

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

RECEIVED

Oct 05 2020

SC Court of Appeals

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.*

**REPLY IN SUPPORT OF
PETITION FOR REHEARING
UNDER RULE 221(a)**

John A. Massalon (SC Bar # 10279)
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

C. Scott Greene (*pro hac vice*)
John R. Bielema (*pro hac vice*)
Michael P. Carey (*pro hac vice*)
Bryan Cave Leighton Paisner LLP
One Atlantic Center, 14th Floor
1201 W. Peachtree St., N.W.
Atlanta, GA 30309-3471
(404) 572-6978
scott.greene@bclplaw.com
john.bielema@bclplaw.com
michael.carey@bclplaw.com

Barbara A. Smith (*pro hac vice*)
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000
barbara.smith@bclplaw.com

***Counsel for Defendants-Appellants
Gregory E. Aliff; James Bennett;
John F.A.V. Cecil; Sharon A. Decker;
D. Maybank Hagood; Lynne M.
Miller; James W. Roquemore;
Maceo K. Sloan; and Alfredo Trujillo***

Steven J. Pugh (SC Bar # 14341)
Benjamin P. Carlton (SC Bar #
101142)
Richardson Plowden
& Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com

I.S. Leevy Johnson (SC Bar # 3020)
George C. Johnson (SC Bar # 9308)
Johnson Toal & Battiste, P.A.
1615 Barnwell Street
Columbia, South Carolina 29201
(803) 252-9700
islj@jtbpa.com
George@jtbpa.com

Brian D. Schmalzbach (*pro hac vice*)
Brian E. Pumphrey (*pro hac vice*)
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-7745
bschmalzbach@mcguirewoods.com
bpumphrey@mcguirewoods.com

***Counsel for Nominal Defendant-
Appellant SCANA Corporation***

William A. Coates (SC Bar # 1289)
Roe Cassidy Coates & Price P.A.
1052 North Church Street
Post Office Box 10529
Greenville, South Carolina 29603
(864) 349-2600
wac@roecassidy.com

John A. Jordak, Jr. (*pro hac vice*)
Meredith J. Kingsley (*pro hac vice*)
Alston & Bird
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000
john.jordak@alston.com
meredith.kingsley@alston.com

Counsel for Defendant-Appellant
Jimmy Addison

James M. Griffin (SC Bar # 9995)
Margaret N. Fox (SC Bar # 76228)
Griffin Davis
4408 Forest Drive, Suite 300
Columbia, SC 29206
(803) 744-0800
jgriffin@griffindavislaw.com
mfox@griffindavislaw.com

James F. Wyatt, III (*pro hac vice*)
Robert A. Blake, Jr. (*pro hac vice*)
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
(704) 331-0767
jwyatt@wyattlaw.net
rblake@wyattlaw.net

Counsel for Defendant-Appellant
Stephen A. Byrne

J. Brady Hair (SC Bar # 9040)
Derk Van Raalte (SC Bar # 9286)
Law Offices of J. Brady Hair
2500 City Hall Lane
Post Office Box 61896
North Charleston, SC 29419
(843) 572-8700
Brady@bradyhair.com
Derk@bradyhair.com

Anne M. Tompkins (*pro hac vice*)
Jonathan M. Watkins (*pro hac vice*
pending)
Aaron C. Lang (*pro hac vice* pending)
Cadwalader, Wickersham & Taft LLP
227 West Trade Street
Charlotte, NC 28202
(704) 348-5222
Anne.Tompkins@cwt.com
Jonathan.Watkins@cwt.com
Aaron.Lang@cwt.com

Counsel for Defendant-Appellant
Kevin B. Marsh

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITY	ii
INTRODUCTION	1
ARGUMENT	2
I. Parler agrees that the dismissal order’s nature and effect, not its label, control its appealability	2
II. The nature and effect of the trial court’s order giving control of this litigation to a hostile non-shareholder and her counsel make that order appealable	2
A. The trial court’s order denies SCANA’s substantial rights	3
B. The trial court’s order involves the merits and effectively determines the action	5
III. The trial court’s error should be remedied now.	7
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	12

TABLE OF AUTHORITY

	Page(s)
Cases	
<i>Ark. Teacher Ret. Sys. v. Mozilo</i> , 705 F.3d 973 (9th Cir. 2013)	7
<i>Evans v. State</i> , 344 S.C. 60, 543 S.E.2d 547 (2001)	8
<i>Hagood v. Sommerville</i> , 362 S.C. 191, 607 S.E.2d 707 (2005)	5
<i>Johnson v. Baldwin</i> , 221 S.C. 141, 69 S.E.2d 585 (1952)	4, 8
<i>KBC Asset Mgmt. NV v. Marsh</i> , No. 2019-CP-40-02522 (Richland County)	6
<i>Mid-State Distributors, Inc. v. Century Importers, Inc.</i> , 310 S.C. 330, 426 S.E.2d 777 (1993)	5
<i>In re SCANA Corporation Public Shareholder Litig.</i> , No. 3:18-cv-505 (D.S.C.)	6
<i>State v. Register</i> , 308 S.C. 534, 419 S.E.2d 771 (1992)	7
<i>Swenson v. Thibaut</i> , 39 N.C. App. 77, 250 S.E.2d 279 (1978)	3
<i>Washington Frontier League Baseball, LLC v. Zimmerman</i> , 2017 WL 10440087 (S.D. Ind. May 15, 2017)	4
Statutes	
S.C. Code Ann. § 14-3-330	1, 3

INTRODUCTION

The order dismissing this appeal from an unprecedented trial court order handing control of a company’s litigation over to a non-shareholder warrants rehearing because the dismissal order overlooked that the nature and effect of that trial court order make it appealable under S.C. Code Ann. § 14-3-330. Respondent Teresa Parler (“Parler”) concedes that it is the *substance* of the order that determines its appealability. And Parler does not dispute that the dismissal order hinged on the *form* of the appealed order, which denied a motion to dismiss for lack of derivative standing. Those undisputed points alone require rehearing to engage in the analysis required by Supreme Court precedent.

Parler also agrees that the substance of the order below permitted Parler to pursue derivative claims meant to benefit SCANA Corp. (“SCANA”) despite Parler’s lack of any interest or stake in SCANA and its well-being. Granting that license to a non-shareholder effectively transfers control over corporate litigation, choice of counsel, and the selection of defendants outside the company. And Parler does not dispute that an order is immediately appealable if it denies a party’s substantial rights to control its litigation asset, select its counsel, and choose its defendants.

Parler simply disagrees that SCANA or its sole shareholder Dominion Energy, Inc. (“Dominion”) may exercise those substantial rights impaired by the decision below. Instead, Parler asserts that *she* somehow holds these rights and that a newly invoked (*i.e.*, not argued below) “corporate neutrality” doctrine that Parler now seeks to import from other states somehow bars SCANA from exercising its own rights in this litigation. That argument has no basis in South Carolina law or common sense.

SCANA’s rights to control its derivative asset, including by deciding its counsel and defendants, are intertwined with Parler’s inability to represent SCANA in this derivative litigation. Nothing in Parler’s Return to Petition for Rehearing (“Return”) overcomes SCANA’s showing that the decision below is immediately appealable, and that rehearing should be granted to address this appeal on the merits.

ARGUMENT

I. Parler agrees that the dismissal order’s nature and effect, not its label, control its appealability.

Parler does not dispute that the dismissal order overlooked or misapprehended that the *substance* of the trial court’s order—rather than its *form*—determines whether the order is appealable. Pet. for Reh’g at 5–7. Instead, Parler readily admits that the proper inquiry is “whether the ‘nature and effect’ of the trial court’s order” warrant an appeal. Return at 1. The dismissal order overlooked this controlling rule and dismissed the appeal based solely on the appealed order’s label as a denial of a motion for judgment on the pleadings. That threshold error warrants rehearing.

II. The nature and effect of the trial court’s order giving control of this litigation to a hostile non-shareholder and her counsel make that order appealable.

The dismissal order’s threshold error also caused it to overlook that the nature and effect of the trial court’s order warrant an immediate appeal. Although Parler concedes that the substance of the trial court’s order is what matters—and that the dismissal order here misapprehended that rule—Parler argues that the trial court’s

order neither involves the merits nor affects a party's substantial right as required by S.C. Code Ann. § 14-3-330. Parler is wrong on both counts.

A. The trial court's order denies SCANA's substantial rights.

Parler does not dispute that the rights to control one's litigation asset, choose one's counsel, and select one's defendants are substantial ones, the denial of which justifies immediate appeal. *See* Return at 3. Parler merely asserts that SCANA does not itself possess those rights in this derivative action. In Parler's view, *she* holds these rights, even though she is a non-shareholder who lacks standing to pursue the derivative action. *Id.*

Parler premises this assertion on a doctrine she invokes for the first time in this Court: the "rule of corporate neutrality." *See id.* But that rule has no basis in South Carolina law, and would not apply here even if it did.

Parler provides no authority showing that South Carolina courts have adopted the corporate neutrality principle. *See id.* (citing North Carolina and New Jersey decisions). There appears to be none. Especially given the trial court's erroneous adopting of foreign authority directly opposed to binding South Carolina law, *see* Appellants' Initial Br. at 18–19, this Court should not adopt this foreign rule here to reject an appeal that South Carolina law grants and permits.

Even if this principle existed under South Carolina law, it would neither apply here nor preclude SCANA's appeal. The corporate neutrality rule does *not* require a corporation to remain neutral in a derivative action if the corporation has "interests adverse to those of the nominal plaintiffs bringing the action derivatively." *Swenson*

v. Thibaut, 39 N.C. App. 77, 100, 250 S.E.2d 279, 294 (1978); *see also Washington Frontier League Baseball, LLC v. Zimmerman*, 2017 WL 10440087, at *4 (S.D. Ind. May 15, 2017) (the corporation can participate in the defense on the merits if “the derivative action threatens rather than advances corporate interests”).¹

Parler and her counsel’s interests are adverse to SCANA’s, and she scarcely contends otherwise. SCANA moved to dismiss based on Parler’s non-shareholder status because her “gratuitous inquisition into [SCANA’s] business” threatens SCANA’s interests and wrests from it control of its own litigation asset. *Johnson v. Baldwin*, 221 S.C. 141, 149–50, 69 S.E.2d 585, 589 (1952) (quoting *Kehaya v. Axton*, 32 F. Supp. 266, 268 (S.D.N.Y. 1940)); *see also* Pet. for Reh’g at 7–8. So, too, do her counsel’s efforts to use this derivative action to prosecute direct claims against Dominion and SCANA’s indemnitees, which further undermine SCANA’s rights to representation by non-hostile counsel and to choose its own defendants. *See* Pet. for Reh’g at 9, 10–11. Parler and her counsel even staked out the position (in defining which claims were released by a related securities class action) that *this very action* can include direct (and therefore potentially indemnifiable) claims against SCANA’s indemnitees. *See* Ex. 1, *In re SCANA Corp. Securities Litig.* Release Scope Agreement at 3, ¶ 2.² So because Parler and her counsel are threatening SCANA’s interests, the corporate neutrality doctrine does not apply on its face, and SCANA

¹ Nor does the neutrality principle apply when (as here) the alleged wrongdoers no longer control the corporation. *See Zimmerman*, 2017 WL 10440087, at *4.

² This document, which is publicly available on the District of South Carolina’s docket and signed by Parler’s counsel, is judicially noticeable under Rule 201, SCRE.

retains the substantial rights to control its own litigation assets, select its counsel, and choose which defendants to sue. By rejecting SCANA's standing challenge and allowing Parler to pursue this derivative action, the trial court's order deprived SCANA of those substantial rights. That result makes the order immediately and substantively appealable.

B. The trial court's order involves the merits and effectively determines the action.

Cementing this conclusion is the order's impact on the merits. The decision below effectively determines the action and necessarily involves the merits because the denial of SCANA's substantial rights cannot be remedied by an appeal after final judgment. *See Hagood v. Sommerville*, 362 S.C. 191, 197–98, 607 S.E.2d 707, 710 (2005) (holding an order appealable where “an appeal after final judgment would not adequately protect a party's interests”). Instead, SCANA will suffer irreversible harm because adverse counsel will prosecute the derivative action to SCANA's detriment not only in this action, but in multiple related actions for which SCANA will have to pay.

Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993), is not to the contrary. Unlike a denial of a motion to dismiss for lack of personal jurisdiction, there *is* “finality” in the trial court's order permitting a non-shareholder to litigate this derivative action. *Id.* Parler fails to show how “[a]ll defenses remain open to” SCANA going forward, Return at 5—an assertion at odds

with Parler’s newfound contention that the corporate neutrality rule eliminates SCANA’s ability to present most defenses.

Parler does not dispute that SCANA has indemnification obligations of its own, yet she suggests (based on an excerpt of a hearing below) that SCANA faces no financial threat because “Dominion” is providing indemnification. Return at 7. But as the omitted full context of that excerpt makes clear, the shorthand reference to “Dominion” included its wholly owned subsidiary SCANA, which is the entity to which “any recovery on this lawsuit is going to go.” Return, Ex. A at 17:15–17 (“[A]t this time, Dominion is responsible for paying the cost of defense of this lawsuit. And any recovery on this lawsuit is going to go to Dominion.”); *see also, e.g.*, [R. p. _; Ex. A. to Defs.’ Mot. for Judgment on the Pleadings (“Mot. for Judgment”) pp. 1–2, 9]. Nothing in that transcript changes the undisputed fact that *SCANA* is currently paying costs of defending against these claims. *See* Pet. for Reh’g at 8–11.

Parler’s counsel, meanwhile, is litigating direct claims against SCANA’s indemnitees—for which SCANA may be liable—simultaneously with this derivative action. *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). If the trial court’s order stands uncorrected, Parler’s counsel will be able to prosecute this derivative action to help increase SCANA’s indemnification liability in other actions. *See* Appellants’ Initial Br. at 27–28. Even if a later appeal eventually corrects the trial court’s erroneous grant of derivative standing, Parler’s counsel will have had months or even years to extract ammunition from this case for battles in

other cases in which they are seeking *billions* from SCANA's indemnitees. A reversal after final judgment will provide no relief if Parler's counsel has already won those battles. Because the trial court's decision threatens to prejudice SCANA in a way a later appeal cannot remedy, it effectively decides the action, involves the merits, and requires interlocutory review.

III. The trial court's error should be remedied now.

As a final attack on appealability, Parler contends *both* that the vital question of South Carolina corporate law raised here is not novel or important enough to warrant immediate appeal, Return at 8 n.6, *and* at the same time that this question is *too* novel and important to decide on a motion to dismiss. *Id.* at 8–9. Neither argument succeeds.

First, the novelty of the trial court's ruling and its contradiction of the District of South Carolina on the same issue warrant an appeal. The trial court upended decades of precedent and threatened to embroil derivative actions in novel standing disputes. Parler errs in suggesting (at *id.* at 8 n.6) that *State v. Register*, 308 S.C. 534, 536 n.1, 419 S.E.2d 771, 772 n.1 (1992), somehow limits the need to review novel issues to the precise factual context of that case. To the contrary, *Register* sensibly recognized that the presence of "a novel issue" supports immediate appellate review. *Id.* And both the novelty and significance of the decision here justify this Court's review now. *See Ark. Teacher Ret. Sys. v. Mozilo*, 705 F.3d 973, 975 (9th Cir. 2013).

("[D]isputes regarding shareholder derivative standing implicate significant issues of state public policy best resolved by reference to clear rules of state law.").

Second, this Court's review does not require *any* factual development. Whether the trial court erroneously carved out an unprecedented "equitable" exception to *Johnson v. Baldwin*'s longstanding continuous ownership rule presents a pure question of law ripe for decision now. When a dispute hinges on "interpretation of the law, and development of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss." *Evans v. State*, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001). There is thus no reason for SCANA to suffer the loss of its substantial rights and substantial indemnified defense expenses through summary judgment, Return at 5, particularly when the trial court's order has already and impermissibly passed judgment on "the likelihood of the truth of the matters asserted in Parler's arguments." [R. p. 1; Order p. 13.]

No record development will change the single, undisputed fact relevant to this standing dispute under *Johnson*: Parler no longer owns any SCANA stock. As SCANA has explained, the trial court erred by letting its suspicion about the strength of Parler's allegations of corporate misconduct overcome the strict continuous ownership rule dictated by South Carolina law. *See* Appellants' Initial Br. at 22–24. Those allegations do not bear on the central question of whether Parler has lost standing because she lost her stock. No discovery is needed to decide that question.

This Court should review this case now to correct the trial court's fundamental error in holding otherwise.

CONCLUSION

For these reasons and those in SCANA's Petition for Rehearing, this Court should grant SCANA's 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: October 5, 2020

s/ John A. Massalon

John A. Massalon (SC Bar # 10279)
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

C. Scott Greene (*pro hac vice*)
John R. Bielema Jr. (*pro hac vice*)
Michael P. Carey (*pro hac vice*)
Bryan Cave Leighton Paisner LLP
One Atlantic Center, 14th Floor
1201 West Peachtree Street, N.W.
Atlanta, Georgia 30309
(404) 572-6600
scott.greene@bclplaw.com
john.bielema@bclplaw.com
michael.carey@bclplaw.com

Barbara A. Smith (*pro hac vice*)
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2000
barbara.smith@bclplaw.com

***Counsel for Defendants-Appellants
Gregory E. Aliff; James Bennett;
John F.A.V. Cecil; Sharon A. Decker;
D. Maybank Hagood; Lynne M.
Miller; James W. Roquemore;
Maceo K. Sloan; and Alfredo Trujillo***

s/ William A. Coates

William A. Coates (SC Bar # 1289)
Roe Cassidy Coates & Price P.A.
1052 North Church Street
Post Office Box 10529
Greenville, South Carolina 29603
(864) 349-2600

Respectfully submitted,

s/ Steven J. Pugh

Steven J. Pugh (SC Bar # 14341)
Benjamin P. Carlton (SC Bar #
101142)
Richardson Plowden
& Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com

I.S. Leevy Johnson (SC Bar # 3020)
George C. Johnson (SC Bar # 9308)
Johnson Toal & Battiste, P.A.
1615 Barnwell Street
Columbia, South Carolina 29201
(803) 252-9700
islj@jtbpa.com
George@jtbpa.com

Brian D. Schmalzbach (*pro hac vice*)
Brian E. Pumphrey (*pro hac vice*)
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-7745
bschmalzbach@mcguirewoods.com
bpumphrey@mcguirewoods.com

***Counsel for Nominal Defendant-
Appellant SCANA Corporation***

s/ Derk Van Raalte

J. Brady Hair (SC Bar # 9040)
Derk Van Raalte (SC Bar # 9286)
Law Offices of J. Brady Hair
2500 City Hall Lane
Post Office Box 61896
North Charleston, SC 29419
(843) 572-8700

wac@roecassidy.com

John A. Jordak, Jr. (*pro hac vice*)
Meredith J. Kingsley (*pro hac vice*)
Alston & Bird
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000
john.jordak@alston.com
meredith.kingsley@alston.com

***Counsel for Defendant-Appellant
Jimmy Addison***

s/ James M. Griffin
James M. Griffin (SC Bar # 9995)
Margaret N. Fox (SC Bar # 76228)
Griffin Davis
4408 Forest Drive, Suite 300
Columbia, SC 29206
(803) 744-0800
jgriffin@griffindavislaw.com
mfox@griffindavislaw.com

James F. Wyatt, III (*pro hac vice*)
Robert A. Blake, Jr. (*pro hac vice*)
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
(704) 331-0767
jwyatt@wyattlaw.net
rblake@wyattlaw.net

***Counsel for Defendant-Appellant
Stephen A. Byrne***

Brady@bradyhair.com
Derk@bradyhair.com

Anne M. Tompkins (*pro hac vice*)
Jonathan M. Watkins (*pro hac vice*
pending)
Aaron C. Lang (*pro hac vice* pending)
Cadwalader, Wickersham & Taft LLP
227 West Trade Street
Charlotte, NC 28202
(704) 348-5222
Anne.Tompkins@cwt.com
Jonathan.Watkins@cwt.com
Aaron.Lang@cwt.com

***Counsel for Defendant-Appellant
Kevin B. Marsh***

Exhibit 1

Teresa Parler (“Parler”); Kevin B. Marsh, Jimmy E. Addison, Stephen A. Byrne, D. Maybank Hagood, James W. Roquemore, and Harold C. Stowe (collectively, the “Securities Defendants”); and Gregory E. Aliff, James A. Bennett, John F.A.V. Cecil, Sharon A. Decker, Lynne M. Miller, Maceo K. Sloan, and Alfredo Trujillo (collectively with Marsh, Addison, Byrne, Hagood, and Roquemore, the “*Parler* Defendants”); and SCANA Corporation (“SCANA”), by their respective counsel, hereby enter into this agreement (“Release Scope Agreement”) regarding application of the Stipulation and Agreement of Settlement dated December 20, 2019 (the “Stipulation”) in *In re SCANA Corporation Securities Litigation*, No. 3:17-CV-2616-MBS (D.S.C.) (“*SCANA Securities*”). All capitalized words and terms not defined in this Release Scope Agreement shall have the meaning stated in the Stipulation. This Release Scope Agreement memorializes the parties’ understanding of certain terms in the Stipulation, and their agreement on the appropriate application of those terms in the scenarios set forth below. It does not amend or change the meaning of the Stipulation.

WHEREAS:

A. Parler is intervenor-plaintiff in *Todd v. Marsh et al.*, No. 2017-CP-40-06621 (S.C. Ct. Comm. Pls., Richland Cty.) (the “*Parler* Action”).

B. Parler asserts claims in the *Parler* Action, against certain former officers and directors of SCANA, including certain *Parler* Defendants.

C. On January 7, 2020, the Stipulation was filed as an exhibit to Lead Plaintiffs’ Unopposed Motion for an Order Preliminarily Approving Class Settlement in *SCANA Securities*. ECF 213-2.

E. The Stipulation states that “[s]ubject to the approval of the Court and the terms and conditions expressly provided herein,” it “is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Plaintiffs’ Claims (defined below) against Defendants.”

F. The Stipulation defines “Released Plaintiffs’ Claims” as “all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class (i) asserted in the Complaint, or (ii) could have asserted in the Action or any other forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase of SCANA common stock during the Class Period.

Released Plaintiffs' Claims do not cover, include, or release any of the Excluded Plaintiffs' Claims." Stipulation ¶ 1(vv).

G. The Stipulation defines "Excluded Plaintiffs' Claims" as: "(i) any claims asserted in any ERISA or derivative action, including, without limitation, the claims asserted in *In re: SCANA Corporation Derivative Litigation*, No. 3:17-cv-03166-MBS (D.S.C.), *Crangle v. Marsh et al.*, No. 2017-CP-40-05791 (S.C. Ct. Comm. Pls., Richland Cty.), *Todd v. Marsh et al.*, No. 2017-CP-40-06621 (S.C. Ct. Comm. Pls., Richland Cty.), *In re SCANA Corporation Public Shareholder Litigation*, Lead Case No. 3:18-cv-00505-MBS (D.S.C.), or *KBC Asset Management LV v. Marsh et al.*, No. 3:19-cv-1457-MBS (D.S.C.), or any cases consolidated into those actions; (ii) any claims by any governmental entity that arise out of any governmental investigation of Defendants relating to the conduct alleged in the Action, including, without limitation, the claims asserted in *Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920*, S.C. PSC Dkt. No. 2017-305-E; (iii) any claims asserted in any ratepayer action, including, without limitation, the claims asserted in *Timothy Glibowski v. SCANA Corp.*, No. 9:18-273-TLW (D.S.C.), *Lightsey et al. v. South Carolina Electric & Gas Co. et al.*, Case No. 2017-CP-25-00355 (S.C. Ct. Comm. Pls., Hampton Cty.), *Cleckley v. SCE&G*, No. 2017-CP-40-04833 (S.C. Ct. Comm. Pls., Richland Cty.), *Cook v. S.C. Pub. Serv. Auth.*, No. 2017-CP-25-00348 (S.C. Ct. Comm. Pls., Hampton Cty.), *Goodman v. SCANA Corp.*, No. 2017-CP-20-00300 (S.C. Ct. Comm. Pls., Fairfield Cty.), *Luquire v. Marsh et al.*, No. 5:19-cv-2516-TLW (D.S.C.), or any cases consolidated into those actions; (iv) any claims asserted in *Fairfield Co. v. South Carolina Electric & Gas Co.*, No. 2017-CP-20-458 (S.C. Ct. Comm. Pls., Fairfield Cty.), *Fluor Enterprises, Inc. v. South Carolina Electric & Gas Company*, No. 2018-CP-0343 (S.C. Ct. Comm. Pls., Fairfield Cty.), or *Friends of the Earth and Sierra Club v. South Carolina Electric & Gas Company*, S.C. PSC Dkt. No. 2017-207-E, or any cases consolidated into those actions; (v) any claims relating to the enforcement of the Settlement; and (vi) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court." Stipulation ¶ 1(aa).

H. The District of South Carolina entered an order granting preliminary approval in *SCANA Securities* on February 11, 2020.

IT IS HEREBY AGREED AS FOLLOWS:

1. As set forth above, Excluded Plaintiffs' Claims include any claims asserted in any derivative action, including, without limitation, the claims asserted in the *Parler* Action.

2. In the event that the claims asserted in the *Parler* Action are determined to be direct claims of SCANA shareholders, through consolidation or otherwise, subject to ¶ 3 of this Release Scope Agreement, the *Parler* Defendants and Securities Defendants (collectively, "Defendants") agree that such claims asserted in the *Parler* Action or any cases consolidated into that action are Excluded Plaintiffs' Claims within the meaning of ¶ 1(aa) of the Stipulation. By signing this agreement, Defendants do not agree that claims asserted in the *Parler* Action are or could be direct claims. Defendants will oppose any attempt to add direct claims or to cast derivative as direct claims.


3. Parler agrees that, notwithstanding ¶ 2 of this Release Scope Agreement, claims in the *Parler* Action are not Excluded Plaintiffs' Claims to the extent they (i) are determined to be direct claims; (ii) seek damages arising from the diminution in value during the Class Period of SCANA common stock that was purchased during the Class Period; and (iii) are based upon alleged misrepresentations or omissions by Defendants during the Class Period, and that such claims are Released Plaintiffs' Claims subject to ¶ 5 of the Stipulation.

4. Parler agrees that she will not cause to be filed any objection to the *SCANA Securities* settlement.

5. This Release Scope Agreement may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, Parler, the Securities Defendants, and the *Parler* Defendants have caused this Release Scope Agreement to be executed, by their duly authorized attorneys, as of June 12, 2020.

BRAGAR EAGEL & SQUIRE, P.C.

By: 
Lawrence P. Eigel

Melissa Fortunato
885 Third Avenue, Suite 3040
New York, NY 10022
Telephone: (212) 308-5858
Facsimile: (212) 486-0462
eigel@bespc.com

Mark D. Chappell
Graham L. Newman
CHAPPELL, SMITH & ARDEN, P.A.
2801 Devine Street, Suite 300
Columbia, South Carolina 29205
Telephone: (803) 929-3600
Facsimile: (803) 929-3604

Counsel for Teresa Parler

MCGUIREWOODS LLP

By: 

Brian E. Pumphrey

800 East Canal Street

Richmond, VA 23219

Telephone: (804) 775-7745

Facsimile: (804) 698-2018

bpumphrey@mcguirewoods.com

*Counsel for Dominion Energy, Inc. and
Defendants SCANA Corporation, Harold
C. Stowe, D. Maybank Hagood, and James
W. Roquemore*

**BRYAN CAVE LEIGHTON PAISNER
LLP**

By: 

John R. Bielema

One Atlantic Center, 14th Floor,

1201 W. Peachtree St., N.W.

Atlanta, GA 30309-3471

Telephone: (404) 572-4504

Facsimile: (404) 420 0504

john.bielema@bclplaw.com

*Counsel for Defendants Gregory E. Aliff,
James A. Bennett, John F.A.V. Cecil,
Sharon A. Decker, Lynne M. Miller, Maceo
K. Sloan, and Alfredo Trujillo*

**CADWALADER, WICKERSHAM &
TAFT LLP**

By: _____
Jonathan M. Watkins
227 West Trade St.
Charlotte, NC 28202
Telephone: (704) 348-5222
Facsimile: (704) 348-5200
jonathan.watkins@cwt.com

Counsel for Defendant Kevin Marsh

ALSTON & BIRD

By: _____
John A. Jordak, Jr.
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: (404) 881-7868
Facsimile: (404) 253-8358
john.jordak@alston.com

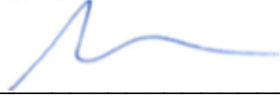
Counsel for Defendant Jimmy E. Addison

**CADWALADER, WICKERSHAM &
TAFT LLP**

By: _____
Jonathan M. Watkins
227 West Trade St.
Charlotte, NC 28202
Telephone: (704) 348-5222
Facsimile: (704) 348-5200
jonathan.watkins@cwt.com

Counsel for Defendant Kevin Marsh

ALSTON & BIRD

By:  _____
John A. Jordak, Jr.
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: (404) 881-7868
Facsimile: (404) 253-8358
john.jordak@alston.com

Counsel for Defendant Jimmy E. Addison

**WILMER CUTLER PICKERING HALE
AND DORR, LLP**

By: Timothy Perla

Timothy Perla
60 State Street
Boston, MA 02109
Telephone: (617) 526-6696
Facsimile: (617) 526-5000
Timothy.Perla@wilmerhale.com

Counsel for Defendant Stephen Byrne

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 *Reply in Support of 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. Eigel
Melissa A. Fortunato
Bragar Eigel & Squire, P.C.
885 Third Avenue, Suite 3040
New York, New York 10022
eigel@bespc.com
fortunato@bespc.com

RECEIVED
Oct 05 2020
SC Court of Appeals

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

Dated: October 5, 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@bcplaw.com"](#); ["john.bielema@bcplaw.com"](#); ["michael.carey@bcplaw.com"](#); ["barbara.smith@bcplaw.com"](#)
Subject: Parler v. Marsh et al. - 2017-CP-40-00621; Appellate Case No. 2020-000619 (Court of Appeals) - Appellants"
Date: Monday, October 5, 2020 6:28:00 PM
Attachments: [Parler Reply ISO Rehearing Petition 10.5.2020.pdf](#)
[Ex. 1 - SCANA Shareholder Litigation Release Scope Agreement 2.pdf](#)

Counsel,

Please find attached a copy of Appellants' Reply in Support of 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)."

Thank you, have a nice evening, and please continue to stay safe.
Ben Carlton

HOME	VCARD	LOCATION
		
Benjamin P. Carlton Attorney at Law BCarlton@RichardsonPlowden.com		
Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.253.8687 Fax: 803.779.0016 www.RichardsonPlowden.com		

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.