to ascertain by any objective standard whether prejudice resulted." *Id.*

The trial court's order effectively denies SCANA and its sole shareholder Dominion this established substantial right. As the real party in interest, SCANA has a right to representation by counsel that will promote and protect its interests. Counsel representing its sole shareholder Dominion would qualify. But Parler's counsel, like Parler, lacks any interest in protecting SCANA. In fact, Parler's counsel is incentivized to *harm* SCANA through this litigation, because Parler's counsel has

brought direct actions against SCANA and Dominion and SCANA's former officers and directors involving the same facts and legal arguments as here. *See* Complaint, *Metzler Asset Mgmt. GmbH v. Aliff*, Doc. No. 1-1, No. 3:18-cv-505 (D.S.C. Feb. 21, 2018); *In re SCANA Corporation Public Shareholder Litig.*, No. 3:18-cv-505 (D.S.C.); *KBC Asset Mgmt. NV v. Marsh*, No. 2019-CP-40-02522 (Richland County). Parler's counsel's representation of the plaintiff in the derivative action will thus involve developing the same facts and legal arguments that could *increase* SCANA's liability in the direct actions, to counsel's direct benefit and SCANA's direct detriment. *See, e.g.*, *In re Groupon Deriv. Litig.*, 882 F. Supp. 2d 1043, 1052 (N.D. Ill. 2012) ("Prosecution of [the] derivative action would involve taking actions designed to refute the merits of the Company's defense of the Securities Class Action.").

SCANA has also indemnified defendant officers and directors in these direct actions consistent with South Carolina law. *See* S.C. Code Ann. § 33-8-510. As a result, pursuing this derivative action will help Parler's counsel prosecute her direct claims—claims that may be SCANA's obligation to pay. The trial court's decision thus threatens to prejudice SCANA in a way a later appeal cannot remedy. This Court overlooked this feature of the trial court's order that further cements its appealability. Rehearing should be granted to correct this oversight.

C. The decision below effectively denies SCANA and Dominion's right to select its defendants.

The dismissal order also overlooked that the trial court's order effectively denies SCANA and its sole shareholder Dominion's right to choose the defendants to pursue in a derivative action meant to benefit SCANA. *Chester v. S.C. Dep't of Pub.*

Safety, 388 S.C. 343, 345, 698 S.E.2d 559, 560 (2010) ("It is well-settled that a plaintiff has the sole right to determine which [defendants] [it] will sue."). The Supreme Court held in *Neeltec* that this common law right is a substantial one, the denial of which is immediately appealable. 397 S.C. at 566, 725 S.E.2d at 928.

The trial court's order here undermines SCANA's right to choose which defendants it may pursue for harming the company. SCANA, as it was entitled to do, has indemnified directors and officers named in this derivative action. SCANA and its sole shareholder Dominion should decide whether prosecuting derivative claims against these indemnified parties serves SCANA's interests. The trial court instead placed that power in the hands of a non-stockholder with no stake in SCANA's corporate health. In doing so, the trial court effectively denied SCANA's substantial—and exclusive—right to determine the defendants sued on its behalf.

This Court's dismissal order, however, overlooked that the trial court's order had such an effect—one that makes the order immediately appealable regardless of its label. This Court should grant rehearing because the nature and effect of the decision below make that decision appealable.

CONCLUSION

For these reasons, this Court should grant this Petition for Rehearing under Rule 221(a), review the merits of this appeal, and reverse the trial court's order with instructions to dismiss the complaint without prejudice to the right of Dominion to pursue these claims.

Dated: August 12, 2020

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The Supreme Court of South Carolina

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Appellate Case No. 2020-000616

ORDER

An appeal is currently pending in the court of appeals in this matter. Petitioners ask this Court to issue a writ of certiorari to decide the issues on appeal. The petition for a writ of certiorari is denied.

_____ C.J.

_____ J.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina
August 7, 2020

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Meredith J. Kingsley, Esquire
James F. Wyatt, III, Esquire
Robert A. Blake, Esquire
Anne M. Tompkins, Esquire
Jonathan M. Watkins, Esquire
Aaron C. Lang, Esquire
Brian E. Pumphrey, Esquire
Mark D. Chappell, Esquire
Graham L. Newman, Esquire
Lawrence P. Eagel, Esquire
Melissa A. Fortunato, Esquire
The Honorable Jenny Abbott Kitchings

CERTIFICATE OF SERVICE

I, Benjamin P. Carlton, an attorney practicing with Richardson Plowden & Robinson, P.A., certify that on this day, pursuant to Section (g)(3) of the South Carolina Supreme Court's Amended Order, in Appellate Case No. 2020-05-29-02, regarding "Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)," I served this *Petition for Rehearing* on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

Mark D. Chappell
Graham L. Newman
Chappell Smith & Arden, P.A.
2801 Devine Street, Suite 300
Columbia, SC 29205
mchappell@csa-law.com
gnewman@csa-law.com

Lawrence P. Eagel
Melissa A. Fortunato
Bragar Eagel & Squire, P.C.
885 Third Avenue, Suite 3040
New York, New York 10022
eagel@bespc.com
fortunato@bespc.com

A copy of the sent email is enclosed with this Proof of Service.

Dated: August 12, 2020

s/ *Benjamin P. Carlton*
Benjamin P. Carlton
Richardson Plowden
& Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400
bcarlton@richardsonplowden.com

From:	Ben Carlton
To:	"mchappell@csa-law.com"; gnewman@csa-law.com; eagel@bespc.com; fortunato@bespc.com
Cc:	IS Leevy Johnson (islj@jtbpa.com); George Johnson (GEORGE@jtbpa.com); Steve Pugh; Charity McQueen; Carmen Ganjehsani; "jmassalon@wmalawfirm.net"; Bill Coates (wac@roecassidy.com); "john.jordak@alston.com"; "meredith.kingsley@alston.com"; "Schmalzbach, Brian D."; "Pumphrey, Brian E."; "Brady@bradyhair.com"; "Derk@bradyhair.com"; "Anne.Tompkins@cwt.com"; "Jonathan.Watkins@cwt.com"; "Aaron.Lang@cwt.com"; "jgriffin@griffindavislaw.com"; "mfox@griffindavislaw.com"; James Wyatt (JWyatt@wyattlaw.net); "rblake@wyattlaw.net"; "scott.greene@bclplaw.com"; "john.bielema@bclplaw.com"; "michael.carey@bclplaw.com"; "barbara.smith@bclplaw.com"
Subject:	Parler v. Marsh et al. - 2017-CP-40-00621; Appellate Case No. 2020-000619 (Court of Appeals) - Appellants" Petition for Rehearing
Date:	Wednesday, August 12, 2020 3:52:00 PM
Attachments:	SCANA Pet. for Rehearing.pdf SCANA Pet. for Rehearing_Ex. 1.pdf Parler - Ltr to Ct App re Rehearing Petition filing (SCANA) (8-12-2020).pdf

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Counsel,

Please find attached a copy of Appellants' Petition for Rehearing (with referenced Exhibit 1), in the above-referenced matter, which is being filed contemporaneously herewith in accordance with the Court's Amended Order, No. 2020-05-29-02, regarding "Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)." Also, please find attached a copy of the cover letter being mailed to the South Carolina Court of Appeals along with the corresponding filing fee.

Thank you and please continue to stay safe,
Ben Carlton

HOME VCARD LOCATION

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Attorney at Law
BCarlton@RichardsonPlowden.com

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Reply to: Benjamin P. Carlton
Direct Dial: 803-253-8687
bcarlton@richardsonplowden.com

August 12, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: ***R. Wayne Todd, derivatively on behalf of SCANA Corporation (Plaintiff) v. Kevin Marsh et al. (Defendants) and SCANA Corp. (Nominal Defendant).***

Teresa Parler, derivatively on behalf of SCANA Corporation (Plaintiff) v. Kevin Marsh et al. (Defendants) and SCANA Corp. (Nominal Defendant).

Appellate Case No.: 2020-000619
RPR File No.: 3637-66

Dear Ms. Kitchings:

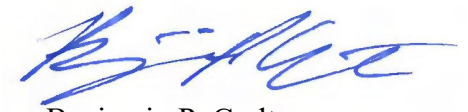
Enclosed please find a copy of the Petition for Rehearing, Under Rule 221(a), SCACR (with Exhibit 1) [collectively, the "Filing"], of Appellants SCANA Corporation, Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne, which was filed electronically with the Court of Appeals pursuant to the Appellate Court Filing System (OneDrive).

Also enclosed is a check in the amount of $50.00 for the corresponding fee.

We have served this Filing via e-mail on all counsel of record pursuant to Section g(3) of the Order Regarding Operation of the Appellate Courts During the Coronavirus Emergency dated March 20, 2020, as amended May 29, 2020.

Should you have any questions regarding this matter, please do not hesitate to call. With kindest regards, I am

Sincerely,



Benjamin P. Carlton

Enclosures

cc: Mark D. Chappell (via email)
Graham L. Newman (via email)
Lawrence P. Eagel (via email)
Melissa A. Fortunato (via email)