

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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OCT 21 2020

S.C. SUPREME COURT

*On Petition for Writ of Certiorari  
To the Supreme Court of South Carolina*

Appellate Case No. 2020-000689  
Unpublished Opinion No. 2020-UP-021  
(Rehearing denied March 27, 2020)

Mario Escalante,

Petitioner,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

**APPENDIX TO THE  
PETITION FOR CERTIORARI**

Anderson, South Carolina  
October 19, 2020

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**APPENDIX A**

**FORM 15  
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

**RECEIVED**  
JUL 02 2018  
SC Court of Appeals

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

**RECORD ON APPEAL**

June 21, 2018



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SUMMONS AND COMPLAINT  
July 23, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

IN THE COURT OF COMMON PLEAS

FILED-CLERK'S OFFICE CIVIL ACTION COVERSHEET  
Plaintiff(s) ANDERSON SC

vs.

2013 JUL 22 P 3:42

2013-CP - 04- 01700

David L. and Janice W. Rogers, d/b/a Whitehall  
Express Mart

Defendant(s)

Submitted By: Donald L. Smith

Address: 122 N. Main St., Anderson SC 29621

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Other:

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

**DOCKETING INFORMATION (Check all that apply)**

*\*If Action is Judgment/Settlement do not complete*

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

**NATURE OF ACTION (Check One Box Below)**

- |                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20____-CP-_____<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                         | <b>Torts - Personal Injury</b><br><input checked="" type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)                                                                                                                                                                              | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

Submitting Party Signature:



Date:

7/22/13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES OF**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

**You are required to take the following action(s):**

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

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

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante, )

Plaintiff, )

vs. )

David L. Rodgers and )  
Janice W. Rodgers, )  
d/b/a, Whitehall Express Mart, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-04- 01700

SUMMONS  
(JURY TRIAL DEMANDED)

FILED-CLERK'S OFFICE  
ANDERSON SC  
2013 JUL 22 P 3:43  
COMMON PLEAS AND  
GENERAL SESSIONS

TO THE DEFENDANTS ABOVE-NAMED:

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the undersigned at 122 N. Main St., Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.



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Anderson, South Carolina  
July 22, 2013.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE  
ANDERSON SC IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

2013 JUL 22 P 3:42

Mario Escalante,

Plaintiff,

-vs-

David L. Rodgers and  
Janice W. Rodgers,  
d/b/a, Whitehall Express Mart,

Defendants.

COMMON PLEAS AND  
GENERAL SESSIONS

COMPLAINT  
(JURY TRIAL DEMANDED)  
C.A. No.: 2013-CP-04-01700

Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto the Court that:

**FACTUAL ALLEGATIONS**

1. The Plaintiff is a citizen and resident of the County of Webb, State of Texas.
2. The Defendants are citizens and residents of the County of Anderson, State of South Carolina.
3. At all times herein mentioned, Defendants were engaged in the retail merchandise business and, in the furtherance of that business, they kept and maintained a store in the County of Anderson, State of South Carolina, wherein they kept goods, wares, and merchandise for sale to the general public, and the general public was especially invited to enter into the store and make purchases of such goods, wares, and merchandise.
4. At all times herein mentioned, Defendants' agents, servants, and/or employees were acting within the course and scope of their agency and/or employment with the Defendants.

5. On or about Sunday, May 5, 2013, just before 5:00 p.m., Plaintiff entered into Defendants' store located at 704 Whitehall Road, Anderson, South Carolina, and purchased a case of beer from one of the Defendants' employees.
6. Plaintiff attempted to purchase a second case of beer for his friend but was denied by Defendants' employee due to the prohibition of Sunday alcohol sales in the County, and returned to work.
7. Defendants contacted the Anderson County Sheriff's Department and stated that they had Plaintiff on film stealing the beer from Defendants' store.
8. Defendants filed a complaint stating that Plaintiff stole a case of beer, demanding his arrest.
9. Defendant David Rogers followed the Plaintiff, and aided the Sheriff's Department in locating him.
10. Defendant David Rogers instructed the police that Plaintiff had stolen the beer and substantiated his claim with video/photos taken with his phone.
11. Anderson County Sheriff's Department did confirm that Plaintiff carried away the beer without paying for it.
12. Several Sheriff's deputies converged on Plaintiff in the center of the Anderson County Fair, where he was working, and arrested him for shoplifting.
13. Plaintiff told Anderson County Sheriff's Department that he had purchased the case of beer.
14. Sheriff's deputies cuffed Plaintiff and led him through the fairgrounds to a patrol car.

15. Plaintiff demanded to view the video of the alleged theft and was only afforded the opportunity to view still photos which did not accurately portray the purchase.
16. The Defendants' Rogers has been cited for alcohol violations in the past, including Sunday sales.
17. The Defendants and their employee alleged that the Plaintiff had stolen the beer so as to protect them from prosecution for violating the Sunday alcohol ordinance.
18. The Anderson County Sheriff's Department on the complaint of Defendant, its agents, servants, and/or employees, in full view of Plaintiff's co-workers, employer and patrons of the county fair, falsely and maliciously accused Plaintiff of stealing some of Defendants' merchandise, and, despite Plaintiff's protests and claims of innocence, took him into custody, restrained him in handcuffs and placed him under arrest.
19. The Anderson County Sheriff's Department failed to look into the Plaintiff's claim of innocence.
20. As a result of the reckless disregard of the Plaintiff's innocence, Plaintiff was arrested and deprived of his liberty against his will and without lawful justification or probable cause.
21. The Defendants are liable for the actions, conduct and omissions of its agents, servants, and employees, under the theory of respondent superior.
22. As a direct and proximate result of the false accusations, and his unlawful detention and/or false arrest, Plaintiff was humiliated, embarrassed, and shocked, suffered great and lasting mental anguish, and was thereby injured and damaged in his good name and reputation, and as a proximate result thereof, he has been damaged, for which damages the



Defendants are liable.

23. As a direct and proximate result of the false accusations, Plaintiff was deprived of the case of beer that he had purchased from the Defendants.

**FOR A FIRST CAUSE OF ACTION**

24. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 23 above.

25. The aforementioned actions, conduct and/or omissions of the Defendants, by and through its agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants resulted in Plaintiff being falsely imprisoned and/or deprived of his liberty against his will without justification or probable cause.

26. As a direct and proximate result of the Plaintiff's false imprisonment by the Anderson County Sheriff's Department on behalf of Defendant, its agents, servants, and/or employees, the Plaintiff has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

**FOR A SECOND CAUSE OF ACTION**

27. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 26 above.

28. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants constitutes an intentional and unreasonable invasion of Plaintiff's privacy.

29. As a direct and proximate result of the Defendants' unreasonable invasion of

Plaintiff's privacy by the Defendants, their agents, servants, and/or employees while acting within the course and scope of their agency and/or employment with the Defendant, the Plaintiff has been subjected to ridicule and scorn, and has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

#### **FOR A THIRD CAUSE OF ACTION**

30. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 29 above.

31. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants expressly or by implication gave Defendants' co-workers, employer and patrons of the county fair/or others the impression that Plaintiff was engaging in wrongful or illegal activity.

32. The aforementioned insinuation, and/or inference of wrongdoing, constitutes a publication of defamatory matter that was defamatory to the Plaintiff.

33. As a direct and proximate result of the Defendants' defamation of the Plaintiff, Plaintiff has been damaged, for which damages the Defendants are liable.

#### **FOR A FOURTH CAUSE OF ACTION**

34. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 33 above.

35. The Defendants failed to properly and thoroughly train its employees in county ordinances.

36. The Defendants failed to properly and thoroughly investigate the alleged loss of

merchandise before accusing Plaintiff of stealing and/or being involved in the alleged theft.

37. The Defendants had no reasonable factual basis for accusing Plaintiff of being involved in the alleged theft and/or subjecting Plaintiff to a custodial interrogation regarding such and/or illegally, wrongfully and/or maliciously instigating Plaintiff's unlawful arrest and/or false imprisonment.

38. Due to their lack of proper training and failure to exercise reasonable care, the Defendants, wrongfully concluded, in the absence of any evidence reasonably supporting their inferences, that Plaintiff was involved in the alleged theft of merchandise and/or criminal activity.

39. The Defendants also failed to properly train and supervise its employees before, expressly or by implication, publishing false accusations of criminal conduct.

40. The Plaintiff has suffered actual damage as a direct and proximate result of the negligent, gross negligent, willful, wanton, reckless, careless and/or heedless actions, conduct and/or omissions of the Defendants and their employees.

41. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

#### **FOR A FIFTH CAUSE OF ACTION**

42. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 41 above.

43. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute false arrest.

44. The Plaintiff has suffered actual damage as a direct and proximate result of the

false arrest at the instigation of the Defendants and their agents and employees.

45. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A SIXTH CAUSE OF ACTION**

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 45 above.

47. The aforementioned actions, conduct and/or omissions of the Defendant, by and through their agents, servants, and/or employees, constitute outrage.

48. The Plaintiff has suffered actual damage as a direct and proximate result of the outrage at the instigation of the Defendant and their agents and employees.

49. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A SEVENTH CAUSE OF ACTION**

50. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 49 above.

51. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute malicious prosecution.

52. The Plaintiff has suffered actual damage as a direct and proximate result of the malicious prosecution at the instigation of the Defendant and their agents and employees.

53. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A EIGHTH CAUSE OF ACTION**

54. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 53 above.

55. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute conspiracy.

56. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendants and their agents and employees.

57. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A NINTH CAUSE OF ACTION**

58. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 57 above.

59. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute conversion.

60. The Plaintiff has suffered actual damage as a direct and proximate result of the conversion at the instigation of the Defendants and their agents and employees.

61. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A TENTH CAUSE OF ACTION**

62. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 61 above.

63. The aforementioned actions, conduct and/or omissions of the Defendants, by and

through their agents, servants, and/or employees, constitute fraud.

64. The Plaintiff has suffered actual damage as a direct and proximate result of the fraud at the instigation of the Defendants and their agents and employees.

65. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**WHEREFORE** Plaintiff prays for judgment against the Defendants for all actual damages sustained by the Plaintiff, for such punitive damages the jury deems equitable given all the circumstances surrounding this matter and such other and further relief that this Court deems just and proper.



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Anderson, South Carolina  
July 22 2013.

ANSWER  
August 21, 2013



STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Mario Escalante, )  
Plaintiff, )

vs. )

David L. Rodgers and Janice W. Rodgers, )  
d/b/a Whitehall Express Mart, )  
Defendants. )

ANSWER

C.A. No. 2013-CP-04-1700

(Jury Trial Demanded)

The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart, answering the complaint, would respectfully allege and show unto the court as follows:

**FOR A FIRST DEFENSE AS TO ALL CAUSES OF ACTION**

1. The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart (hereinafter referred to as "Mr. and Mrs. Rodgers"), lack sufficient information to form a belief as to the truth of the allegations of paragraph 1 of the complaint and, therefore, deny same and demand strict proof thereof.

2. They admit the allegations of paragraph 2 of the complaint.

3. They admit the allegations of paragraph 3 of the complaint.

4. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 4 of the complaint and, therefore, deny same and demand strict proof thereof.

5. They admit so much of the allegations of paragraph 5 of the complaint as allege that the plaintiff purchased a case of beer from the store on May 5, 2013, However, they lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 5 of the complaint and, therefore, deny same and demand strict proof thereof.

FILED-CLERK'S OFFICE  
ANDERSON SC  
2013 AUG 21 A 11:13  
COMMON PLEAS AND  
GENERAL SESSIONS



6. They admit the allegations of paragraph 6 of the complaint.
7. They admit so much of the allegations of paragraph 7 of the complaint as allege that the plaintiff attempted to steal a case of beer from their store. They also admit that they contacted representatives of the sheriff's department and advised them of this fact. They deny the remaining allegations of paragraph 7 of the complaint and demand strict proof thereof.
8. They admit so much of the allegations of paragraph 8 of the complaint as allege that Mr. Rodgers filed a complaint with the Anderson County Sheriff's Department. However, they deny the remaining allegations of paragraph 8 of the complaint and demand strict proof thereof.
9. They admit so much of the allegations of paragraph 9 of the complaint as allege that Mr. Rodgers provided the Anderson County Sheriff's Department with information concerning the plaintiff's location. However, they deny the remaining allegations of paragraph 9 of the complaint and demand strict proof thereof.
10. They admit the allegations of paragraph 10 of the complaint.
11. They admit the allegations of paragraph 11 of the complaint.
12. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 12 of the complaint and, therefore, deny same and demand strict proof thereof.
13. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 13 of the complaint and, therefore, deny same and demand strict proof thereof.
14. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 14 of the complaint and, therefore, deny same and demand strict proof thereof.
15. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 15 of the complaint and, therefore, deny same and demand strict proof thereof.

16. They deny the allegations of paragraph 16 of the complaint and demand strict proof thereof.

17. They deny the allegations of paragraph 17 of the complaint and demand strict proof thereof.

18. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 18 of the complaint and, therefore, deny same and demand strict proof thereof.

19. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 19 of the complaint and, therefore, deny same and demand strict proof thereof.

20. They deny the allegations of paragraph 20 of the complaint and demand strict proof thereof.

21. They lack sufficient information to form a belief as to the truth of the allegations of paragraph 21 of the complaint and, therefore, deny same and demand strict proof thereof.

22. They deny so much of the allegations of paragraph 22 of the complaint as allege that they are liable to the plaintiff in any respect. They lack sufficient information to form a belief as to the truth of the remaining allegations of paragraph 22 of the complaint and, therefore, deny same and demand strict proof there.

23. They deny the allegations of paragraph 23 of the complaint and demand strict proof thereof.

24. Insofar as the allegations of paragraph 24 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 23 above.

25. They deny the allegations of paragraph 25 of the complaint and demand strict proof thereof.

26. They deny the allegations of paragraph 26 of the complaint and demand strict proof thereof.

27. Insofar as the allegations of paragraph 27 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 26 above.

28. They deny the allegations of paragraph 28 of the complaint and demand strict proof thereof.

29. They deny the allegations of paragraph 29 of the complaint and demand strict proof thereof.

30. Insofar as the allegations of paragraph 30 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 29 above.

31. They deny the allegations of paragraph 31 of the complaint and demand strict proof thereof.

32. They deny the allegations of paragraph 32 of the complaint and demand strict proof thereof.

33. They deny the allegations of paragraph 33 of the complaint and demand strict proof thereof.

34. Insofar as the allegations of paragraph 34 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 33 above.

35. They deny the allegations of paragraph 35 of the complaint and demand strict proof thereof.

36. They deny the allegations of paragraph 36 of the complaint and demand strict proof thereof.

37. They deny the allegations of paragraph 37 of the complaint and demand strict proof thereof.

38. They deny the allegations of paragraph 38 of the complaint and demand strict proof thereof.

39. They deny the allegations of paragraph 39 of the complaint and demand strict proof thereof.

40. They deny the allegations of paragraph 40 of the complaint and demand strict proof thereof.

41. They deny the allegations of paragraph 41 of the complaint and demand strict proof thereof.

42. Insofar as the allegations of paragraph 42 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 41 above.

43. They deny the allegations of paragraph 43 of the complaint and demand strict proof thereof.

44. They deny the allegations of paragraph 44 of the complaint and demand strict proof thereof.

45. They deny the allegations of paragraph 45 of the complaint and demand strict proof thereof.

46. Insofar as the allegations of paragraph 46 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 45 above.

47. They deny the allegations of paragraph 47 of the complaint and demand strict proof thereof.

48. They deny the allegations of paragraph 48 of the complaint and demand strict proof thereof.

49. They deny the allegations of paragraph 49 of the complaint and demand strict proof thereof.

50. Insofar as the allegations of paragraph 50 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 49 above.

51. They deny the allegations of paragraph 51 of the complaint and demand strict proof thereof.

52. They deny the allegations of paragraph 52 of the complaint and demand strict proof thereof.

53. They deny the allegations of paragraph 53 of the complaint and demand strict proof thereof.

54. Insofar as the allegations of paragraph 54 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 53 above.

55. They deny the allegations of paragraph 55 of the complaint and demand strict proof thereof.

56. They deny the allegations of paragraph 56 of the complaint and demand strict proof thereof.

57. They deny the allegations of paragraph 57 of the complaint and demand strict proof thereof.

58. Insofar as the allegations of paragraph 58 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 57 above.

59. They deny the allegations of paragraph 59 of the complaint and demand strict proof thereof.

60. They deny the allegations of paragraph 60 of the complaint and demand strict proof thereof.

61. They deny the allegations of paragraph 61 of the complaint and demand strict proof thereof.

62. Insofar as the allegations of paragraph 62 of the complaint require a response from them, Mr. and Mrs. Rodgers reallege and incorporate herein by reference their responses to the allegations of paragraphs 1 through 61 above.

63. They deny the allegations of paragraph 63 of the complaint and demand strict proof thereof.

64. They deny the allegations of paragraph 64 of the complaint and demand strict proof thereof.

65. They deny the allegations of paragraph 65 of the complaint and demand strict proof thereof.

66. Mr. and Mrs. Rodgers deny each and every allegation of the complaint not hereinabove specifically admitted, explained or modified.

**FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION**

67. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

68. They allege that the plaintiff's complaint fails to state facts sufficient to constitute causes of action upon which relief can be granted against them and is, accordingly, barred.

**FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION**

69. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

70. They allege that insofar as the plaintiff has failed to mitigate his damages in the manner provided for by law, such failure to mitigate is pled as a complete defense and bar to his claims.

**FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION**

71. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

72. They allege that the plaintiff, by his conduct, assumed the risk of being involved in the incident and sustaining the injuries and damages for which he is now complaining. Such assumption of the risk is thus pled as a complete defense and bar to his claims.

**FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION**

73. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

74. They allege that the plaintiff has failed to join a party as required under Rule 19 of the South Carolina Rules of Civil Procedure. As such, his claim is barred under Rules 19 and 12(b)(7) of the South Carolina Rules of Civil Procedure and should be dismissed.

**FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION**

75. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

76. They allege that their activities in dealing with the plaintiff were prompted by the good faith and reasonable belief that such activities were necessary to protect their business interest.

77. They further allege that these activities were based upon probable cause and the existence of such probable cause is pled as a complete defense and bar to the plaintiff's claims.

**FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION**

78. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

79. They allege that they were justified in acting in the manner in which they did under the circumstances then and there existing. Such justification is thus pled as a complete defense and bar to the plaintiff's claims.

**FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION**

80. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

81. They allege that they did not act maliciously in any respect whatsoever. Such lack of malice is thus pled as a complete defense and bar to the plaintiff's claims.



**FOR A NINTH DEFENSE AS TO ALL CAUSES OF ACTION**

82. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

83. They allege that if the plaintiff was stopped, detained or arrested in any manner, such was done for the sole purpose of investigating the ownership of the merchandise at issue. They further allege that any such investigation was conducted in a reasonable manner and any such detention was done for a reasonable time for the sole purpose of investigating the ownership of such merchandise. Further, any investigation done and actions taken were because reasonable cause existed to believe the plaintiff was guilty of a crime.

84. As such, Mr. and Mrs. Rodgers allege that they were justified in acting in the fashion in which they did and that such acts are protected by South Carolina Code §16-13-140 which is pled as a complete defense and bar to the plaintiff's claims.

**FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION**

85. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

86. They allege that any communications made by them concerning the plaintiff, which are expressly denied and admitted solely for the purpose of this defense and no other, were made during the course of their investigation into the plaintiff's activities and were solely concerned with that investigation.

87. They further allege that any such communications were made in good faith, without malice, in a proper manner and to the proper parties and they expressly deny that any publication of any communications made by them were made to any improper parties.

88. They thus allege that they were qualifiedly privileged to communicate the information which they did, if any, in the manner in which they did and this qualified privilege is thus pled as a complete defense and bar to the plaintiff's claims.

**FOR AN ELEVENTH DEFENSE AS TO ALL CAUSES OF ACTION**

89. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

90. They allege that any communications made by them concerning the plaintiff were true or substantially true and were not defamatory in any respect whatsoever. Such truth is thus pled as a complete defense and bar to the plaintiff's claims.

**FOR A TWELFTH DEFENSE AS TO ALL CAUSES OF ACTION**

91. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

92. They allege that to the extent that the plaintiff's fourth cause of action contains a negligence claim, the plaintiff was contributorily and/or comparatively negligent in connection with his involvement in this incident and that his negligent conduct was either the sole proximate cause or a concurrent cause of the incident and any alleged injuries and damages allegedly sustained by him, which injuries and damages are expressly denied. They further allege that such contributory and/or comparative negligence operates to completely bar or reduce the amount of the plaintiff's damages, if any.

**FOR A THIRTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

93. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

94. They allege that the plaintiff, by his conduct, has waived any claims that he may have and is estopped from making any such claims. Such waiver and estoppel are thus pled as complete defenses and bars to his claims.

**FOR A FOURTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

95. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

96. They allege that any damages sustained by the plaintiff, which are expressly denied and admitted solely for the purpose of this defense and no other, were caused by the intervening conduct on the part of persons or entities over whom Mr. and Mrs. Rodgers have no control and for whom they have no responsibility. Such intervening conduct is thus pled as a complete defense and bar to the plaintiff's claims.

**FOR A FIFTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

97. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

98. They allege that the plaintiff has not sustained any damages as a result of any conduct on their part. As such, his claims against them are barred.

**FOR A SIXTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

99. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

100. They allege that the allegations of paragraph 16 of the complaint are irrelevant and immaterial and should be stricken from the complaint.

**FOR A SEVENTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

101. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

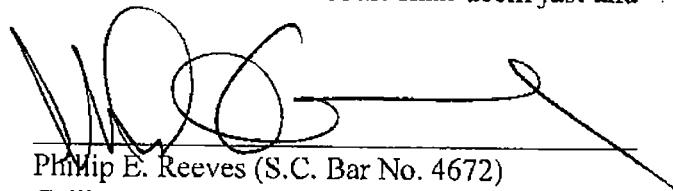
102. They allege that the plaintiff's tenth cause of action should be dismissed as a result of the plaintiff's failure to comply with the requirements of Rule 9(b) of the South Carolina Rules of Civil Procedure.

**FOR AN EIGHTEENTH DEFENSE AS TO ALL CAUSES OF ACTION**

103. Mr. and Mrs. Rodgers incorporate herein the allegations of their first defense not inconsistent herewith.

104. They allege that insofar as the plaintiff's complaint seeks punitive damages, such punitive damages are violative of both the U.S. and South Carolina constitutions. As such, the plaintiff's claim for punitive damages is barred and should be stricken from the complaint.

WHEREFORE, having fully answered the complaint, Mr. and Mrs. Rodgers pray that it be dismissed with costs and for any such other and further relief as this court shall deem just and proper.

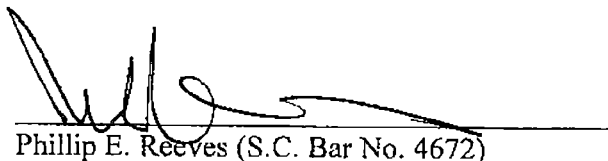


Phillip E. Reeves (S.C. Bar No. 4672)  
Gallivan, White & Boyd, P.A.  
Post Office Box 10589, F.S.  
Greenville, South Carolina 29603  
(864) 271-9580

Greenville, South Carolina  
August 19, 2013

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart

The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart, request a jury trial in this matter.



Phillip E. Reeves (S.C. Bar No. 4672)

MOTION TO COMPEL  
OCTOBER 8, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

v.

David L. Rodgers and Janice W. Rodgers  
d/b/a, Whitehall Express Mart,  
Defendant.

C.A. No.: 2013-CP-04-01700

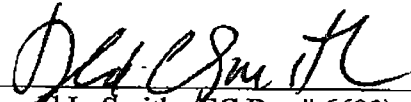
COMMON PLEAS AND  
GENERAL SESSIONS

2013 OCT 8 PM 4 25

FILED CLERK'S OFFICE  
AUGUST 30 1960

**WHEREFORE**, a Motion to Compel should be granted and the Defendants, David L. Rodgers and Janice W. Rodgers, d/b/a, Whitehall Express Mart, be ordered to present these materials in an expeditious manner. That if the Plaintiff can't, or won't, provide the Responses to Plaintiff's first Set of Interrogatories to Defendants and materials for Plaintiff's First Request for Production that a judgment be entered against the Defendants and the Plaintiff be awarded

judgment fees as they relate to this matter, as well as, all Attorney Fees and Litigation Expenses incurred to date.



Donald L. Smith, (SC Bar # 6699)

Attorney for Plaintiff

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: October 8, 2013

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

MARIO ESCALANTE )

Plaintiff, )

vs. )

David L. Rodgers and Janice W. Rodgers, )  
d/b/a, Whitehall Express Mart, )

Defendant. )

**MOTION FEE PAID**  
IN THE FAMILY COURT  
10TH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Docket No. 2013-CP-04-01700

Plaintiff's Attorney:  
Donald L. Smith, Bar No. 6699  
Address:  
122 N. Main St., Anderson SC 29621  
Phone: 864-642-9284 Fax 864-642-9285  
E-mail: Other:

Defendant's Attorney:  
Phillip E. Reeves, Bar No. \_\_\_\_\_  
Address:  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
E-mail: Other:

- ☒ **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 Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

- ☒ Written motion 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

10/8/2013  
Date submitted

**SECTION III: Motion Fee**

☐ PAID - AMOUNT: \$

☐ 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: T.S.G. Date Filed: 10/8/13

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$

Custodial Parent (if applicable): \_\_\_\_\_



**Common Pleas**  
**Clerk : Richard A. Shirley**  
**100 South Main Street**  
**Anderson, SC 29622**  
**(864) 260-4053**

**NOTION FEE PAID**

Received From: Smith, Donald Loren  
 122 N. Main St.  
 Anderson, SC 29621

Date: 10/ 8/2013  
 Receipt #: 58561  
 Clerk: c04tgarret

Paying for: Escalante, Mario

Transaction Type: Payment

Payment Type: Check \$25.00

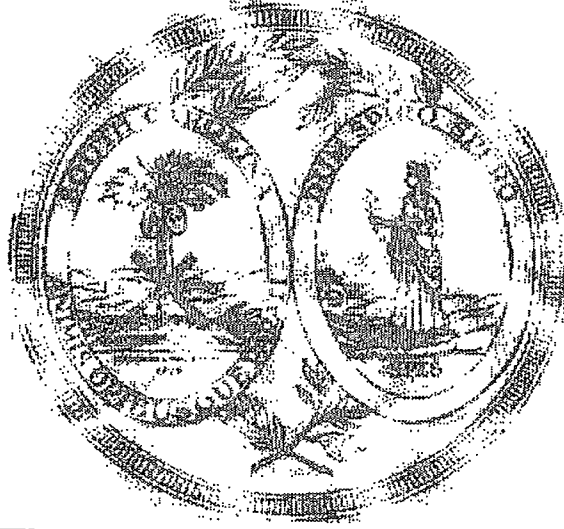
Total Paid: \$25.00

Reference #: 3247

Comment:  
 Non-Refundable

Total Received: \$25.00  
 Change Due: \$0.00

| Case #        | Caption                           | Previous Balance | Amount Paid | Balance Due |
|---------------|-----------------------------------|------------------|-------------|-------------|
| 2013CP0401700 | Mario Escalante VS David L Rogers | \$25.00          | \$25.00     | \$0.00      |



|                     |          |                |                |               |
|---------------------|----------|----------------|----------------|---------------|
| <b>Total Cases:</b> | <b>1</b> | <b>\$25.00</b> | <b>\$25.00</b> | <b>\$0.00</b> |
|---------------------|----------|----------------|----------------|---------------|

COURT ORDER  
FEBRUARY 18, 2014

FILED-CLERK'S OFFICE  
STATE OF SOUTH CAROLINA ANDERSON SC COURT OF COMMON PLEAS  
COUNTY OF ANDERSON 2014 FEB 18 P 3: 54 TENTH JUDICIAL CIRCUIT



Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and  
Janice W. Rodgers, d/b/a,  
Whitehall Express Mart,

Defendants.

PLEAS AND  
SESSIONS

**ORDER**

**Case No.: 2013-CP-04-01700**

**THIS MATTER** came before the Court upon a properly filed and served Motion to Compel. The subject of this Motion was to compel discovery. The Plaintiff had served Interrogatories and Requests for Production on the Defendants. The Plaintiff contends that the responses provided were inadequate. The Plaintiff requests that the Court order the defense to provide the discovery as requested.

The defense responded that relevant responses to the discovery requests had been provided. However, some of the discovery requested was overreaching and extended beyond what is deemed reasonable for this action.

The Court reviewed the documents provided, and the statements of counsel. Some of the discovery requested was premature. That discovery may be addressed at a later date. However, the discovery provided was insufficient.

**WHEREFORE, IT IS ORDERED:**

1. The Defendants shall identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the

LCB

disposition of the case.

2. The Defendants shall identify the names, addresses and phone numbers of all employees who were working at the Whitehall Express Mart on May 5, 2013.
3. The Defendants shall provide the names and addresses of all of the banks at which they had accounts on May 5, 2013.
4. The Defendants shall provide the addresses of all of the property that they held, whether jointly or individually, on May 5, 2013.
5. The Defendants shall provide the Plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
6. Attorney fees and costs shall be held in abeyance.

  
**J. CORDELL MADDOX, JR.**  
Circuit Court Judge  
Tenth Judicial Circuit

Anderson, South Carolina

February 18, 2013.

FILED-CLERK'S OFFICE  
ANDERSON SC  
2014 FEB 18 P 3:54  
CLERK'S OFFICE AND  
JUDICIAL SESSIONS

COMPLAINT FOR CONTEMPT  
SEPTEMBER 30, 2014

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
Mario Escalante, )  
Plaintiff, )  
vs. )  
David L. Rodgers and Janice W. Rodgers, )  
d/b/a Whitehall Express Mart, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**COMPLAINT FOR CONTEMPT**

LCB

FILED CLERK'S OFFICE  
ANDERSON SC  
2014 SEP 30 PM 4 16  
COMMON PLEAS AND  
GENERAL SESSIONS

Plaintiff alleges:

1. That the plaintiff in this action is a citizen and resident of the County of Webb, State of Texas.
2. That the defendants in this action are and have been residents of the County of Anderson, State of South Carolina.
3. That the parties were before this court on January 6, 2014 for a Motion to Compel complete responses to First Set of Interrogatories and First Request for Production. The hearing was presided over by the Honorable J. Cordell Maddox, Jr.
4. That the order contained specific information that the defendants were to provide to the plaintiff.
5. That Defendants have failed to provide the information related to the insurance claim resulting from an alleged lightning strike that damaged the video surveillance system.
6. That Defendants have failed to provide the plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
7. That the defendants' willful and wanton disregard of the order is being done to prevent Plaintiff from successfully prosecuting this case.

**WHEREFORE** the plaintiff prays:

1. That Defendants be found in civil contempt for refusing to abide by the

aforementioned Order or, in the alternative;

2. That Defendant's answer be stricken due to willful and wanton refusal to provide discovery despite previous Order;

3. For an Order requiring the defendants to identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and the policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the claim;

4. That the defendants be found in contempt of court for failure to provide the complete Federal and State Income Tax returns for each party named in the above-referenced matter;

5. For an Order requiring the defendants to provide copies of their entire Federal and State Income Tax returns for the past five (5) years;

6. That the defendants be required to pay Plaintiff's attorney fees and costs for this action; and,

7. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: September 27, 2014.

**RULE TO SHOW CAUSE**  
**OCTOBER 9, 2014**



**MOTION FEE PAID**

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante,  
Plaintiff, )

vs. )

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**RULE TO SHOW CAUSE**

LCB

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, BY AND THROUGH THEIR ATTORNEYS, PHILLIP E. REEVES, ESQUIRE AND NICHOLAS A. FARR, ESQUIRE:**

Based upon the attached affidavit, it appears that you have not obeyed certain court Order (s)m, as described in the affidavit. Therefore,

**IT IS ORDERED THAT YOU APPEAR BEFORE THE** Anderson County Court of Common Pleas on the 27<sup>th</sup> day of Oct., 2014 at 9:30 o'clock A.m., then and there to be prepared to show cause, if any, why the relief requested in the affidavit should not be granted and why you should not be held in contempt of court for such disobedience. This order and rule to show cause can be served on the above person by any means allowable under Rule, 4 (d), SCRPC.

  
\_\_\_\_\_  
Presiding Judge  
Anderson County Court of  
Common Pleas  
Tenth Judicial Circuit

Signed this day,  
10/8, 2014.

CLERK'S OFFICE  
ANDERSON SC  
2014-10-09 A 9:38  
COMMON PLEAS AND  
GENERAL SESSIONS

MOTION TO COMPEL  
JANUARY 27, 2015



STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE IN THE COURT OF COMMON PLEAS  
ANDERSON SC TENTH JUDICIAL CIRCUIT

2015 JAN 29 AM 8:56

Mario Escalante,

Plaintiff,

COMMON PLEAS AND  
GENERAL SESSIONS

MOTION TO COMPEL

v.

C.A. No.: 2013-CP-04-01700

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

The plaintiff, by and through, his undersigned attorney, hereby moves the Court for an Order to Compel the Anderson City Police Department to comply with a Subpoena, properly served by an officer of this court on December 8, 2014. The Subpoena commanded any and all audio and/or video recordings from any and/or all city officers responding or assisting to the incident that is the basis for this action. When Plaintiff's counsel followed up with the city police department regarding the subpoena request, they were told, "there is no record of any city officer responding to the incident in which you are referring." However, based on statements made by both David Rodgers and two (2) separate Anderson County Sheriff's Department officers, two city police officers, with the department identification of, Bravo 8 and Bravo 12, responded and assisted in the detainment and arrest of the plaintiff.

The Anderson City Police Department also failed to provide materials requested in a Freedom of Information Act request dated, August 13, 2014, stating that there was no materials that relate to any information provided in the request. A standard request was made including, officer shift identification numbers, type of call dispatched, dispatcher ID, address of incident requiring law enforcement, CAD #, Incident Report # and the name of the suspect; which according to DHS, "upon receipt of a request satisfying the requirements of the FOIA, records shall be disclosed unless they are protected by one or more of the FOIA exemptions or exclusions and are not appropriate for discretionary disclosure."

This motion is made upon the grounds that the Anderson City Police Department has willfully ignored the Subpoena which was served upon them, as well as, the FOIA. They have been given sufficient time in which to comply providing excuses and/or no response at all. Their refusal to provide information and/or materials related to this case are clearly violating the plaintiff's right to due process.

**WHEREFORE**, Plaintiff asks this Honorable Court to order immediate compliance by Anderson City Police Department to produce any and all materials requested in the Subpoena and any and/or all information requested by the FOIA. The plaintiff also asks that any applicable sanctions that can be levied upon Anderson City Police Department for the non-compliance of a subpoena served upon them, and, the FOIA. It is further requested that they be ordered to pay any attorney fees and cost incurred as a result of their failure to comply with both requests.



Donald L. Smith, (SC Bar # 6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9285  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: January 21, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. and Janice W. Rodgers, d/b/a  
Whitehall Express Mart,

Defendant.

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS  
10th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-04-01700

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET



Plaintiff's Attorney:

Donald L. Smith, Bar No. 6699

Address:

122 N. Main St. Anderson SC 29621

Phone: (864) 642-9284 Fax (864) 642-9285

E-mail: attorneydonaldsmith@gmail.com Other:

Defendant's Attorney:

Nicholas A. Farr, Bar No. \_\_\_\_\_

Address:

55 Beattie Place Suite 1200 Greenville SC  
29601

Phone: (864) 271-9580 Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- ☒ 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 Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion 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

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$

☐ 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: \_\_\_\_\_

CLERK'S VERIFICATION

Collected by: TSG Date Filed: 1-29-15

☒ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

FILED-CLERK'S OFFICE  
ANDERSON SC  
2015 JAN 29 AM 8:50  
COMMON PLEAS AND  
GENERAL SESSIONS

Common Pleas  
Clerk : Richard A. Shirley  
100 South Main Street  
Anderson, SC 29622  
(864) 260-4053

MOTION FEE PAID

Received From: Smith, Donald Loren  
122 N. Main St.  
Anderson, SC 29621

Date: 1/29/2015  
Receipt #: 66601  
Clerk: c04tgarret

Paying for: Escalante, Mario

Transaction Type: Payment

Payment Type: Check \$25.00

Total Paid: \$25.00

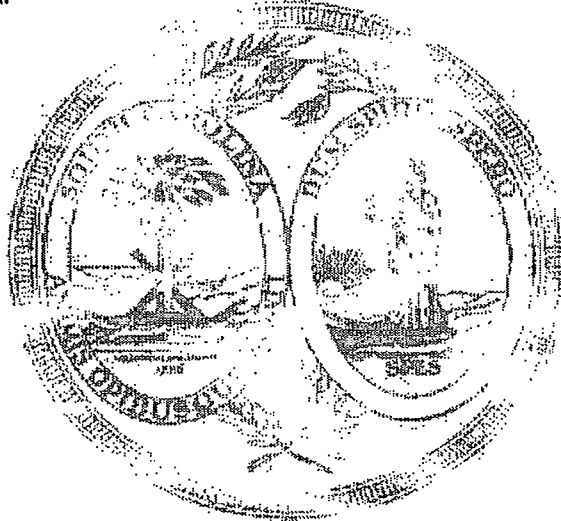
Reference #: 1874

Comment:  
Non-Refundable

Total Received: \$25.00

Change Due: \$0.00

| Case #        | Caption                                                  | Previous Balance | Amount Paid | Balance Due |
|---------------|----------------------------------------------------------|------------------|-------------|-------------|
| 2013CP0401700 | Mario Escalante VS David L Rodgers ,<br>defendant, et al | \$25.00          | \$25.00     | \$0.00      |



|                |         |         |        |
|----------------|---------|---------|--------|
| Total Cases: 1 | \$25.00 | \$25.00 | \$0.00 |
|----------------|---------|---------|--------|

MOTION TO STAY TRIAL  
MARCH 16, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante, )  
Plaintiff, )

v. )

David L. Rodgers and Janice W. Rodgers, )  
d/b/a Whitehall Express Mart, )  
Defendants. )

**MOTION FEE PAID**  
IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT



**MOTION TO STAY TRIAL**

**C.A. No.: 2013-CP-04-00017**

**YOU WILL PLEASE TAKE NOTICE THAT** the undersigned will move before the

Presiding Judge of the Thirteenth Judicial Circuit for an order of the Court granting the following relief:

For an Order granting the plaintiff a stay in this case, which is nearly identical to an action filed in U.S. District Court which involves additional defendants from the Anderson County Sheriff's Department and the City of Anderson Police Department. The same nexus of facts form the bases of the claims against all of the defendants. Therefore, it would be in the best interests of all involved to have all of the issues addressed in one forum.

**WHEREFORE**, in the interests of judicial economy, the plaintiff hereby moves for a stay of this action until the resolution of the federal matter, Escalante v. Rodgers, et al.;

C.A.No.:8:15-cv-00177-MGL-JDA .

Respectfully Submitted,

  
Donald L. Smith

Attorney for the Defendant  
122 N. Main Street  
Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
March 16, 2015.

FILED-CLERK'S OFFICE  
ANDERSON SC  
MAR 16 PM 3:40  
COMMON PLEAS AND  
GENERAL SESSIONS



# MOTION FEE PAID

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante, )

Plaintiff, )

vs. )

David L. and Janice W. Rodgers, d/b/a )  
Whitehall Express Mart, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
10th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-04-01700

## MOTION AND ORDER INFORMATION FORM AND COVERSHEET

### Plaintiff's Attorney:

Donald L. Smith, Bar No. 6699

### Address:

122 N. Main St. Anderson SC 29621

Phone: (864) 642-9284 Fax (864) 642-9285

E-mail: attorneydonaldsmith@gmail.com Other:

### Defendant's Attorney:

Nicholas A. Farr, Bar No. \_\_\_\_\_

### Address:

55 Beattie Place Suite 1200 Greenville SC 29601

Phone: (864) 271-9580 Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- ☒ **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 for a Stay

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES/ ☐ NO

### SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*Donald L. Smith*

Signature of Attorney for ☒ Plaintiff/ ☐ Defendant

3/16/15

Date submitted

### SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **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: \_\_\_\_\_

COMMON PLEAS AND  
GENERAL SESSIONS

### CLERK'S VERIFICATION

Collected by: *DMW*

Date Filed: *3/16/15*

☒ **MOTION FEE COLLECTED: \$** *250*

☐ **CONTESTED - AMOUNT DUE: \$** \_\_\_\_\_

2015 MAR 16 PM 3:40

FILED-CLERK'S OFFICE  
ANDERSON SC

Common Pleas  
Clerk : Richard A. Shirley  
100 South Main Street  
Anderson, SC 29622  
(864) 260-4053

Received From: Smith, Donald Loren  
122 N. Main St.  
Anderson, SC 29621

Date: 3/16/2015  
Receipt #: 67504  
Clerk: c04avoigt

Paying for: Escalante, Mario

Transaction Type: Payment

Reference #: 3432

Payment Type: Check \$25.00

Comment:

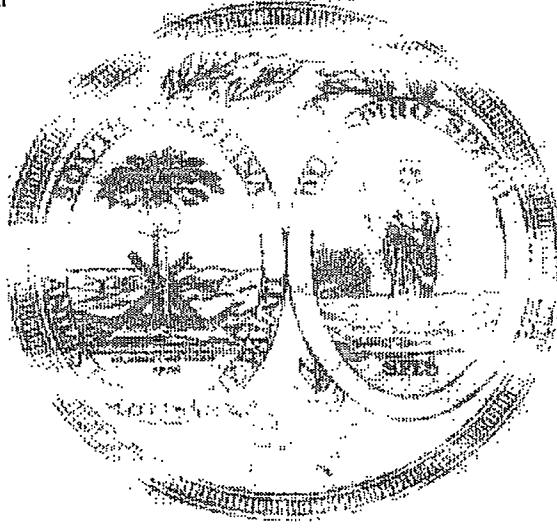
Total Paid: \$25.00

Non-Refundable

Total Received: \$25.00

Change Due: \$0.00

| Case #        | Caption                                                  | Previous Balance | Amount Paid | Balance Due |
|---------------|----------------------------------------------------------|------------------|-------------|-------------|
| 2013CP0401700 | Mario Escalante VS David L Rodgers ,<br>defendant, et al | \$25.00          | \$25.00     | \$0.00      |



|                |         |         |        |
|----------------|---------|---------|--------|
| Total Cases: 1 | \$25.00 | \$25.00 | \$0.00 |
|----------------|---------|---------|--------|

# COURT ORDER

MARCH 18, 2015

FILED-CLERK'S OFFICE  
STATE OF SOUTH CAROLINA ANDERSON SC

COUNTY OF ANDERSON 2015 MAR 18 AM 11:37 IN THE COURT OF COMMON PLEAS

Mario Escalante,

COMMON PLEAS AND  
GENERAL SESSIONS

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants.

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

C.A. No.: 2013-CP-04-1700

This matter is before the court on the motion of the defendant, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the complaint of the plaintiff, Mario Escalante. A hearing on this motion was held before me on February 9, 2015, in the Anderson County Court of Common Pleas. Present at the hearing were Donald L. Smith of the Donald Smith Law Firm, attorneys for the plaintiff, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for the defendants. Based upon the arguments of counsel, pleadings, deposition testimony, exhibits, applicable law and the record in this case, I grant in part and deny in part the defendants' motion for summary judgment.

**PROCEDURAL HISTORY**

The plaintiff initiated this action against the defendants David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (hereinafter "Whitehall"), by filing a summons and complaint on July 22, 2013. Whitehall timely answered the complaint, denying its material allegations and asserting several affirmative defenses. Following the completion of certain discovery, Whitehall moved for summary judgment as to all the plaintiff's claims against it.

### **LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. When plain, palpable and indisputable facts exist upon which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993). In considering a motion for summary judgment, this court “must view the facts in the light most favorable to the non-moving party. Nonetheless a court “cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Citations omitted. Further, “[i]n order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. NationsBank v. Scott Farm, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (S.C. Ct. App. 1995).

### **STATEMENT OF FACTS**

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. The plaintiff alleges that on that date he purchased a case of beer from Whitehall. Thereafter, he returned to Whitehall and attempted to purchase a second case of beer. His attempt to purchase the second case was denied, however, due to the prohibition of Sunday alcohol sales in the City of Anderson. The plaintiff contends that he returned the second case of beer to its location, left the store, and went to the Anderson County Fairgrounds where he was employed. The defendants contend that the plaintiff took the second case of beer from the store without paying.

In any event, the defendants notified the Anderson County Sheriff's Office of the alleged theft. Thereafter, police arrived at the fairgrounds. Mr. Rodgers informed the police about the incident. Specifically, Rodgers indicated that the plaintiff had stolen a case of beer and showed them a still shot on his phone of the surveillance footage. The officers then searched for and found the plaintiff. They discovered an open case of beer in the backseat of the plaintiff's car. The plaintiff contends that the case of beer found was the one which he had purchased from Whitehall earlier in the day. The plaintiff was placed under arrest and transported to the jail. The police returned the beer to the defendants. The defendants did not request that the plaintiff be arrested or otherwise charged with a crime.

The plaintiff was charged with shoplifting and spent one night in jail. The charges against the plaintiff were dismissed for failure to prosecute when the defendants did not appear on his court date due to an alleged lack of notice.

### **CONCLUSIONS OF LAW**

#### **I. False Arrest and Imprisonment**

The plaintiff has alleged that he was unlawfully restrained and arrested on May 5, 2013 at the Anderson County fairgrounds. To prevail against Whitehall on a claim of false arrest and imprisonment, the plaintiff must show: (1) Whitehall restrained the plaintiff; (2) the restraint was intentional; and (3) the restraint was unlawful. Andrews v. Piedmont Airlines, 377 S.E.2d 127 (S.C. Ct. App. 1989); Caldwell v. K-Mart Corp., 410 S.E.2d 21 (S.C. 1991). The Court finds that genuine issues of material fact exist as to these elements and, thus, the defendants' motion for summary judgment on the plaintiff's false arrest and imprisonment claims must be denied.

#### **II. Malicious Prosecution**

In order to survive summary judgment on a malicious prosecution claim, the plaintiff

must have some evidence of: (1) the institution or continuation of original judicial proceedings; (2) by, or at the instance of, the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. See Jordan v. Deese, 452 S.E.2d 838, 879 (S.C. 1995). The Court finds that genuine issues of material fact exist as to these elements and, thus, the defendants' motion for summary judgment on the plaintiff's malicious prosecution claim must be denied.

### III. Defamation

In order to recover for defamation, a plaintiff must allege: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Holtzscheiter v. Thomson Newspapers, Inc., 506 S.E.2d 497, 506 (S.C. 1998) (Toal, C.J., concurring). However, a qualified privilege attaches to any statements made to law enforcement authorities for purposes of investigation. Davis v. Niederhof, 143 S.E.2d 367 (S.C. 1965) (accusation of stealing); Mains v. K-Mart Corp., 375 S.E.2d 311 (S.C. Ct. App. 1988). See also Crowell v. Herring, 392 S.E.2d 464, 467 (S.C. Ct. App. 1990) (similarly an "absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature, provided those steps bear reasonable relation to it").

As such, the speaker is afforded immunity unless it is shown that the defamatory statement was malicious or unnecessarily defamatory. Fulton v. Atlantic Coast Line R.R. Co., 67 S.E.2d 425 (S.C. 1951) (excessive publication of qualified privilege). The Court finds that genuine issues of material fact exist as to the elements of the defamation claim and to the applicability of the qualified privilege and, thus, the defendants' motion for summary judgment on the plaintiff's defamation claim must be denied.

#### **IV. Negligence**

The plaintiff has also alleged that the defendants were negligent in failing to properly investigate the allegations against him and in failing to properly train its employees to investigate. To support a negligence cause of action, the plaintiff must prove that: (1) Whitehall owed a duty of care to the plaintiff; (2) there was a breach of the duty; (3) there is causation between the plaintiff's injury and the breach of the duty owed; and (4) the plaintiff suffered damages. See, e.g., Andrade v. Johnson, 588 S.E.2d 588, 592 (2003). The Court finds that genuine issues of material fact exist as to each of these elements of negligence and, thus, the defendants' motion for summary judgment on the plaintiff's negligence claim must be denied.

#### **V. Conspiracy**

The plaintiff alleges that he suffered actual damage as a result of a conspiracy. In order to prove a claim for civil conspiracy, the plaintiff must prove (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-7, 633 S.E.2d 505, 511 (2006). If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (2009). Here, the Court finds that the plaintiff has neither pled nor produced any evidence of special damages to necessitate a civil conspiracy claim. Accordingly, the defendants' motion for summary judgment as to the plaintiff's conspiracy claim is hereby granted.

#### **VI. Outrage**

"[T]o recover for intentional infliction of emotional distress, or outrage, a plaintiff must establish the following:



(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and 'outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it."

Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

"Where evidence is undisputed that the defendant *acted in good faith and in a reasonable manner*, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." Hawkins v. Greene, 311 S.C. 88, 91, 427 S.E.2d 692, 693 (Ct. App. 1993). The Court finds that genuine issues of material fact exist as to each of these elements of outrage and, thus, the defendants' motion for summary judgment on the plaintiff's outrage claim must be denied.

## **VII. Invasion of Privacy**

In his complaint, the plaintiff has alleged an invasion of privacy claim against the defendants. There are three types of invasion of privacy claims recognized under South Carolina law. See Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39, 42 (S.C. Ct. App. 1984). It appears that the plaintiff is alleging a claim for the publicizing of private affairs of no legitimate public concern. "A cause of action for public disclosure lies only for disclosure of private facts which are of no legitimate public concern." Parker v. Evening Post Publishing Co., 317 S.C. 236, 452 S.E.2d 640, 646 (Ct. App. 1995). "The defendant must intentionally disclose facts in which there is no legitimate public interest -- there is no right of privacy in public matters." Snakenburg v. Hartford Casualty Ins. Co., 299 S.C. 164, 383 S.E.2d 2, 6 (Ct. App. 1989). The Court finds that genuine issues of material fact exist as to the elements of the invasion of privacy claim and, thus, the defendants' motion for summary judgment must be denied.

### **VIII. Fraud**

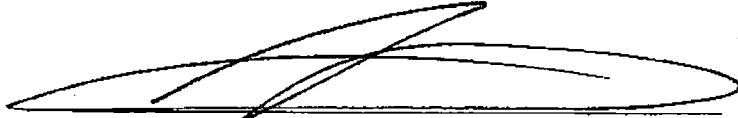
Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App.1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). Here, the Court finds that the plaintiff has failed to allege each of the elements of fraud in his Complaint as required by law. Accordingly, the defendants' motion for summary judgment as to the plaintiff's fraud cause of action is hereby granted.

### **CONCLUSION**

The Court has thoroughly reviewed the entire record, including Defendants' Motion for Summary Judgment and Memorandum in Support, and the applicable law. For the reasons stated above, the Court grants the defendants' motion for summary judgment as to the plaintiff's conspiracy and fraud causes of action and denies their motion as to all other causes of action.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motion of the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment be, and it is hereby, GRANTED IN PART and DENIED IN PART. The defendants' motion is GRANTED as to the claims of conspiracy and fraud and DENIED as to all other causes of action.

IT IS SO ORDERED.



The Honorable Robin B. Stilwell, Presiding Judge  
Anderson County Court of Common Pleas

Greenville, South Carolina

March 16, 2015

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ANDERSON SC  
2015 MAR 18 AM 11:37  
COMMON PLEAS AND  
GENERAL SESSIONS

COMPLAINT FOR CONTEMPT  
JUNE 29, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**COMPLAINT FOR CONTEMPT**

lep

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ANDERSON SC  
2015 FEB 29 PM 4:52  
COMMON PLEAS  
GENERAL

Plaintiff alleges:

1. That the plaintiff in this action is a citizen and resident of the County of Webb, State of Texas.
2. That the defendants in this action are and have been residents of the County of Anderson, State of South Carolina.
3. That the plaintiff served Plaintiff's First Set of Interrogatories and First Request for Production upon the defendants on August 22, 2013. (*Exhibit 1*).
4. That Plaintiff was forced to file a Motion to Compel Discovery Responses from Defendants on October 8, 2013 for Defendants failing to respond to discovery request of August 22, 2013. (*Exhibit 2*).
5. That Plaintiff was then forced to file a Rule to Show Cause and Contempt action against the defendants for failure to provide discovery responses on October 9, 2013 (*Exhibit 3*).
6. That a hearing was scheduled on November 13, 2013 before the Honorable J. Cordell Maddox, Jr. (*Exhibit 4*)
7. That after forcing Plaintiff to file the Motion to Compel, Defendants provided their responses on October 29, 2013, over one (1) month later than is stated in *Rule 34* of the *South Carolina Rules of Civil Procedure*. (*Exhibit 5*).
8. That the responses to Plaintiff's First Set of Interrogatories were incomplete and

the First Request for Production failed to provide numerous documents requested, mainly the insurance information relating to the video surveillance system. (*Exhibit 6*).

9. That Plaintiff sent a Second Request for Production to Defendants which specifically requested all materials relating to the video surveillance system. (*Exhibit 7*).

10. That the Honorable Judge J. Cordell Maddox, Jr., presided over the Motion to Compel hearing on January 6, 2014.

11. That on February 18, 2014, Judge Maddox ordered the defendants to identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the case. (*Exhibit 8*).

12. That after reviewing discovery materials, Plaintiff served a Subpoena upon Safe Auto Insurance Company on June 30, 2014, providing a copy of same to the defendant's counsel. (*Exhibit 9*).

13. That on April 11, 2014, Plaintiff was served defendants' responses to First Set of Interrogatories and Request for Production stating a claim was established with Safe Auto Insurance Company on June 13, 2013, destroying the video surveillance equipment containing the footage of the plaintiffs alleged theft of beer on May 5, 2013. (*Exhibit 10*).

14. That after reviewing discovery materials, Plaintiff served a Subpoena upon Safe Auto Insurance Company on June 30, 2014, providing a copy of same to the defendants counsel. (*Exhibit 11*).

15. That on July 3, 2014, Plaintiff's counsel received a Letter of Representation from Phillip E. Reeves, Esquire, attorney for Defendants, stating his firm would be responding to the Subpoena served on June 30, 2014. (*Exhibit 12*).

16. That Defendants counsel served a Notice of Motion and Motion to Quash and/or for Protective Order to quash and/or limit the scope of the Subpoena issued by the plaintiff upon

Safe Auto Insurance Company. (*Exhibit 13*).

17. That The Honorable Robin B. Stilwell denied the defendants Motion to Quash the Subpoena served upon Safe Auto Insurance Company, ordering them to provide plaintiff discovery of materials pertaining to the claim bearing number PR-0000000-013820, which arises out of an alleged lightning strike which took place shortly after the incident at issue in this action. (*Exhibit 14*).

18. That Defendants provided Plaintiff with materials from NICE Network, Inc., a company contracted by Safe Auto Insurance Company, relating to the alleged lightning strike that destroyed the video surveillance system at Whitehall Express Mart. (*Exhibit 15*).

19. That counsel for Safe Auto Insurance Company provided Plaintiff with what had been alleged to be the materials relating to the damages sustained due to the alleged lightning strike which destroyed the video surveillance equipment.

20. That upon reviewing the materials provided by Safe Auto Insurance Company's counsel, several documents were found to be that of an insured other than the defendants. (*Exhibit 16*).

21. That upon further review, the only materials provided relating to the damage and/or replacement of the video surveillance equipment are three (3) statements from the defendant's personal credit cards. All correspondence, notes and billing associated with Safe Auto Insurance relate solely to replacement of the Car Wash System. (*Exhibit 17*).

22. That the 14 cameras and various electrical components were purchased and paid for by the defendants over the course of several months.

23. That the defendants offered the court that an electrical storm had destroyed the video surveillance equipment at Whitehall Express Mart.

24. That there is no evidence that anything destroyed the video.

25. That the plaintiff is entitled to any and/or all footage from Whitehall Express Mart

from May 5, 2013, between the times of 5:00 a.m. and 6:00 p.m.

**WHEREFORE** the plaintiff prays:

1. That Defendants be found in civil contempt for refusing to provide the  
aforementioned video pursuant to the Subpoena and Order;
2. That the Court order the defendants to provide the requested/ordered video.
3. That the defendants answer be eliminated if the video is not provided in seven (7)  
days;
4. That this Court award attorney fees and costs for this action and all those  
previously related to their failure to produce the requested materials; and,
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

  
Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: June 29, 2015.



STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
Mario Escalante, )  
Plaintiff, )  
vs. )  
David L. Rodgers and )  
Janice W. Rodgers, d/b/a, )  
Whitehall Express Mart, )  
Defendants. )

MAGISTRATES COURT  
TENTH JUDICIAL CIRCUIT

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES TO  
DEFENDANTS**

Case No.: 2013-CP-04-01700

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, D/B/A, WHITEHALL EXPRESS MART, BY AND THROUGH THEIR ATTORNEY, PHILLIP E. REEVES, ESQ.:**

The Plaintiff above-named hereby requires the Defendants, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with the South Carolina Rules of Civil Procedure, Rule 33(b). These Interrogatories shall be deemed to continue until the time of the trial of the case pursuant to Rule 33(b).:

**INTERROGATORIES**

1. For each person known to the Defendants or counsel to be a witness concerning the facts of the case, set forth a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness; and provide a copy of any written or recorded statements taken from such witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, video surveillance recording or other prepared documents in possession of the party that relate to this case; and if you will supply it without necessity of a motion, please attach a copy to your answers.

3. List the names and addresses of any expert witness whom the Defendants propose to use as a witness at the trial of the case. In regard to any such expert, list;
  - a. The date and reports or memoranda made by each such expert;
  - b. The area of expertise or specialization of each such expert and a brief chronological resume of each such expert's educational and professional background;
  - c. The subject matter on which the expert is expected to testify;
  - d. The substance of the facts and opinions to which the expert is expected to testify;and,
  - e. A summary of the grounds for each opinion.
4. State with particularity what you contend the Plaintiff did, or failed to do, which facilitated you to engage the Anderson County Sheriff Department in the pursuit and subsequent arrest of the Plaintiff.
5. State each fact and identify each document upon which you rely to support the allegations of your Answer.
6. Describe how the occurrence complained of in this action happened in comprehensive, narrative detail, giving all the events in detail and in the order in which they occurred, before, at the time of, or after the occurrence, which had any bearing on the cause and manner of the happening of this occurrence.
7. Please state your date of birth, place of birth, driver's license number with state of issuance, present address and present occupation. Further, if you have been known by any other names, please list all the names you have been known by and where and when you have used such names.

8. Identify the individual executing the Verification of the responses to these interrogatories and identify all individuals who assisted in providing any information concerning or relating to your answers to these interrogatories.
9. Provide the names and addresses of all insurance companies that provide liability insurance coverage relating to the matters alleged in any of the pleadings, the number or numbers of such policies, the amount of the liability coverage provided in each such and the named insured on each policy.
10. Identify each person, excluding your attorneys to whom you have made any statement or with whom you have had any discussion regarding any aspect of this action, state the date and describe the substance of the statement or discussion.
11. Please provide the educational background, including graduation dates from any high schools, colleges, technical colleges and/or certificate programs.
12. Please give the names and addresses of each person or organization by whom you have been employed for the past ten (10) years, giving the dates of such employment, the position held, and the rate of pay you received.
13. Have either of the Defendants ever been accused or arrested for a crime? If so, give;
  - a. The date of arrest;
  - b. The name of the jurisdiction the accusation or arrest occurred;
  - c. The nature of the charges;
  - d. The disposition of the charges, including any guilty pleas and/or convictions.
14. Have the parties ever been involved in any other legal action, whether criminal or civil, either as a victim, plaintiff or defendant? If so, give the Court, case number, names of the other parties, names of counsel for the parties, description of the action, and disposition of each.

15. Identify all insurance claims made by the party in the last ten (10) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the case.
15. Have you filed a Federal or State Income Tax return with the pas ten (10) years and, if so, what years? Have you filed both personal and business returns? If so, which years?
16. Please set forth names, addresses and phone numbers of all employees you have had work of the premise in the last five (5) years.
17. Please list and provide copies of any and all other incidents that have occurred in the last five (5) years, on your premises, specifying the day, time, place, and parties involved in the incident and the disposition of each.
18. Identify any and all claims that have been made against the Defendants by employees for any reason. Provide the name, date, type of complaint and resolution. This will include date of hire, disciplinary actions and date of separation/termination.
19. Provide a detailed narrative of the policies of the Defendants' businesses including, but not limited to, the Whitehall Express Mart, as explained to their employee, regarding County Ordinances related to the sale of alcohol in the County of Anderson. Also, provide for each occasion, if any, disciplinary action taken for the disregard of said Ordinances. This will pertain to the Defendants and the Defendants' employees.
20. Identify all agents, servants, employees, representatives, private investigators or others who made any investigation into this incident on the parties behalf.
21. Provide a list of all bank accounts owned by the Defendants, provide the name of the bank, the type of account and the account number.

22. Do the Defendants have any relatives in Anderson County over the age of 18? If so, please list their name, address, age, their place of employment, if married, their spouse's name and their spouse's place of employment.
23. Provide all real estate that is both jointly and individually owned by the Defendants. Include the address, purchase price, tax assessment, taxes paid, current value and whether it is a mortgaged property. If a mortgaged property, provide the name of the lienholder and the account number. Also, provide any real estate transactions that have occurred between the Defendants and another party within the last five (5) years, including the name of the purchaser, the date and the amount of the sale.
25. On the date of the alleged incident, please identify the following:
- a. All cellular phone numbers, including area codes, utilized by the Defendants; and
  - b. The names and addresses of all cellular phone, pager, Black Berry or other personal communication services utilized by the Defendants.
26. List ever "Social Networking Website" (SNW) utilized or accessed by the parties for the past five (5) years. For and SNW identified in response to this or any other interrogatory, provide the following information:
- a. Name, physical address, and interned address of the SNW;
  - b. Name, address, Social Security number, and date of birth of the SNW account subscriber, and if different, the individual financially responsible for the SNW account;
  - c. Each and every user name, screen name, email address, or alias affiliated with the SNW account; and
  - d. Password (s) for accessing the SNW account.



Donald L. Smith, SC Bar# 6699

Attorney for the Plaintiff

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina  
Dated: August 22, 2013.

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
Mario Escalante, )  
Plaintiff, )  
vs. )  
David L. Rodgers and )  
Janice W. Rodgers, d/b/a, )  
Whitehall Express Mart, )  
Defendants. )

MAGISTRATES COURT  
TENTH JUDICIAL CIRCUIT

**PLAINTIFF'S FIRST REQUEST  
FOR PRODUCTION FROM  
DEFENDANTS**

Case No.: 2013-CP-04-01700

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, D/B/A, WHITEHALL EXPRESS MART, BY AND THROUGH THEIR ATTORNEY, PHILLIP E. REEVES, ESQ.:**

The Plaintiff hereby requests, pursuant to the South Carolina Rules of Civil Procedure, that the Defendants respond, within thirty (30) days after the service hereof, to the following requests and that the Defendants produce and permit Plaintiff to inspect, copy, or photograph, at the offices of Plaintiff's attorney at 122 N. Main Street, Anderson, South Carolina 29621, each of the following documents or things which may be in the possession custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim:

**DEFINITIONS**

The term "documents" or "things" means all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers; notations of any sort of conversations, telephone calls, meetings, or other

communications; bulletins, printed matter, computer printouts, teletypes, telefax, invoices work sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records; representations of any kind, including, without limitation, photographs, charges, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, or other records. The term "all documents" means every document as above defined known to the party, the party's agents or counsel, and each document, which can be located or discovered by reasonably diligent efforts.

### REQUESTS

1. Copies of any and all documents, photographs, correspondence, emails, text messages, electronically stored information, or any other materials, relating in any way to the subject action.
2. Any and all documents identified in response to Plaintiff's First Set of Interrogatories.
3. For each person identified as an expert witness provide a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; and exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of publications within the preceding ten (10) years; and a listing of any other cases in which the witness has testified as an expert in the preceding four years. Also provide,
  - (a) All documents prepared by the expert;
  - (b) All documents sent to the expert by the Party's counsel;
  - (c) All documents relied upon by the expert;
  - (d) All documents used, consulted, or reviewed by the expert;



(e) All documents setting forth the compensation agreement between the party and the expert;

(f) All documents used, relied upon, consulted, or reviewed by expert answering expert witness Interrogatories.

4. All documents or materials which you will present to support the allegations made against the Plaintiff.

5. All documents regarding any insurance claims that have been made by the Defendants regarding losses such as the loss they are making claim against the Plaintiff.

6. Please provide copies of incident reports for any and all incidents in which the Defendants have claimed to have occurred at Whitehall Express Mart within the past five (5) years.

7. Provide a copy of each Income Tax Return filed by the Defendants, both personal and business for the past five (5) years.

8. Documentation as to any financial benefits you have received within the past three (3) years that are not shown as income on your tax returns, from any source, itemized by year, together with the value, name, address and provider of any such benefit.

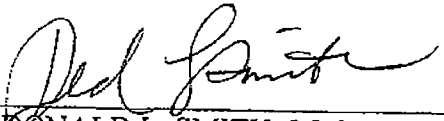
9. Provide a copy of each Defendants most recent Social Security earnings history.

10. Provide a complete copy of the personnel file of any employee currently working and has worked for the Defendants within the past five (5) years. This will include, but is not limited to, application for employment, job description, performance evaluation, insurance documents, resume, disciplinary actions, termination slips, etc.

11. Provide an employee handbook or any documents outlining the policy and procedure and code of conduct for an employee of Whitehall Express Mart.

12. Provide the copies of Deeds, Titles, Lienholder information, Tax records, etc., for all property owned by the Defendants (both individual and joint).
13. Documentation of the payoff on all mortgages you are responsible for as of date this action was filed and as of the current date.
14. Provide the last three (3) years of account statements for each bank account affiliated with the Defendants, as well as, accounts affiliated with Whitehall Express Mart.
15. Documentation on your retirement, profit sharing, pension and any other plans through any former employer or through any personal or business associated with the Defendants, along with any other IRA's annuities or other retirement accounts you have, including the value as of date of filing and as of the current date.
16. Color copies of all photographs.
17. Copies of the parties drivers licenses.
18. Any and all documents received or requested by the party or the party's counsel, either by subpoena, FOIA request or any other request.
19. Any and all impeachment materials.
20. A copy of any and all private investigator reports, surveillance logs, summaries, videotape, intercepted messages, emails, and phone records concerning the Plaintiff or the incident.
21. Any and all documents which you intend to introduce or use as demonstrative evidence a trial.
22. Each article or thing the party intends to offer or use in the trial of the cause to demonstrate, illustrate, aid or assist the testimony of any witness, including models, facsimiles, subjects or articles.

23. To permit the Plaintiff to inspect, photograph or otherwise copy any and all photographs, plats, diagrams which the party's attorney may have which relate to the matters alleged in the Complaint herein.



DONALD L. SMITH, SC Bar# 6699

Attorney for the Plaintiff

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: August \_\_, 2013.

**MOTION FEE PAID**

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

MARIO ESCALANTE

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a, Whitehall Express Mart,

Defendant.

IN THE Court of Common Pleas  
10TH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

**A TRUE COPY**

**OCT - 8 2013**

*Robert J. Kelly*  
CLERK OF COURT

Docket No. 2012-CP-04-01700

Plaintiff's Attorney:  
Donald L. Smith, Bar No. 6699  
Address:  
122 N. Main St., Anderson SC 29621  
Phone: 864-642-9284 Fax 864-642-9285  
E-mail: Other:

Defendant's Attorney:  
Phillip E. Reeves, Bar No. \_\_\_\_\_  
Address:  
Phone: Fax  
E-mail: Other:

- ☒ **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 Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

- ☒ Written motion attached  
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*Donald L. Smith*  
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

10/8/2013  
Date submitted

**SECTION III: Motion Fee**

- ☐ **PAID - AMOUNT: \$**  
☐ **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: \_\_\_\_\_

Judge Signature: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: *T.S.G.* Date Filed: *10/8/13*  
☒ **MOTION FEE COLLECTED: \$ 25.00**  
☐ **CONTESTED - AMOUNT DUE: \$**

Custodial Parent (if applicable): \_\_\_\_\_

MOTION FEE PAID

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante,  
Plaintiff, )

v. )

David L. Rodgers and Janice W. Rodgers  
d/b/a, Whitehall Express Mart,  
Defendant. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

MOTION TO COMPEL

C.A. No.: 2012-CP-04-01700

**A TRUE COPY**

**OCT - 8 2013**

*Philip E. Reeves*  
CLERK OF COURT

The Plaintiff, by and through his attorney, Donald L. Smith, hereby moves the Court for an Order to Compel the Defendant's responses to the Plaintiff's First Set of Interrogatories to Defendants and Plaintiff's First Request for Production which were served upon them through their attorney, Phillip E. Reeves, Esq., on August 22, 2013.

This motion is made upon the grounds that pursuant to *Rule 34, South Carolina Rules of Civil Procedure*, the Defendants are required to produce the responses and documents requested within thirty (30) days to Plaintiff's counsel. The opposing counsel was contacted via email, September 27, 2013 extending the date to return the Discovery materials until October 2, 2013. In order to allow ample time to review the documents and responses, and validate information provided, the Defendants attorney must submit them to the Plaintiff's counsel at, 122 N. Main Street, Anderson SC 29621.

**WHEREFORE**, a Motion to Compel should be granted and the Defendants, David L. Rodgers and Janice W. Rodgers, d/b/a, Whitehall Express Mart, be ordered to present these materials in an expeditious manner. That if the Plaintiff can't, or won't, provide the Responses to Plaintiff's first Set of Interrogatories to Defendants and materials for Plaintiff's First Request for Production that a judgment be entered against the Defendants and the Plaintiff be awarded

judgment fees as they relate to this matter, as well as, all Attorney Fees and Litigation Expenses incurred to date.



Donald L. Smith, (SC Bar # 6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
attorneydonaldsmith@gmail.com

Anderson, South Carolina  
Dated: October 8, 2013

**MOTION**

**Exhibit 3**

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante,

Plaintiff, )

vs. )

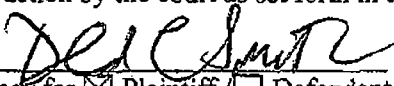
David L. and Janice W. Rodgers, d/b/a  
Whitehall Express Mart,

Defendant. )

IN THE COURT OF COMMON PLEAS  
10th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-04-01700

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Plaintiff's Attorney:</b><br>Donald L. Smith, Bar No. 6699<br>Address:<br>122 N. Main St. Anderson SC 29621<br>Phone: (864) 642-9284 Fax (864) 642-9285<br>E-mail: attorneydonaldsmith@gmail.com Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Defendant's Attorney:</b><br>Nicholas A. Farr, Bar No. _____<br>Address:<br>55 Beattie Place Suite 1200 Greenville SC 29601<br>Phone: (864) 271-9580 Fax _____<br>E-mail: _____ Other: _____ |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                 |
| <p style="text-align: center;"><b>SECTION I: Hearing Information</b></p> Nature of Motion: Rule to Show Cause/Contempt<br>Estimated Time Needed: 30 minutes      Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                 |
| <p style="text-align: center;"><b>SECTION II: Motion/Order Type</b></p> <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> <br/>           Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant         </div> <div style="text-align: center;">           9/21/14<br/>           Date submitted         </div> </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                 |
| <p style="text-align: center;"><b>SECTION III: Motion Fee</b></p> <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input checked="" type="checkbox"/> EXEMPT: (check reason) <div style="display: flex; flex-wrap: wrap; margin-top: 5px;"> <div style="width: 50%;"><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</div> <div style="width: 50%;"><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</div> <div style="width: 50%;"><input type="checkbox"/> Indigent Status      <input type="checkbox"/> State Agency v. Indigent Party</div> <div style="width: 50%;"><input type="checkbox"/> Sexually Violent Predator Act      <input type="checkbox"/> Post-Conviction Relief</div> <div style="width: 50%;"><input type="checkbox"/> Motion for Stay in Bankruptcy</div> <div style="width: 50%;"><input type="checkbox"/> Motion for Publication      <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</div> <div style="width: 100%;"><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</div> </div> Name of Court Reporter: _____<br><input checked="" type="checkbox"/> Other: Rule to Show Cause/Contempt |                                                                                                                                                                                                 |
| <p style="text-align: center;"><b>JUDGE'S SECTION</b></p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p style="text-align: center;"><b>JUDGE CODE</b></p> Date: _____                                                                                                                                |
| <p style="text-align: center;"><b>CLERK'S VERIFICATION</b></p> Collected by: <u>am</u> Date Filed: <u>9/20/14</u><br><input checked="" type="checkbox"/> MOTION FEE COLLECTED: \$ <u>250</u><br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                 |

**A TRUE COPY**

**SEP 30 2014**

*[Signature]*  
CLERK OF COURT

**MOTION FEE PAID**

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**RULE TO SHOW CAUSE**

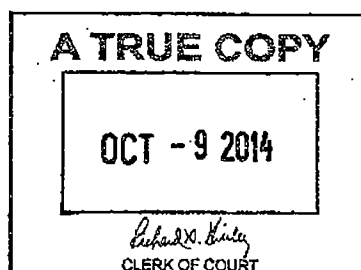
**TO: DAVID L. RODGERS AND JANICE W. RODGERS, BY AND THROUGH THEIR ATTORNEYS, PHILLIP E. REEVES, ESQUIRE AND NICHOLAS A. FARR, ESQUIRE:**

Based upon the attached affidavit, it appears that you have not obeyed certain court Order (s)m, as described in the affidavit. Therefore,

**IT IS ORDERED THAT YOU APPEAR BEFORE THE** Anderson County Court of Common Pleas on the 29<sup>th</sup> day of Oct., 2014 at 9:30 o'clock A.m., then and there to be prepared to show cause, if any, why the relief requested in the affidavit should not be granted and why you should not be held in contempt of court for such disobedience. This order and rule to show cause can be served on the above person by any means allowable under Rule, 4 (d), SCRPC.

  
\_\_\_\_\_  
Presiding Judge  
Anderson County Court of  
Common Pleas  
Tenth Judicial Circuit

Signed this day,  
10/8, 2014.



CLERK'S OFFICE  
ANDERSON SC  
OCT -9 A 9:38  
COMMON PLEAS AND  
GENERAL SESSIONS



STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

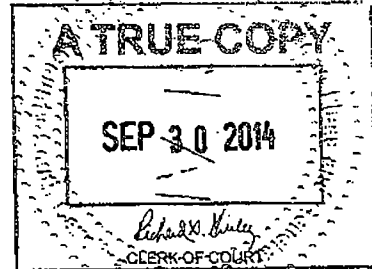
vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**COMPLAINT FOR CONTEMPT**



Plaintiff alleges:

1. That the plaintiff in this action is a citizen and resident of the County of Webb, State of Texas.
2. That the defendants in this action are and have been residents of the County of Anderson, State of South Carolina.
3. That the parties were before this court on January 6, 2014 for a Motion to Compel complete responses to First Set of Interrogatories and First Request for Production. The hearing was presided over by the Honorable J. Cordell Maddox, Jr.
4. That the order contained specific information that the defendants were to provide to the plaintiff.
5. That Defendants have failed to provide the information related to the insurance claim resulting from an alleged lightning strike that damaged the video surveillance system.
6. That Defendants have failed to provide the plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
7. That the defendants' willful and wanton disregard of the order is being done to prevent Plaintiff from successfully prosecuting this case.

**WHEREFORE** the plaintiff prays:

1. That Defendants be found in civil contempt for refusing to abide by the

aforementioned Order or, in the alternative;

2. That Defendant's answer be stricken due to willful and wanton refusal to provide discovery despite previous Order;
3. For an Order requiring the defendants to identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and the policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the claim;
4. That the defendants be found in contempt of court for failure to provide the complete Federal and State Income Tax returns for each party named in the above-referenced matter;
5. For an Order requiring the defendants to provide copies of their entire Federal and State Income Tax returns for the past five (5) years;
6. That the defendants be required to pay Plaintiff's attorney fees and costs for this action; and,
7. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: September 27, 2014.

# ATTORNEY OFFICE OF DONALD SMITH

122 N. Main St.  
Anderson SC 29621

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Donald L. Smith, Esquire

Telephone: (864) 642-9284  
Facsimile: (864) 642-9285

August 15, 2014

Phillip E. Reeves, Esquire  
Nicholas A. Farr, Esquire  
P.O. Box 10589  
Greenville SC 29603

RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers, d/b/a  
Whitehall Express Mart  
C.A. No.: 2013-CP-04-01700

Gentlemen,

Please find enclosed a Rule to Show Cause and Complaint for Contempt that I will forced to file in the above-referenced matter, if I do not receive the materials that Judge Maddox previously ordered you to provide within ten (10) days of the date of this letter. Specifically, I want the following:

1. Identify all insurance claims made by the party in the last five (5) years, including the name of the carrier the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the case.
2. Copies of Defendants entire Federal and State Income Tax returns for the past five (5) years.

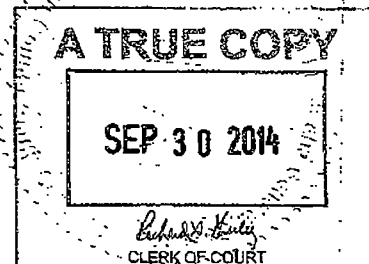
I have enclosed a copy of Judge Maddox's Order for your convenience.

If you have any questions regarding the enclosed materials, please contact me.

With highest regards, I remain  
Very truly yours,



Donald L. Smith  
DLS/kn  
Enclosures



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

vs.

David L. and Janice W. Rodgers, d/b/a  
Whitehall Express Mart,

Plaintiff,

Defendant.

**MOTION FEE PAID**  
IN THE COURT OF COMMON PLEAS  
10th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-04-01700

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

**Plaintiff's Attorney:**

Donald L. Smith, Bar No. 6699

Address:

122 N. Main St. Anderson SC 29621

Phone: (864) 642-9284 Fax (864) 642-9285

E-mail: attorneydonaldsmith@gmail.com Other:

**Defendant's Attorney:**

Nicholas A. Farr, Bar No. \_\_\_\_\_

Address:

55 Beattie Place Suite 1200 Greenville SC  
29601

Phone: (864) 271-9580 Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- ☒ **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: Rule to Show Cause/Contempt

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion 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: 8/15/14

**SECTION III: Motion Fee**

☐ PAID - AMOUNT: \$ \_\_\_\_\_

☒ 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: Rule to Show Cause/Contempt

**JUDGE'S SECTION**

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: \_\_\_\_\_

JUDGE CODE: \_\_\_\_\_

Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: amr

Date Filed: 9/30/14

☒ MOTION FEE COLLECTED: \$ 2500

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

**A TRUE COPY**

**SEP 30 2014**

Richard X. Kiley  
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

**NOTION FEE PAID**

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

**RULE TO SHOW CAUSE**

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, BY AND THROUGH THEIR ATTORNEYS, PHILLIP E. REEVES, ESQUIRE AND NICHOLAS A. FARR, ESQUIRE:**

Based upon the attached affidavit, it appears that you have not obeyed certain court Order (s)m, as described in the affidavit. Therefore,

**IT IS ORDERED THAT YOU APPEAR BEFORE THE** Anderson County Court of Common Pleas on the \_\_\_\_ day of \_\_\_\_, 2014 at \_\_\_\_ o'clock --.m., then and there to be prepared to show cause, if any, why the relief requested in the affidavit should not be granted and why you should not be held in contempt of court for such disobedience. This order and rule to show cause can be served on the above person by any means allowable under Rule, 4 (d), SCRCP.

\_\_\_\_\_  
Presiding Judge  
Anderson County Court of  
Common Pleas  
Tenth Judicial Circuit

Signed this day,  
August \_\_\_\_, 2014.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

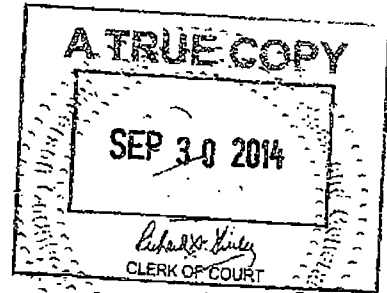
vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

COMPLAINT FOR CONTEMPT



Plaintiff alleges:

1. That the plaintiff in this action is a citizen and resident of the County of Webb, State of Texas.
2. That the defendants in this action are and have been residents of the County of Anderson, State of South Carolina.
3. That the parties were before this court on January 6, 2014 for a Motion to Compel complete responses to First Set of Interrogatories and First Request for Production. The hearing was presided over by the Honorable J. Cordell Maddox, Jr.
4. That the order contained specific information the defendants must provide to the plaintiff.
5. That defendants have failed to provide the information related to the electricity claim regarding the lightning strike that damaged the video surveillance system.
6. That defendants have failed to provide the Plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
7. That the defendants' willful and wanton disregard of the order is being done to prevent Plaintiff from successfully prosecuting this case.

WHEREFORE the Plaintiff prays:

1. That defendants be found in civil contempt for refusing to abide by the

aforementioned Order;

2. That defendants be held in contempt of court for failing to provide the information related to the lightning strike, on or about, June 13, 2013;
3. For an Order requiring defendants identify all insurance claims made by the arty in the last five (5) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the case;
4. That defendants be found in contempt of court for failure to provide the complete Federal and State Income Tax returns for each party named in the above-referenced matter;
5. For an Order requiring defendants to provide copies of their entire Federal and State Income Tax returns for the past five (5) years;
6. That the Defendants be required to pay Plaintiff's attorney fees and costs for this action; and,
7. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285

Anderson, South Carolina  
Dated: August \_\_, 2014.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and  
Janice W. Rodgers, d/b/a,  
Whitehall Express Mart,

Defendants.

COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

ORDER

Case No.: 2013-CP-04-01700

A TRUE COPY

FEB 18 2014

*Richard M. Kelly*  
CLERK OF COURT

THIS MATTER came before the Court upon a properly filed and served Motion to Compel. The subject of this Motion was to compel discovery. The Plaintiff had served Interrogatories and Requests for Production on the Defendants. The Plaintiff contends that the responses provided were inadequate. The Plaintiff requests that the Court order the defense to provide the discovery as requested.

The defense responded that relevant responses to the discovery requests had been provided. However, some of the discovery requested was overreaching and extended beyond what is deemed reasonable for this action.

The Court reviewed the documents provided, and the statements of counsel. Some of the discovery requested was premature. That discovery may be addressed at a later date. However, the discovery provided was insufficient.

**WHEREFORE, IT IS ORDERED:**

1. The Defendants shall identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the



disposition of the case.

2. The Defendants shall identify the names, addresses and phone numbers of all employees who were working at the Whitehall Express Mart on May 5, 2013.
3. The Defendants shall provide the names and addresses of all of the banks at which they had accounts on May 5, 2013.
4. The Defendants shall provide the addresses of all of the property that they held, whether jointly or individually, on May 5, 2013.
5. The Defendants shall provide the Plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
6. Attorney fees and costs shall be held in abeyance.

  
J. CORDELL MADDOX, JR.  
Circuit Court Judge  
Tenth Judicial Circuit

Anderson, South Carolina

February 18, 2013.

FILED-CLERK'S OFFICE  
ANDERSON SC  
2014 FEB 18 P 3:54  
COMMON PLEAS AND  
GENERAL SESSIONS



Don Smith <attorneydonaldsmith@gmail.com>

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**Motion "MCOMPL-Motion To Compel" for Case "2013CP0401700-Mario Escalante VS David L Rogers" was added to a Motions Roster for 11/13/2013 at 10:00 AM**

2 messages

---

noreply@andersoncountysc.org <noreply@andersoncountysc.org>  
To: attorneydonaldsmith@gmail.com

Wed, Oct 30, 2013 at 12:39 PM

The above referenced case has been scheduled for a motion hearing at the date and time referenced in the subject line. You are hereby noticed to appear before the Honorable J. Cordell Maddox, Jr., in Courtroom 3-1. Failure of moving party to appear at this hearing may result in dismissal of the motion.

SEE IMPORTANT INFO AT THE ROSTER NEWS LINKS, located at [publicindex.sccourts.org/anderson/courtrosters](http://publicindex.sccourts.org/anderson/courtrosters). Requests for continuances will only be accepted in the form of formal motions, accompanied by the \$25 filing fee and the required form. Hearings will not be continued except by granted motion and order. For questions, contact the court coordinator at [jpruitt@andersoncountysc.org](mailto:jpruitt@andersoncountysc.org).

---

Don Smith <attorneydonaldsmith@gmail.com>

Wed, Oct 30, 2013 at 12:44 PM

To: Angela Smith <angelasm0214@gmail.com>, Tyler Smith <lpx2275@aim.com>, Kirsten Nauta <kirstenn0118@gmail.com>

[Quoted text hidden]



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST REQUEST FOR  
PRODUCTION**

C.A. No. 2013-CP-04-1700

**TO: DONALD L. SMITH OF THE DONALD L. SMITH LAW FIRM, ATTORNEYS  
FOR THE PLAINTIFF, MARIO ESCALANTE**

The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart, hereby respond to requests for production of documents propounded by the plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure:

**GENERAL OBJECTIONS**

David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart (hereinafter "Whitehall") objects to these requests insofar as they are inconsistent with the South Carolina Rules of Civil Procedure. Whitehall also objects to these requests where they are overly broad and unduly burdensome. Whitehall also objects insofar as they seek discovery of information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence. Whitehall also objects insofar as these requests seek disclosure of information protected as work product, under the attorney client privilege or under the common interest doctrine. Subject to the foregoing objections and without waiving same, Whitehall states as follows:

- c. All documents relied upon by the expert;
- d. All documents used, consulted, or reviewed by the expert;
- e. All documents setting forth the compensation agreement between the party and the expert;
- f. All documents used, relied upon, consulted, or reviewed by expert answering expert witness Interrogatories.

RESPONSE: Whitehall has not identified any experts at this time. However, Whitehall reserves the right to identify experts at a later date.

4. All documents or materials which you will present to support the allegations made against the Plaintiff.

RESPONSE: Discovery has not progressed to a point to fully identify any and all documents or materials which will be used by Whitehall to support any allegations made. Whitehall craves reference to any material identified in its answers to plaintiff's interrogatories or produced in response to these requests for production.

5. All documents regarding any insurance claims that have been made by the Defendants regarding losses such as the loss they are making claim against the Plaintiff.

RESPONSE: Whitehall objects to this request on the grounds that it is overly broad and unduly burdensome. Further, Whitehall objects on the grounds that it is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Whitehall did not make an insurance claim arising out of the incident at issue.

6. Please provide copies of incident reports for any and all incidents in which the Defendants have claimed to have occurred at Whitehall Express Mart within the past five (5) years.

- c. All documents relied upon by the expert;
- d. All documents used, consulted, or reviewed by the expert;
- e. All documents setting forth the compensation agreement between the party and the expert;
- f. All documents used, relied upon, consulted, or reviewed by expert answering expert witness Interrogatories.

RESPONSE: Whitehall has not identified any experts at this time. However, Whitehall reserves the right to identify experts at a later date.

4. All documents or materials which you will present to support the allegations made against the Plaintiff.

RESPONSE: Discovery has not progressed to a point to fully identify any and all documents or materials which will be used by Whitehall to support any allegations made. Whitehall craves reference to any material identified in its answers to plaintiff's interrogatories or produced in response to these requests for production.

5. All documents regarding any insurance claims that have been made by the Defendants regarding losses such as the loss they are making claim against the Plaintiff.

RESPONSE: Whitehall objects to this request on the grounds that it is overly broad and unduly burdensome. Further, Whitehall objects on the grounds that it is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Whitehall did not make an insurance claim arising out of the incident at issue.

6. Please provide copies of incident reports for any and all incidents in which the Defendants have claimed to have occurred at Whitehall Express Mart within the past five (5) years.

20. A copy of any and all private investigator reports, surveillance logs, summaries, videotape, intercepted messages, emails, and phone records concerning the Plaintiff or the incident.

RESPONSE: None.

21. Any and all documents which you intend to introduce or use as demonstrative evidence a trial.

RESPONSE: Discovery has not progressed to a point to fully identify any and all documents which would be used as demonstrative evidence at the trial of this case. Whitehall reserves the right to supplement this response at a later date.

22. Each article or thing the party intends to offer or use in the trial of the cause to demonstrate, illustrate, aid or assist the testimony of any witness, including models, facsimiles, subjects or articles.

RESPONSE: See response to request number 21.

23. To permit the Plaintiff to inspect, photograph or otherwise copy any and all photographs, plats, diagrams which the party's attorney may have which relate to the matters alleged in Complaint herein.

RESPONSE: Whitehall has produced any and all documents in its possession relative to the matters at issue in this lawsuit.

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

October 29, 2013

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart

20. A copy of any and all private investigator reports, surveillance logs, summaries, videotape, intercepted messages, emails, and phone records concerning the Plaintiff or the incident.

RESPONSE: None.

21. Any and all documents which you intend to introduce or use as demonstrative evidence a trial.

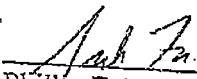
RESPONSE: Discovery has not progressed to a point to fully identify any and all documents which would be used as demonstrative evidence at the trial of this case. Whitehall reserves the right to supplement this response at a later date.

22. Each article or thing the party intends to offer or use in the trial of the cause to demonstrate, illustrate, aid or assist the testimony of any witness, including models, facsimiles, subjects or articles.

RESPONSE: See response to request number 21.

23. To permit the Plaintiff to inspect, photograph or otherwise copy any and all photographs, plats, diagrams which the party's attorney may have which relate to the matters alleged in Complaint herein.

RESPONSE: Whitehall has produced any and all documents in its possession relative to the matters at issue in this lawsuit.

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

October 29, 2013

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart



**ATTORNEY OFFICE OF DONALD SMITH**

122 N. Main St.  
Anderson SC 29621

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Donald L. Smith, Esquire

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

August 22, 2014

Phillip E. Reeves, Esquire  
Nicholas A. Farr, Esquire  
55 Beattie Place  
Suite 1200  
P.O. Box 10589 (29603)  
Greenville SC 29601

**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers, d/b/a  
Whitehall Express Mart  
C.A. No.: 2013-CP-04-01700**

Gentlemen,

Please find enclosed Plaintiff's Second Request For Production. I am requesting that these materials are provided to my office, no later than, September 4, 2014, prior to the depositions which we have scheduled for the following day.

If you have any questions or concerns, please do not hesitate to contact me.

With highest regards, I remain  
Very truly yours,



Donald L. Smith  
DLS/kn  
Enclosures

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and  
Janice W. Rodgers, d/b/a,  
Whitehall Express Mart,

Defendants.

MAGISTRATES COURT  
TENTH JUDICIAL CIRCUIT

**PLAINTIFF'S SECOND REQUEST  
FOR PRODUCTION TO  
DEFENDANTS**

Case No.: 2013-CP-04-01700

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, D/B/A, WHITEHALL EXPRESS MART, BY AND THROUGH THEIR ATTORNEY, PHILLIP E. REEVES, ESQ.:**

The Plaintiff hereby requests these materials to be presented, no later than, **September 4, 2014** at the office of Plaintiff's counsel, located at, *122 N. Main Street, Anderson, South Carolina 29621*, each of the following documents or things which may be in the possession custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim:

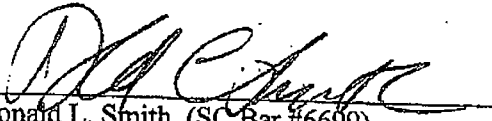
**DEFINITIONS**

The term "documents" or "things" means all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers; notations of any sort of conversations, telephone calls, meetings, or other communications; bulletins, printed matter, computer printouts, teletypes, telefax, invoices work

sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records; representations of any kind, including, without limitation, photographs, charges, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, or other records. The term "all documents" means every document as above defined known to the party, the party's agents or counsel, and each document, which can be located or discovered by reasonably diligent efforts.

#### REQUESTS

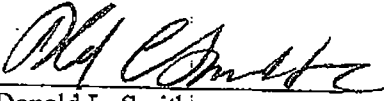
1. Provide the complete personnel file for each employee working at Whitehall Express Mart on the day the alleged incident occurred.

  
Donald L. Smith, (SC Bar #6699)  
122 N. Main Street  
Anderson SC 29621  
Attorney for Plaintiff  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
Dated: August 22, 2014.

#### **CERTIFICATE OF MAILING**

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 22<sup>nd</sup> day of August, 2014

  
Donald L. Smith

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. and Janice W. Rodgers, d/b/a  
Whitehall Express Mart,

Defendant.

IN THE COURT OF COMMON PLEAS  
10th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-04-01700

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

**Plaintiff's Attorney:**

Donald L. Smith, Bar No. 6699

**Address:**

122 N. Main St. Anderson SC 29621

Phone: (864) 642-9284 Fax (864) 642-9285

E-mail: attorneydonaldsmith@gmail.com Other:

**Defendant's Attorney:**

Nicholas A. Farr, Bar No. \_\_\_\_\_

**Address:**

55 Beattie Place Suite 1200 Greenville SC  
29601

Phone: (864) 271-9580 Fax \_\_\_\_\_

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

☐ **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: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_

Court Reporter Needed: ☐ YES/☐ NO

**SECTION II: Motion/Order Type**

☐ Written motion 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 2/4/14

**SECTION III: Motion Fee**

☐ PAID - AMOUNT: \$

☒ 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 \_\_\_\_\_

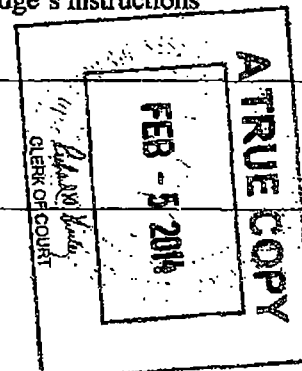
Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$ \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_



STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante, )

Plaintiff, )

vs. )

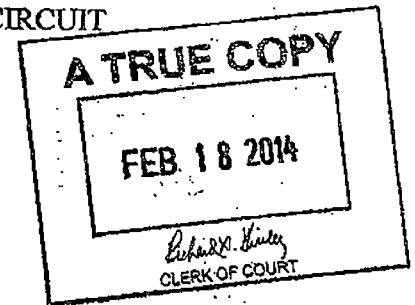
David L. Rodgers and )  
Janice W. Rodgers, d/b/a, )  
Whitehall Express Mart, )

Defendants. )

COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

ORDER

Case No.: 2013-CP-04-01700



**THIS MATTER** came before the Court upon a properly filed and served Motion to Compel. The subject of this Motion was to compel discovery. The Plaintiff had served Interrogatories and Requests for Production on the Defendants. The Plaintiff contends that the responses provided were inadequate. The Plaintiff requests that the Court order the defense to provide the discovery as requested.

The defense responded that relevant responses to the discovery requests had been provided. However, some of the discovery requested was overreaching and extended beyond what is deemed reasonable for this action.

The Court reviewed the documents provided, and the statements of counsel. Some of the discovery requested was premature. That discovery may be addressed at a later date. However, the discovery provided was insufficient.

**WHEREFORE, IT IS ORDERED:**

1. The Defendants shall identify all insurance claims made by the party in the last five (5) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the

disposition of the case.

2. The Defendants shall identify the names, addresses and phone numbers of all employees who were working at the Whitehall Express Mart on May 5, 2013.
3. The Defendants shall provide the names and addresses of all of the banks at which they had accounts on May 5, 2013.
4. The Defendants shall provide the addresses of all of the property that they held, whether jointly or individually, on May 5, 2013.
5. The Defendants shall provide the Plaintiff with copies of their entire Federal and State Income Tax returns for the past five (5) years.
6. Attorney fees and costs shall be held in abeyance.

  
J. CORDELL MADDOX, JR.  
Circuit Court Judge  
Tenth Judicial Circuit

Anderson, South Carolina

February 18, 2013.

FILED-CLERK'S OFFICE  
ANDERSON SC  
2011 FEB 18 P 3:54  
GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON ) IN THE COURT OF COMMON PLEAS  
Mario Escalante, )  
Plaintiff, )  
vs. ) DEFENDANTS' SUPPLEMENTAL  
David L. Rodgers and Janice W. Rodgers, ) ANSWERS TO PLAINTIFF'S FIRST SET  
d/b/a Whitehall Express Mart, ) OF  
Defendants. ) INTERROGATORIES  
C.A. No. 2013-CP-04-1700

TO: DONALD L. SMITH OF THE DONALD L. SMITH LAW FIRM, ATTORNEYS FOR THE PLAINTIFF, MARIO ESCALANTE

The defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, hereby supplement their answers to interrogatories propounded by the plaintiff pursuant to Rule 33 of the South Carolina Rules of Civil Procedure:

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

15. Identify all insurance claims made by the party in the last ten (10) years, including the name of the carrier, the type of policy and policy number under which the claim was made, the type of claim, the amount of the claim and the disposition of the case.

ANSWER:

Pursuant to the order signed by Judge Maddox on February 18, 2014, Whitehall identifies the following insurance claim made in the last five (5) years:

- a. State Auto Insurance Company  
Policy Type: Businessowners  
Policy No.: BOP2505142  
Claim No.: BOP250514292312  
D/L: 9/23/12  
  
Nature of claim: Vehicle damaged in parking lot  
Disposition: State Auto paid \$20 for one day's loss of use

b. State Auto Insurance Company  
Policy Type: Businessowners  
Policy No.: BOP2209667  
Claim No.: PR-0000000-013820  
D/L: 6/13/13

Nature of claim: Lightning strike to building  
Disposition: Claim is still being investigated

c. State Auto Insurance Company  
Policy Type: Businessowners  
Policy No.: BOP2209667  
Claim No.: PR-0000000-003332  
D/L: 10/12/13

Nature of claim: Slip and fall  
Disposition: Claim is still being investigated

16. Please set forth names, addresses and phone numbers of all employees you have had work of the premise in the last five (5) years.

ANSWER:

Pursuant to the order signed by Judge Maddox on February 18, 2014, Whitehall identifies the following employees as having worked at Whitehall on May 5, 2013:

a. Phylis Kelley  
410 West Shockley Ferry  
Anderson, SC 29625  
(864) 356-9636

b. Melissa Reed  
309 Glen Rd.  
Anderson, SC 29626  
(864) 958-4008

c. Nichole Brown  
3612 S. Main St.  
Anderson, SC 29624  
(864) 401-5731



21. Provide a list of all bank accounts owned by the Defendants, provide the name of the bank, the type of account and the account number.

ANSWER:

Pursuant to the order signed by Judge Maddox on February 18, 2014, Whitehall identifies the following banks at which it had accounts on May 5, 2013:

- a. Palmetto Bank  
815 N. Main St.  
Anderson, SC 29621
- b. People's Bank of Anderson  
3901 Clemson Blvd.  
Anderson, SC

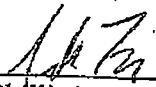
23. Provide all real estate that is both jointly and individually owned by the Defendants. Include the address, purchase price, tax assessment, taxes paid, current value and whether it is a mortgaged property. If a mortgaged property, provide the name of the lienholder and the account number. Also, provide any real estate transactions that have occurred between the Defendants and another party within the last five (5) years, including the name of the purchaser, the date and the amount of the sale.

ANSWER:

Pursuant to the order signed by Judge Maddox on February 18, 2014, Whitehall identifies the following addresses of all property that the Rodgers' held on May 5, 2013:

- a. 5733 Dobbins Bridge Rd.  
Anderson, SC 29626
- b. 1901-B Highway 187 South  
Anderson, SC 29626
- c. 321 Bridgeview Dr.  
Anderson, SC 29625
- d. 704 Whitehall Rd.  
Anderson, SC 29625

- e. 703 Whitehall Rd.  
Anderson, SC 29625
- f. 4017 Brackenberry Dr.  
Anderson, SC 29621

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart

April 11, 2014

**ATTORNEY OFFICE OF DONALD SMITH**

122 N. Main St.  
Anderson SC 29621  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Donald L. Smith, Esquire

Telephone: (864) 642-9284  
Facsimile: (864) 642-9285

June 30, 2014

Phillip E. Reeves, Esquire  
Nicholas A. Farr, Esquire  
P.O. Box 10589  
Greenville SC 29603

**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers, d/b/a  
Whitehall Express Mart  
C.A. No.: 2013-CP-04-01700**

Gentlemen,

Please find enclosed a subpoena that I am serving upon Safe Auto Company, by and through, the Director of Insurance, in the above-referenced matter.

If you have any questions or concerns, please do not hesitate to contact me.

With highest regards, I remain  
Very truly yours,



Donald L. Smith  
DLS/kn  
Enclosures

**STATE OF SOUTH CAROLINA**

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ANDERSON

Mario Escalante, Plaintiff

v.

David L. Rogers et al, Defendant

**SUBPOENA IN A CIVIL CASE**

Case Number: 2013-CP-04-01700

Pending in Anderson County

TO: State Auto Insurance Company, by and through, the Director of Insurance, 1201 Main St., Suite 1000, Columbia SC 29201.

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |                    |
|--------------------|--------------------|
| PLACE OF TESTIMONY | COURTROOM          |
|                    | DATE AND TIME , AM |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                    |
|---------------------|--------------------|
| PLACE OF DEPOSITION | DATE AND TIME , AM |
|---------------------|--------------------|

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

Any and all materials relating to David L. Rodgers and/or Janice W. Rodgers, Whitehall Express Mart, 704 Whitehall Rd., Anderson SC 29625, Policy #BOP2505142 , Policy#BOP2209667. This includes, but is not limited to, policy, contract, claims, settlements, receipts, emails, phone logs, adjuster notes, denials, correspondence, etc. These materials must be returned to the address below, on or before, August 30, 2014.

|                                                                                 |                                   |
|---------------------------------------------------------------------------------|-----------------------------------|
| PLACE<br>Attorney Office of Donald Smith, 122 N. Main St.,<br>Anderson SC 29621 | DATE AND TIME August 30, 2014, AM |
|---------------------------------------------------------------------------------|-----------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

*[Signature]*

DATE 6/30/2014

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

6/30/2014

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

| PROOF OF SERVICE                                                                   |                                                          |                                                                    |
|------------------------------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------------|
| SERVED                                                                             | DATE <u>7/1/2014</u>                                     | FEEES AND MILEAGE TENDERED TO WITNESS                              |
|                                                                                    | PLACE <u>201 Main St., Suite 1000, Columbia SC 29201</u> | <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
| SERVED ON <u>Safe Auto Insurance Co, by and through, the Director of Insurance</u> |                                                          | MANNER OF SERVICE <u>Certified U.S. Mail</u>                       |
| SERVED BY <u>Donald L. Smith, Esquire</u>                                          |                                                          | TITLE <u>Attorney</u>                                              |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/30/2014 7/1/2014

SIGNATURE OF SERVER

122 N. Main Street Anderson SC 29621

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

#### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it

- fails to allow reasonable time for compliance; or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- subjects a person to undue burden.

#### (B) If a subpoena:

- requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCCA 254 (10/04)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

Phillip E. Reeves  
A member of the South Carolina and Georgia Bars  
Direct 864.271.5358  
PReeves@GWBlawfirm.com



Gallivan, White & Boyd, P.A.  
ATTORNEYS AT LAW

55 Beattie Place, Suite 1200  
Post Office Box 10589 (29603)  
Greenville, South Carolina 29601  
Telephone 864.271.9580  
Facsimile 864.271.7502  
www.GWBlawfirm.com

July 3, 2014

Mr. Donald L. Smith  
Attorney Office of Donald Smith  
122 North Main Street  
Anderson, SC 29621

Re: Mario Escalante vs. David L. and Janice W. Rodgers, d/b/a  
Whitehall Express Mart  
C.A. No: 2013-CP-04-01700

Dear Don:

I am in receipt of your June 30, 2014, letter together with attached subpoena in the above-captioned matter. I appreciate you forwarding a copy of this subpoena to me. In this regard, please be advised that we will be responsible for responding to the subpoena on State Auto's behalf. As such, I would appreciate you forwarding all further inquiries concerning this subpoena to me.

As always, I appreciate your attention and cooperation in this matter.

Sincerely yours,

GALLIVAN, WHITE & BOYD, P.A.

Phillip E. Reeves

PER/lzd

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants.

IN THE COURT OF COMMON PLEAS

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION TO QUASH AND/OR FOR  
PROTECTIVE ORDER**

C.A. No. 2013-CP-04-1700

**TO: DONALD L. SMITH OF THE ATTORNEY OFFICE OF DONALD SMITH,  
ATTORNEYS FOR MARIO ESCALANTE, PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, through their undersigned attorneys, will move before the resident or presiding judge of the Anderson County Court of Common Pleas, as soon as possible following the date hereof, at such time and place as may be set by the court for an order quashing and/or limiting the scope of the subpoena issued by the plaintiff on or about June 30, 2014 to State Auto Insurance Company. This motion is based on the grounds that the subpoena seeks the production of material that is not relevant to the claims and defenses in this matter and is not reasonably calculated to lead to the discovery of admissible evidence. Further, the subpoena seeks the production of information which was the subject of the plaintiff's prior motion to compel. By Order dated February 18, 2014, the Honorable J. Cordell Maddox, Jr. limited the scope of permissible discovery relevant to the present subpoena to the identification of insurance claims made by the defendants within the last five years. The defendants complied with the order. The plaintiff cannot seek the production of material by subpoena which this Court has previously ordered did not have to be produced.



This motion is made pursuant to the applicable rules of the South Carolina Rules of Civil Procedure and is based upon the pleadings and discovery in this case, any affidavits or memoranda of law filed or to be filed, and the common and statutory law of the State of South Carolina.



---

Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

Attorneys for Defendants, David L. Rodgers  
and Janice W. Rodgers d/b/a Whitehall Express  
Mart

Greenville, South Carolina

July 17, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

☐ Plaintiff

v.

David L. Rodgers and Janice W. Rodgers

d/b/a Whitehall Express Mart,

☒ Defendants.

IN THE ☒ COURT OF COMMON PLEAS  
☐ FAMILY COURT

CASE NO. 2013-CP-04-1700

**MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET**

Check box above indicating submitting party

Name and address of plaintiff's attorney

Donald L. Smith

Attorney Office of Donald Smith

122 North Main Street

Anderson, SC 29621

Phone: (864) 642-9284 Fax: (864) 642-9285

Name and address of defendant's attorney

Phillip E. Reeves (SC Bar #4672)

Nicholas A. Farr (SC Bar #78769)

Gallivan, White & Boyd, P.A.

P.O. Box 10589

Greenville, SC 29603

Phone: (864) 271-9580 Fax: (864) 271-7502

☒ 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 Quash and/or for Protective Order

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

July 17, 2014

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**

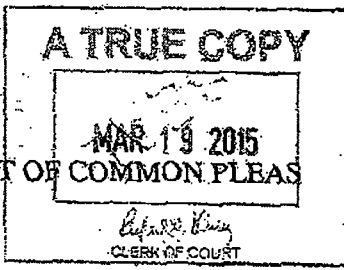
Collected by: \_\_\_\_\_  
(print name)

DATE FILED

☐ MOTION FEE COLLECTED: \_\_\_\_\_

☐ CONTESTED - AMOUNT DUE: \_\_\_\_\_

Feb 12



STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )  
Mario Escalante, )  
Plaintiff, )  
vs. )  
David L. Rodgers and Janice W. Rodgers, )  
d/b/a Whitehall Express Mart, )  
Defendants. )

IN THE COURT OF COMMON PLEAS

ORDER DENYING MOTION TO QUASH

C.A. No.: 2013-CP-04-1700

FILED CLERK'S OFFICE  
ANDERSON SC  
2015 MAR 18 AM 11:37  
COMMON PLEAS AND  
GENERAL SESSIONS

This matter is before the court on the motion of the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, to quash a subpoena served by the plaintiff, Mario Escalante. A hearing on this motion was held before me on February 9, 2015, in the Anderson County Court of Common Pleas. Present at the hearing were Donald L. Smith of the Donald Smith Law Firm, attorneys for the plaintiff, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for the defendants.

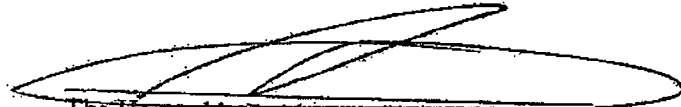
On June 30, 2014, counsel for the plaintiff served a subpoena on State Auto Insurance Company. This subpoena requested any and all claim file materials as well as other documents relating to the defendants and included a request for claim files unrelated to this action. Counsel for the defendants moved to quash the subpoena on the grounds that the subpoena sought the production of material that was not relevant to the claims and defenses in this matter and is not reasonably calculated to lead to the discovery of relevant and admissible evidence.

After hearing arguments from counsel, this Court denies the defendants' motion to quash. However, the Court finds that the plaintiff's subpoena shall be limited to the discovery of materials pertaining to the claim bearing number PR-0000000-013820, which arises out of an

alleged lightning strike which took place shortly after the incident at issue in this action. To the extent that those materials contain confidential or otherwise protected information, the defendants shall petition the court for a confidentiality order.

AND IT IS SO ORDERED.

March 12, 2015  
Anderson, South Carolina

  
The Honorable Robin B. Stilwell, Presiding Judge  
Anderson County Court of Common Pleas  
2158

FILED-CLERK'S OFFICE  
ANDERSON SC  
2015 MAR 18 AM 11:37  
COMMON PLEAS AND  
GENERAL SESSIONS

**MOTION FEE PAID**

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

MARIO ESCALANTE )

Plaintiff, )

vs. )

David L. Rodgers and Janice W. Rodgers, )  
d/b/a, Whitehall Express Mart, )

Defendant. )

IN THE Court of Common Pleas  
10TH JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

**A TRUE COPY**

OCT - 8 2013

*Robert A. Vandy*  
CLERK OF COURT

Docket No. 2012-CP-04-01700

Plaintiff's Attorney:  
Donald L. Smith, Bar No. 6699  
Address:  
122 N. Main St., Anderson SC 29621  
Phone: 864-642-9284 Fax 864-642-9285  
E-mail: Other:

Defendant's Attorney:  
Phillip E. Reeves, Bar No. \_\_\_\_\_  
Address:  
\_\_\_\_\_  
Phone: \_\_\_\_\_ Fax \_\_\_\_\_  
E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- ☒ **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 Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

**SECTION II: Motion/Order Type**

- ☒ Written motion attached  
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*David L. Rodgers*  
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

10/8/2013  
Date submitted

**SECTION III: Motion Fee**

- ☐ PAID - AMOUNT: \$ \_\_\_\_\_  
☐ 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: *T.S.G.* Date Filed: *10/8/13*  
☒ MOTION FEE COLLECTED: \$ *25.00*  
☐ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

Custodial Parent (if applicable): \_\_\_\_\_

# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

I would appreciate the following pertinent documents and information regarding the loss:

1. As soon as possible, contact and phone numbers of any technicians working on the equipment and copies of any technician work orders outlining any evaluation of the equipment and the apparent scope of damage.
2. A detailed inventory of the damaged equipment indicating the manufacturer's model/part numbers, and relevant configurations/specs.
3. Upon receipt, copies of any actual repair/replacement invoices or estimates broken down by parts (manufacturer, model/part number, repair/replacement cost) and labor (date, technician, hours, hourly rate, and detail of specific work activity).

The insurance company requests that any repair/replacement costs incurred be considered practical and cost effective relative to current market values and apparent scope of damage.

Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • [derek@nicenetwork.com](mailto:derek@nicenetwork.com)

February 21, 2014

Mr. Adolph Ware  
State Auto Insurance  
P.O. Box 1980  
Indianapolis, IN 46209

Re: David Rodgers  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Ware:

On 06/18/2013, NICE Network was contacted in reference to the above captioned claim involving Ryko car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network was requested to verify the inventory and value of the equipment, evaluate the reported scope of damage and appropriate repair/replacement options, and assess the potential salvage recovery.

On 06/18/13, NICE Network contacted Mr. David Rodgers of David Rodgers and NICE Network was advised that the car wash equipment had not been repaired or replaced as of that date. According to Mr. Rodgers, a local technician completed an initial damage/repair evaluation and determined at least two components were damaged and required replacement, but there would likely be more damage discovered. Mr. Rodgers also advised that he had arranged for other technician to evaluate a sign, lights, and a camera system.

NICE Network requested a detailed inventory of the equipment, copies of any technician work orders, and copies of any repair/replacement invoices and estimates. (See NICE Network's contact letter dated 06/18/13 and follow up letters.)

On 08/26/13, Mr. Rodgers advised that he had planned to repair the car wash on his own and with the assistance of local technicians. NICE Network confirmed with Ryko that the insured purchased \$1,969.44 in repair/replacement parts, however, the insured was unable to complete repairs on his own and returned the parts to Ryko for a credit of \$1,969.44.

Based on the information provided to NICE Network, the insured's presented repair/replacement costs total \$32,885.76 which includes \$23,790.76 for repairs/replacement equipment, \$4,363.00 for loss of revenue, and \$4,732.00 for lost coin box sales as per the enclosed repair/replacement invoices, estimates, and prior year revenue documentation.

Based on NICE Network's initial weather research, there were thunderstorms in the insured's area on the reported date of loss as indicated by the enclosed copy of the NCDC weather report. If requested, NICE Network can obtain a lightning verification report to confirm if there were any cloud to ground lightning strikes near the loss location on the reported date of loss.

Following this report is a spreadsheet which contains a breakdown of equipment reported as damaged, the presented repair/replacement cost, and NICE Network's estimated repair/replacement cost. Please refer to the footnotes in the right column and the following corresponding descriptions:

1. Based on NICE Network's market research, the presented repair/replacement part pricing is reflective of competitive market pricing.
2. NICE Network contacted John Rose of Ryko Solutions and NICE Network was advised that the Ryko car wash system was damaged by a severe electrical surge, characteristic of lightning damage. According to Mr. Rose, Ryko service technicians confirmed the car wash equipment incurred damage to five areas or components: the outside activation system, the internal interface system, ultrasonic sensor, the Ryko PLC board, and the code generation interface unit inside the store. NICE Network was advised that some of the components exhibited visible physical damage, including burn marks. The system reported as damaged has been manufacturer discontinued, but the replacement equipment is considered comparable new equipment.
3. NICE Network confirmed with Mr. Rose that these are options that the insured did not have on the damaged car wash equipment.
4. NICE Network obtained the attached Ryko Work Order/Invoice dated 10/24/13 which verified the car was fully repaired, tested, and deemed fully operational on that date which is over three months after the date of loss. NICE Network estimates that a reasonable length of time to fully repair a car wash is two months.
5. NICE Network has not received any documentation to substantiate any loss of coin box sales. If requested, NICE Network can review any prior year documentation to verify the presented loss of coin box revenue.

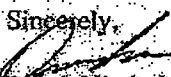
If requested, NICE Network can arrange to have the equipment further evaluated to verify the reported scope of damage. Considering the used market value and the reported scope of damage, the damaged equipment has minimal, if any, salvage value in the secondary market.

In summary, the repair/replacement costs verified to date total \$23,655.38. On 02/21/14, NICE Network left a phone message for Mr. Rodgers to review the estimated repair/replacement costs.

If necessary, any additional presented actual repair/replacement invoices can be verified to ascertain actual costs incurred. Please be advised that all of NICE Network's estimated repair/replacement costs are contingent upon the interpretation of any policy relevant to the loss and are not intended to imply any coverage decisions.

This report concludes NICE Network's activities on this assignment as requested and enclosed is our bill for services and expenses. If you have any questions or further need of our service, please call.

Sincerely,

  
Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant



37495  
11/19



David Rodgers  
<bigdaveatwhiteha@aol.com>

To: derek@nicenetwork.com

cc

11/18/2013 04:26 PM

bcc

Subject: Fwd: Whitehall Express

I am forwarding you the recent letter from John Rose. He is the service manager for the southeast for Ryko. I will send you the documentation on electrical and camera system this week.

-----Original Message-----

From: JRose <JRose@Ryko.com>

To: David Rodgers <bigdaveatwhiteha@aol.com>

Sent: Sat, Nov 16, 2013 12:59 pm

Subject: Whitehall Express

David,

I apologize for the delays in getting back with you. I took some vacation days this week and our workload has been extreme over the past 12 weeks. I came in on Saturday to get caught up a little. I will try to answer most of the topics we have been discussing below and will call you Monday before noon to check with you. I have not been contacted from any insurance agency about your site.

\* I have attached 2 PDF's below that address the issues with repairing the existing equipment with the car wash when your site suffered the huge power surge or most likely lightning strike. It is not verifiable by examining the equipment which occurred as the burned out electronics have the same symptoms when this happens.

Technology changes quickly in the computerized equipment markets and systems that get older than four or five years can quickly become obsolete and impossible to repair or too costly if it's possible. Very similar to home and office computerized systems.

The equipment damaged on your site included the outside activation system, the internal interface system, ultrasonic sensor and PLC onboard the actual machine and the Code generation interface unit inside the store. As you see from the letter, these systems are no longer fully supported and parts for repairs are scarce if available at all.

We do not have access to the original documentation for the sale of that equipment. I can only give you the corresponding part numbers associated with that equipment and a ballpark price for the retail value when that equipment was on the market.

This was the inside store unit and the outside activation unit, which you replaced with newer systems.

*damaged* 7010M - Code Generation Interface Unit (CAW IV) \$4000.00

*damaged* 7020M - Multi-Upgrade Activation system - \$ 5000.00

Onboard the carwash itself we replaced the following. These items are at the current price you paid.

*damaged* 19850-026 - Sensor/Ultrasonic, 0-1 KHZ, 3AVG - \$608.69

*damaged* 19576-018 - PC/ 128 I/O Base CPU with Clock -- \$2500.00

*incompatible* 15903-000 - Wash Combination Selector Assy. - \$744.91

\* I have entered the parts you returned when we got stuck on the repair for a credit, the total credit applied for was \$1969.44. Ryko does not move quickly on credit memo's, so check with accounting before placing any orders to assure the credit has been applied to your account, it will be a few weeks. They will not issue a check.

*- parts from trying to make repairs on his*

Thank you.

John Rose  
Service Manager GA / E.TN/ SC  
Ryko Solutions, Inc.  
1500 SE 37th Street  
Grimes, Iowa 50111  
Phone: 800-362-9331  
Fax: 770-729-8846  
www.ryko.com



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Master\_obsolescence\_letter.pdf



Final\_parts\_list.pdf



# SALES ORDER

50-249266

12/10/2013



**Customer**

Whitehall Express  
Dave  
704 Whitehall Road  
ANDERSON SC 29621  
UNITED STATES  
Tel: (854) 224-1086

## Contacts

Ship To

Marshall Express  
Dave  
704 Whitehall Road  
ANDERSON SC 29621  
UNITED STATES  
Tel: (554) 224-1086

| Account          | Terms                   | Ship Date  | Account Rep | Schedule Date |          |          |
|------------------|-------------------------|------------|-------------|---------------|----------|----------|
| 290636           | CREDIT CARD             | 12/10/2013 | Irene Kelly | 12/9/2013     |          |          |
| Quotation        | PO #                    | Reference  | Ship VIA    | Pages Printed |          |          |
| SC-281652        |                         |            | UPS Ground  | 1             |          |          |
| L Item           | Description             | Order      | Ship        | Price UM      | Discount | Amount   |
| 1BCCR264-16X1-2T | 16 Channel 2000 HD      | 1          |             | \$505.00 EA   | \$50.50  | \$454.50 |
| 2HDD-1TB-Cantek  | 1TB HDD-CAN/5Y          | 2          |             | \$100.00 EA   |          | \$200.00 |
| 3102Q01          | VSI-PRO VES EXT VASSTER | 2          |             | \$139.00 EA   | \$79.80  | \$718.20 |
| \$100000         | Gillette Passport 505   | 2          |             | \$42.00 EA    | \$8.40   | \$75.20  |
| 538              | SHIPPING/HANDLING       | 1          |             | \$29.60 EA    |          | \$29.60  |

NOTE: A RESTOCKING FEE OF 25% WILL BE APPLIED TO ALL SALES RETURNS NOT RETURNED WITHIN 15 DAYS FROM RECEIPT DATE. ALL RETURNS REQUIRE AN RMA # BEFORE THEY CAN BE SHIPPED BACK. NO RETURNS WILL BE ACCEPTED AFTER 30 DAYS.

Tax Details  
EXHIBIT 22-201

**Example**

54.56

Payment Date: 12/05/2014

1992

50-60

Example:

ॐ नमो भगवते वासुदेवाय

**Total**

21,477.33

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\$1,472.36

Balance  
Dec. 31, 1922

58.10  
22,472.20

From: sales <sales@closeoutcctv.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Subject: closeoutcctv.com Order Confirmation  
Date: Thu, Nov 14, 2013 12:44 pm



CustomerID# 48903

Thank you for your order. Your order number is LUX76203, placed 09/11/2013 at 12:12PM.

**\*Note Important Order and Tracking Information\***

Once your package has shipped, you will receive a confirmation email with tracking information about your order. Expedited requests that are received before 10:00 AM EST will have same day shipping.

*The customer is responsible for inspecting product for shipping damage/missing items within 7 days of product delivery. Unused merchandise may be returned within 30 days from date of purchase for a refund of the purchase price less a 20% restocking fee.*

**Bill To:**

David L Rodgers  
PO Box 2906  
Anderson, SC 29622  
United States  
864-940-0113  
bigdaveatwhiteha@aol.com

**Ship To:**

Whitehall Express/ David Rodgers  
704 White Hall Rd  
Anderson, SC 29521  
United States  
864-940-0113

**Payment Info:**

Credit Card: American Express  
David L Rodgers  
\*\*\*\*\*3015  
Exp: 06/2015

**Shipping Method:**

Free Shipping (UPS Ground)

**Order Details:**

| Code       | Item                                                 | Qty | Price    | Grand Total |
|------------|------------------------------------------------------|-----|----------|-------------|
| CL-18POWER | 18 Channel CCTV Camera Power Supply Distribution Box | 2   | \$109.95 | \$219.90    |

Subtotal: \$219.90

Tax: \$0.00

Shipping  
Cost: \$0.00

Grand Total: \$219.90

From: sales <sales@closeoutcctv.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Subject: closeoutcctv.com Order Confirmation  
Date: Thu, Nov 14, 2013 12:46 pm



CustomerID# 48803

Thank you for your order. Your order number is LUX75228, placed 07/08/2013 at 04:06PM.

**\*Note Important Order and Tracking Information\***

Once your package has shipped, you will receive a confirmation email with tracking information about your order. Expedited requests that are received before 10:00 AM EST will have same day shipping.

The customer is responsible for inspecting product for shipping damage/missing items within 7 days of product delivery. Unused merchandise may be returned within 30 days from date of purchase for a refund of the purchase price less a 20% restocking fee.

**Bill To:**

David L Rodgers  
PO box 2906  
Anderson, SC 29622  
United States  
864-940-0113  
bigdaveatwhiteha@aol.com

**Ship To:**

Whitehall Express/ David Rodgers  
704 White Hall Rd  
Anderson, SC 29621  
United States  
864-940-0113

**Payment Info:**

Credit Card: American Express  
David L Rodgers  
\*\*\*\*\*3015  
Exp: 06/2015

**Shipping Method:**

Free Shipping (UPS Ground)

**Order Details:**

| Code   | Item                                                      | Qty | Price   | Grand Total |
|--------|-----------------------------------------------------------|-----|---------|-------------|
| CL-21S | Home Bullet Camera with 420 Lines of Resolution           | 12  | \$50.95 | \$611.40    |
| CL-20S | Security Cameras with Sony CCD 420 TV Lines of Resolution | 4   | \$38.95 | \$155.80    |

Subtotal: \$767.20

Tax: \$0.00

Shipping  
Cost: \$0.00

Grand Total: \$767.20

Insured: David Rodgers  
revision 2/21/14

NICE Network File #37495  
Claim # PR-0000000-013820

| Item# | Qty. | Vendor & Equipment Description                                                                 | Invoice Estimate<br>Other | Insured's Presented<br>Repair/Replacement | NICE Network<br>Estimated<br>Repair/Replacement | Notes |
|-------|------|------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------------|-------------------------------------------------|-------|
|       |      | <i>123 Security Products</i>                                                                   |                           |                                           |                                                 |       |
| 1     |      | 16 channel DVR with (2) 1TB hard drives, etc.                                                  | I                         | \$1,477.30                                | \$1,477.30                                      | 1     |
|       |      | <i>RYKO</i>                                                                                    |                           |                                           |                                                 |       |
| 2     | 1    | Unitec Wash Select II POS with Mars                                                            |                           | 10,141.00                                 | 10,141.00                                       | 2     |
| 3     | 1    | Unitec Internet processing option                                                              |                           | 2,855.00                                  | did not have                                    | 3     |
| 4     | 1    | Unitec thermal receipt and report printer option                                               |                           | 1,282.00                                  | 1,282.00                                        | 2     |
| 5     | 1    | Unitec proximity sensor option                                                                 |                           | 514.00                                    | 514.00                                          | 2     |
| 6     | 1    | Unitec alarm option                                                                            |                           | 218.00                                    | did not have                                    | 3     |
| 7     | 1    | Unitec voice messaging option                                                                  |                           | 689.00                                    | 689.00                                          | 2     |
| 8     | 1    | Unitec surge suppression kit                                                                   |                           | 254.00                                    | 254.00                                          | 2     |
| 9     | 1    | Unitec standard height stainless steel base                                                    |                           | 945.00                                    | 945.00                                          | 2     |
| 10    | 1    | Wash combination selector                                                                      |                           | 800.00                                    | \$800.00                                        | 2     |
| 11    | x    | Sales tax @ 6%                                                                                 |                           | 1,049.88                                  | 877.50                                          | 2     |
| 12    | x    | Installation labor                                                                             |                           | 2,074.48                                  | 2,074.48                                        | 2     |
|       |      | Subtotal                                                                                       | I                         | 20,622.36                                 | 17,576.96                                       |       |
|       |      | <i>Cliqueur CCTV</i>                                                                           |                           |                                           |                                                 |       |
| 13    | 2    | 18-channel CCTV camera power supply distribution box                                           | I                         | 219.90                                    | 219.90                                          | 1     |
| 14    | x    | (12) Home Bullet camera with 420 resolution, (4) Security cameras with Sony CCD 420 resolution | I                         | 767.20                                    | 767.20                                          | 1     |
|       |      | <i>Upstate Lighting</i>                                                                        |                           |                                           |                                                 |       |
| 15    | 4    | Service charge, metal halide lamps for parking lot and car wash, installation labor            | I                         | 704.00                                    | 704.00                                          | 1     |
|       |      | <i>Loss of Carwash Sales Prior Year Documentation</i>                                          |                           |                                           |                                                 |       |
| 16    |      | 7/1/12 to 7/31/12                                                                              |                           | 233.00                                    | 233.00                                          | 3     |
| 17    |      | 7/1/12 to 7/31/12                                                                              |                           | 667.00                                    | 667.00                                          | 3     |
| 18    |      | 8/1/12 to 8/31/12                                                                              |                           | 232.00                                    | 232.00                                          | 3     |
| 19    |      | 8/1/12 to 8/31/12                                                                              |                           | 662.00                                    | 662.00                                          | 3     |
| 20    |      | 9/1/12 to 9/30/12                                                                              |                           | 282.00                                    | 282.00                                          | 3     |
| 21    |      | 9/1/12 to 9/30/12                                                                              |                           | 834.00                                    | 834.00                                          | 3     |
| 22    |      | 10/1/12 to 10/31/12                                                                            |                           | 496.00                                    | not verified                                    | 4     |
| 23    |      | 10/1/12 to 10/31/12                                                                            |                           | 957.00                                    | not verified                                    | 4     |
|       |      | Subtotal                                                                                       | O                         | 4,363.00                                  | 2,910.00                                        |       |
| 24    |      | Coinbox sales                                                                                  | n/a                       | 4,732.00                                  | not verified                                    | 5     |
|       |      | TOTALS                                                                                         |                           | \$32,885.76                               | \$23,655.38                                     |       |

Claim: PR-0000000-013820



Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

## Loss Details

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### Loss Details

|                                  |                                                                                    |
|----------------------------------|------------------------------------------------------------------------------------|
| FNOL Description                 | Lightning strike to building, electronics damaged. Estimated damages of \$8-9,000. |
| Assignment Loss Type             | Structural damage                                                                  |
| Is there subrogation potential?  | No                                                                                 |
| Is there salvage potential?      | No                                                                                 |
| Is this related to a CAT?        | Yes                                                                                |
| Catastrophe                      | 172013 - 172013 - 06/12/2013 - 06/14/2013                                          |
| Weather                          |                                                                                    |
| In Course of Employment?         |                                                                                    |
| Date of Loss                     | 06/13/2013 12:01 AM                                                                |
| Sammi Location Code              |                                                                                    |
| AIA Accident Description         | FIRE, LIGHTNING - BUILDING LOSS                                                    |
| Facts of Loss                    |                                                                                    |
| Self Insured Ind                 |                                                                                    |
| Destruction override date        | 05/12/2021 03:08 PM                                                                |
| Class action indicator           |                                                                                    |
| Premium Paid                     | Yes                                                                                |
| Pending Recoverable Depreciation | No                                                                                 |

### Coverage Review

|                                   |     |
|-----------------------------------|-----|
| Review Loss History?              | Yes |
| Applicable Forms and Endorsements |     |

Special Limits/Deductibles?

### Loss Location

|           |                    |
|-----------|--------------------|
| Address 1 | 704 WHITEHALL ROAD |
|-----------|--------------------|

User: SHELLY BROVIAK

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Claim: PR-0000000-013820



Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

**Address 2**

City Anderson  
County Elmore  
State South Carolina  
ZIP Code 29325  
Country United States of America  
Description of Loss Location  
State of Controlling Law South Carolina

**Notification and Contact**

First Notice Suit?  
How Reported Phone  
Reported By Kelly Sutherland  
Relationship to Insured Agent  
Main Contact DAVID RODGERS  
Relationship to Insured Self  
Date Reported to Agent

**Vehicles**

**Properties**

| Address          | City     | State |
|------------------|----------|-------|
| 704 WHITEHALL RD | (TAX MAP |       |

**Injuries**



Claim: PR-0000000-013820



Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

### Non-Physical Injuries

### Officials

### Witnesses

### Contributing Factors

### Financials (Total Incurred: \$25,826.51): Transactions

| Type    | Date       | Amount      | Exposure   | Coverage | Financial Type | Transaction Category | Status     | User        |
|---------|------------|-------------|------------|----------|----------------|----------------------|------------|-------------|
| Reserve | 11/14/2013 | \$8,000.00  | 1 Building | Building | Indemnity      | Indemnity            | Submitting | STEVE FRYE  |
| Reserve | 11/14/2013 | \$1,000.00  | 1 Building | Building | Expense        | Expense              | Submitting | STEVE FRYE  |
| Reserve | 02/14/2014 | \$22,000.00 | 1 Building | Building | Indemnity      | Indemnity            | Submitting | ADOLPH WARE |

User: SHELLY BROVIAK

Claim: PR-0000000-013820



Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

| Type    | Date       | Amount        | Exposure                          | Coverage  | Financial Type | Transaction Category | Status     | User        |
|---------|------------|---------------|-----------------------------------|-----------|----------------|----------------------|------------|-------------|
| Payment | 03/06/2014 | \$1,476.25    | 1 Building                        | Expense   | Expense        | Expense              | Submitted  | ADOLPH WARE |
| Payment | 04/11/2014 | \$18,790.26   | 1 Building                        | Indemnity | Indemnity      | Indemnity            | Submitted  | ADOLPH WARE |
| Reserve | 05/02/2014 | (\$323.76)    | 1 Building                        | Expense   | Expense        | Expense              | Submitting | ADOLPH WARE |
| Reserve | 05/02/2014 | (\$11,209.74) | 1 Building                        | Indemnity | Indemnity      | Indemnity            | Submitting | ADOLPH WARE |
| Reserve | 05/02/2014 | \$4,800.00    | 2 Time Element - Extended Bus Inc | Indemnity | Indemnity      | Indemnity            | Submitting | ADOLPH WARE |
| Reserve | 05/02/2014 | \$900.00      | 2 Time Element - Extended Bus Inc | Expense   | Expense        | Expense              | Submitting | ADOLPH WARE |
| Payment | 05/02/2014 | \$4,800.00    | 2 Time Element - Extended Bus Inc | Indemnity | Indemnity      | Indemnity            | Submitted  | ADOLPH WARE |
| Payment | 05/12/2014 | \$760.00      | 2 Time Element - Extended Bus Inc | Expense   | Expense        | Expense              | Submitted  | ADOLPH WARE |
| Reserve | 05/12/2014 | (\$140.00)    | 2 Time Element - Extended Bus Inc | Expense   | Expense        | Expense              | Submitted  | ADOLPH WARE |

## Latest Notes

|                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>CLOSED CLAIM.</p> <p>-ADOLPH WARE (05/12/2014 03:09 PM)</p> <p>issued check to accountant for 760</p> <p>-ADOLPH WARE (05/12/2014 05:08 PM)</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------|

User: SHELLY BROVIK

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Rec'd OK to pay accountant.  
-ADOLPH WARE (05/12/2014 03:07 PM)

Received invoice from accountant. Request authority from supv. Brant to issue payment to accountant for 760.  
-ADOLPH WARE (05/12/2014 02:52 PM)

Awaiting invoice from accountant to close claim.  
-ADOLPH WARE (05/12/2014 08:07 AM)

INSD CALLED. I WENT OVER BI CLAIM WITH HIM AND INFORMED HIM OF THE EVALUATED BI AMOUNT. INFORMED INSD THAT A CHECK IS BEING ISSUED FOR 4800 FOR THE BI CLAIM. INSD DIDN'T HAVE ANY REMAINING QUESTIONS. ISSUED CHECK TO INSD FOR 4800.  
-ADOLPH WARE (05/02/2014 11:02 AM)

REC'D OK AND I SET THE RESERVES CALLED INSD AND LF V/M MESSAGE CALLED ACCOUNTANT AND REQUESTED THAT SHE FORWARD HER INVOICE.  
-ADOLPH WARE (05/02/2014 10:54 AM)

I SET INSD'S REMAINING RESERVE AT ZERO. REC'D ACCOUNTANT'S REVIEW OF INSD'S CLAIM. SHE HAS CALCULATED INSD'S BI LOSS TO BE 4800 REQUESTED AUTHORITY TO SET BI RESERVE AT 4800 AND EXPENSE RESERVE TO 900.  
-ADOLPH WARE (05/02/2014 09:57 AM)

rec'd insd's documentation for BI. Discussed loss with supv and rec'd OK to use accountant. I was advised that BI loss over 5k has to reviewed by accountant. I was given Lynda Hogarth contact info @ 317-574-1991 I sent accountant the information that insd supplied me. Lynda indicated that she will follow up with insd. Called insd and informed him that Lynda Hogarth will be assisting us with evaluating his BI claim.  
-ADOLPH WARE (05/01/2014 09:30 AM)

Called insd. Insd is going to forward me some information today.  
-ADOLPH WARE (04/30/2014 08:29 AM)

Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

SPOKE TO INSD. DAVID IS GOING TO FORWARD SOME INFORMATION FOR HIS BI CLAIM.

-ADOLPH WARE (04/23/2014 12:08 PM)

ISSUED CHECK TO INSD FOR 18790.26

-ADOLPH WARE (04/14/2014 07:10 AM)

INSD HAS PROVIDED COPIES OF THE MORTGAGE RELEASES. CALLED INSD AND SPOKE TO DAVID. HE IS IN THE PROCESS OF GETTING ADDITIONAL DOCUMENTATION TO EVALUATE HIS BI CLAIM. INSD WILL BE OUT OF THE COUNTRY NEXT WEEK AND WILL FORWARD DOCUMENTATION ONCE HE RETURNS INSD HAS REC'D A COPY NICE NETWORKS REPORT AND HE IS IN AGREEMENT WITH THE VALUATION FOR HIS DAMAGE. I INFORMED INSD THAT A CHECK IS BEING ISSUED FOR RC 23790.26 DED 5000 NET PAY 18790.26 REQUESTED AUTHORITY TO ISSUE PAYMENT TO INSD FOR 18790.26

-ADOLPH WARE (04/11/2014 10:47 AM)

I e-mailed nice network report to insd. insd has accepted quote for damage however he is in the process of securing lien releases. insd indicated that he also wants to forward some different documentation that may reflect his BI claim insd will let me know when he secure lien releases and has BI documentation

-ADOLPH WARE (03/20/2014 01:58 PM)

REC'D NICE NETWORKS REPORT AND REVIEWED IT. INSD HAS A CLAIM FOR 23790.76 FOR DAMAGE TO CAR WASH AND HAVE AN ESTIMATED BI CLAIM FOR 9000. DISCUSSED LOSS WITH MANAGER JACK. I RECEIVED THE OK TO HAVE AN ACCOUNTANT EVALUATE INSD'S BI CLAIM. ISSUED CHECK TO NICE NETWORK FOR 1476.25

-ADOLPH WARE (03/06/2014 09:28 AM)

Called Derek Niederhelman @ NICE Network, Inc. y. 800-837-6423 ext. 4. He will be forwarding the report over tomorrow.

-ADOLPH WARE (02/20/2014 11:28 AM)

sent request to set reserve at 30k to my supv.

-ADOLPH WARE (02/14/2014 10:58 AM)

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Pol: BOP2209667 | Ins: DAVID RODGERS | DoL: 06/13/2013 | St: Closed | Adj: ADOLPH WARE (RCI Centralized Property Team 2)

Called Derek Niederhelman @ NICE Network, Inc. v- 800-837-6423, ext. 4. I spoke to Derek. He indicated that he is in the process of evaluating some information that he received from our Insd. He suggested that I set a reserve of 60k on the claim. He will provide me with an update by next Friday.

-ADOLPH WARE (02/13/2014 10:56 AM)

Called Derek Niederhelman @ NICE Network, Inc. v- 800-837-6423, ext. 4. I left a voice-mail message requesting a return call.

-ADOLPH WARE (02/13/2014 01:08 PM)

Received a call from Derek from Nice Network. He states that he has received the insured's repair invoices. He states the repairs that total around \$28,000.00. He will have the report to us shortly. Setting diary for 7 days.

STEVE FRYE (02/03/2014 10:10 AM)

STATUS REQ. TO NI FROM NICE

12/18/13 Hello David, I would like to wrap this up soon possible. As of this date, I have not received any actual repair/replacement invoices. Please provide copies of actual invoices for the repairs that have been made to the car wash equipment, as well as the electrical and camera system. Thank you and please call or email if you have any questions. Sincerely, Derek Niederhelman NICE Network, Inc. v- 800-837-6423, ext. 4 f- 859-814-0062

-CHRISTINA WESTERLUND (01/12/2014 01:14 PM)

Called NICE

I called and left a message to get the status of the claim. I will attempt to call nice again later today.

-STEVE FRYE (12/17/2013 09:49 AM)

Spoke with the agent

I spoke with Kelly at the agent's office. We discussed the claim. The insured has sent documents to Engineer to reviewed. I explained I call NICE Network to get the status of the claim. She understood.

-STEVE FRYE (12/17/2013 09:47 AM)

I spoke to Ms. Garrett at the agent's office. We discussed the claim. The insured was upset about the 10 day letter he had received. He explained the letter was sent due lack of information from the insured. The agent requested that I send email from engineer to the insured. She will follow up with the insured and forward any information to me.

-STEVE FRYE (11/14/2013 02:51 PM)

Insured sent request to keep the claim open. He still getting invoices for the repairs together to submit to Nice Network. I am setting activity out 10 days and I will follow up with the insured.

-STEVE FRYE (11/07/2013 10:49 AM)

Mailed 10 Day Letter

I have mailed a 10 day letter to the insured. The insured has provided the needed documentation to Nice Network for damages that the insured is claiming for the loss. I will review again in 14 days.

-STEVE FRYE (11/07/2013 10:32 AM)

Called Insured

I called the insured at 864-940-0113. I left a message for the insured requesting the needed documents for the nice network for the damages to his building. I left my contact information. I f no response from the insured I will send a 10 day letter to the insured.

-STEVE FRYE (10/18/2013 10:21 AM)

Received status:

Received status from engineer. He is requesting additional documentation from the insured.

-STEVE FRYE (09/26/2013 09:52 AM)

Received second status from Nice network, The insured has not provided the requested documentation to Nice network. They have sent a 14 day letter requesting documents from the insured

-STEVE FRYE (08/24/2013 04:55 PM)

Requested status

I sent email requesting status from Nice Network.

-STEVE FRYE (08/08/2013 01:23 PM)

Called insured

I called and spoke to Mr. Rodgers. He states that the carwash, video cameras and exterior lights have effected by lightning. He estimates the repairs at around \$8,000. I explained I was assigning NICE Network to come to the site and and inspect the loss. The insured understood. I left my contact information.

-STEVE FRYE (06/18/2013 02:30 PM)

Attempted Contact

Left a message for the insured at 864-940-0113, trying to determine what was hit by lightning. I will attempt to call the insured again. later this morning. I left my contact information.

-STEVE FRYE (06/18/2013 06:59 AM)

Called Insured

Left a message for the insured at 864-940-0113, explaining the claim process. Within 48 hours an adjuster will contact to set an inspection date. Once inspection has been completed the adjuster will send a report for review to me. Once the report is received and reviewed I will contact you to discuss your policy and coverage. Advised if they have any additional questions to please feel free to contact me. Provided my contact information.

-STEVE FRYE (06/17/2013 05:38 PM)

Coverage

Coverage Noted as Follows BLD 1-1: \$405,121, RCV BPP 1-1: \$130,445, RCV BLD 1-2: \$281,, RCV BLD 1-3: \$175,243, RCV DEDUCTIBLE: \$5,000 CO-INSURANCE: 80% PREMIUM STATUS: OK POLICY PERIOD: 09/04/2012-9/04/2013. The policy provides coverage for direct physical loss to the building and personal property. The date of loss falls within the policy period noted above.

-STEVE FRYE (06/17/2013 05:31 PM)



**From:** Derek@nicenetwork.com  
**Sent:** Tuesday, June 18, 2013 3:58 PM  
**To:** bigdavewhite@aol.com  
**Cc:** Frye, Steve  
**Subject:** State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** 37495c1.pdf

---

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

\*\* Can't open this attachment? Download the latest version of Adobe PDF reader here <http://www.adobe.com/products/acrobat/readstep2.html>

# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

I would appreciate the following pertinent documents and information regarding the loss:

1. As soon as possible, contact and phone numbers of any technicians working on the equipment and copies of any technician work orders outlining any evaluation of the equipment and the apparent scope of damage.
2. A detailed inventory of the damaged equipment indicating the manufacturer's model/part numbers, and relevant configurations/specs.
3. Upon receipt, copies of any actual repair/replacement invoices or estimates broken down by parts (manufacturer, model/part number, repair/replacement cost) and labor (date, technician, hours, hourly rate, and detail of specific work activity).

The insurance company requests that any repair/replacement costs incurred be considered practical and cost effective relative to current market values and apparent scope of damage.

Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelfman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

**From:** Jamie@nicenetwork.com  
**Sent:** Tuesday, June 18, 2013 1:43 PM  
**To:** Frye, Steve  
**Cc:** derek@nicenetwork.com  
**Subject:** Claim # PR-0000000-013820 for David Rodgers; NICE Network File 37495

---

Steve,

This is to confirm that NICE Network has received your new assignment and Derek Niederhelman will be handling this file and will follow-up accordingly. You can reach Derek at 800-837-6423 ext. 4 or email:  
derek@nicenetwork.com

Thank you.

Jamie Mount  
Office Manager

**From:** Derek@nicenetwork.com  
**Sent:** Friday, July 05, 2013 2:48 PM  
**To:** bigdaveatwhiteha@aol.com  
**Cc:** Frye, Steve  
**Subject:** State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** 37495c1.pdf

---

Hello Dave,

I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Please advise if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 07/05/2013 03:46 PM —

Derek Niederhelman/nicenetwork

06/18/2013 04:58 PM

To bigdaveatwhiteha@aol.com

cc Steve.frye@stateauto.com

Subjed State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

142

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

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# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

I would appreciate the following pertinent documents and information regarding the loss:

1. As soon as possible, contact and phone numbers of any technicians working on the equipment and copies of any technician work orders outlining any evaluation of the equipment and the apparent scope of damage.
2. A detailed inventory of the damaged equipment indicating the manufacturer's model/part numbers, and relevant configurations/specs.
3. Upon receipt, copies of any actual repair/replacement invoices or estimates broken down by parts (manufacturer, model/part number, repair/replacement cost) and labor (date, technician, hours, hourly rate, and detail of specific work activity).

The insurance company requests that any repair/replacement costs incurred be considered practical and cost effective relative to current market values and apparent scope of damage.

Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

**From:** Frye, Steve  
**Sent:** Thursday, August 08, 2013 12:19 PM  
**To:** derek@nicenetwork.com  
**Cc:** Frye, Steve  
**Subject:** Claim # PR-0000000-013820 for David Rodgers; NICE Network File 37495

---

Derek,

Can you give me a status update on this claim?

Thanks

**Steve Frye**

Claims Adjuster

State Auto Insurance Companies [www.stateauto.com](http://www.stateauto.com)

5918 West Courtyard Dr.

Suite 100, Austin, TX 78730

Phone: 512.354.3935

**From:** Derek@nicenetwork.com  
**Sent:** Thursday, August 08, 2013 1:29 PM  
**To:** bigdaveatwhiteha@aol.com  
**Cc:** Frye, Steve  
**Subject:** State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** 37495c1.pdf

---

Hello Dave,

As of this date, I have not received the requested claim documentation as per my June 18th letter and follow up email. I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Let me know if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 08/08/2013 01:27 PM —

Derek Niederhelman/nicenetwork

To bigdaveatwhiteha@aol.com

cc Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

45

07/05/2013 03:48 PM

Hello Dave,

I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Please advise if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 07/05/2013 03:48 PM —

Derek Niederhelman/nicenetwork

To bigdaveatwhiteha@aol.com

cc Steve.frye@stateauto.com

08/18/2013 04:58 PM

Subject: Stat (Steve, NICE Network, Inc.)  
Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

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# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

I would appreciate the following pertinent documents and information regarding the loss:

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Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

**From:** Derek@nicenetwork.com  
**Sent:** Friday, August 23, 2013 12:09 PM  
**To:** bigdaveatwhiteha@aol.com  
**Cc:** Frye, Steve  
**Subject:** State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** 37495c1.pdf

---

Hello Dave,

As per my phone message, the insurance company requests that the requested claim documentation be provided as soon as possible for review. NICE Network will close our file in 2 weeks if we have not received a response to this email, or my phone call.

Let me know if you have any questions about the specific requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

→  
✉ Forwarded by Derek Niederhelman/nicenetwork on 08/23/2013 12:08 PM —  
Derek Niederhelman/nicenetwork

To: bigdaveatwhiteha@aol.com

cc: Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

08/08/2013 01:29 PM

Hello Dave,

As of this date, I have not received the requested claim documentation as per my June 18th letter and follow up email. I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Let me know if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 08/08/2013 01:27 PM —

Derek Niederhelman/nicenetwork

07/05/2013 03:48 PM

To: bigdave@whiteha@aol.com

cc: Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

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Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 07/05/2013 03:48 PM —

Derek Niederhelman/nicenetwork

07/18/2013 04:58 PM

To: bigdave@whiteha@aol.com

cc: Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

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# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

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Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelfman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

**From:** Derek@nicenetwork.com  
**Sent:** Tuesday, September 17, 2013 12:55 PM  
**To:** David Rodgers  
**Cc:** Frye, Steve; camann@ryko.com  
**Subject:** Re: Whitehall Express Shell - State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** Activation\_-\_Whitehall\_Express\_Anderson\_SC\_10.2013.pdf

---

Hello David,

Thank you for the list of items that are damaged and the proposal for \$20,636.00 from Ryko. I have reviewed the proposal with Ryko salesperson Charlie Amann, but I would also appreciate the following:

1. Quantity, manufacturer(s), and model/part numbers of the parts reported as damaged (i.e., how many WI boards and what is the model/part number, what is Comsys and bill acceptor part numbers, etc.).
2. Digital photos of the equipment reported as damaged.
3. Please advise who evaluated the reported damage and provide copies of any technician service reports outlining testing completed and damage verified.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

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David Rodgers <bigdaveatwhiteha@aol.com>

09/02/2013 04:21 PM

To: Derek@nicenetwork.com

cc

Subject: Re: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

The following items are known damaged on my carwash

CVI multi AMTT

Code A Wash 4 inside interface to POS

Comsys

WI Boards

www.ryko.com

AC/DC power supply  
CPU ports and program  
Bill acceptor

I hope this helps!

-----Original Message-----

From: Derek <Derek@nicenetwork.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Cc: Steve.frye <Steve.frye@stateauto.com>  
Sent: Thu, Aug 8, 2013 1:29 pm  
Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Derek, This is the unit I will be purchasing. Contact me if you have questions.

-----Original Message-----

From: Amann, Charles <CAmann@ryko.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Sent: Mon, Sep 9, 2013 2:25 pm  
Subject: Wash Select II Quote

Dave,

Here is the revised Wash Select II quote as you requested. I added the Wash Combination Selector item that I spoke with you about, and the information on installation. The unit as quoted will use a separate card processing company that will be connected through Unitec and work with your bank, until the Gilbarco update is released by Unitec. Then you can shift to Gilbarco Passport for card processing. If you choose not to go with the Gilbarco option simply delete that option price and we can proceed as normal. I did use the internet processing option in this quote versus a dial-up processing, so you will need broadband connection in the store.

**Charlie Amann**

Direct Area Manager

Ryko Solutions, Inc.

Phone: 828-310-1086

[amann@ryko.com](mailto:amann@ryko.com)

[www.Ryko.com](http://www.Ryko.com)

This e-mail (including any attachments) is for the sole use of the intended addressee and may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify me by reply e-mail or by telephone (collect), delete this e-mail and destroy any copies. Any unauthorized disclosure, copying, distribution or any action taken in reliance on it is prohibited and may be unlawful.

Hello Dave,

As of this date, I have not received the requested claim documentation as per my June 18th letter and follow up email. I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Let me know if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 08/08/2013 01:27 PM —

Derek Niederhelman/nicenetwork  
07/05/2013 03:48 PM

To [bigdaveatwhitehs@aol.com](mailto:bigdaveatwhitehs@aol.com)

cc [Steve.frye@statesauto.com](mailto:Steve.frye@statesauto.com)

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

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Sincerely,

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NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 07/05/2013 03:46 PM —

Derek Niederhelman/nicenetwork  
06/18/2013 04:58 PM

To [bigdaveatwhitehs@aol.com](mailto:bigdaveatwhitehs@aol.com)

cc [Steve.frye@statesauto.com](mailto:Steve.frye@statesauto.com)

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

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Sincerely,

Derek Niederhelman  
NICE Network  
v- 800-837-6423, ext. 4

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This proposal prepared for  
**WhiteHall Express Shell – Anderson, SC**  
**Dave Rogers**

Equipment Configuration and Summary of Costs  
Quote- Wash Select II Activation for SoftGloss XS      Date: 9/9/2013

---

**Activation Unit Replacement Options on new SoftGloss Maxx**

**UNITEC Wash Select II Activation**

Accepts cash by bills or coins, credit cards and codes. Credit card processing would initially run through a separate credit card processing set up through Unitec and would not run through the C-store Gilbarco Passport system. The Gilbarco upgrade will be available before the end of the year and would allow credit card processing to run through the Gilbarco Passport system.

**Unitec - Wash Select II Option  
(Gilbarco Connectivity Upgrade)**

|             |                                                                                                                                                                                                                                                                                                                                                                                                                      |                  |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| WS2POSMARS  | <b>Wash Select II POS with Mars</b><br>Includes POS 4000/V2, standard WSII with Mars bill acceptor (accepts bills, quarters, and 350 fleet/coupon codes) and WSII POS Interface option                                                                                                                                                                                                                               | \$10,141         |
| WS2CREDITIP | <b>Internet Processing Option</b><br>Accepts MC, Visa, AMEX and Discover. Includes the internet credit device and card reader. Receipt printer must be purchased separately (listed below).<br>*Supported Credit Processors include Paymentech, First Data Omaha, Elavon, TYSYS and FDR Atlanta (Buypass).                                                                                                           | \$2,655          |
| WS2PRINT    | <b>Thermal Receipt and Report Printer Option</b><br>Prints accounting reports and configuration reports. With added options, prints customer credit card receipts/VIP Wash Pass transaction receipts and transaction history for credit or fleet accounts.<br><b>Gilbarco Credit Interface Option Upgrade</b> (when available) Adds the capability to process credit cards through the Gilbarco Passport POS system. | \$1,282<br>\$903 |
| WS2ALARM    | <b>Alarm Option</b><br>Includes a shock sensor, standard door switch and internal siren.                                                                                                                                                                                                                                                                                                                             | \$218            |
| WS2SPEECH   | <b>Voice Messaging Option</b><br>14 recordable voice message options recorded by the site owner/operator.                                                                                                                                                                                                                                                                                                            | \$689            |

|        |                                                                                                                                                                                                      |                 |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| SA2279 | <b>Surge Suppression Kit</b><br>Upgrades the surge protection of the Wash Select II power and data circuits. Includes power filter/surge suppression device, installation hardware and instructions. | \$254           |
| SBASE  | <b>Standard Height (32.5") Stainless Steel Base</b>                                                                                                                                                  | \$945           |
|        | <b>Wash Combination Selector</b><br>Interface connection between Softgloss and WS2                                                                                                                   | \$800           |
|        |                                                                                                                                                                                                      | <hr/>           |
|        |                                                                                                                                                                                                      | <b>\$17,886</b> |
|        | Installation                                                                                                                                                                                         | \$1,950         |
|        | Estimated Freight                                                                                                                                                                                    | \$800           |
|        | Wash Select II package                                                                                                                                                                               | <hr/>           |
|        |                                                                                                                                                                                                      | <b>\$20,636</b> |

**Option to remove cash acceptance from Wash Select II**

|           |                                                                                      |            |
|-----------|--------------------------------------------------------------------------------------|------------|
| WS2NOCASH | <b>Deletion of Cash</b><br>Removes the bill acceptor and coin acceptor from the WS2. | \$ (1,050) |
|-----------|--------------------------------------------------------------------------------------|------------|

The Wash Select II Activation unit accepts codes sent over from the pump and c-store register systems and will allow customers to purchase a car wash directly at the unit with a credit card. In its normal configuration it will also accept wash sales at the unit with cash; either bills or coins. The cash function can be removed with a \$1050 price reduction (unit would then use codes and credit cards only). Credit card purchases at the activation unit will be processed on a separate credit card processing account that will be set up through Unitec and the banking account you choose. Credit cards used at the activation unit would process through the Gilbarco Passport system once the upgrade is available and installed (before end of year).

This system has an in-store POS 4000 server. Management software provided.

Use internet to manage programs and receive reports.

### INSTALLATION TASKS & REQUIREMENTS

Installation includes the installation of the pedestal on the concrete base, the placement and setup of the Wash Select II in the pedestal, connection of all wires to the Wash Select II, installation of the Wash Combination Selector in the Softgloss, and set up of the wash packages for the Softgloss and Wash Select II. The C-Store portion of the installation includes placement and connection of the POS 4000 to the Wash Select II pedestal.

Connection of the POS 4000 and/or modem to the Gilbarco Passport system will have to be done by your Gilbarco representative and they may charge for this service. Also with the new Gilbarco interface you will need the Carwash portion of their software.

The Wash Select II will require 110v AC at the pedestal, a 5 wire control system cabling from the pedestal to the car wash, and both a communication cable and CAT-5 Data cable connection from the pedestal to the c-store office/counter. Ryko does not pull these wires. Existing cables from the AMTT may suffice with the exception of the added CAT5 cable. I will have a Ryko tech come by and check your existing cabling.

**RYKO SOLUTIONS, INC. TO PROVIDE THE FOLLOWING:**

- Technical assistance with wash building design and layout
- Coordination with customers' contractors and subcontractors to accomplish equipment installation per specifications
- Unloading, handling, installation and programming all supplied equipment in customer-prepared wash building per RYKO specifications
- Training of personnel on operation and basic maintenance procedures
- **NOTE: Utilities such as air, water or electrical are not included but are available in our bay preparation utility package**

**Our service team will be available for pre bid and pre-construction meetings.**

**BAY PREPARATION REQUIREMENTS**

1. Electrical work to install wash system to include:
    - Conduit, wire, fittings, labor, circuit breakers from the RYKO pre-kit to the car wash power panel
  2. All plumbing work to include:
    - Pipe, fittings, valves, labor to hook up the equipment water and air supply in building
  3. Communication cable from store to the car wash provided by Ryko Solutions, Inc and installed by electrician
  4. All concrete work, underground conduit, water and air pipe, power panel and electrical to inside wash bay per specifications
  5. Air compressor installed to meet requirements
  6. Lights, heat and building to house the wash system to specifications
- \* Should conduit between store & carwash not be usable, price may vary.

**Customer to provide items 1 thru 6.**

RYKO Solutions, Inc., due to a wide variety of circumstances and local requirements, is not responsible for obtaining any local permits, approvals, or inspections from any governmental agency or sub agency for the installation, operation, maintenance or employment of the products ordered by the customer.

The customer shall have the sole responsibility for obtaining any such permit, approval or inspection and for providing utilities to RYKO predetermined locations within the bay and for any architectural drawings required.

This Quotation Good for 30 Days

RYKO Reserves the Right to Back-order Any Portion of Customer Order at Time of Delivery.

RYKO Reserves the Right to change Specifications without Prior Notification.

Freight F.O.B. Grimes, IA

AS A BUYER OF RYKO EQUIPMENT, YOU ARE VALUED BY THE COMPANY. WE APPRECIATE YOUR BUSINESS!

THANK YOU FOR SELECTING RYKO MANUFACTURING COMPANY.

- APPROVED CREDIT WITH A 25% DEPOSIT DUE AT ORDER PLACEMENT
- 65% PROGRESS PAYMENT DUE TWO WEEKS PRIOR TO SHIPPING
- BALANCE PAID UPON INSTALLATION COMPLETE.

IN NO CASE WILL RYKO COMMENCE INSTALLATION OF THE EQUIPMENT UNLESS, OR UNTIL, THE CHOSEN PAYMENT OPTION ABOVE HAS BEEN SATISFIED.

#### BALANCE DUE UPON INSTALLATION COMPLETION

#### SALES CONDITIONS

1. Taxes and other fees. Prices on the specified products are exclusive of all city, state and federal excise taxes, including without limitation, taxes on manufacture sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the purchaser. Prices do not reflect any other fees for, but not limited to, inspections, licenses, permits, testing (UL or ETL, for example) union labor supervision, and insurance which fees are the responsibility of the purchaser.
2. Acceptance. It is understood and agreed that all terms and conditions of this quotation are set forth hereon, and are accepted by the purchaser by signing below. Acceptance of this quotation and the terms and sales conditions by the purchaser by signing below shall constitute an order to purchase the goods listed herein. This order will not be binding on the seller unless and until it is accepted, in writing, by the seller's authorized representative.
3. Shipment. All merchandise will be shipped F.O.B factory after a 25% deposit and 65% progress payment have been received unless otherwise specified. Freight charges are estimated from current freight rates, plus a Handling Fee of up to \$250 per load for crating, loading, drayage, and unloading services. Seller will not be responsible, under this order, for non-delivery or delay of aforementioned goods caused by strikes, lock-outs, fires, shortages of labor, fuel, power, materials or supplies, transportation, delays, acts of God or any other cause or causes beyond the reasonable control of the seller. Method and route of shipment are at seller's discretion unless the purchaser provides explicit instructions. All shipments are insured at purchaser's expense and made at purchaser's risk.
4. Indemnification. Purchaser agrees at all times to indemnify and save harmless seller and manufacturers of equipment from and against all loss, cost, damage, expense, construction delays, claims, demands, suits and causes of action whatsoever alleged or asserted by any person, firm or corporation for, on account of, or in

connection with, the installation, condition, maintenance, use, or operation of the machinery or equipment covered by this order.

5. Cancellation. Purchaser further agrees that if this sales agreement is cancelled by the purchaser and seller accepts such cancellation, the money paid herein as down payment or deposit shall become property of the seller, to compensate for its liquidated damages resulting from such cancellation.

6. Change Fees. Approximately three weeks prior to shipment you will be asked to confirm your order and ship date on a Shipping Confirmation form. Submission of this form triggers your order to be placed into production. As a result, any change made to your order after submitting the Shipping Confirmation will be subject to a \$500 change fee. In addition, should you choose to move the ship date out beyond the confirmed ship date your order may be assessed storage fees of \$100 per calendar day at Ryko's discretion.

7. Payment. Seller may charge interest at 1 1/2% per month on all overdue bills or statements (or if state law provides for a lesser interest charge at the highest permissible rate). Deliveries hereunder will be subject to payment methods established by or credit approval by the seller and unless otherwise stated, payment is due upon installation completion. Purchaser furthermore agrees to pay all legal fees and expenses incurred by the seller (RYKO) in collecting any past due amounts payable by the purchaser.

8. Laws Governing. Purchaser further agrees that the conditions and terms of this document shall be governed by the applicable laws and statutes of the State of Iowa.

9. Warranty. NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE IS MADE UNLESS THE SAME IS SPECIFICALLY SET FORTH IN THE MANUALS ACCOMPANYING THE EQUIPMENT AND TO THE EXTENT LIMITED THEREIN. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF SUCH MERCHANDISE OR FOR CONSEQUENTIAL DAMAGES.

**SALES REP – Charlie Amann, Direct Area Manager**

**PURCHASER SIGNATURE -**

Represented by: Peoples Agency 3901 Clemson Blvd Anderson, SC 29621-1233 854-224-7444

October 25, 2013

DAVID RODGERS  
PO BOX 2906  
ANDERSON, SC 29622

**Claim Number:** PR-0000000-013820  
**Loss Date:** 06/13/2013  
**Insured:** DAVID RODGERS

Dear Mr. Rodgers:

We have not received a response from you regarding your claim. If there is anything we can do to assist you in this matter, please give us a call.

If we do not hear from you within the next ten days, we will assume you do not wish to pursue the claim.

Sincerely,

STEVE FRYE  
Claims Adjuster  
5918 W Courtyard Dr., Ste 100  
Austin, TX 78730  
866-614-0203

XCC810(03/04)

**From:** Frye, Steve  
**Sent:** Thursday, November 14, 2013 1:51 PM  
**To:** 'Kgarrett@thepeoplesagency.com'  
**Subject:** Claim#PR-0000000-013820  
**Attachments:** ArchivedEmail[5].pdf; ArchivedEmail[1].pdf; ArchivedEmail[6].pdf

---

Ms. Garrett

Derek sent the email with a repair proposal from the insured. There are a list information needed from the insured. I hope this helps. If the insured has additional documentation please forward it .

Thanks

Steve Frye  
Claims Adjuster  
State Auto Insurance Companies [www.stateauto.com](http://www.stateauto.com)  
Phone: 512.354.3935 Fax: 317.715.4249  
For 92 years, a company you like and trust.

# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

Dear Mr. Rodgers:

As per our recent phone conversation, NICE Network has been contacted by State Auto Insurance in reference to the above captioned claim involving the car wash equipment, security cameras and exterior lights reported as damaged by lightning. NICE Network has been requested to verify the inventory and value of the equipment, verify the reported scope of damage and repair/replacement options, and assess the potential salvage recovery.

I would appreciate the following pertinent documents and information regarding the loss:

1. As soon as possible, contact and phone numbers of any technicians working on the equipment and copies of any technician work orders outlining any evaluation of the equipment and the apparent scope of damage.
2. A detailed inventory of the damaged equipment indicating the manufacturer's model/part numbers, and relevant configurations/specs.
3. Upon receipt, copies of any actual repair/replacement invoices or estimates broken down by parts (manufacturer, model/part number, repair/replacement cost) and labor (date, technician, hours, hourly rate, and detail of specific work activity).

The insurance company requests that any repair/replacement costs incurred be considered practical and cost effective relative to current market values and apparent scope of damage.

Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance



**From:** Derek@nicenetwork.com  
**Sent:** Friday, August 23, 2013 12:09 PM  
**To:** bigdaveatwhiteha@aol.com  
**Cc:** Frye, Steve  
**Subject:** State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** 37495c1.pdf

---

Hello Dave,

As per my phone message, the insurance company requests that the requested claim documentation be provided as soon as possible for review. NICE Network will close our file in 2 weeks if we have not received a response to this email, or my phone call.

Let me know if you have any questions about the specific requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

----- Forwarded by Derek Niederhelman/nicenetwork on 08/23/2013 12:06 PM -----  
Derek Niederhelman/nicenetwork

08/08/2013 01:29 PM

To: bigdaveatwhiteha@aol.com  
cc: Steve.frye@statesauto.com  
Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

As of this date, I have not received the requested claim documentation as per my June 18th letter and follow up email. I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Let me know if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

----- Forwarded by Derek Niederhelman/nicenetwork on 08/08/2013 01:27 PM -----

Derek Niederhelfman/nicenetwork

07/05/2013 03:48 PM

To bigdaveatwhitehs@aol.com

cc Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Please advise if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelfman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

----- Forwarded by Derek Niederhelfman/nicenetwork on 07/05/2013 03:48 PM -----

Derek Niederhelfman/nicenetwork

06/18/2013 04:58 PM

To bigdaveatwhitehs@aol.com

cc Steve.frye@stateauto.com

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelfman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

\*\* Can't open this attachment? Download the latest version of Adobe PDF reader here <http://www.adobe.com/products/acrobat/readstep2.html>

# NICE Network, Inc.

2613 Crescent Springs Pike • Crescent Springs, KY 41017-1555

Phone 800-837-6423 ext. 4 • Fax 800-486-8110

Email: derek@nicenetwork.com

June 18, 2013

Mr. David Rodgers  
704 Whitehall Road  
Anderson, SC 29625

State Auto Insurance  
Claim # PR-0000000-013820  
Date of Loss: 6/13/2013  
NICE Network File: 37495

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1. As soon as possible, contact and phone numbers of any technicians working on the equipment and copies of any technician work orders outlining any evaluation of the equipment and the apparent scope of damage.
2. A detailed inventory of the damaged equipment indicating the manufacturer's model/part numbers, and relevant configurations/specs.
3. Upon receipt, copies of any actual repair/replacement invoices or estimates broken down by parts (manufacturer, model/part number, repair/replacement cost) and labor (date, technician, hours, hourly rate, and detail of specific work activity).

The insurance company requests that any repair/replacement costs incurred be considered practical and cost effective relative to current market values and apparent scope of damage.

Please retain any damaged equipment for future inspection and damage verification and advise of any depot repair or exchange pricing which may be available.

Thank you for your assistance and if you have any questions, please call.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
Claims Consultant

cc: Steve Frye, State Auto Insurance

**From:** Derek@niconetwork.com  
**Sent:** Tuesday, September 17, 2013 12:55 PM  
**To:** David Rodgers  
**Cc:** Frye, Steve; camann@ryko.com  
**Subject:** Re: Whitehall Express Shell - State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** Activation\_-\_Whitehall\_Express\_Anderson\_SC\_10.2013.pdf

---

Hello David,

Thank you for the list of items that are damaged and the proposal for \$20,636.00 from Ryko. I have reviewed the proposal with Ryko salesperson Charlie Amann, but I would also appreciate the following:

1. Quantity, manufacturer(s), and model/part numbers of the parts reported as damaged (i.e., how many W/I boards and what is the model/part number, what is Comsys and bill acceptor part numbers, etc.).
2. Digital photos of the equipment reported as damaged.
3. Please advise who evaluated the reported damage and provide copies of any technician service reports outlining testing completed and damage verified.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

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David Rodgers <bigdaveatwhiteha@aol.com>

09/02/2013 04:21 PM

To: Derek@niconetwork.com

cc

Subject: Re: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

The following items are known damaged on my carwash:

CVI multi AMTT

Code A Wash 4 inside interface to POS

Comsys

W/I Boards

www.ryko.com

AC/DC power supply  
CPU ports and program  
Bill acceptor

I hope this helps!

-----Original Message-----

From: Derek <Derek@nicenetwork.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Cc: Steve.frye <Steve.frye@stateauto.com>  
Sent: Thu, Aug 8, 2013 1:29 pm  
Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Derek, This is the unit I will be purchasing. Contact me if you have questions.

-----Original Message-----

From: Amann, Charles <CAmann@ryko.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Sent: Mon, Sep 9, 2013 2:25 pm  
Subject: Wash Select II Quote

Dave,

Here is the revised Wash Select II quote as you requested. I added the Wash Combination Selector item that I spoke with you about, and the information on installation. The unit as quoted will use a separate card processing company that will be connected through Unitec and work with your bank, until the Gilbarco update is released by Unitec. Then you can shift to Gilbarco Passport for card processing. If you choose not to go with the Gilbarco option simply delete that option price and we can proceed as normal. I did use the internet processing option in this quote versus a dial-up processing, so you will need broadband connection in the store.

**Charlie Amann**

Direct Area Manager

Ryko Solutions, Inc.

Phone: 828-310-1000

[camann@ryko.com](mailto:camann@ryko.com)

[www.Ryko.com](http://www.Ryko.com)

This e-mail (including any attachments) is for the sole use of the intended addressee and may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify me by reply e-mail or by telephone (collect), delete this e-mail and destroy any copies. Any unauthorized disclosure, copying, distribution or any action taken in reliance on it is prohibited and may be unlawful.

Hello Dave,

As of this date, I have not received the requested claim documentation as per my June 18th letter and follow up email. I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Let me know if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 08/08/2013 01:27 PM —

Derek Niederhelman/nicenetwork  
07/05/2013 03:48 PM

To [bigdaveatwhiteha@aol.com](mailto:bigdaveatwhiteha@aol.com)

cc [Steve.frye@stateauto.com](mailto:Steve.frye@stateauto.com)

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

I would appreciate an update on the status of the equipment evaluation, repairs completed, etc. at your convenience. Please advise if you have any questions about the requested information and claim documentation.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

— Forwarded by Derek Niederhelman/nicenetwork on 07/05/2013 03:46 PM —

Derek Niederhelman/nicenetwork  
06/18/2013 04:58 PM

To [bigdaveatwhiteha@aol.com](mailto:bigdaveatwhiteha@aol.com)

cc [Steve.frye@stateauto.com](mailto:Steve.frye@stateauto.com)

Subject: State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

Hello Dave,

As per our recent conversation, attached is my contact letter. Please advise if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837- } ext. 4

f- 859-814-0062

\*\* Can't open this attachment? Download the latest version of Adobe PDF reader here <http://www.adobe.com/products/acrobat/readstep2.html>



This proposal prepared for  
**WhiteHall Express Shell – Anderson, SC**  
**Dave Rogers**

**Equipment Configuration and Summary of Costs**  
**Quote- Wash Select II Activation for SoftGloss XS      Date: 9/9/2013**

---

**Activation Unit Replacement Options on new SoftGloss Maxx**

**UNITEC Wash Select II Activation**

Accepts cash by bills or coins, credit cards and codes. Credit card processing would initially run through a separate credit card processing set up through Unitec and would not run through the C-store Gilbarco Passport system. The Gilbarco upgrade will be available before the end of the year and would allow credit card processing to run through the Gilbarco Passport system.

**Unitec - Wash Select II Option  
(Gilbarco Connectivity Upgrade)**

|             |                                                                                                                                                                                                                                                                                                                                                                                                                      |                  |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| WS2POSMASS  | <b>Wash Select II POS with Mars</b><br>Includes POS 4000/V2, standard WSII with Mars bill acceptor (accepts bills, quarters, and 350 fleet/coupon codes) and WSII POS Interface option                                                                                                                                                                                                                               | \$10,141         |
| WS2CREDITIP | <b>Internet Processing Option</b><br>Accepts MC, Visa, AMEX and Discover. Includes the internet credit device and card reader. Receipt printer must be purchased separately (listed below).<br>*Supported Credit Processors include Paymentech, First Data Omaha, Elavon, TYSYS and FDR Atlanta (Buypass).                                                                                                           | \$2,655          |
| WS2PRINT    | <b>Thermal Receipt and Report Printer Option</b><br>Prints accounting reports and configuration reports. With added options, prints customer credit card receipts/VIP Wash Pass transaction receipts and transaction history for credit or fleet accounts.<br><b>Gilbarco Credit Interface Option Upgrade</b> (when available) Adds the capability to process credit cards through the Gilbarco Passport POS system. | \$1,282<br>\$903 |
| WS2ALARM    | <b>Alarm Option</b><br>Includes a shock sensor, standard door switch and internal siren.                                                                                                                                                                                                                                                                                                                             | \$218            |
| WS2SPEECH   | <b>Voice Messaging Option</b><br>14 recordable voice message options recorded by the site owner/operator.                                                                                                                                                                                                                                                                                                            | \$689            |



|        |                                                                                                                                                                                                      |                 |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| SA2279 | <b>Surge Suppression Kit</b><br>Upgrades the surge protection of the Wash Select II power and data circuits. Includes power filter/surge suppression device, installation hardware and instructions. | \$254           |
| SBASE  | <b>Standard Height (32.5") Stainless Steel Base</b>                                                                                                                                                  | \$945           |
|        | <b>Wash Combination Selector</b><br>Interface connection between Softgloss and WS2                                                                                                                   | \$800           |
|        |                                                                                                                                                                                                      | <b>\$17,886</b> |
|        | Installation                                                                                                                                                                                         | \$1,950         |
|        | Estimated Freight                                                                                                                                                                                    | \$800           |
|        | Wash Select II package                                                                                                                                                                               | <b>\$20,636</b> |

**Option to remove cash acceptance from Wash Select II**

|           |                                                                                      |            |
|-----------|--------------------------------------------------------------------------------------|------------|
| WS2NOCASH | <b>Deletion of Cash</b><br>Removes the bill acceptor and coin acceptor from the WS2. | \$ (1,050) |
|-----------|--------------------------------------------------------------------------------------|------------|

The Wash Select II Activation unit accepts codes sent over from the pump and c-store register systems and will allow customers to purchase a car wash directly at the unit with a credit card. In its normal configuration it will also accept wash sales at the unit with cash; either bills or coins. The cash function can be removed with a \$1050 price reduction (unit would then use codes and credit cards only). Credit card purchases at the activation unit will be processed on a separate credit card processing account that will be set up through Unitec and the banking account you choose. Credit cards used at the activation unit would process through the Gilbarco Passport system once the upgrade is available and installed (before end of year). This system has an in-store POS 4000 server. Management software provided. Use internet to manage programs and receive reports.

### INSTALLATION TASKS & REQUIREMENTS

Installation includes the installation of the pedestal on the concrete base, the placement and setup of the Wash Select II in the pedestal, connection of all wires to the Wash Select II, installation of the Wash Combination Selector in the Softgloss, and set up of the wash packages for the Softgloss and Wash Select II. The C-Store portion of the installation includes placement and connection of the POS 4000 to the Wash Select II pedestal.

Connection of the POS 4000 and/or modem to the Gilbarco Passport system will have to be done by your Gilbarco representative and they may charge for this service. Also with the new Gilbarco interface you will need the Carwash portion of their software.

The Wash Select II will require 110v AC at the pedestal, a 5 wire control system cabling from the pedestal to the car wash, and both a communication cable and CAT-5 Data cable connection from the pedestal to the c-store office/counter. Ryko does not pull these wires. Existing cables from the AMTT may suffice with the exception of the added CAT5 cable. I will have a Ryko tech come by and check your existing cabling.

**RYKO SOLUTIONS, INC. TO PROVIDE THE FOLLOWING:**

- Technical assistance with wash building design and layout
- Coordination with customers' contractors and subcontractors to accomplish equipment installation per specifications
- Unloading, handling, installation and programming all supplied equipment in customer-prepared wash building per RYKO specifications
- Training of personnel on operation and basic maintenance procedures
- **NOTE: Utilities such as air, water or electrical are not included but are available in our bay preparation utility package**

**Our service team will be available for pre bid and pre-construction meetings.**

**BAY PREPARATION REQUIREMENTS**

1. Electrical work to install wash system to include:
    - Conduit, wire, fittings, labor, circuit breakers from the RYKO pre-kit to the car wash power panel
  2. All plumbing work to include:
    - Pipe, fittings, valves, labor to hook up the equipment water and air supply in building
  3. Communication cable from store to the car wash provided by Ryko Solutions, Inc and installed by electrician
  4. All concrete work, underground conduit, water and air pipe, power panel and electrical to inside wash bay per specifications
  5. Air compressor installed to meet requirements
  6. Lights, heat and building to house the wash system to specifications
- \* Should conduit between store & carwash not be usable, price may vary.

**Customer to provide items 1 thru 6.**

RYKO Solutions, Inc., due to a wide variety of circumstances and local requirements, is not responsible for obtaining any local permits, approvals, or inspections from any governmental agency or sub agency for the installation, operation, maintenance or employment of the products ordered by the customer.

The customer shall have the sole responsibility for obtaining any such permit, approval or inspection and for providing utilities to RYKO predetermined locations within the bay and for any architectural drawings required.

This Quotation Good for 30 Days

RYKO Reserves the Right to Back-order Any Portion of Customer Order at Time of Delivery.

RYKO Reserves the Right to change Specifications without Prior Notification.

Freight F.O.B. Grimes, IA

AS A BUYER OF RYKO EQUIPMENT, YOU ARE VALUED BY THE COMPANY. WE APPRECIATE YOUR BUSINESS!

THANK YOU FOR SELECTING RYKO MANUFACTURING COMPANY.

- APPROVED CREDIT WITH A 25% DEPOSIT DUE AT ORDER PLACEMENT
- 65% PROGRESS PAYMENT DUE TWO WEEKS PRIOR TO SHIPPING
- BALANCE PAID UPON INSTALLATION COMPLETE.

IN NO CASE WILL RYKO COMMENCE INSTALLATION OF THE EQUIPMENT UNLESS, OR UNTIL, THE CHOSEN PAYMENT OPTION ABOVE HAS BEEN SATISFIED.

#### BALANCE DUE UPON INSTALLATION COMPLETION

#### SALES CONDITIONS

1. Taxes and other fees. Prices on the specified products are exclusive of all city, state and federal excise taxes, including without limitation, taxes on manufacture sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the purchaser. Prices do not reflect any other fees for, but not limited to, inspections, licenses, permits, testing (UL or ETL, for example) union labor supervision, and insurance which fees are the responsibility of the purchaser.
2. Acceptance. It is understood and agreed that all terms and conditions of this quotation are set forth hereon, and are accepted by the purchaser by signing below. Acceptance of this quotation and the terms and sales conditions by the purchaser by signing below shall constitute an order to purchase the goods listed herein. This order will not be binding on the seller unless and until it is accepted, in writing, by the seller's authorized representative.
3. Shipment. All merchandise will be shipped F.O.B factory after a 25% deposit and 65% progress payment have been received unless otherwise specified. Freight charges are estimated from current freight rates, plus a Handling Fee of up to \$250 per load for crating, loading, drayage, and unloading services. Seller will not be responsible, under this order, for non-delivery or delay of aforementioned goods caused by strikes, lock-outs, fires, shortages of labor, fuel, power, materials or supplies, transportation, delays, acts of God or any other cause or causes beyond the reasonable control of the seller. Method and route of shipment are at seller's discretion unless the purchaser provides explicit instructions. All shipments are insured at purchaser's expense and made at purchaser's risk.
4. Indemnification. Purchaser agrees at all times to indemnify and save harmless seller and manufacturers of equipment from and against all loss, cost, damage, expense, construction delays, claims, demands, suits and causes of action whatsoever alleged or asserted by any person, firm or corporation for, on account of, or in

connection with, the installation, condition, maintenance, use, or operation of the machinery or equipment covered by this order.

5. Cancellation. Purchaser further agrees that if this sales agreement is cancelled by the purchaser and seller accepts such cancellation, the money paid herein as down payment or deposit shall become property of the seller, to compensate for its liquidated damages resulting from such cancellation.

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8. Laws Governing. Purchaser further agrees that the conditions and terms of this document shall be governed by the applicable laws and statutes of the State of Iowa.

9. Warranty. NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE IS MADE UNLESS THE SAME IS SPECIFICALLY SET FORTH IN THE MANUALS ACCOMPANYING THE EQUIPMENT AND TO THE EXTENT LIMITED THEREIN. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF SUCH MERCHANDISE OR FOR CONSEQUENTIAL DAMAGES.

**SALES REP – Charlie Amann, Direct Area Manager**

**PURCHASER SIGNATURE -**

**From:** David Rodgers (bigdaveatwhiteha@aol.com)  
**Sent:** Wednesday, November 06, 2013 1:43 AM  
**To:** Frye, Steve  
**Subject:** Claim Number Pr-0000000-013820 Whitehall Express Claim

---

Mr Frye:

I just received your letter dated October 25, 2013. I am appalled that you wish to dismiss my claim as you "have not heard from me." This has been a most unpleasant situation for me as I have had to replace my entire pay/control system due to the damages. The carwash is now up and running and Mr John Rose from Ryco has checked out the damaged parts and will be sending me parts numbers and cost for said parts. These parts, majority of which, are not available any more and he has difficulties in locating cost and parts numbers. This is what I am waiting for. John is the service manager with Ryko for the southeast. His phone number is 678-618-8507.

I also have invoice for one Pelco DVR in the amount of 3445.00. I ordered cameras and power supplies from the internet and will have to locate invoices for them.( appx 700.00) Also have a lighting invoice for 704.00.

In addition I would think that I would be entitled to coverage for Loss of Income as the carwash generates appx 4000.00 per month in income. I will be able to show this average income using my POS system for last years figures by month.

Let me know what I need to do to answer your questions. The best way to contact me is via e-mail at this address. [Bigdaveatwhiteha@aol.com](mailto:Bigdaveatwhiteha@aol.com)

David Rodgers

**From:** Derek@nicenetwork.com  
**Sent:** Wednesday, December 18, 2013 3:00 PM  
**To:** David Rodgers  
**Cc:** Frye, Steve  
**Subject:** Re: Fwd: Whitehall Express Shell - State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495  
**Attachments:** ATT00001.jpg; Master\_obsolescence\_letter.pdf; Final\_parts\_list.pdf

---

Hello David,

I would like to wrap this up soon possible. As of this date, I have not received any actual repair/replacement invoices. Please provide copies of actual invoices for the repairs that have been made to the car wash equipment, as well as the electrical and camera system. Thank you and please call or email if you have any questions.

Sincerely,

Derek Niederhelman  
NICE Network, Inc.  
v- 800-837-6423, ext. 4  
f- 859-814-0062

David Rodgers <bigdaveatwhiteha@aol.com>

11/18/2013 04:26 PM

To: derek@nicenetwork.com

cc

Subject: Fwd: Whitehall Express Shell - State Auto Insurance claim # PR-0000000-013820, NICE Network file 37495

I am forwarding you the recent letter from John Rose. He is the service manager for the southeast for Ryko. I will send you the documentation on electrical and camera system this week.

---Original Message---

**From:** JRose <JRose@Ryko.com>  
**To:** David Rodgers <bigdaveatwhiteha@aol.com>  
**Sent:** Sat, Nov 16, 2013 12:59 pm  
**Subject:** Whitehall Express

David,

I apologize for the delays in getting back with you. I took some vacation days this week and our workload has been extreme over the past 12 weeks. I came in on Saturday to get caught up a little. I will try to answer most of the topics we have been discussing below and will call you Monday before noon to check with you. I have not been contacted from any insurance agency about your site.

\* I have attached 2 PDF's below that address the issues with repairing the existing equipment with the car wash when your site suffered the huge power surge or most likely lightning strike, it is not verifiable by examining the equipment which occurred as the burned out electronics have the same symptoms when this happens. Technology changes quickly in the computerized equipment markets and systems that get older than four or five years can quickly become obsolete and impossible to repair or too costly if it's possible. Very similar to home and office computerized systems.

The equipment damaged on your site included the outside activation system, the internal interface system, ultrasonic sensor and PLC onboard the actual machine and the Code generation interface unit inside the store, as you see from the letter, these systems are no longer fully supported and parts for repairs are scarce if available at all. We do not have access to the original documentation for the sale of that equipment, I can only give you the corresponding part numbers associated with that equipment and a ballpark price for the retail value when that equipment was on the market.

This was the inside store unit and the outside activation unit, which you replaced with newer systems.

7010M - Code Generation Interface Unit ( CAW IV) \$4000.00

20M- Multi-Upgrade Activation system - \$ 5000.00

Onboard the carwash itself we replaced the following. These items are at the current price you paid.

19850-026 - Sensor/Ultrasonic, 0-1 KHZ, 3AVG - \$608.69

19576-018 - PC/ 128 I/O Base CPU with Clock - \$2500.00

15903-000 - Wash Combination Selector Assy. - \$744.91

have entered the parts you returned when we got stuck on the repair for a credit, the total credit applied for was \$1969.44, Ryko does not move quickly on credit memo's, so check with accounting before placing any orders to assure the credit has been applied to your account, it will be a few weeks. They will not issue a check.

Thank you,

John Rose  
Service Manager GA / E.TN/ SC  
Ryko Solutions, Inc.  
1500 SE 37th Street  
Grimes, Iowa 50111  
Phone: 800-362-9331  
Fax: 770-729-8846  
www.ryko.com



This e-mail (including any attachments) is for the sole use of the intended addressee and may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify me by reply e-mail or by telephone (collect), delete this e-mail and destroy any copies. Any unauthorized disclosure, copying, distribution or any action taken in reliance on it is prohibited and may be unlawful.







## Product Obsolescence Notice

April 2, 2012

Dear Valued Customer,

This letter is sent to advise you that Ryko Solutions has discontinued manufacturing selected products from our standard product line offering-the products are included on Attachment #####. Our intent is to support these products, whenever possible, for a limited time in order to allow for future planning by our customers. However, please be aware that some vendor-supplied components have become obsolete and may not be available any longer. Please keep in mind, also, that some of the products listed on Attachment ##### have updated versions that can quickly and easily replace your product.

Ryko Solutions appreciates and values its business relationship with you and we look forward to your continued interest in our products. We apologize for any inconvenience this announcement may cause and remain eager to meet your future product requirements.

To best serve you, all inquiries and requests should be directed through the normal sales channels or through me, as Product Marketing Manager. I can be reached by e-mail at [droush@ryko.com](mailto:droush@ryko.com) or by phone at 515.986.7437.

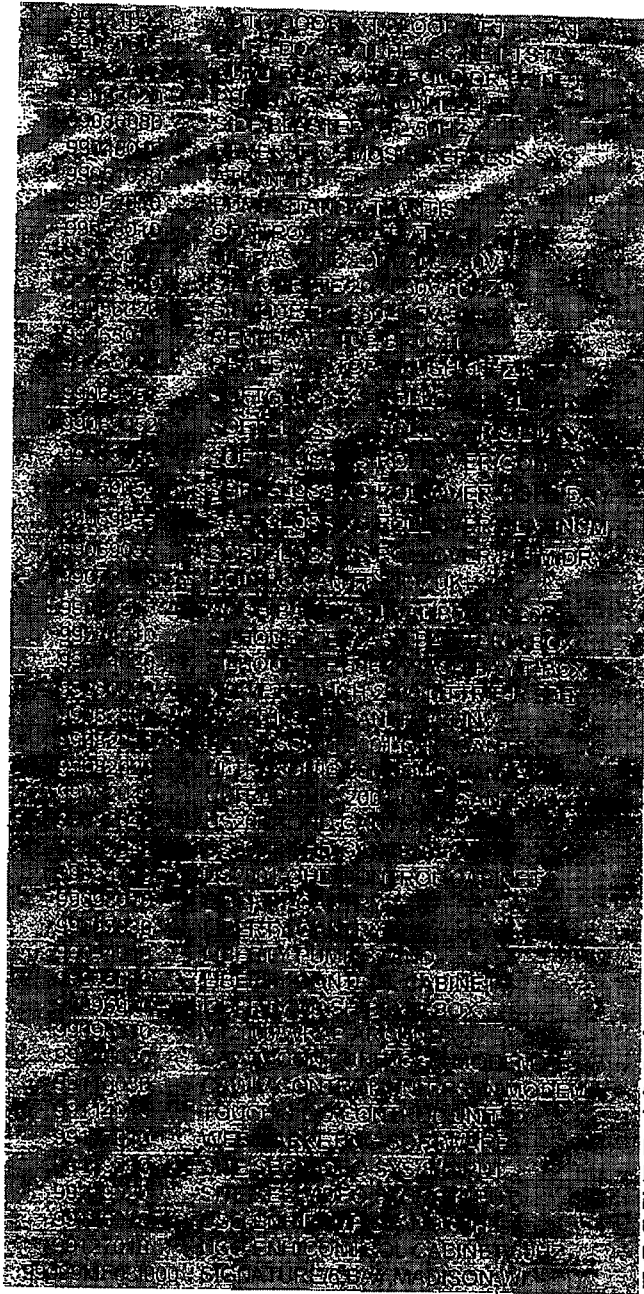
Sincerely,

*Doug Roush*

Product Marketing Manager  
515.986.7437







International Equipment  
International Equipment

Atlantis  
Atlantis  
Atlantis  
US2001  
International Equipment  
International Equipment

International Equipment  
SoftGloss<sup>2</sup>  
SoftGloss<sup>2</sup>  
SoftGloss<sup>2</sup>  
SoftGloss<sup>2</sup>  
SoftGloss<sup>2</sup>  
SoftGloss<sup>2</sup>

International Equipment  
US2001

International Equipment  
International Equipment  
International Equipment  
US2001 OHD w/wall sensors  
US2001 OHD w/wall sensors  
US2001 OHD w/wall sensors  
US2001 OHD w/ trolley sensors  
US2001 OHD w/ trolley sensors  
US2001 OHD w/ trolley sensors  
US2001 OHD

International Equipment  
International Equipment  
International Equipment  
International Equipment  
International Equipment

Wrap Arounds for VT2000

CAW IV CTS (color screen) setup to use GSM modem

CAW IV CTS (color screen) setup to use dial-up modem.

Touch and Go

Ryko Web Marketing

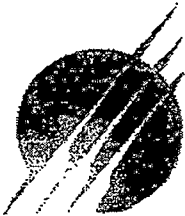
Ryko security system

Ryko security system

US2001 OHD w/FX3U PLC

US2001 OHD w/FX3U PLC

Prototype Signature Series in Madison, WI.



# 123SECURITY

PRODUCTS.COM  
SECURITY MADE SIMPLE

731 Union Parkway Tel. 866-440-2288  
Ranconkoma, NY 11779 Fax 631-588-1205

## SALES ORDER

SO-249266

12/10/2013



|                                                                                                                                                                                                                            |                          |                                                                           |                    |                                                                                                                                                                                     |                         |                 |               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------|---------------|
| <b>Customer</b>                                                                                                                                                                                                            |                          | <b>Contact</b>                                                            |                    | <b>Ship To</b>                                                                                                                                                                      |                         |                 |               |
| Whitehall Express<br>Dave<br>704 Whitehall Road<br>ANDERSON SC 29621<br>UNITED STATES<br>Tel: (864)224-1086                                                                                                                |                          |                                                                           |                    | Whitehall Express<br>Dave<br>704 Whitehall Road<br>ANDERSON SC 29621<br>UNITED STATES<br>Tel: (864)224-1086                                                                         |                         |                 |               |
| <b>Account</b>                                                                                                                                                                                                             | <b>Terms</b>             | <b>Due Date</b>                                                           | <b>Account Rep</b> | <b>Schedule Date</b>                                                                                                                                                                |                         |                 |               |
| 200836                                                                                                                                                                                                                     | CREDIT CARD              | 12/10/2013                                                                | Irene Kelly        | 12/9/2013                                                                                                                                                                           |                         |                 |               |
| <b>Quotation</b>                                                                                                                                                                                                           | <b>PO #</b>              | <b>Reference</b>                                                          | <b>Ship VIA</b>    | <b>Page</b>                                                                                                                                                                         | <b>Printed</b>          |                 |               |
| SQ-281652                                                                                                                                                                                                                  |                          |                                                                           | UPS Ground         | 1                                                                                                                                                                                   | 12/10/2013<br>4:22:03PM |                 |               |
| <b>Item</b>                                                                                                                                                                                                                | <b>Description</b>       | <b>Order</b>                                                              | <b>Ship</b>        | <b>Price</b>                                                                                                                                                                        | <b>Qty</b>              | <b>Discount</b> | <b>Amount</b> |
| 1 SCOR264-16X1-2T                                                                                                                                                                                                          | 16 Channel 2000 HD       | 1                                                                         |                    | \$505.00/EA                                                                                                                                                                         |                         | \$30.50         | \$454.50      |
| 2 HDD-1TB-Cantek                                                                                                                                                                                                           | 1TB HDD-CANTEK           | 2                                                                         |                    | \$100.00/EA                                                                                                                                                                         |                         |                 | \$200.00      |
| 3 102001                                                                                                                                                                                                                   | VSI-PRO V13 TXT INSERTER | 2                                                                         |                    | \$399.00/EA                                                                                                                                                                         |                         | \$79.60         | \$718.20      |
| 4 106056                                                                                                                                                                                                                   | Gilbarco Passport DB9    | 2                                                                         |                    | \$42.00/EA                                                                                                                                                                          |                         | \$8.40          | \$75.60       |
| 5 SH                                                                                                                                                                                                                       | SHIPPING/HANDLING        | 1                                                                         |                    | \$29.00/EA                                                                                                                                                                          |                         |                 | \$29.00       |
| NOTE: A RESTOCKING FEE OF 25% WILL BE APPLIED TO ALL SALES RETURNS NOT RETURNED WITHIN 15 DAYS FROM RECEIPT DATE. ALL RETURNS REQUIRE AN RMA # BEFORE THEY CAN BE SHIPPED BACK. NO RETURNS WILL BE ACCEPTED AFTER 30 DAYS. |                          | <b>Tax Details</b><br>EXEMPT \$0.00                                       |                    | <b>Taxable</b><br>50.00                                                                                                                                                             |                         |                 |               |
|                                                                                                                                                                                                                            |                          | <b>Payment Details</b><br>12/10/2013 AM123<br>XXXXXXXXXXXXXXXX \$1,477.30 |                    | <b>Total Tax</b><br>\$0.00<br><b>Exempt</b><br>\$1,477.30<br><b>Total</b><br>\$1,477.30<br><b>Paid</b><br>\$1,477.30<br><b>Balance</b><br>\$0.00<br><b>Dep. Avail</b><br>\$1,477.30 |                         |                 |               |

From: sales <sales@closeoutcctv.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Subject: closeoutcctv.com Order Confirmation  
Date: Thu, Nov 14, 2013 12:44 pm



CustomerID# 48903

Thank you for your order. Your order number is LUX76203, placed 09/11/2013 at 12:12PM.

**\*Note Important Order and Tracking Information\***

Once your package has shipped, you will receive a confirmation email with tracking information about your order. Expedited requests that are received before 10:00 AM EST will have same day shipping.

*The customer is responsible for inspecting product for shipping damage/missing items within 7 days of product delivery. Unused merchandise may be returned within 30 days from date of purchase for a refund of the purchase price less a 20% restocking fee.*

**Bill To:**

David L Rodgers  
PO box 2906  
Anderson, SC 29622  
United States  
864-940-0113  
bigdaveatwhiteha@aol.com

**Ship To:**

Whitehall Express/ David Rodgers  
704 White Hall Rd  
Anderson, SC 29621  
United States  
864-940-0113

**Payment Info:**

Credit Card: American Express  
David L Rodgers  
\*\*\*\*\*3015  
Exp: 06/2015

**Shipping Method:**

Free Shipping (UPS Ground)

**Order Details:**

| Code       | Item                                                 | Qty | Price    | Grand Total |
|------------|------------------------------------------------------|-----|----------|-------------|
| CL-18POWER | 18 Channel CCTV Camera Power Supply Distribution Box | 2   | \$109.95 | \$219.90    |

Subtotal: \$219.90

Tax: \$0.00

Shipping Cost: \$0.00

Grand Total: \$219.90

From: sales <sales@closeoutcctv.com>  
To: bigdaveatwhiteha <bigdaveatwhiteha@aol.com>  
Subject: closeoutcctv.com Order Confirmation  
Date: Thu, Nov 14, 2013 12:46 pm



CustomerID# 48903

Thank you for your order. Your order number is LUX75228, placed 07/08/2013 at 04:06PM.

**\*Note Important Order and Tracking information\***

Once your package has shipped, you will receive a confirmation email with tracking information about your order. Expedited requests that are received before 10:00 AM EST will have same day shipping.

*The customer is responsible for inspecting product for shipping damage/missing items within 7 days of product delivery. Unused merchandise may be returned within 30 days from date of purchase for a refund of the purchase price less a 20% restocking fee.*

**Bill To:**

David L Rodgers  
PO box 2906  
Anderson, SC 29622  
United States  
864-940-0113  
bigdaveatwhiteha@aol.com

**Ship To:**

Whitehall Express/ David Rodgers  
704 White Hall Rd  
Anderson, SC 29621  
United States  
864-940-0113

**Payment Info:**

**Credit Card:** American Express  
David L Rodgers  
\*\*\*\*\*3015  
Exp: 06/2015

**Shipping Method:**

Free Shipping (UPS Ground)

**Order Details:**

| Code   | Item                                                      | Qty | Price   | Grand Total |
|--------|-----------------------------------------------------------|-----|---------|-------------|
| CL-21S | Home Bullet Camera with 420 Lines of Resolution           | 12  | \$50.95 | \$611.40    |
| CL-20S | Security Cameras with Sony CCD 420 TV Lines of Resolution | 4   | \$38.95 | \$155.80    |

Subtotal: \$767.20

Tax: \$0.00

Shipping  
Cost: \$0.00

Grand Total: \$767.20



COURT ORDER TO SHOW CAUSE

JULY 7, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,  
Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,  
Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-04-01700

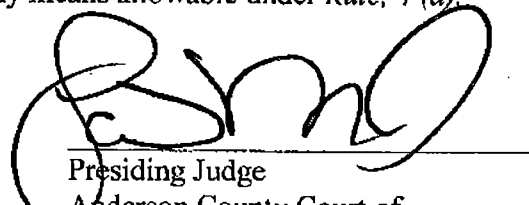
**RULE TO SHOW CAUSE**

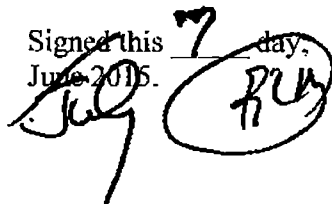
*Rep*

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, BY AND THROUGH THEIR ATTORNEYS, PHILLIP E. REEVES, ESQUIRE AND NICHOLAS A. FARR, ESQUIRE:**

Based upon the attached affidavit, it appears that you have not obeyed certain court Order(s), as described in the affidavit. Therefore,

**IT IS ORDERED THAT YOU APPEAR BEFORE THE** Anderson County Court of Common Pleas on the 28<sup>th</sup> day of July 2015 at 3 o'clock p.m., then and there to be prepared to show cause, if any, why the relief requested in the affidavit should not be granted and why you should not be held in contempt of court for such disobedience. This order and rule to show cause can be served on the above person by any means allowable under Rule, 4 (d), SCRPC.

  
\_\_\_\_\_  
Presiding Judge  
Anderson County Court of  
Common Pleas  
Tenth Judicial Circuit

Signed this 7 day,  
June 2015.  


FILED-CLERKS OFFICE  
ANDERSON SC  
2015 JUN -8 AM 9:20  
COMMON PLEAS AND  
GENERAL SESSIONS

# NOTICE AND MOTION TO COMPEL DISCOVERY

MARCH 28, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants.

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

**NOTICE OF MOTION AND MOTION  
TO COMPEL DISCOVERY**

C.A. No.: 2013-CP-04-1700

COMMON PLEAS /  
GENERAL SESSION

2016 MAR 28 AM 9:59

FILED-CLERK'S OFFICE  
ANDERSON SC

**TO: ANDERSON COUNTY SHERIFF'S DEPARTMENT, BY AND THROUGH  
COUNSEL OF RECORD, MICHAEL OWENS, ESQUIRE:**

**PLEASE TAKE NOTICE** that Plaintiff, through his undersigned attorney, will move before the Judge for the Court of Common Pleas for Anderson County, at the Anderson County Courthouse, 100 S. Main Street, Anderson SC 29624 for an Order pursuant to Rule 45(d) of the South Carolina Rules of Civil Procedure requiring Anderson County Sheriff's Department to provide a complete response to a Subpoena which was served upon the department.

This motion is based on Plaintiff properly serving a Subpoena upon Anderson County Sheriff's Department requesting scheduling information for the month of May 2013, on February 22, 2016. (Exhibit A). Plaintiff requested the department to produce "all shift schedules for Anderson County Sheriff's Department for the month of May 2013, including but not limited to, Alpha, Bravo, Charlie and Delta scheduled hours, worked hours, officer identification, over time, etc. (copies of which are attached hereto as Exhibit B).

What Anderson County Sheriff's Department produced was a generic shift schedule, which is attached. (Exhibit C). Identification of the officers, their worked hours and their overtime was noticeably absent. The undersigned has addressed the absences with defense counsel on numerous

occasions to no avail. In fact, the defense has alleged that the subpoena was received less than a week ago. (Exhibit D). This claim is invalid based on defense counsel's response negating the relevance of the materials requested by the subpoena. (Exhibit E).

The undersigned attorney affirms that prior to the filing of the within Motion, I have communicated in writing, with the Defendant and have attempted in good faith to resolve the matter contained in the within motion.



Donald L. Smith, (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
March 28, 2016.

EXHIBIT A

Michael D. Owens <mdowens@andersonsheriff.com>

Feb 22

me  
Victor

Dear Don,

In response to your subpoena dated today in Escalante v. Rogers, 2013-CP-04-1700, which was served on Mr. McDade, and our subsequent telephone conversation regarding the same, please find attached an Excel spreadsheet detailing the shift rotations for the year 2013.

Michael

Michael D. Owens  
Inv. General Counsel  
Anderson County Sheriff's Office  
306 Camson Rd.  
Anderson, SC 29625  
864-260-5590

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Attachments area

Preview attachment Copy of 2013 12 HR 14 DAY ROTATION.xls

Copy of 2013 12 HR 14 DAY ROTATION.xls

Reply Reply Forward  
to all

Don Smith <attorneydonaldsmith@gmail.com>

Feb 22

## STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ANDERSON

**EXHIBIT B**

Mario Escalante, Plaintiff

v.

## SUBPOENA IN A CIVIL CASE

David L. Rogers et al, Defendant

Case Number: 2013-CP-04-01700

Pending in Anderson County

TO: Anderson County Sheriff's Department, by and through counsel of record, J. Victor McDade, Esquire, 102 N. Main Street, Anderson SC 29621

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

All shift schedules for Anderson County Sheriff's Department for the month of May 2013, including but limited to, Alpha, Bravo, Charlie and Delta scheduled hours, worked hours, officer identification, over time, etc.

PLACE:

Attorney Office of Donald Smith, 122 N. Main Street,  
Anderson SC 29621

DATE AND TIME March 7, 2016, 4:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE 2/22/16

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

## PROOF OF SERVICE

|                                                                                                             |                                             |                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                      | DATE February 22, 2016                      | FEES AND MILEAGE TENDERED TO WITNESS<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   AMOUNT \$ |
|                                                                                                             | PLACE 102 N. Main Street, Anderson SC 29621 |                                                                                                                         |
| SERVED ON Anderson County Sheriff's Department, by and through counsel of record, J. Victor McDade, Esquire |                                             | MANNER OF SERVICE hand delivery                                                                                         |
| SERVED BY Donald L. Smith                                                                                   |                                             | TITLE Attorney                                                                                                          |

## DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on February 22, 2016

  
 SIGNATURE OF SERVER  
122 N. Main Street, Anderson SC 29621  
 ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

### (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

### (B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.





**OFFICE OF THE SHERIFF**  
ANDERSON COUNTY, S.C.

**EXHIBIT C**

**ANDERSON COUNTY SHERIFF'S OFFICE 12-HOUR SHIFT 14 DAY ROTATION**

N = NIGHT 7PM-7AM D = DAY 7AM-7PM O = OFF

YEAR 2013

| JANUARY | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH |
| ALPHA   | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  |
| BRAVO   | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  |
| CHARLIE | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  |
| DELTA   | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  |

| FEBRUARY | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 |
|----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY      | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH |
| ALPHA    | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  |
| BRAVO    | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  |
| CHARLIE  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  |
| DELTA    | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  |

| MARCH   | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU |
| ALPHA   | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  |
| BRAVO   | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  |
| CHARLIE | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  |
| DELTA   | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  |

| APRIL   | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU |
| ALPHA   | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  |
| BRAVO   | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  |
| CHARLIE | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  |
| DELTA   | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  |

| MAY     | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |   |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|---|
| DAY     | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR |   |
| ALPHA   | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  |   |
| BRAVO   | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  |   |
| CHARLIE | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | O  | N  | N  | O  | O  | N |
| DELTA   | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | O  | D  | D  | O  | O  | D |

| JUNE    | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU |
| ALPHA   | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | O  | O  | N  | N  | O  | O  | O  | O  |
| BRAVO   | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | O  | O  | D  | D  | O  | O  | O  | O  |
| CHARLIE | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  |
| DELTA   | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  |



**OFFICE OF THE SHERIFF**  
**ANDERSON COUNTY, S.C.**

**ANDERSON COUNTY SHERIFF'S OFFICE 12-HOUR SHIFT 14 DAY ROTATION**

N = NIGHT 7PM-7AM D = DAY 7AM-7PM O = OFF

YEAR 2013

| JULY    | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE |
| ALPHA   | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  |
| BRAVO   | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  |
| CHARLIE | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | O  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  |
| DELTA   | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  |

| AUGUST  | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA |
| ALPHA   | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  |
| BRAVO   | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  |
| CHARLIE | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  |
| DELTA   | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  |

| SEPTEMBER | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|-----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY       | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO |
| ALPHA     | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  |
| BRAVO     | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  |
| CHARLIE   | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  |
| DELTA     | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  |

| OCTOBER | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY     | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH |
| ALPHA   | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  |
| BRAVO   | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  |
| CHARLIE | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  |
| DELTA   | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  |

| NOVEMBER | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY      | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA |
| ALPHA    | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  |
| BRAVO    | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  |
| CHARLIE  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  |
| DELTA    | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  |

| DECEMBER | 1  | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|----------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| DAY      | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU |
| ALPHA    | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  |
| BRAVO    | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  |
| CHARLIE  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  |
| DELTA    | N  | O  | O  | N  | N  | O  | O  | O  | D  | D  | O  | O  | D  | D  | D  | O  | O  | D  | D  | O  | O  | O  | N  | N  | O  | O  | N  | N  | N  | O  | O  |

EXHIBIT D

Don Smith <attorneydonaldsmith@gmail.com>

Mar 25 (2 days ago)

J. Victor

Michael

Kirsten

Gentlemen:

Please find attached my Motion to Compel that I will file if I am not provided what I have requested. Thank you for your understanding.

Donald L. Smith

Attorney Office of Donald Smith

122 N. Main St.

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Attachments are:

Preview attachment ESCALANTE, MARIO-TORT-MOTION TO COMPEL RESPONSE FROM ANDERSON COUNTY SHERIFF'S DEPARTMENT.docx

W

ESCALANTE, MARIO-TORT-MOTION TO COMPEL RESPONSE FROM ANDERSON COUNTY SHERIFF'S DEPARTMENT.docx

[Reply](#) [Reply to all](#) [Forward](#)

**Don Smith**

Gentlemen:  
Please find  
attached  
my Motion  
to Compel  
that I will  
file if I am

Mar 25 (2 days ago)

Gentlemen: Please find attached my Motion to Compel that I will file if I am ...

**J. Victor McDade**

Mar 25 (2 days ago)

me  
Michael  
Kirsten

Don

I advised you that Michael Owens just got the subpoena this week. I am going to be handling the response as of yesterday. It looks like I will be filing a Motion to Quash. You can oppose that and, if the judge orders, get your materials without having to pay a motion filing fee. In any event, I would ask that you hold off and allow me to file my motion by the end of next week. I plan on doing it sooner than the end of next week.

Victor

J. Victor McDade

Doyle, Tate & McDade, PA

201 N. Main Street, Suite 400

PO Box 2125

Anderson, SC 29622

(864) 224-7111

# EXHIBIT E

Michael D. Owens <mduwens@andersonsheriff.com>

Feb 24

Victor  
me

Good morning to you both,

Don, at the deposition of Jordan Nubern you inquired whether there would be something showing which shift was working the day of the incident. I told you I thought there'd be a shift schedule in existence, but if nothing else we might be able to go through dispatch to determine which shift was getting the majority of calls that day. Your subpoena requests the shift schedules for May 2013. I have provided you with a document which supplies that information for the entirety of 2013. As Victor addressed, there is no requirement for me to create a responsive document for you which addresses the subsets of information you have implicitly inquired about in your subpoena. It is also notable that the additional information you seek certainly has no bearing as to whether ACSO had probable cause to arrest your client, or whether the store, through its agents, acted wrongfully or negligently.

For the record...it is my memory, though I cannot say for certain, that during the depositions of Hyslop and Surratt you asked which shift was working, and the answer was Delta. So this all seems a bit superfluous anyway. But because I told you during Nubern's deposition that I'd try to find a shift schedule if you would go through Victor to keep him in the loop, I did so.

Michael

# ORDER FOR CONTINUANCE

JUNE 3, 2016

FILED-CLERK'S OFFICE  
ANDERSON SC

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante,

Plaintiff,

vs.

( David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants. )

2016 JUN -7 PM 12:33  
COMMON PLEAS AND  
GENERAL SESSIONS

IN THE COURT OF COMMON PLEAS

**ORDER FOR CONTINUANCE**

C.A. No.: 2013-CP-04-1700.

A telephone status conference was held in the above-referenced matter on Thursday, February 11, 2016, pursuant to a request by the defendants to discuss the trial of this case which was set for a date certain trial on February 16, 2016. As a result of the status conference, for good cause shown, the Court finds that the trial of this matter shall be continued. The parties shall be permitted to select a second date certain for the trial of this matter after the United States District Court for the District of South Carolina has ruled on pending motions for summary judgment. Further, the defendants shall be responsible for any reasonable change fees incurred by the plaintiff, Mario Escalante, in altering his flight plans.

AND IT IS SO ORDERED.

  
The Honorable Cordell Maddox, Presiding Judge  
Anderson County Court of Common Pleas

June 3, 2016  
Anderson, South Carolina

## Maddox, J. Cordell Law Clerk (Robert C. Lake)

---

**From:** Nick Farr <nfarr@gwblawfirm.com>  
**Sent:** Tuesday, May 03, 2016 8:47 AM  
**To:** Maddox, J. Cordell; Maddox, J. Cordell Law Clerk (Robert C. Lake)  
**Cc:** Don Smith  
**Subject:** Escalante v. Whitehall Express (C.A. No. 2013-cp-04-1700)  
**Attachments:** Proposed Order Continuance.docx

Judge Maddox,

Please find the attached proposed order setting forth the rulings in the February 11<sup>th</sup> telephone conference in the above-captioned case. If this order meets your approval, we ask that it be entered in this case.

Plaintiff's counsel, Don Smith, has been copied on this email.



**Nicholas A. Farr**  
Associate  
nfarr@GWBlawfirm.com

**Gallivan, White & Boyd P.A.**  
**Office** 55 Beattie Place | Suite 1200 | Greenville SC 29601  
864 271 5347 Direct | 864 271 9580 Main | 864 271 7502 Fax  
**Mailing** Post Office Box 10589 | Greenville SC 29603  
vCard | BioURL | Website

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.



COURT ORDER  
SEPTEMBER 7, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

FORM 4

JUDGMENT IN A CIVIL CASE

FILED-CLERK'S OFFICE  
ANDERSON SC

CASE NO. 2013CP0401700



2016 SEP -7 AM 9:55

Mario Escalante  
PLAINTIFF(S)

COMMON PLEAS AND  
GENERAL SESSIONS

David L. Rodgers, et al  
DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Plaintiff's Motion to Compel is dismissed for failure to prosecute. Anderson County Sheriff's Office's Motion to Quash is Granted. Mr. McDade to prepare formal order.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2752

Judge Code

9-6-16  
Date

For Clerk of Court Office Use Only



This judgment was entered on the 7<sup>th</sup> day of Sept., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7<sup>th</sup> day of Sept., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)  
\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

\_\_\_\_\_  
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED-CLERK'S OFFICE  
ANDERSON SC.  
2016 SEP - 7 AM 9:55  
COMMON PLEAS AND  
GENERAL SESSIONS

RESPONDENTS' MOTION FOR  
SUMMARY JUDGMENT  
WITH EXHIBITS

OCTOBER 18, 2017

|                                         |   |                                     |
|-----------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) |                                     |
|                                         | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF ANDERSON                      | ) |                                     |
| Mario Escalante,                        | ) |                                     |
|                                         | ) | <b>DEFENDANTS' NOTICE OF MOTION</b> |
| Plaintiff,                              | ) | <b>AND MOTION FOR SUMMARY</b>       |
|                                         | ) | <b>JUDGMENT</b>                     |
| vs.                                     | ) |                                     |
|                                         | ) | C.A. No.: 2013-CP-04-1700           |
| David L. Rodgers and Janice W. Rodgers, | ) |                                     |
| d/b/a Whitehall Express Mart,           | ) |                                     |
|                                         | ) |                                     |
| Defendants.                             | ) |                                     |

**TO: DONALD L. SMITH OF THE ATTORNEY OFFICE OF DONALD SMITH,  
ATTORNEYS FOR MARIO ESCALANTE, PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, by and through their undersigned attorneys, will move before the resident or presiding judge on the 10<sup>th</sup> day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the court may determine for an order granting them summary judgment as to the issue of their liability to the plaintiff. This motion is based upon the following grounds:

1. There is no genuine issue as to any material fact in this case;
2. On July 22, 2013, the plaintiff filed this action against Mr. and Mrs. Rodgers d/b/a Whitehall Express Mart ("Mr. and Mrs. Rodgers") in which he asserts false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud causes of action. A copy of the complaint is attached as Exhibit A.
3. On January 13, 2015, the plaintiff filed suit in the United States District Court for the District of South Carolina, Anderson Division, Mr. and Mrs. Rodgers, the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon

Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as “the Federal Action”). The complaint in the Federal Action contains nearly identical allegations as in this action and asserts the same causes of action against Mr. and Mrs. Rodgers. In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants. A copy of the plaintiff’s complaint in the Federal Action is attached as Exhibit B.

4. By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Mr. and Mrs. Rodgers and the police defendants as to each cause of action asserted by the plaintiff, finding:

(1) that Plaintiff has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and

(2) that probable cause ultimately supported Plaintiff’s shoplifting arrest.

A copy of the order granting summary judgment is attached as Exhibit C.

5. On October 12, 2017, the order granting summary judgment to Mr. and Mrs. Rodgers was affirmed by the Fourth Circuit Court of Appeals. A copy of the Fourth Circuit opinion is attached as Exhibit D.

6. Because Mr. and Ms. Rodgers have obtained summary judgment in the Federal Action which involved the same claims and allegations as the present action, the plaintiff’s claims are barred by the doctrines of res judicata and collateral estoppel. Accordingly, Mr. and Ms. Rodgers are entitled to summary judgment as a matter of law.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings filed in this case, discovery completed in this case, including the

plaintiff's answers to interrogatories, responses to requests for production, responses to requests for admissions, and depositions taken or to be taken, affidavits filed or to be filed and the common and statutory law of the State of South Carolina.

s/ Phillip E. Reeves

Phillip E. Reeves (S.C. Bar No. 4672)

Nicholas A. Farr (S.C. Bar No. 78769)

GALLIVAN, WHITE & BOYD, P.A.

Post Office Box 10589

Greenville, SC 29603

(864) 271-9580

Attorneys for Defendants, David L. Rodgers  
and Janice W. Rodgers d/b/a Whitehall Express  
Mart

Greenville, South Carolina

October 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mario Escalante,

IN THE COURT OF COMMON PLEAS

FILED - CLERK'S OFFICE CIVIL ACTION COVERSHEET  
Plaintiff(s) ANDERSON SC

vs.

2013 JUL 22 P 3:43

2013-CP - 04- 01700

David L. and Janice W. Rogers, d/b/a Whitehall  
Express Mart  
COMMON PLEAS AND  
GENERAL SESSIONS  
Defendant(s)

Submitted By: Donald L. Smith  
Address: 122 N. Main St., Anderson SC 29621

SC Bar #: 6699  
Telephone #: 864-642-9284  
Fax #: 864-642-9285  
Other:  
E-mail: attorneydonaldsmith@gmail.com

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

**DOCKETING INFORMATION (Check all that apply)**

*\*If Action is Judgment/Settlement do not complete*

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

**NATURE OF ACTION (Check One Box Below)**

- |                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 -CP-<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                 | <b>Torts - Personal Injury</b><br><input checked="" type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)                                                                                                                                                                              | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

Submitting Party Signature:



Date:

7/22/13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

**You are required to take the following action(s):**

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

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

ELECTRONICALLY FILED - 2017 Oct 18 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante, )

Plaintiff, )

vs. )

David L. Rodgers and )  
Janice W. Rodgers, )  
d/b/a, Whitehall Express Mart, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-04- 01700

SUMMONS  
(JURY TRIAL DEMANDED)

FILED-CLERK'S OFFICE  
ANDERSON SC  
2013 JUL 22 P 3:43  
COMMON PLEAS AND  
GENERAL SESSIONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the undersigned at 122 N. Main St., Anderson, South Carolina, 29621, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.



Donald L. Smith  
ATTORNEY FOR PLAINTIFF  
122 N. Main St.  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
attorneydonaldsmith@gmail.com

Anderson, South Carolina  
July 22, 2013.

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE  
ANDERSON SC

THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

2013 JUL 22 P 3:43

Mario Escalante,

Plaintiff,

-vs-

David L. Rodgers and  
Janice W. Rodgers,  
d/b/a, Whitehall Express Mart,

Defendants.

COMMON PLEAS AND  
GENERAL SESSIONS

COMPLAINT

(JURY TRIAL DEMANDED)

C.A. No.: 2013-CP-04- 01700

Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto the Court that:

**FACTUAL ALLEGATIONS**

1. The Plaintiff is a citizen and resident of the County of Webb, State of Texas.
2. The Defendants are citizens and residents of the County of Anderson, State of South Carolina.
3. At all times herein mentioned, Defendants were engaged in the retail merchandise business and, in the furtherance of that business, they kept and maintained a store in the County of Anderson, State of South Carolina, wherein they kept goods, wares, and merchandise for sale to the general public, and the general public was especially invited to enter into the store and make purchases of such goods, wares, and merchandise.
4. At all times herein mentioned, Defendants' agents, servants, and/or employees were acting within the course and scope of their agency and/or employment with the Defendants.

5. On or about Sunday, May 5, 2013, just before 5:00 p.m., Plaintiff entered into Defendants' store located at 704 Whitehall Road, Anderson, South Carolina, and purchased a case of beer from one of the Defendants' employees.
6. Plaintiff attempted to purchase a second case of beer for his friend but was denied by Defendants' employee due to the prohibition of Sunday alcohol sales in the County, and returned to work.
7. Defendants contacted the Anderson County Sheriff's Department and stated that they had Plaintiff on film stealing the beer from Defendants' store.
8. Defendants filed a complaint stating that Plaintiff stole a case of beer, demanding his arrest.
9. Defendant David Rogers followed the Plaintiff, and aided the Sheriff's Department in locating him.
10. Defendant David Rogers instructed the police that Plaintiff had stolen the beer and substantiated his claim with video/photos taken with his phone.
11. Anderson County Sheriff's Department did confirm that Plaintiff carried away the beer without paying for it.
12. Several Sheriff's deputies converged on Plaintiff in the center of the Anderson County Fair, where he was working, and arrested him for shoplifting.
13. Plaintiff told Anderson County Sheriff's Department that he had purchased the case of beer.
14. Sheriff's deputies cuffed Plaintiff and led him through the fairgrounds to a patrol car.

15. Plaintiff demanded to view the video of the alleged theft and was only afforded the opportunity to view still photos which did not accurately portray the purchase.

16. The Defendants' Rogers has been cited for alcohol violations in the past, including Sunday sales.

17. The Defendants and their employee alleged that the Plaintiff had stolen the beer so as to protect them from prosecution for violating the Sunday alcohol ordinance.

18. The Anderson County Sheriff's Department on the complaint of Defendant, its agents, servants, and/or employees, in full view of Plaintiff's co-workers, employer and patrons of the county fair, falsely and maliciously accused Plaintiff of stealing some of Defendants' merchandise, and, despite Plaintiff's protests and claims of innocence, took him into custody, restrained him in handcuffs and placed him under arrest.

19. The Anderson County Sheriff's Department failed to look into the Plaintiff's claim of innocence.

20. As a result of the reckless disregard of the Plaintiff's innocence, Plaintiff was arrested and deprived of his liberty against his will and without lawful justification or probable cause.

21. The Defendants are liable for the actions, conduct and omissions of its agents, servants, and employees, under the theory of respondent superior.

22. As a direct and proximate result of the false accusations, and his unlawful detention and/or false arrest, Plaintiff was humiliated, embarrassed, and shocked, suffered great and lasting mental anguish, and was thereby injured and damaged in his good name and reputation, and as a proximate result thereof, he has been damaged, for which damages the

Defendants are liable.

23. As a direct and proximate result of the false accusations, Plaintiff was deprived of the case of beer that he had purchased from the Defendants.

**FOR A FIRST CAUSE OF ACTION**

24. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 23 above.

25. The aforementioned actions, conduct and/or omissions of the Defendants, by and through its agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants resulted in Plaintiff being falsely imprisoned and/or deprived of his liberty against his will without justification or probable cause.

26. As a direct and proximate result of the Plaintiff's false imprisonment by the Anderson County Sheriff's Department on behalf of Defendant, its agents, servants, and/or employees, the Plaintiff has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

**FOR A SECOND CAUSE OF ACTION**

27. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 26 above.

28. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants constitutes an intentional and unreasonable invasion of Plaintiff's privacy.

29. As a direct and proximate result of the Defendants' unreasonable invasion of

Plaintiff's privacy by the Defendants, their agents, servants, and/or employees while acting within the course and scope of their agency and/or employment with the Defendant, the Plaintiff has been subjected to ridicule and scorn, and has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

**FOR A THIRD CAUSE OF ACTION**

30. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 29 above.

31. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, who were acting within the course and scope of their agency and/or employment with the Defendants expressly or by implication gave Defendants' co-workers, employer and patrons of the county fair/or others the impression that Plaintiff was engaging in wrongful or illegal activity.

32. The aforementioned insinuation, and/or inference of wrongdoing, constitutes a publication of defamatory matter that was defamatory to the Plaintiff.

33. As a direct and proximate result of the Defendants' defamation of the Plaintiff, Plaintiff has been damaged, for which damages the Defendants are liable.

**FOR A FOURTH CAUSE OF ACTION**

34. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 33 above.

35. The Defendants failed to properly and thoroughly train its employees in county ordinances.

36. The Defendants failed to properly and thoroughly investigate the alleged loss of

merchandise before accusing Plaintiff of stealing and/or being involved in the alleged theft.

37. The Defendants had no reasonable factual basis for accusing Plaintiff of being involved in the alleged theft and/or subjecting Plaintiff to a custodial interrogation regarding such and/or illegally, wrongfully and/or maliciously instigating Plaintiff's unlawful arrest and/or false imprisonment.

38. Due to their lack of proper training and failure to exercise reasonable care, the Defendants, wrongfully concluded, in the absence of any evidence reasonably supporting their inferences, that Plaintiff was involved in the alleged theft of merchandise and/or criminal activity.

39. The Defendants also failed to properly train and supervise its employees before, expressly or by implication, publishing false accusations of criminal conduct.

40. The Plaintiff has suffered actual damage as a direct and proximate result of the negligent, gross negligent, willful, wanton, reckless, careless and/or heedless actions, conduct and/or omissions of the Defendants and their employees.

41. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

#### **FOR A FIFTH CAUSE OF ACTION**

42. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 41 above.

43. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute false arrest.

44. The Plaintiff has suffered actual damage as a direct and proximate result of the



false arrest at the instigation of the Defendants and their agents and employees.

45. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A SIXTH CAUSE OF ACTION**

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 45 above.

47. The aforementioned actions, conduct and/or omissions of the Defendant, by and through their agents, servants, and/or employees, constitute outrage.

48. The Plaintiff has suffered actual damage as a direct and proximate result of the outrage at the instigation of the Defendant and their agents and employees.

49. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A SEVENTH CAUSE OF ACTION**

50. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 49 above.

51. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute malicious prosecution.

52. The Plaintiff has suffered actual damage as a direct and proximate result of the malicious prosecution at the instigation of the Defendant and their agents and employees.

53. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A EIGHTH CAUSE OF ACTION**

54. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 53 above.

55. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute conspiracy.

56. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendants and their agents and employees.

57. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A NINTH CAUSE OF ACTION**

58. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 57 above.

59. The aforementioned actions, conduct and/or omissions of the Defendants, by and through their agents, servants, and/or employees, constitute conversion.

60. The Plaintiff has suffered actual damage as a direct and proximate result of the conversion at the instigation of the Defendants and their agents and employees.

61. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**FOR A TENTH CAUSE OF ACTION**

62. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 61 above.

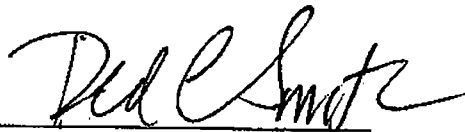
63. The aforementioned actions, conduct and/or omissions of the Defendants, by and

through their agents, servants, and/or employees, constitute fraud.

64. The Plaintiff has suffered actual damage as a direct and proximate result of the fraud at the instigation of the Defendants and their agents and employees.

65. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

**WHEREFORE** Plaintiff prays for judgment against the Defendants for all actual damages sustained by the Plaintiff, for such punitive damages the jury deems equitable given all the circumstances surrounding this matter and such other and further relief that this Court deems just and proper.



**Donald L. Smith**  
**ATTORNEY FOR PLAINTIFF**  
122 N. Main St.  
Anderson SC 29621  
Telephone: (864) 642-9284  
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Anderson, South Carolina  
July 22, 2013.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Mario Escalante,

PLAINTIFF

Civil Action No.:

V.

**COMPLAINT**

Anderson County Sheriff's Department  
305 Camson Rd.  
Anderson, South Carolina 29625

Sheriff John Skipper, in his official and individual capacities  
305 Camson Rd.  
Anderson, South Carolina 29625

Sergeant Andrew R. Hyslop, in his official and individual capacities  
305 Camson Rd.  
Anderson, South Carolina 29625

Deputy Brandon Surratt, in his official and individual capacities  
305 Camson Rd.  
Anderson, South Carolina 29625

City of Anderson Police Department  
401 South Main Street  
Anderson, SC 29624

James S. Stewart, Chief of Police, in his official and individual capacities  
401 South Main Street  
Anderson, SC 29624

David L. Rodgers and Janice W. Rodgers,

d/b/a, Whitehall Express Mart, and,

John Does 1-20,

DEFENDANTS.

ELECTRONICALLY FILED - 2017 Oct 18 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

**COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES**

Mario Escalante, through his undersigned attorneys, hereby files this Complaint seeking declaratory and damages against defendants sued in their individual and official capacities for violation of his constitutional rights under the due process clause of the Fourteenth Amendment, for violation of his constitutional rights under the probable cause clause of the Fourth Amendment and false arrest, false imprisonment, conspiracy, invasion of privacy, malicious prosecution, outrage, unlawful arrest, assault, fraud, and defamation, and avers as follows:

**SUBJECT MATTER JURISDICTION**

1. This Court possesses subject matter jurisdiction over the Complaint under 28 U.S.C. 1331 because Plaintiff's claims arise under a federal statute, 42 U.S.C. 1983, and the United States Constitution. This Court also possesses subject matter jurisdiction over the Complaint under 28 U.S.C. 1332, because the parties are diverse and the amount in controversy exceeds \$75,000.

**PERSONAL JURISDICTION**

2. This Court has personal jurisdiction over the defendants in their individual and official capacities because each of the defendants reside in South Carolina; and, their acts or omissions giving rise to Plaintiff's claims occurred in South Carolina.

**VENUE**

3. Venue is proper under 28 U.S.C. 1391(b) because the defendants reside in this District; and the acts or omissions giving rise to Plaintiff's claims occurred in this District.

**PARTIES**

4. The plaintiff, Mario Escalante, was working a fair in the County of Anderson, State of South Carolina, when he was falsely arrested, slandered and defamed by the defendants. The plaintiff is a citizen and resident of the County of Webb, State of Texas.

5. Defendant Anderson County Sheriff's Office arrested the plaintiff at his place of employment, without first conducting a thorough factual investigation. The plaintiff was arrested essentially at the whim of a private individual, leading to the false imprisonment and slander and defamation of the plaintiff. The defendant Anderson County Sheriff's Office is located at 305 Camson Road, Anderson, South Carolina.

6. Sheriff John Skipper, Jr., sued in his individual and official capacities, as sheriff of the Anderson County Sheriff's Department. His business address is 305 Camson Road, Anderson, South Carolina. He has refused to rectify the unlawful conduct of his subordinates, fostering and facilitating an atmosphere of cronyism, and racially motivated actions and inaction. Sheriff Skipper's personnel fail to provide equal protection of the law based on ride

7. Defendant Sergeant Andrew R. Hyslop, sued in his individual and official capacities, arrested the plaintiff at his place of employment, without first conducting a thorough factual investigation. The plaintiff was arrested essentially at the whim of a private individual, leading to the false imprisonment and slander and defamation of the plaintiff. Defendant Hyslop was presented undisputable evidence that Defendant David Rodgers sold beer in Anderson County on Sunday in violation of the law; and, he was shown the receipt for the only case of beer that was found by law enforcement at the time of arrest, thereby illustrating that the beer was purchased as opposed to stolen. Sergeant Hyslop did not arrest defendant Rodgers due to the fact that he was a Caucasian and plaintiff Escalante was a Mexican fair worker. Sergeant Hyslop failed to provide

equal protection of the law based on race. Defendant Sergeant Hyslop is located at 305 Camson Road, Anderson, South Carolina.

8. Deputy Brandon Surratt, sued in his individual and official capacities, arrested the plaintiff at his place of employment, without first conducting a thorough factual investigation. The plaintiff was arrested essentially at the whim of a private individual, leading to the false imprisonment and slander and defamation of the plaintiff. Defendant Surratt was presented indisputable evidence that defendant David Rodgers sold beer in Anderson County on Sunday in violation of the law; and, he was shown the receipt for the only case of beer that was found by law enforcement at the time of arrest, thereby illustrating that the beer was purchased as opposed to stolen. Deputy Surratt did not arrest defendant Rodgers for the illegal sale of beer on a Sunday, or the false police report offered by defendant Rodgers due to the fact that he was a Caucasian and plaintiff Escalante was a Mexican fair worker. Deputy Surratt failed to provide equal protection of the law based on race. Defendant Deputy Surratt is located at 305 Camson Road, Anderson, South Carolina.

8. Defendant City of Anderson Police Department worked in tandem with the Anderson County Sheriff's Office to arrest the plaintiff at his place of employment. Like the Anderson County Sheriff's Office, the City of Anderson failed to conduct an investigation into the facts before making the arrest. Defendant City of Anderson is located at 401 South Main Street, Anderson, South Carolina.

9. Defendant David Rogers owns and operates the store from which the plaintiff was alleged to have stolen merchandise. David Rogers instigated the unlawful arrest of the plaintiff by, among other fraudulent means, providing false information and misleading still photographs

to authorities. The defendant David Rogers can be located at 704 Whitehall Road, Anderson, South Carolina.

10. Defendant David Rogers owns and operates the store from which the plaintiff was alleged to have stolen merchandise. David Rogers instigated the unlawful arrest of the plaintiff by, among other fraudulent means, providing false information and misleading still photographs to authorities. The defendant David Rogers can be located at 704 Whitehall Road, Anderson, South Carolina.

### **STATEMENT OF FACTS**

8. On or about Sunday, May 5, 2013, just before 5:00 p.m., Plaintiff entered Defendant Rogers' store located at 704 Whitehall Road, Anderson, South Carolina, and purchased a case of beer from one of the Defendants' employees.

9. Plaintiff later attempted to purchase a second case of beer for his friend, but was denied by Defendant Rodgers' employee due to the prohibition of Sunday alcohol sales in the County, and returned to work.

10. Defendant Rodgers contacted the Anderson County Sheriff's Department and stated that he had video evidence of the plaintiff stealing the beer from the store.

11. Defendant Rodgers filed a complaint stating that Plaintiff stole a case of beer, demanding his arrest.

12. Defendant Rodgers followed the Plaintiff, and aided the Sheriff's Department in locating him.

13. Defendant Rodgers instructed the police that Plaintiff had stolen the beer and substantiated his claim with video/photos taken with his phone.



14. Defendant Rodgers did not provide any video of the plaintiff's time in the store, despite having over 30 (thirty) cameras, but instead took pictures of the video with his phone, and provided these pictures to the authorities in ways meant to lead them to conclude that the plaintiff had stolen the beer.

15. Anderson County Sheriff's Department and the City of Anderson Police Department agreed that Plaintiff carried away the beer without paying for it.

16. Several Sheriff's deputies and city police officers converged on Plaintiff in the center of the Anderson County Fair, where he was working, and arrested him for shoplifting.

17. Plaintiff told Anderson County Sheriff's that he had purchased the case of beer.

18. Sheriff's deputies cuffed Plaintiff and led him through the fairgrounds to a patrol car.

19. Plaintiff demanded to view the video of the theft, which was allegedly lost to a lightning strike.

20. The defendant David Rodgers has been cited for alcohol violations in the past, including Sunday sales.

21. The defendant David Rodgers and his employee alleged that the Plaintiff had stolen the beer, in an effort to protect themselves from prosecution for violating the Sunday alcohol ordinance.

22. The defendants Anderson County Sheriff's Department and City of Anderson, on the complaint of defendant David Rodgers, his agents, servants, and/or employees, in full view of the plaintiff's co-workers, employer and patrons of the county fair, falsely and maliciously accused the plaintiff of stealing some of defendant David Rodgers' merchandise, and, despite the

plaintiff's protests and claims of innocence, took him into custody, restrained him in handcuffs and placed him under arrest.

23. The defendants Anderson County Sheriff's Department and City of Anderson failed to look into the plaintiff's claim of innocence.

24. When the plaintiff returned to Anderson, South Carolina from Texas for criminal proceedings related to the alleged theft, defendant David Rodgers informed plaintiff that he would not be pressing charges.

25. When plaintiff asked defendant David Rodgers why he had taken such actions up to that point, and waited until the plaintiff returned from Texas to inform the plaintiff that he would not be prosecuting the charges, defendant David Rodgers placed his hand on the plaintiff's shoulder and said, "Things happen."

26. As a result of the defendants' reckless disregard of the plaintiff's innocence, the plaintiff was arrested and deprived of his liberty against his will and without lawful justification or probable cause.

27. The defendants are liable for the actions, conduct and omissions of their agents, servants, and employees, under the theory of respondent superior.

28. As a direct and proximate result of the false accusations, and his unlawful detention and/or false arrest, the plaintiff was humiliated, embarrassed, and shocked, suffered great and lasting mental anguish, and was thereby injured and damaged in his good name and reputation, and as a proximate result thereof, he has been damaged, for which damages the defendants are liable.

29. As a direct and proximate result of the false accusations, the subject beer was returned to the store owned and operated by defendant David Rodgers, thereby depriving the plaintiff of goods for which he had tender payment.

**FOR A FIRST CAUSE OF ACTION – CIVIL RIGHTS**

30. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 29 above.

31. In arresting and prosecuting the plaintiff without probable cause, the defendants violated the plaintiff's clearly established constitutional right to due process under the Fourteenth Amendment and 42 U.S.C. § 1983, of which the defendants knew or should have known.

32. Defendants acted with actual malice against Plaintiff in violating his clearly established constitutional right to due process.

33. Defendants' violation of Plaintiff's constitutional rights proximately caused Plaintiff damages in lost income—past and prospective—and mental and emotional pain, suffering, humiliation, and irreparable harm to his reputation.

**FOR A SECOND CAUSE OF ACTION – FALSE IMPRISONMENT**

34. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 33 above.

35. The aforementioned actions, conduct and/or omissions of the defendants in their individual capacities and/or, by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, resulted in the plaintiff being falsely imprisoned.

36. As a direct and proximate result of the false imprisonment by the defendants in their individual capacities and/or, by and through their agents, servants, and/or employees, the plaintiff has been damaged, for which damages the defendants are liable.

**FOR A THIRD CAUSE OF ACTION – ASSAULT**

37. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 36 above.

38. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute assault.

39. As a direct and proximate result of the defendants' assault of the plaintiff in their individual capacities, and/or by and through their agents, servants, and/or employees, the plaintiff has been damaged, for which damages the defendants are liable.

**FOR A FOURTH CAUSE OF ACTION – BATTERY**

40. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 39 above.

41. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute battery.

42. As a direct and proximate result of the defendants' battery of the plaintiff in their individual capacities, and/or by and through their agents, servants, and/or employees, the plaintiff has been damaged, for which damages the defendants are liable.

**FOR A FIFTH CAUSE OF ACTION – INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS**

43. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 42 above.

44. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute intentional infliction of emotional distress.

45. As a direct and proximate result of the willful and wanton acts, as well as the gross negligence of the defendants, the plaintiff sustained severe emotional and mental injuries and damages, for which damages the defendants are liable.

**FOR A SIXTH CAUSE OF ACTION – INVASION OF PRIVACY**

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 45 above.

47. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute an intentional and unreasonable invasion of the plaintiff's privacy.

48. As a direct and proximate result of the unreasonable invasion of the plaintiff's privacy by the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees while acting within the course and scope of their agency and/or employment, the plaintiff has been subjected to ridicule and scorn, leaving him damaged, for which damages the defendants are liable.

**FOR A SEVENTH CAUSE OF ACTION – OUTRAGE**

49. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 48 above.

50. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute outrage.

51. As a direct and proximate result of the outrage of the defendants, the plaintiff sustained severe and emotional and mental injuries and damages, for which damages the defendants are liable.

**FOR AN EIGHTH CAUSE OF ACTION – DEFAMATION**

52. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 51 above.

53. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, expressly or by implication gave the plaintiff, his family, friends, neighbors, community and others the impression that the plaintiff was engaging in unlawful, deviant behavior and/or activity which constitutes a publication of matter that was defamatory to the plaintiff.

54. As a direct and proximate result of the defendants' defamation of the plaintiff, the plaintiff has been damaged, for which damages the defendants are liable.

**FOR A NINTH CAUSE OF ACTION – SLANDER**

55. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 54 above.

56. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute a publishing of matter that was slanderous to the plaintiff.

57. As a direct and proximate result of the defendants' slander of the plaintiff, he has been damaged, for which damages the defendants are liable.

**FOR A TENTH CAUSE OF ACTION – CIVIL CONSPIRACY**

58. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 57 above.

59. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute a civil conspiracy to harm the plaintiff.

60. As a direct and proximate result of the defendants' conspiracy to harm the plaintiff, plaintiff has been damaged, for which damages the defendants are liable.

**FOR AN ELEVENTH CAUSE OF ACTION – ABUSE OF PROCESS**

61. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 60 above.

62. The aforementioned actions, conduct, and/or omissions of the defendants' Rodgers and Rodgers, d/b/a Express Mart in their individual capacities, and/or by and through

their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute an abuse of process.

63. As a direct and proximate result of the defendants' abuse of process, the plaintiff has been damaged, for which damages the defendants are liable.

**FOR A TWELFTH CAUSE OF ACTION – CONVERSION**

64. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 63 above.

65. The aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute conversion.

66. As a direct and proximate result of the defendants' conversion of the plaintiff's goods, the plaintiff has been damaged, for which damages the defendants are liable.

**DAMAGES**

67. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 66 above.

68. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the defendants herein, plaintiff suffered numerous injuries.

69. As a direct and proximate result of the defendants' negligence, gross negligence, recklessness, willfulness and wantonness, the plaintiff incurred the following:

- a. Conscious mental pain, suffering, and distress;
- b. Economic damages, including but not limited to lost wages and lost goods;
- c. Irreparable damage to his good name and reputation;



d. Psychological distress; and

e. Punitive damages.

70. Plaintiff is entitled to recover actual and punitive damages from the defendants in an amount as to be determined by this Court.

#### **PUNITIVE DAMAGES**

71. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 70 above.

72. The acts and/or omissions of the defendants, as stated above, were a willful, wanton, and/or reckless disregard for the well-being and life of the plaintiff.

73. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the defendants, the plaintiff suffered.

74. The conduct of the defendants as set forth above justifies an award of punitive damages for each and every claim of the plaintiff as set forth herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, the plaintiff prays that he have and recover from the defendants as follows:

1. Actual damages in an amount to be determined by a jury, but in any event, an amount in excess of \$75,000;

2. Punitive damages in an amount sufficient to punish the defendants for their reckless, willful and wanton acts, and to deter the defendants and others from committing similar acts, such amount to be determined by a jury, but in any event, an amount in excess of \$75,000;

3. Attorney fees, costs, and interest as provided by law; and

4. For such other and further relief as the Court may deem just and proper.

#### **JURY TRIAL**

Plaintiff demands a trial by jury.

**ENDORSEMENT AND CERTIFICATION**

I hereby certify that a substantial part of the events or omissions giving rise to the claims herein occurred in Anderson County in the State of South Carolina, and thus the complaint should be assigned to the Anderson/Greenwood Division accordingly.

s/Donald L. Smith

Donald L. Smith

Respectfully submitted,

Donald L. Smith  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

January 13, 2015

ELECTRONICALLY FILED - 2017 Oct 18 3:29 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

|                                                       |   |                               |
|-------------------------------------------------------|---|-------------------------------|
| Mario Escalante,                                      | ) | Civil Action No. 8:15-177-MGL |
|                                                       | ) |                               |
| Plaintiff,                                            | ) |                               |
|                                                       | ) |                               |
| v.                                                    | ) | <b><u>ORDER</u></b>           |
|                                                       | ) |                               |
| Anderson County Sheriff's Department, <i>et al.</i> , | ) |                               |
|                                                       | ) |                               |
| Defendants.                                           | ) |                               |
| _____                                                 | ) |                               |

Plaintiff Mario Escalante, ("Plaintiff"), brings the instant action pursuant to 42 U.S.C. § 1983 and South Carolina state law. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial handling. On July 29, 2016, the Magistrate Judge issued a Report and Recommendation, ("the Report"), (ECF No. 92), recommending that this Court grant the Motion for Summary Judgment of Defendants Anderson County Sheriff's Department, Sergeant Andrew R. Hyslop, Sheriff John Skipper, and Deputy Brandon Surratt (collectively, "the Sheriff's Department Defendants") (ECF No. 45) and the Motion for Summary Judgment of Defendants David L. Rodgers and Janice W. Rodgers, both d/b/a Whitehall Express Mart, (collectively, "the Rogers Defendants") (ECF No. 47). Plaintiff submitted a timely Objection to the Report on August 15, 2016, (ECF No. 95), and the matter is now ripe for review by this Court.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of a timely filed Objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

In light of the standards set forth above, the Court has reviewed, *de novo*, the entire record in this case, including, in particular, the Magistrate Judge’s Report and Plaintiff’s Objection. The Court has considered each of Plaintiff’s objections and finds that none of Plaintiff’s arguments effectively counter the reasoned conclusions of the Magistrate Judge, including the Report’s central conclusions: (1) that Plaintiff has produced no evidence to support his entirely speculative contention that shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and (2) that probable cause ultimately supported Plaintiff’s shoplifting arrest.

Based upon all of the forgoing, the Court concurs with the reasoning of the Magistrate Judge and adopts the Report and incorporates it herein by reference, (ECF No. 92), overruling Plaintiff’s Objection. (ECF No. 95). Accordingly, the Sheriff Department Defendants’ Motion for Summary Judgment, (ECF No. 45), and the Rodgers Defendants’ Motion for Summary Judgment, (ECF No. 47), are both **GRANTED**, and this action is **DISMISSED**.

**IT IS SO ORDERED.**

s/Mary G. Lewis  
United States District Judge

August 16, 2016  
Columbia, South Carolina

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 17-6452**

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MARIO ESCALANTE,

Plaintiff - Appellant,

v.

ANDERSON COUNTY SHERIFF'S DEPARTMENT; SHERIFF JOHN SKIPPER, in his official and individual capacities; SERGEANT ANDREW R. HYSLOP, in his official and individual capacities; DEPUTY BRANDON SURRATT, in his official and individual capacities; DAVID L. RODGERS, d/b/a Whitehall Express Mart; JANICE W. RODGERS, d/b/a Whitehall Express Mart,

Defendants - Appellees,

and

CITY OF ANDERSON POLICE DEPARTMENT; CHIEF OF POLICE JAMES S. STEWART, in his official and individual capacities; JOHN DOES 1-20,

Defendants.

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Appeal from the United States District Court for the District of South Carolina, at Anderson. Mary G. Lewis, District Judge. (8:15-cv-00177-MGL)

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Submitted: September 29, 2017

Decided: October 12, 2017

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Before WILKINSON, NIEMEYER, and FLOYD, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Donald L. Smith, DONALD SMITH LAW FIRM, Anderson, South Carolina, for Appellant. Phillip E. Reeves, GALLIVAN, WHITE & BOYD, P.A., Greenville, South Carolina; J. Victor McDade, DOYLE, TATE & MCDADE, Anderson, South Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mario Escalante appeals from the district court's order denying his motion for reconsideration of its August 16, 2016, order adopting the recommendation of the magistrate judge and granting summary judgment to Appellees in his civil action under 42 U.S.C. § 1983 (2012) and South Carolina state law. On appeal, Escalante challenges the magistrate judge's February 2, 2016, order granting the motion of Appellees Hyslop and Surratt seeking a protective order excluding their personal cellular phone numbers and records from discovery and the district court's August 16 summary judgment order. We affirm.

With respect to the February 2 order, Escalante argues that it was error to prohibit the discovery of the cellular phone records of Hyslop and Surratt. Because the magistrate judge, rather than the district court, issued the ruling granting the motion for a protective order, Fed. R. Civ. P. 72(a) governs. Under Rule 72(a), if an aggrieved party fails to timely object to a magistrate judge's order ruling on a nondispositive motion in the district court, then thereafter the "party may not assign as error a defect in the [magistrate judge's] order." Fed. R. Civ. P. 72(a); *see Solis v. Malkani*, 638 F.3d 269, 274 (4th Cir. 2011). The record does not indicate that Escalante ever objected to the magistrate judge's ruling granting the motion for a protective order. Accordingly, he has waived appellate review of this issue. *Malkani*, 638 F.3d at 274. We thus affirm the February 2 order.

Next, applying a de novo standard of review, *Lawson v. Union Cty. Clerk of Court*, 828 F.3d 239, 247 (4th Cir. 2016), we have reviewed the record and the parties'

briefs and find no reversible error in the district court's August 16 grant of summary judgment to Appellees. Accordingly, we affirm that order for the reasons stated by the district court. *Escalante v. Anderson Cty. Sheriff's Dep't*, No. 8:15-cv-00177-MGL (D.S.C. Aug. 16, 2016).

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*



**MOTION TO STRICKEN ANSWER/OR IN ALTERNATIVE  
MOTION FOR ADVERSE INFERENCE DUE TO SPOLIATION**

**DECEMBER 29, 2017**

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | MAGISTRATES COURT                   |
|                           | ) | TENTH JUDICIAL CIRCUIT              |
| COUNTY OF ANDERSON        | ) |                                     |
|                           | ) |                                     |
| Mario Escalante,          | ) |                                     |
|                           | ) |                                     |
| Plaintiff,                | ) |                                     |
|                           | ) |                                     |
| vs.                       | ) | <b>PLAINTIFF'S MOTION TO</b>        |
|                           | ) | <b>STRICKEN ANSWER; OR, IN</b>      |
|                           | ) | <b>THE ALTERNATIVE, MOTION</b>      |
|                           | ) | <b>FOR ADVERSE INFERENCE DUE TO</b> |
|                           | ) | <b>SPOILIATION</b>                  |
| David L. Rodgers and      | ) |                                     |
| Janice W. Rodgers, d/b/a, | ) |                                     |
| Whitehall Express Mart,   | ) |                                     |
|                           | ) | <b>Case No.: 2013-CP-04-01700</b>   |
| Defendants.               | ) |                                     |

**PLAINTIFF'S MOTION FOR SANCTIONS**

**TO: DAVID L. RODGERS AND JANICE W. RODGERS, D/B/A, WHITEHALL EXPRESS MART, BY AND THROUGH THEIR ATTORNEY, PHILLIP E. REEVES, ESQ.:**

**COMES NOW MARIO ESCALANTE**, Plaintiff and moves the Court for an Order finding that Defendants, David L. Rodgers and Janice W. Rodgers, d/b/a, Whitehall Express Mart, have abused the discovery process by spoliating evidence. Plaintiff further moves the Court to sanction the defendants by ordering that their answer be stricken; and, that they be placed in default. In the alternative, Plaintiff prays for an adverse inference instruction at the time of trial.

**PRELIMINARY STATEMENT**

This motion arises out of Defendants' intentional, or reckless, destruction of relevant evidence; namely, video surveillance from his business on May 5, 2013. Plaintiff Mario Escalante shows below the facts that warrant the Court: (1) entering an order stricken Defendant David L. Rodgers and Defendant Janice W. Rodgers, d/b/a, Whitehall Express Mart Answer to Plaintiff's Summons and Complaint; or, in the alternative, (2) imposing adverse-

inference instruction against Defendants, consistent with the well-established rule that a party who has notice that evidence is relevant to litigation has a duty to preserve (or not destroy) it, for if they do it can be inferred that said evidence would have been detrimental to them.

### **BACKGROUND**

This suit is brought pursuant to the arrest of Mario Escalante for shoplifting one case of beer from Defendants' retail establishment on Sunday, May 5, 2013. Plaintiff came to Anderson County from El Paso, Texas to work a concession stand at the annual Anderson County Fair. Plaintiff had spent the morning breaking down the concession stand he had been working at and during a break, went to purchase a case of beer to celebrate his friend's birthday, later that evening. Since Plaintiff is not a resident of this state, he was unaware the sale of alcohol on a Sunday was prohibited by law. Plaintiff selected Defendants' retail establishment to make his purchase based on the close proximity of the store to the fair grounds.

After entering the store and making his way to the back of the cooler where the beer is located, Plaintiff picked up one case and proceeded to the register to make his purchase. When the transaction was complete, the clerk gave Plaintiff a receipt for his beer purchase and he exited the store. Upon sitting down in his car, Plaintiff thought one case would not suffice based on the number of people he expected to partake in the festivities. Plaintiff then entered the store for a second time and made his way back to the "beer cave" for a second case.

When Plaintiff approached the clerk this time, she had realized the significant mistake she made by selling alcohol on a Sunday and informed Plaintiff she would not be able to sell him the second case. Plaintiff understood and returned the case of beer back to where he had found it, left the store and returned to the fair grounds to finish tearing down the stand.

Defendant claims that at this time, one of the clerks in his store called him on his cell phone, informing him that Plaintiff had actually stolen the case of beer, run out of the store and driven off. None of his employees have testified that they called Rodgers. Defendant David Rodgers claims that upon arriving at the store, he reviewed the video camera footage of the incident (showing Mr. Escalante with a wet back due to the rain falling that afternoon); and, he concluded that based on the plaintiff's appearance and the direction the video shows him exiting the property, he must have been a fair employee.

Defendant David Rodgers proceeded to follow Plaintiff to the fairgrounds, where he subsequently fingered Plaintiff, and remained until he had been apprehended. David Rodgers was on the phone with the 911 operator as he followed him back to the fair. (Exhibit 1, CAD Report, 5/5/2013). He stated to the 911 operator that he was behind Mario. He kept Mario in his sight from the time that he left his store until he had been cuffed and put in the back of the police car.

The case of beer that was confiscated by police was Busch beer. Mario's receipt and associated purchase evidence on his bank (his bank in San Antonio, Texas) statement for the month of May 2013, was the \$14.30 case of Busch as well. (Exhibit 2, Bank Statement, May 1-31, 2013) (Exhibit 3, Beer Receipt, May 5, 2013). Rodgers has claimed that Mario bought the first case; and, he stole the second case. He has no evidence to support that claim. The woman who sold him the case said that she never saw a second case leave the store. (Deposition, Amanda Nicole Brown, 9/5/2014, p. 19, 10.11).

If Mario had a second case of beer, it would have been located by the police. Since Rodgers had followed Mario back to the fair and did not offer any statement regarding a case

being removed, the only place it could have been would have been in Mario's truck. It was not; thereby, proving that the second case of beer was a myth.

David Rodgers had the opportunity to prove to the world that Mario Escalante had stolen from him. According to him, he had over 30 cameras that would have shown what brand of jeans he was wearing, let alone him stealing a case of beer. However, he did absolutely nothing to preserve the video, though its preservation, or lack thereof, is something only he knows. Based on the facts and circumstances of that day, and the fact that there were no witnesses to any theft, the only conclusion that can be drawn is that the video didn't show what Rodgers claimed. He couldn't afford to prove his own crime of giving a false report to police. The video had to disappear. It did.

If there is the slightest hesitation in a reasonable man's thoughts, one only needs to think of the true victim in this case. Mario Escalante had just purchased a case of beer with his bank card. The bank card would have all of his information. It is the contention of Rodgers that Mario paid for the beer with an identifying bank card, and then returned three minutes later to steal a case. It would appear from Rodgers' logic that Mario did something so absolutely ridiculous as a cry for help. He wanted to be arrested 1500 hundred miles from home with no friends or family to bail him out. Mario deserves to have the willful and wanton conduct of David Rodgers met with the strickening of his Answer. Mr. Escalante would have bludgeoned Mr. Rodgers with the video if it existed. He would have beat him into submission with the truth.

### **ARGUMENT**

The Court prides itself on having reasonable discovery so as to allow parties to joust on an even playing field. Thus, certain standards have been developed to maintain the obligation to have fair and meaningful discovery. One of the main violations of the demand for

“jurisprudentially established discovery standards” is the spoliation of evidence. In essence, spoliation is the elimination of evidence that detracts from the prosecution of a party’s case.

There are three basic elements to a spoliation claim. They are as follows:

1. The spoliator had control over the evidence, as well as an obligation to preserve it at the time it was lost.
2. The spoliator acted negligently, grossly negligent, or willfully and wantonly.
3. The evidence that ceases to exist is relevant to the innocent party’s claim; and, its absence is prejudicial to the innocent party.

Striking a parties’ pleadings is a drastic remedy, and Plaintiff does not make this motion lightly. Striking pleadings is permitted, however, under Rule 37(b)(2) of the South Carolina Rules of Civil Procedure. Under that rule, where a party or an officer of a party fails to obey a discovery order, the court may issue an order “refusing to allow the disobedient party to support or oppose designated claims or defenses”, prohibit “him from introducing designated matters in evidence”, or striking the parties’ pleadings. The court may also award attorney fees and costs to the moving party.

“The duty to preserve material evidence arises not only during litigation but also extends to that period before a litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.” *Sylvestri v. General Motors Corp.* 271 F.3d 583, 590 (4<sup>th</sup> Cir. 2001).

The appellate court found that when the trial court decides to strike an answer, it is necessary that the moving party “show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction.” *Id.* At 257, 594 S.E.29 at 547.

South Carolina Rules of Civil Procedure, Rule 26(b)(1), specifically states:

- (b) **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

**(1) In General.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(6)(2) actually provides specific instructions as to how a party must handle and preserve anything that may be deemed discoverable.

**(b) Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

**(6) Electronically Stored Information.**

**(A)** A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery, including allocation of expenses associated with discovery of the electronically stored information.

Dave Rodgers had the opportunity to have the evidence necessary to prove whether beer was stolen or not. He had in excess of 30 cameras on the property, according to what he told Mario. David Rodgers had worked with the police a month earlier to give them video of a shoplifter. (Exhibit 4, Incident Report, 4/1/2013).

Unfortunately for Mario Escalante, on this occasion, David Rodgers eliminated the video whether on purpose, or because he recklessly allowed the footage to be overwritten. (Exhibit 5, Defense Responses to Plaintiff's Second Requests for Production, 4/11/2014). After Mario had

gotten out of jail and brought the receipt to David Rodgers, Rodgers should have known that the video would be necessary for the Escalante defense, or when he brought this suit.

Spoliation is the “destruction or material alteration of evidence or ... the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation.” *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4<sup>th</sup> Cir.2001) (citing *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 766, 779 (2d Cir.1999)). In the 2011 case of *Cole Vision v. Hobbs*, the court discussed the effect of spoliation. It ruled that “[T]he effect of the doctrine of spoliation, when applied in a defensive manner, is to allow a defendant to exculpate itself from liability because the plaintiff has barred it from obtaining evidence . . . .” Robert L. Tucker, *The Flexible Doctrine of Spoliation of Evidence: Cause of Action, Defense, Evidentiary Presumption, and Discovery Sanction*, 27 U. Tol. L. Rev. 67, 75 (1995) cited in *Vision vs. Hobbs*, No. 26988 (S.C. 6/20/11). Plaintiff submits that when Defendant Rodgers lost a key piece of evidence, which it was legally obligated to maintain, his ability to answer should have gone with it.

David Rodgers knew or should have known that Mario Escalante would need that video, unless he knew that he would not pursue the case. At the very least, he was put on notice when Mario attempted to get the matter resolved due to what he believed was a horrible mistake. He told David to “take care of it”. David’s interpretation was the following:

6 He came up and told me I needed  
7 to get this stuff straightened out, and I  
8 don’t remember the exact words. I felt  
9 as though he was threatening  
10 me with his – with his words and  
11 shaking a sales receipt in his – in my  
12 direction.

(Deposition of David Rodgers, 10/6/2015, p. 29, 6.12).



Mario went back to Rodgers with proof that he had not stolen the beer from him. Rodgers wouldn't have any part of it. He told Mr. Escalante that he had everything that he needed to prosecute him.

9 ...I'm trying to get it settled  
 10 with him to show that I had the receipt, that I  
 11 had my credit card statement, and he didn't want to  
 12 help me at all. He didn't even look at it.  
 13 He said, I got you on verified camera, I  
 14 got video, audio, this, that, receipts, and he just  
 15 patted me on my back like -- like -- like—I was  
 16 some stupid idiot or something and said, I'll see  
 17 you in court, and then he never showed up to court.

(Deposition of Mario Escalante, 10/6/2015, p. 27, 9.17).

Mario's anger for being falsely accused of shoplifting was evident to Rodgers. The bad things that were going to happen was that he would sue him for his defamatory claim. This knowledge required him to save the video. He did not.

Dave Rodgers said he was unaware of the Sunday sale, because he says that he wasn't at the store. However, there is absolutely no additional evidence that supports his claim. In fact, all of the evidence that exists contradicts his story. He stated that he was traveling from home and that he was not at the store. While speaking to the 911 operator, he told him that he was following Mr. Escalante. Despite this independent, unbiased statement, he refused to admit that he was at the store during the incident.

### CONCLUSION

Mario Escalante will live with the memories of being humiliated in front of his boss and co-workers. He can never get back the hours he was held against his will in a jail cell for a crime he did not commit. He cannot gain back the monies he lost, having to travel back to Anderson, South Carolina to plead his case, when a case never existed. He has lost his ability to trust in his

fellow man. Defendant Rodgers, on the other hand, has been allowed to continue on with his life as if nothing had ever happened. Defendant Rodgers' unlawful Sunday alcohol sale has been overlooked and all but forgotten. Defendant Rodgers has been rewarded for his deceit and disregard towards a visitor to our town. Mr. Escalante seeks to have Defendant Rodgers' answer stricken due to the damning effect of his spoliation of the evidence. In the alternative, he prays for an adverse inference charge to the jury.

**s/Donald L. Smith**

Donald L. Smith, (SC Bar#6699)

Attorney for Plaintiff

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
December 29, 2017.

Print Date: 11/18/2015  
Print Time: 9:45

# Detail CAD Report

User Name: SCHITWOOD  
Terminal #: 030

|                                                                                                                                                                          |                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| Dispatch # 2013-100151                                                                                                                                                   |                                               |
| Phone: (864) -                                                                                                                                                           | ESN: 0136 AF AF S9                            |
| Name: DAVID ROGERS 9400113                                                                                                                                               | EMS: MEDSHORE                                 |
| Address: 3027 MARTIN LUTHER KING JR BLVD Apt.:                                                                                                                           | Fire: ANDERSON CIT                            |
| Community: ANDERSON                                                                                                                                                      | Law: ANDERSON PDLs                            |
| Caller address: 3027 MARTIN LUTHER KING JR BLVD                                                                                                                          | Rescue:                                       |
| Jurisdiction:                                                                                                                                                            | Source: N9C                                   |
| Intersection:                                                                                                                                                            | Disp: 5                                       |
| SubDivision:                                                                                                                                                             | Sit Found:                                    |
| Location Info: CIVIC CENTER                                                                                                                                              |                                               |
| Incoming 911: 5/5/2013 4:41:27 PM                                                                                                                                        | Action: Language:                             |
| Call Created Time: 4:41:27 PM                                                                                                                                            | Position: 10                                  |
| Call Send Time: 4:42:46 PM                                                                                                                                               | Units Dispatched: 6                           |
| Call Dispatch Time: 4:42:58 PM                                                                                                                                           | Priority: P 2 Event: 1049 - CIVIL DISTURBANCE |
| Call Enroute Time: 4:43:42 PM                                                                                                                                            | Law:                                          |
| Call Arrival Time: 4:50:44 PM                                                                                                                                            | Fire:                                         |
| Call Clear Time: 5:36:51 PM                                                                                                                                              | EMS:                                          |
| Call Closed: 5/5/2013 5:36:51 PM                                                                                                                                         | Rescue:                                       |
| Exempt: Reason:                                                                                                                                                          |                                               |
| <b>Original Dispatch Remarks:</b>                                                                                                                                        |                                               |
| CALLER IS IN A BLACK SUBURBAN IN THE PAVED LOT ACROSS FROM THE DUCK POND AFTER HE FOLLOWED THEM FROM THE SHELL STATION// SUBJ IS A FAIR EMPLOYEE AND TOOK A CASE OF BEER |                                               |

## Narratives

JRNUBERN 5/5/2013 4:44:42 PM  
CALLER IS IN THE PARKING LOT WHERE THEY ARE BREAKING DOWN EQUIPMENT

JRNUBERN 5/5/2013 4:45:00 PM  
OCCURRED AT SHELL STATION IN THE COUNTY

JRNUBERN 5/5/2013 4:57:26 PM  
13:49 05/05/2013 03367 SC0040100 \*08B3048EC1 TXT LIC CN8G626 EXPIRES JUL/13 EWT 2900 GWT 2900  
PASSENGER-TRUCK PLT, STKR REG CLASS 02 \$ 64.25 TITLE 01501540609092113 ISSUED 03/18/11  
ODOMETER N/A 00 PONT 4D 1G2NF52T1YC533823 PASS COLOR: RED PREVIOUS OWNER ROSENDO AVILA  
EMMA HERNA,SAN ANTONIO,TX OWNER JOE R CASTILLO,ID#N/A, 319 YUKON,,SAN ANTONIO,TX 78221 PLATE  
AGE: 2 REMARKS DATE OF ASSIGNMENT:2011/03/08.PAPER TITLE..

TBARRY 5/5/2013 5:04:08 PM  
ANDCC013. TO: ANDCC013-854638 20130505 17:01:10 00068E2CCC FROM: NC2K-9317580 20130505 17:01:10  
08B6054F1F 1L0108B6054F1F2QWA SC0040100 NO NCIC WANT NAM/ESCALANTE, MARIO DOB/19750228  
\*\*\*MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS

TBARRY 5/5/2013 5:04:27 PM  
ANDCC013. TO: ANDCC013-854630 20130505 16:59:59 00085C2F50 FROM: NLETS-6041424 20130505 16:59:59  
08B6054F1C DR.TXOLN0000 14:02 05/05/2013 65395 14:02 05/05/2013 03447 SC0040100 \*08B6054F1C TXT NAME:  
ESCALANTE, MARIO DESCRIPTION: HISPANICMALE\02281975\5-08\270\BROWN\BROWN SEX OFF: COMM IMPED:  
ORGAN DONOR: N VISA EXP: PHYSICAL ADD: 2503 CALLAGHAN CI/CO/ST/ZIP: LAREDO,WEBB,TEXAS,78040-0000,  
UNITED STATES MAILING ADD: 2503 CALLAGHAN CI/ST/ZIP: LAREDO,TEXAS,78040-0000, UNITED STATES REC  
STATUS: NOT ELIGIBLE ADMIN STATUS: CARD STATUS: HME THR ASMT: EXP: CARD TYPE: ID #:  
16401815 EXPIR DATE: 02282018 RESTRICTIONS: ENDORSEMENTS: \*\*\*\* DRIVER RECORD INFORMATION IS  
PERSONAL INFORMATION PROTECTED UNDER THE FEDERAL DRIVER PRIVACY ACT OF 1994 (18 USC 2721, ET  
SEQ.) AS AMENDED AND THE MOTOR VEHICLE RECORDS DISCLOSURE ACT, TEXAS TRANSPORTATION CODE  
730 \*\*\*\*\* END OF RECORD\*\*\*\*\*

Print Date: 11/18/2015  
Print Time: 9:45

# Detail CAD Report

User Name: SCHITWOOD.  
Terminal #: 030

ELECTRONICALLY FILED - 2017 Dec 29 5:21 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

| Unit  | Badges | Radio Names |
|-------|--------|-------------|
| B-34  |        |             |
| B12   |        |             |
| B8    |        |             |
| D-20  |        |             |
| K9-26 |        |             |
| SHE   |        |             |

| Unit  | Dept. | Status/DSP/CASE | Location/Remark | User     | Date/Time                 |
|-------|-------|-----------------|-----------------|----------|---------------------------|
| B8    | L 01  | DSP             |                 | JRNUBERN | 5/5/2013 4:42:58 PM       |
| B8    | L 01  | 1088            |                 | JRNUBERN | 5/5/2013 4:43:37 PM       |
| B12   | L 01  | 1017            |                 | JRNUBERN | 5/5/2013 4:43:42 PM       |
| SHE   | L 07  | DSP             |                 | JRNUBERN | 5/5/2013 4:44:49 PM       |
| B12   | L 01  | 1023            |                 | JRNUBERN | 5/5/2013 4:50:44 PM       |
| B8    | L 01  | CASE            | 21068           | JRNUBERN | 5/5/2013 4:51:09 PM       |
| K9-26 | L 07  | 1017            |                 | ABOYLE   | 5/5/2013 4:52:23 PM       |
| SHE   | L 07  | 1024            |                 | ABOYLE   | 5/5/2013 4:52:46 PM       |
| D-20  | L 07  | 1017            |                 | ABOYLE   | 5/5/2013 4:53:00 PM       |
| B-34  | L 07  | 1017            |                 | ABOYLE   | 5/5/2013 4:53:30 PM       |
| D-20  | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:55:55 PM       |
| B-34  | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:56:58 PM       |
| K9-26 | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:57:00 PM       |
| K9-26 | L 07  | CASE            | 21492           | ABOYLE   | 5/5/2013 4:57:03 PM       |
| B-34  | L 07  | LOG             |                 | ABOYLE   | 5/5/2013 4:57:11 PM       |
| D-20  | L 07  | LOG             |                 | ABOYLE   | 5/5/2013 4:57:13 PM       |
| K9-26 | L 07  | LOG             |                 | ABOYLE   | 5/5/2013 5:06:21 PM       |
| B-34  | L 07  | 1017J           | I IN CUSTODY    | ABOYLE   | 5/5/2013 5:08:21 PM       |
| B-34  | L 07  | 1023J           | 1067            | ABOYLE   | 5/5/2013 5:10:08 PM       |
| B8    | L 01  | 104             |                 | JRNUBERN | 5/5/2013 5:20:29 PM       |
| B12   | L 01  | 104             |                 | JRNUBERN | 5/5/2013 5:20:33 PM       |
| B12   | L 01  | 1024            | 7               | TBARRY   | 5/5/2013 5:23:34 PM       |
| B8    | L 01  | 1024            | 7               | TBARRY   | 5/5/2013 5:23:45 PM       |
| D-20  | L 07  | 1024            |                 | ABOYLE   | 5/5/2013 5:25:01 PM       |
| K9-26 | L 07  | 1024            | 5               | ABOYLE   | 5/5/2013 5:25:15 PM       |
| B-34  | L 07  | 1024            | 5               | ABOYLE   | 5/5/2013 5:36:50 PM       |
|       |       |                 |                 |          | ? - manually entered time |

H&R Block Bank  
PO Box 2415  
Omaha NE 68103-2415

H&R Block

H&R Block Emerald Prepaid Mastercard®

MARIO ESCALANTE  
2503 CALLAGHAN  
LAREDO, TX 78040

Account Statement Summary

Statement Period: May 01 - May 31, 2013

Account Number(s):

0545 - old Card  
5295 - New Card  
7863

Account Summary

|                                   |   |           |
|-----------------------------------|---|-----------|
| Balance on May 1, 2013            |   | \$692.30  |
| Funds Added To Card               | + | \$1020.00 |
| Purchases/Withdrawals             | - | \$1643.22 |
| Fees                              | - | \$0.00    |
| Available Balance on May 31, 2013 | = | \$69.08   |

\* Balance may not reflect recent purchases.

Avoid paying high check cashing fees by having your payroll directly deposited to your H&R Block Emerald Card®. Ask your employer how to get this started today. You can also visit one of our participating reload locations like Wal-Mart® or Walgreens® through MoneyGram®, Western Union®, and Green Dot® networks. To find a reload location nearest you, visit [hrblock.com/reload](http://hrblock.com/reload) or call 1-866-353-1266. It's convenient and easy.

Detail Transactions

Date Description Amount Balance

|            |                                                 |         |         |
|------------|-------------------------------------------------|---------|---------|
| 05-01-2013 | BEGINNING BALANCE                               |         | 692.30  |
| 05-05-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 540.00  | 1232.30 |
| 05-05-2013 | (0545) SHELL SERVICE STATION, ANDERSON SC       | -14.30  | 1218.00 |
| 05-06-2013 | (0545) EXXON-MOBIL, ANDERSON SC                 | -5.00   | 1213.00 |
| 05-06-2013 | (0545) SUPER DEALS LLC, ANDERSON SC             | -18.93  | 1194.07 |
| 05-07-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 480.00  | 1674.07 |
| 05-07-2013 | (0545) FAMILY DOLLAR, ANDERSON SC               | -10.60  | 1663.47 |
| 05-07-2013 | (0545) BI-LO, ANDERSON SC                       | -11.01  | 1652.46 |
| 05-07-2013 | (0545) EL ARRIERO MEXICAN RES, ANDERSON SC      | -57.25  | 1595.21 |
| 05-08-2013 | (0545) BI-LO, ANDERSON SC                       | -11.91  | 1583.30 |
| 05-09-2013 | (0545) REDBOX *DVD RENTAL, 866-733-2693 IL      | -1.27   | 1582.03 |
| 05-09-2013 | (0545) 7-ELEVEN, SALUDA SC                      | -2.13   | 1579.90 |
| 05-10-2013 | (0545) 7-ELEVEN, LEXINGTON SC                   | -17.10  | 1562.80 |
| 05-10-2013 | (0545) TAVERN UNDER THE BRIDG, ANDERSON SC      | -24.44  | 1538.36 |
| 05-10-2013 | (0545) BOJANGLES, BATESBURG SC                  | -8.11   | 1530.25 |
| 05-10-2013 | (0545) MOM&POPS CONVEN, LEESVILLE SC            | -6.51   | 1523.74 |
| 05-13-2013 | (0545) SAN JOSE MEXICAN RESTA, LEESVILLE SC     | -23.12  | 1500.62 |
| 05-13-2013 | (0545) RYANS #2103, ANDERSON SC                 | -25.42  | 1475.20 |
| 05-14-2013 | (0545) COUNTRY CROSSROADS, IVA SC               | -10.00  | 1465.20 |
| 05-14-2013 | (0545) W/D(ATM), 691 HWY 28 BYPASS, ANDERSON SC | -502.50 | 962.70  |
| 05-14-2013 | (0545) SERVICE CHARGE (ATM FEE)                 | -2.50   | 960.20  |

Trans

BELL  
704 S. HALL RD  
ANDERSON SC 29625  
57545742504

05/05/2013 4:25:26 PM  
Register: 3 Trans #: 7438 Op ID: 6  
Your cashier: Nichole

Bush Can Ca \$13.49 101

Subtotal = \$13.49  
Tax = \$0.81

Total = \$14.30

Change Due = \$0.00

Debit \$14.30

XXXX-XXXX-0545, Debit  
INVOICE 601905  
AUTH 919978  
PINUsed

1 tell me if this sounds right. He comes in, goes to  
2 the beer cave and gets a case of beer. He comes up  
3 to you at the register. You sell it to him. He  
4 takes it out to his car. He comes back in and gets  
5 another case of beer. At this time you realize it's  
6 Sunday, you should not have sold him a case of beer  
7 in the first place. You tell him, I can't sell you  
8 that. He takes the beer back to the beer cave and  
9 then he leaves.

10 A I don't remember seeing him walk out with  
11 another case of beer. I just remember pointing and  
12 telling him he had to put that one back because I  
13 was not supposed to sell it on Sunday.

14 Q I understand. How much of the videotape  
15 did you watch? Did you watch the whole transaction  
16 the whole time that he was at the Express Mart?

17 A I don't remember.

18 Q Who did you watch it with?

19 A Dave.

20 Q Did Dave make a copy of this?

21 A I'm not sure if he did. He did not tell  
22 me about it.

23 Q Do you know what you did for further  
24 prosecution? Did you have to go to court? Did Dave  
25 go to court?

# INCIDENT REPORT

CASE NUMBER

2,0,1,3,-,1,5,3,5,1

NCIC

INC. ENT.  
N N

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
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| EVENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | INCIDENT TYPE                                                                                                                                                                                                                                                                                     |                                               |                                    |                                               | COMPLETED                                                                                                                                     | FORCED ENTRY                                             | PREMISE TYPE      | UNITS ENTERED      | TYPE VICTIM                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1. SHOPLIFTING (23C)                                                                                                                                                                                                                                                                              |                                               |                                    |                                               | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                           | <input type="checkbox"/> YES <input type="checkbox"/> NO | Convenience Store |                    | <input type="checkbox"/> Individual<br><input type="checkbox"/> Business<br><input type="checkbox"/> Financial Inst.<br><input type="checkbox"/> Government<br><input type="checkbox"/> Relig. Orgn.<br><input type="checkbox"/> Soc. Public<br><input type="checkbox"/> Other<br><input type="checkbox"/> Unknown<br><input type="checkbox"/> Police Off. |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2.                                                                                                                                                                                                                                                                                                |                                               |                                    |                                               | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                      | <input type="checkbox"/> YES <input type="checkbox"/> NO |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 3.                                                                                                                                                                                                                                                                                                |                                               |                                    |                                               | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                      | <input type="checkbox"/> YES <input type="checkbox"/> NO |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| VICTIM NO. 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)                                                                                                                                                                                                                     |                                               |                                    |                                               |                                                                                                                                               |                                                          | ZIP CODE          | WEAPON TYPE        |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 704 WHITEHALL RD, ANDERSON                                                                                                                                                                                                                                                                        |                                               |                                    |                                               |                                                                                                                                               |                                                          | 29625             |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | INCIDENT DATE                                                                                                                                                                                                                                                                                     | 24 HR. CLOCK                                  | TO                                 | DATE                                          | 24 HR. CLOCK                                                                                                                                  | DISPATCH DATE/TIME                                       | 24 HR. CLOCK      | DISPATCH DATE/TIME | 24 HR. CLOCK                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 04/01/2013                                                                                                                                                                                                                                                                                        | 14:15                                         |                                    | 04/01/2013                                    | 14:20                                                                                                                                         | 04/01/13                                                 | 14:27             | 14:33              | 14:54                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| SUBJECT NO. 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                          |                                               |                                    |                                               | RELATIONSHIP TO SUBJECT                                                                                                                       | RESIDENT                                                 | RACE              | SEX                | AGE                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | WHITEHALL EXPRESS SHELL,                                                                                                                                                                                                                                                                          |                                               |                                    |                                               |                                                                                                                                               | J S O U                                                  |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ADDRESS                                                                                                                                                                                                                                                                                           |                                               |                                    |                                               | CITY                                                                                                                                          | STATE                                                    | ZIP CODE          | LOCATION NO.       |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 704 WHITEHALL RD                                                                                                                                                                                                                                                                                  |                                               |                                    |                                               | ANDERSON                                                                                                                                      | SC                                                       | 29625             | 4                  |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| NARRATIVE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | VICTIM'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                               |                                               |                                    |                                               | RELATIONSHIP TO SUBJECT                                                                                                                       | RESIDENT                                                 | RACE              | SEX                | AGE                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | WHITEHALL EXPRESS,                                                                                                                                                                                                                                                                                |                                               |                                    |                                               |                                                                                                                                               | J S O U                                                  |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ADDRESS                                                                                                                                                                                                                                                                                           |                                               |                                    |                                               | CITY                                                                                                                                          | STATE                                                    | ZIP CODE          | LOCATION NO.       |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 704 WHITEHALL RD                                                                                                                                                                                                                                                                                  |                                               |                                    |                                               | ANDERSON                                                                                                                                      | SC                                                       | 29625             | 4                  |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| ADMINISTRATIVE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | VISIBLE INJURY (VICT. 1) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> EXPLAIN —                                                                                                                                                                   |                                               |                                    |                                               | COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                    |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | VICTIM (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE:  |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TWO-WAN VEH. <input type="checkbox"/> ONE-WAN VEH. <input type="checkbox"/> DETECTIVE/PLASMT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/> *J—This Jurisdiction. S—State. O—Out of State. U—Unknown.                  |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE: |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| PROPERTY EST.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                        |                                               |                                    |                                               | RACE                                                                                                                                          | SEX                                                      | AGE               | ETH.               | DATE OF BIRTH                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                                                                                                                                                                                                                       |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ADDRESS                                                                                                                                                                                                                                                                                           |                                               |                                    |                                               | CITY                                                                                                                                          | STATE                                                    | ZIP CODE          | LOCATION NO.       |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| ADMINISTRATIVE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. <input type="checkbox"/> TYPE: |                                               |                                    |                                               | ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> DATE/TIME OF OFFENSE |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | TOTAL - ARRESTED                                                                                                                                                                                                                                                                                  |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | DATE/TIME OF ARREST                                                                                                                                                                                                                                                                               |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
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| <p>I, Deputy J. Turner was dispatched to the above listed incident location in reference to the complainant stating that there was an unknown black male that just walked out of the store with two cases of Bud Light that he did not pay for. Upon my arrival on scene I canvassed the area for the male that was described to have been wearing a blue or black t shirt with blue jeans, sneakers to be about 600 tall, and of average build. I then made contact with an elderly white male Wade Ashley who brought the subject to the store, not knowing who he was or what his intentions were. He stated that the subject waved him down somewhere near Appleton Street asking for a ride to the convenience store. He also stated that upon the black male leaving the store that he got in the truck with the beer and requested to leave. Someone then stated that he had stolen the beer and Mr. Ashley stated that he would have to clear this up and that he was not riding with him until he did. The black male then hitched a ride with someone else. This vehicle was described as a white in color S-10 displaying a SC Tag of IDY 381, which came back to a pontiac grand prix out of Beaufort, SC.</p> |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <p>JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY: 00400</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <p>JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <table border="1"> <tr> <td>TYPE (GROUP)</td> <td>Alcohol - al</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>TOTAL VALUE</td> </tr> <tr> <td>STOLEN</td> <td>33</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>33</td> </tr> <tr> <td>DAMAGED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>BURNED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>RECOVERED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>SEIZED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            | TYPE (GROUP)                                                                                                                                                                                                                                                                         | Alcohol - al    |             |                   |                   |                   |                                                                     |                                                                     |                                               | TOTAL VALUE                        | STOLEN                                        | 33                                            |                                                                                             |  |         |  |      |  |  | 33 | DAMAGED       |  |          |  |  |  |  |  |  |  | BURNED |  |  |  |  |  |  |  |  |  | RECOVERED |  |  |  |  |  |  |  |  |  | SEIZED |  |  |  |  |  |  |  |  |  |
| TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Alcohol - al                                                                                                                                                                                                                                                                                      |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    | TOTAL VALUE                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 33                                                                                                                                                                                                                                                                                                |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    | 33                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| BURNED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <table border="1"> <tr> <td>SUBJECT IDENTIFIED</td> <td>SUBJECT LOCATED</td> <td>ACTIVE</td> <td>ADJ. CLOSED</td> <td>ARRESTED UNDER 16</td> <td>EX-CLEAR UNDER 16</td> </tr> <tr> <td><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</td> <td><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</td> <td><input checked="" type="checkbox"/> UNFOUNDED</td> <td><input type="checkbox"/> UNFOUNDED</td> <td><input type="checkbox"/> ARRESTED 16 AND OVER</td> <td><input type="checkbox"/> EX-CLEAR 16 AND OVER</td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            | SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                   | SUBJECT LOCATED | ACTIVE      | ADJ. CLOSED       | ARRESTED UNDER 16 | EX-CLEAR UNDER 16 | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <input checked="" type="checkbox"/> UNFOUNDED | <input type="checkbox"/> UNFOUNDED | <input type="checkbox"/> ARRESTED 16 AND OVER | <input type="checkbox"/> EX-CLEAR 16 AND OVER |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | SUBJECT LOCATED                                                                                                                                                                                                                                                                                   | ACTIVE                                        | ADJ. CLOSED                        | ARRESTED UNDER 16                             | EX-CLEAR UNDER 16                                                                                                                             |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                               | <input checked="" type="checkbox"/> UNFOUNDED | <input type="checkbox"/> UNFOUNDED | <input type="checkbox"/> ARRESTED 16 AND OVER | <input type="checkbox"/> EX-CLEAR 16 AND OVER                                                                                                 |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| <table border="1"> <tr> <td>REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY</td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            | REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
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| <table border="1"> <tr> <td>REPORTING OFFICER(S)</td> <td>DATE</td> <td>UNIT NUMBER</td> <td>APPROVING OFFICER</td> <td>DATE</td> <td>UNIT NUMBER</td> </tr> <tr> <td>TURNER, J. K.</td> <td>04/01/13</td> <td>676</td> <td>SGT. HYSLOP, A. R.</td> <td>04/01/13</td> <td>248</td> </tr> <tr> <td colspan="2">FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</td> <td colspan="2">OFFICER</td> <td colspan="2">DATE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">TURNER, J. K.</td> <td colspan="2">04/01/13</td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                   |                                               |                                    |                                               |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            | REPORTING OFFICER(S)                                                                                                                                                                                                                                                                 | DATE            | UNIT NUMBER | APPROVING OFFICER | DATE              | UNIT NUMBER       | TURNER, J. K.                                                       | 04/01/13                                                            | 676                                           | SGT. HYSLOP, A. R.                 | 04/01/13                                      | 248                                           | FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |  | OFFICER |  | DATE |  |  |    | TURNER, J. K. |  | 04/01/13 |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| REPORTING OFFICER(S)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DATE                                                                                                                                                                                                                                                                                              | UNIT NUMBER                                   | APPROVING OFFICER                  | DATE                                          | UNIT NUMBER                                                                                                                                   |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| TURNER, J. K.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 04/01/13                                                                                                                                                                                                                                                                                          | 676                                           | SGT. HYSLOP, A. R.                 | 04/01/13                                      | 248                                                                                                                                           |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
| FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                   | OFFICER                                       |                                    | DATE                                          |                                                                                                                                               |                                                          |                   |                    |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                      |                 |             |                   |                   |                   |                                                                     |                                                                     |                                               |                                    |                                               |                                               |                                                                                             |  |         |  |      |  |  |    |               |  |          |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |           |  |  |  |  |  |  |  |  |  |        |  |  |  |  |  |  |  |  |  |
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ELECTRONICALLY FILED - 2017 Dec 29 5:21 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700



AGENCY I.D.  
SC0040000

# SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2013 - 15351

NOIC

NO. ENTD.  
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ORIGINAL  
REPORT  
☐ MODIFIES  
ORIGINAL

☐ SUPPLEMENTAL  
REPORT  
☐ CASE STATUS  
CHANGE

☐ ADDITIONAL  
VICTIMS  
☐ ADDITIONAL  
OFFENDERS

☐ ADDITIONAL  
STOLEN PROPERTY  
☐ ADDITIONAL  
RECOVERED PROPERTY

PAGE 2 of \_\_\_\_\_ PAGES.

|                            |                                       |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|----------------------------|---------------------------------------|----------------------------|--------|--------------------------------|------|------------------------------------------------------------------------------|----------|------|-----|-----|--------|------|--|
| VICTIM/SUBJ. I.D. OVERFLOW | <input type="checkbox"/> COMPLAINT    | NAME (LAST, FIRST, MIDDLE) |        | VICTIM RELATIONSHIP TO SUBJECT |      |                                                                              | RESIDENT | RACE | SEX | AGE | D.O.B. | ETH. |  |
|                            | <input type="checkbox"/> VICTIM #     |                            |        | #1                             | #2   | #3                                                                           |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> SUBJECT #    | HEIGHT                     | WEIGHT | HAIR                           | EYES | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> RUNAWAY      |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> WANTED       |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> WARRANT      |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> ARREST       |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> JAIL         |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> SUBJUNCTIONS |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/>              |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
| VICTIM/SUBJ. I.D. OVERFLOW | <input type="checkbox"/> COMPLAINT    | NAME (LAST, FIRST, MIDDLE) |        | VICTIM RELATIONSHIP TO SUBJECT |      |                                                                              | RESIDENT | RACE | SEX | AGE | D.O.B. | ETH. |  |
|                            | <input type="checkbox"/> VICTIM #     |                            |        | #1                             | #2   | #3                                                                           |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> SUBJECT #    | HEIGHT                     | WEIGHT | HAIR                           | EYES | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> RUNAWAY      |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> WANTED       |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> WARRANT      |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> ARREST       |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> JAIL         |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/> SUBJUNCTIONS |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |
|                            | <input type="checkbox"/>              |                            |        |                                |      |                                                                              |          |      |     |     |        |      |  |

|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|
| NARRATIVE                                          | A surveillance tape is being copied and the store manager stated that he would be calling to let us know when it was ready to be picked up. Nothing further at this time. |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
|                                                    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
| JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY    |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
| JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |
| 00400                                              |                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |  |  |

|                      |                                    |                                                   |                                 |  |                               |        |
|----------------------|------------------------------------|---------------------------------------------------|---------------------------------|--|-------------------------------|--------|
| 1. VEH. / GUN / ETC. | STATUS                             | TYPE                                              | VIN AND/OR LICENSE NO.          |  | BOAT HULL NO. AND/OR REG. NO. |        |
|                      | <input type="checkbox"/> STOLEN    | <input type="checkbox"/> VEHICLE                  |                                 |  |                               |        |
|                      | <input type="checkbox"/> RECOVERED | <input type="checkbox"/> GUN                      | SERIAL AND/OR OWNER APPLIED NO. |  | STATE                         |        |
|                      | <input type="checkbox"/> FOUND     | <input type="checkbox"/> BOAT                     | YEAR OF REGISTRATION            |  | YEAR OF EXPIRATION            | YEAR   |
|                      | <input type="checkbox"/> TOWED     | <input type="checkbox"/> LICENSE PLATE            | MODEL                           |  | STYLE                         | COLOR  |
|                      | <input type="checkbox"/> SUSPECT   | <input type="checkbox"/> SECURITIES/BONDS, STOCKS | HIC NO.                         |  | DENOMINATION                  | ISSUER |
|                      | <input type="checkbox"/> VICTIM    | <input type="checkbox"/> ARTICLE                  | MISCELLANEOUS                   |  |                               |        |
|                      |                                    |                                                   |                                 |  |                               |        |
|                      |                                    |                                                   |                                 |  |                               |        |
|                      |                                    |                                                   |                                 |  |                               |        |

|               |              |  |  |  |  |  |             |
|---------------|--------------|--|--|--|--|--|-------------|
| PROPERTY EST. | TYPE (GROUP) |  |  |  |  |  | TOTAL VALUE |
|               | STOLEN       |  |  |  |  |  |             |
|               | DAMAGED      |  |  |  |  |  |             |
|               | BURNED       |  |  |  |  |  |             |
|               | RECOVERED    |  |  |  |  |  |             |
|               | SEIZED       |  |  |  |  |  |             |

|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             |                                                                                             |  |                                               |             |                                               |  |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------|-------------|---------------------------------------------------------------------------------------------|--|-----------------------------------------------|-------------|-----------------------------------------------|--|
| ADMINISTRATIVE | SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                   |  | SUBJECT LOCATED                                                     |             | <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADJ. CLOSED             |  | <input type="checkbox"/> ARRESTED UNDER 18    |             | <input type="checkbox"/> EX-CLEAR UNDER 18    |  |
|                | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                  |  | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |             | <input type="checkbox"/> UNFOUNDED                                                          |  | <input type="checkbox"/> ARRESTED 18 AND OVER |             | <input type="checkbox"/> EX-CLEAR 18 AND OVER |  |
|                | REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |  |                                                                     |             |                                                                                             |  |                                               |             |                                               |  |
|                | REPORTING OFFICER(S)                                                                                                                                                                                                                                                                 |  | DATE                                                                | UNIT NUMBER | APPROVING OFFICER                                                                           |  | DATE                                          | UNIT NUMBER |                                               |  |
|                | TURNER, J. K.                                                                                                                                                                                                                                                                        |  | 04/01/13                                                            | 676         | SGT. HYSLOP, A. R.                                                                          |  | 04/01/13                                      | 248         |                                               |  |
|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             | FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |  | OFFICER                                       |             |                                               |  |
|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             | TURNER, J. K.                                                                               |  | 04/01/13                                      | 676         |                                               |  |
|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             |                                                                                             |  |                                               |             |                                               |  |
|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             |                                                                                             |  |                                               |             |                                               |  |
|                |                                                                                                                                                                                                                                                                                      |  |                                                                     |             |                                                                                             |  |                                               |             |                                               |  |

ELECTRONICALLY FILED - 2017 Dec 29 5:21 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

|                                         |   |                                        |
|-----------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) |                                        |
| COUNTY OF ANDERSON                      | ) | IN THE COURT OF COMMON PLEAS           |
| Mario Escalante,                        | ) |                                        |
| Plaintiff,                              | ) |                                        |
| vs.                                     | ) | <b>DEFENDANTS' RESPONSES TO</b>        |
|                                         | ) | <b>PLAINTIFF'S SECOND REQUESTS FOR</b> |
|                                         | ) | <b>PRODUCTION</b>                      |
| David L. Rodgers and Janice W. Rodgers, | ) |                                        |
| d/b/a Whitehall Express Mart,           | ) |                                        |
| Defendants.                             | ) | C.A. No. 2013-CP-04-1700               |

**TO: DONALD L. SMITH OF THE DONALD L. SMITH LAW FIRM, ATTORNEYS FOR THE PLAINTIFF, MARIO ESCALANTE**

The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart, hereby respond to requests for production of documents propounded by the plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure:

**GENERAL OBJECTIONS**

David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart (hereinafter "Whitehall") objects to these requests insofar as they are inconsistent with the South Carolina Rules of Civil Procedure. Whitehall also objects to these requests where they are overly broad and unduly burdensome. Whitehall also objects insofar as they seek discovery of information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence. Whitehall also objects insofar as these requests seek disclosure of information protected as work product, under the attorney client privilege or under the common interest doctrine. Subject to the foregoing objections and without waiving same, Whitehall states as follows:

**RESPONSES TO REQUEST FOR PRODUCTION**

1. Copies of any and all documents, photographs, correspondence, emails, text messages, electronically stored information, or any other materials, relating in any way to the subject action.

RESPONSE: Whitehall objects to this request on the grounds that it is overly broad and unduly burdensome. Further, Whitehall objects on the grounds that it seeks the discovery of information that is protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving these objections, Whitehall responds that it has previously produced all documents in its possession responsive to this request.

2. Any and all documents identified in response to Plaintiff's Second Set of Interrogatories.

RESPONSE: Whitehall did not identify any documents in its answers to plaintiff's second set of interrogatories.

3. Copy of the receipt for purchase of video surveillance system.

RESPONSE: Whitehall is not in possession of the receipt for purchase of the video surveillance system.

3. Copy of the video surveillance systems User Manual.

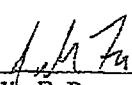
RESPONSE: A copy of the video surveillance system's user manual is produced.

4. Copy of the invoice for installation of the surveillance system.

RESPONSE: David Rogers d/b/a Whitehall installed the surveillance system himself. Accordingly, there is no invoice for the installation.

5. Copy of video containing plaintiff, including twelve (12) hours of video before and after his appearance.

RESPONSE: As discussed more fully in Whitehall's answer to interrogatory number 8 contained in the plaintiff's second set of interrogatories, video surveillance footage is stored for approximately 30 days. Thereafter, the DVR system for the surveillance system overwrites the footage. Accordingly, the surveillance footage of the plaintiff was overwritten by the system approximately 30 days after the incident.

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

April 11, 2014

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart

Mario Escalante

1 he could get it dismissed because I didn't steal  
2 the beer.

3 And he didn't want to see any of it. He  
4 patted me on my back, said, oh, you were drunk, it  
5 happens, it happens. And that's the reason we're  
6 here right now.

7 Q Is that because Mr. Rodgers didn't call  
8 the authorities and say that you had a receipt?

9 A No. Because I'm trying to get it settled  
10 with him to show him that I had the receipt, that I  
11 had my credit card statement, and he didn't want to  
12 help me at all. He didn't even want to look at it.

13 He said, I got you on verified camera, I  
14 got video, audio, this, that, receipts, and he just  
15 patted me on my back like -- like -- like I was  
16 some stupid idiot or something and said, I'll see  
17 you in court, and then he never showed up to court.

18 Q Okay. And when no one showed up to  
19 court, the charge was dismissed?

20 A Yes, sir. And then I asked the judge if  
21 I could sue him.

22 Q Okay. What did the judge tell you?

23 A He said, you sure can.

24 Q Okay. Do you know what judge it was?

25 A Whatever judge was for that day. I don't

1 Q. Okay.

2 A. He came to my store, and I saw him in  
3 the parking lot.

4 Q. Okay. And what did he say when he saw  
5 you in the parking lot?

6 A. He came up and told me I needed to get  
7 this stuff straightened out, and I  
8 don't remember the exact words. I felt  
9 as though he was somewhat threatening  
10 me with his -- with his words and  
11 shaking a sales receipt in his -- in my  
12 direction. And I -- you know, the  
13 first thing I thought was, well, you  
14 know, perhaps he had purchased that and  
15 got the receipt and she had voided the  
16 transaction when she sent him back. So  
17 then I went in and looked, and that's  
18 when I first found out that he had  
19 indeed come in and purchased another  
20 case of beer.

21 Q. So when he's out there what did you say  
22 when he's shaking a receipt in your  
23 face?

24 A. "It's out of my hands."

25 Q. What did you mean by that?

JUDY COMP & ASSOCIATES, INC.

REPLY TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

JANUARY 2, 2018

|                           |   |                                         |
|---------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | COURT OF COMMON PLEAS                   |
|                           | ) | TENTH JUDICIAL CIRCUIT                  |
| COUNTY OF ANDERSON        | ) |                                         |
|                           | ) |                                         |
| Mario Escalante,          | ) |                                         |
|                           | ) |                                         |
| Plaintiff,                | ) |                                         |
|                           | ) | <b>PLAINTIFF'S REPLY TO DEFENDANTS'</b> |
| vs.                       | ) | <b>MOTION FOR SUMMARY JUDGMENT</b>      |
|                           | ) |                                         |
|                           | ) |                                         |
| David L. Rodgers and      | ) |                                         |
| Janice W. Rodgers, d/b/a, | ) |                                         |
| Whitehall Express Mart,   | ) | <b>Case No.: 2013-CP-04-01700</b>       |
|                           | ) |                                         |
| Defendants.               | ) |                                         |

**COMES NOW MARIO ESCALANTE**, Plaintiff, in reply to Defendants' Rodgers

Motion for Summary Judgment, states as follows:

#### **PROCEDURAL HISTORY**

On July 22, 2013, Plaintiff filed this action against Mr. and Mrs. Rodgers d/b/a Whitehall Express Mart (hereinafter Defendants), claiming that he had been falsely arrested, defamed, imprisoned falsely, maliciously prosecuted, conspired against, had his beer stolen, and negligently accused of stealing a case of beer. On January 13, 2015, the plaintiff filed suit in the United States District Court for the District of South Carolina, Anderson Division, Mr. and Mrs. Rodgers, the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as "the Federal Action").

The Federal Action focused on the alleged conspiracy between the aforementioned Defendants. The U.S. District Court dismissed the matter based on a finding that probable cause existed. The negligence cause of action was not addressed by the Court based on the fact that it was not raised by Plaintiff. Since the negligent act of accusing Plaintiff of stealing a case of



beer was done by a private citizen, it was a state action and not part of the District Court's finding. Thus, Plaintiff sought a date certain trial in the above-captioned matter, due to the fact he resided in Texas. As a result, Defendants' Rodgers filed their Motion for Summary Judgment on October 18, 2017. Plaintiff opposes same based on the following:

### **FACTUAL BACKGROUND**

This suit is brought pursuant to the arrest of Mario Escalante for shoplifting one case of beer from Defendants' retail establishment on Sunday, May 5, 2013. Plaintiff came to Anderson County from El Paso, Texas to work a concession stand at the annual Anderson County Fair. Plaintiff had spent the morning breaking down the concession stand he had been working at and during a break, went to purchase a case of beer to celebrate his friend's birthday, later that evening. Since Plaintiff was not a resident of this state, he was unaware the sale of alcohol on a Sunday was prohibited by law. Plaintiff selected Defendants' retail establishment to make his purchase based on the close proximity of the store to the fair grounds.

After entering the store and making his way to the back of the cooler where the beer is located, Plaintiff picked up one case and proceeded to the register to make his purchase. When the transaction was complete, the clerk gave Plaintiff a receipt for his beer purchase and he exited the store. Upon sitting down in his car, Plaintiff thought one case would not suffice based on the number of people he expected to partake in the festivities. Plaintiff then entered the store for a second time and made his way back to the "beer cave" for a second case.

When Plaintiff approached the clerk this time, she had realized the significant mistake she made by selling alcohol on a Sunday and informed Plaintiff she would not be able to sell him the second case. Plaintiff understood and returned the case of beer back to where he had found it, left the store and returned to the fair grounds to finish tearing down the stand.

Defendants claim that at this time, one of the clerks in the store called him Mr. Rodgers on his cell phone, informing him that Plaintiff had actually stolen the case of beer, run out of the store and driven off. None of the employees have testified that they called Rodgers. Defendant David Rodgers claims that upon arriving at the store, he reviewed the video camera footage of the incident (showing Mr. Escalante with a wet back due to the rain falling that afternoon); and, he concluded that based on the plaintiff's appearance and the direction the video shows him exiting the property, he must have been a fair employee.

Defendant David Rodgers proceeded to follow Plaintiff to the fairgrounds, where he subsequently fingered Plaintiff, and remained until he had been apprehended. David Rodgers was on the phone with the 911 operator as he followed him back to the fair. (Exhibit 1, CAD Report, 5/5/2013). He stated to the 911 operator that he was behind Mario. He kept Mario in his sight from the time that he left his store until he had been cuffed and put in the back of the police car.

The case of beer that was confiscated by police was Busch beer. Mario's receipt and associated purchase evidence on his bank (his bank in San Antonio, Texas) statement for the month of May 2013, was the \$14.30 case of Busch as well. (Exhibit 2, Bank Statement, May 1-31, 2013) (Exhibit 3, Beer Receipt, May 5, 2013). Rodgers has claimed that Mario bought the first case; and, he stole the second case. He has no evidence to support that claim. The woman who sold him the case said that she never saw a *second* case leave the store. (Deposition, Amanda Nicole Brown, 9/5/2014, p. 19, 10.11).

If Mario had a second case of beer, it would have been located by the police. Since Rodgers had followed Mario back to the fair and did not offer any statement regarding a case

being removed, the only place it could have been would have been in Mario's truck. It was not; thereby, proving that the second case of beer was a myth.

David Rodgers had the opportunity to prove Mario Escalante had stolen from him. According to him, he had over 30 cameras that would have shown what brand of jeans Mario was wearing, let alone him stealing a case of beer. However, he did absolutely nothing to preserve the video, though its preservation, or lack thereof, is something only he can explain. Based on the facts and circumstances of that day, and the fact that there were no witnesses to any theft, the only conclusion that can be drawn is that the video didn't show what Rodgers claimed. He couldn't afford to prove his own crime of giving a false report to police. The video had to disappear. It did.

#### ARGUMENT

"The duty to preserve material evidence arises not only during litigation but also extends to that period before a litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation." *Sylvestri v. General Motors Corp.* 271 F.3d 583, 590 (4<sup>th</sup> Cir. 2001).

The appellate court found that when the trial court decides to strike an answer, it is necessary that the moving party "show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction." *Id.* At 257, 594 S.E.2d at 547. David Rodgers had worked with the police a month earlier to give them video of a shoplifter. (Exhibit 4, Incident Report, 4/1/2013). Despite the understanding of the video's necessity, Rodgers did not preserve it. This raises the question of fact necessary to defeat summary judgment.

Unfortunately for Mario Escalante, on this occasion, David Rodgers eliminated the video whether on purpose, or because he recklessly allowed the footage to be overwritten. (Exhibit 5,

Defense Responses to Plaintiff's Second Requests for Production, 4/11/2014). After Mario had gotten out of jail and brought the receipt to David Rodgers, Rodgers should have known that the video would be necessary for the Escalante defense, or when he brought this suit.

Summary Judgment should not be granted in this matter because genuine disputes as to material facts exist. Defendant Rodgers continued denial of following Plaintiff to the fairgrounds that day, conflicts with the narrative created by Emergency Services on the Detailed CAD Report. The report explicitly states that David Rodgers was the caller and the caller was following the suspect. Summary Judgment may only be granted if: in the absence of contradictory evidence showing a genuine dispute as to a material fact, the moving party is entitled to judgment as a matter of law. See *Celotex Corp.*, 477 U.S. at 317, 106 S.Ct. 2548. For the purposes of summary judgment, a genuine dispute exists if a reasonable jury could return a verdict for the nonmoving party. See *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505.

When resolution of a case depends on determining what actually happened, "the issue is inappropriate for resolution by summary judgment". *Rainey v. Conerly*, 973 F.2d 321, 324 (4<sup>th</sup> Cir.1992). Rodgers contradictory statements create a question about his credibility, and credibility questions are for the jury to resolve. Credibility is not a question of law, it is a question which must be put before a jury to decide.

### **CONCLUSION**

Mario Escalante was arrested for stealing a case of beer on May 5, 2013. David Rodgers, by and through Nichole Brown, accepted payment from him on a credit card. Furthermore, she gave him a receipt. Rodgers has maintained that Mr. Escalante stole the second case of beer after he returned the first. Testimony from Ms. Brown casts serious doubt on the second case, given the fact that she only remembers him taking the case that she sold

him out of the store. With the plethora of stories that Mr. Rodgers has conjured up since May 5, 2013, there is no way that questions of material fact could have been resolved.

Despite all of the video and photos that the Defendants had, none of them have ever been provided in discovery. There is a reason for that. The video would prove that the Plaintiff did not steal beer. Mario Escalante is the only one deserving of summary judgment against the defendants. The only two eye witnesses to the event, Mario and Nichole Brown, saw only one case leave the store in his possession on that day. The police proved that the Busch beer possessed by Mr. Escalante was the one for which he has a receipt and a notation of the purchase on his bank statement.

**s/Donald L. Smith**

Donald L. Smith, (SC Bar#6699)

Attorney for Plaintiff

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina

January 2, 2018.

Print Date: 11/18/2015  
Print Time: 9:45

## Detail CAD Report

User Name: SCHITWOOD  
Terminal #: 030

Dispatch # 2013-100151

Phone: (864) -  
Name: DAVID ROGERS 9400113  
Address: 3027 MARTIN LUTHER KING JR BLVD Apt.:  
Community: ANDERSON  
Caller address: 3027 MARTIN LUTHER KING JR BLVD  
Jurisdiction:  
Intersection:  
SubDivision:  
Location Info: CIVIC CENTER

ESN: 0136 AF AF S9  
EMS: MEDSHORE  
Fire: ANDERSON CIT  
Law: ANDERSON PDLs  
Rescue:  
Source: N9C  
Disp: 5  
Sit Found:

Incoming 911: 5/5/2013 4:41:27 PM  
Call Created Time: 4:41:27 PM  
Call Send Time: 4:42:46 PM  
Call Dispatch Time: 4:42:58 PM  
Call Enroute Time: 4:43:42 PM  
Call Arrival Time: 4:50:44 PM  
Call Clear Time: 5:36:51 PM  
Call Closed: 5/5/2013 5:36:51 PM  
Exempt: Reason:

Created By: JRNUBERN  
Sent By: JRNUBERN  
Priority: P 2  
Law:  
Fire:  
EMS:  
Rescue:

Action: Language:  
Position: 10  
Units Dispatched: 6  
Event: 1049 - CIVIL DISTURBANCE

### Original Dispatch Remarks:

CALLER IS IN A BLACK SUBURBAN IN THE PAVED LOT ACROSS FROM THE DUCK POND AFTER HE FOLLOWED THEM FROM THE SHELL STATION// SUBJ IS A FAIR EMPLOYEE AND TOOK A CASE OF BEER

### Narratives

JRNUBERN 5/5/2013 4:44:42 PM  
CALLER IS IN THE PARKING LOT WHERE THEY ARE BREAKING DOWN EQUIPMENT

JRNUBERN 5/5/2013 4:45:00 PM  
OCCURRED AT SHELL STATION IN THE COUNTY

JRNUBERN 5/5/2013 4:57:26 PM  
13:49 05/05/2013 03367 SC0040100 \*08B3048EC1 TXT LIC CN8G626 EXPIRES JUL/13 EWT 2900 GWT 2900  
PASSENGER-TRUCK PLT, STKR REG CLASS 02 \$ 64.25 TITLE 01501540609092113 ISSUED 03/18/11  
ODOMETER N/A 00 PONT 4D 1G2NF52T1YC533823 PASS COLOR: RED PREVIOUS OWNER ROSENDO AVILA  
EMMA HERNA,SAN ANTONIO,TX OWNER JOE R CASTILLO,ID#-N/A, 319 YUKON,,SAN ANTONIO,TX 78221 PLATE  
AGE: 2 REMARKS DATE OF ASSIGNMENT:2011/03/08.PAPER TITLE..

TBARRY 5/5/2013 5:04:08 PM  
ANDCC013. TO: ANDCC013-854638 20130505 17:01:10 00068E2CCC FROM: NC2K-9317580 20130505 17:01:10  
08B6054F1F 1L0108B6054F1F2QWA SC0040100 NO NCIC WANT NAM/ESCALANTE, MARIO DOB/19750228  
\*\*\*MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS

TBARRY 5/5/2013 5:04:27 PM  
ANDCC013. TO: ANDCC013-854630 20130505 16:59:59 00085C2F50 FROM: NLETS-6041424 20130505 16:59:59  
08B6054F1C DR.TXOLN0000 14:02 05/05/2013 65395 14:02 05/05/2013 03447 SC0040100 \*08B6054F1C TXT NAME:  
ESCALANTE, MARIO DESCRIPTION: HISPANIC/MALE/02281975/5-08/270/BROWN/BROWN SEX OFF: COMM IMPED:  
ORGAN DONOR: N VISA EXP: PHYSICAL ADD: 2503 CALLAGHAN CI/CO/ST/ZIP: LAREDO,WEBB,TEXAS,78040-0000,  
UNITED STATES MAILING ADD: 2503 CALLAGHAN CI/ST/ZIP: LAREDO,TEXAS,78040-0000, UNITED STATES REC  
STATUS: NOT ELIGIBLE ADMIN STATUS: CARD STATUS: HME THR ASMT: EXP: CARD TYPE: ID #:  
16401815 EXPIR DATE: 02282018 RESTRICTIONS: ENDORSEMENTS: \*\*\*\* DRIVER RECORD INFORMATION IS  
PERSONAL INFORMATION PROTECTED UNDER THE FEDERAL DRIVER PRIVACY ACT OF 1994 (18 USC 2721, ET  
SEQ.) AS AMENDED AND THE MOTOR VEHICLE RECORDS DISCLOSURE ACT, TEXAS TRANSPORTATION CODE  
730 \*\*\*\*\* END OF RECORD\*\*\*\*\*

ELECTRONICALLY FILED - 2018 Jan 02 6:55 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

Print Date: 11/18/2015  
 Print Time: 9:45

# Detail CAD Report

User Name: SCHITWOOD  
 Terminal #: 030

ELECTRONICALLY FILED - 2018 Jan 02 6:55 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

| Unit  | Badges | Radio Names |
|-------|--------|-------------|
| B-34  |        |             |
| B12   |        |             |
| B8    |        |             |
| D-20  |        |             |
| K9-26 |        |             |
| SHE   |        |             |

| Unit  | Dept. | Status/DSP/CASE | Location/Remark | User     | Date/Time           |
|-------|-------|-----------------|-----------------|----------|---------------------|
| B8    | L01   | DSP             |                 | JRNUBERN | 5/5/2013 4:42:58 PM |
| B8    | L01   | 1088            |                 | JRNUBERN | 5/5/2013 4:43:37 PM |
| B12   | L01   | 1017            |                 | JRNUBERN | 5/5/2013 4:43:42 PM |
| SHE   | L07   | DSP             |                 | JRNUBERN | 5/5/2013 4:44:49 PM |
| B12   | L01   | 1023            |                 | JRNUBERN | 5/5/2013 4:50:44 PM |
| B8    | L01   | CASE 21068      |                 | JRNUBERN | 5/5/2013 4:51:09 PM |
| K9-26 | L07   | 1017            |                 | ABOYLE   | 5/5/2013 4:52:23 PM |
| SHE   | L07   | 1024            |                 | ABOYLE   | 5/5/2013 4:52:46 PM |
| D-20  | L07   | 1017            |                 | ABOYLE   | 5/5/2013 4:53:00 PM |
| B-34  | L07   | 1017            |                 | ABOYLE   | 5/5/2013 4:53:30 PM |
| D-20  | L07   | 1023            |                 | ABOYLE   | 5/5/2013 4:55:55 PM |
| B-34  | L07   | 1023            |                 | ABOYLE   | 5/5/2013 4:56:58 PM |
| K9-26 | L07   | 1023            |                 | ABOYLE   | 5/5/2013 4:57:00 PM |
| K9-26 | L07   | CASE 21492      |                 | ABOYLE   | 5/5/2013 4:57:03 PM |
| B-34  | L07   | LOG             |                 | ABOYLE   | 5/5/2013 4:57:11 PM |
| D-20  | L07   | LOG             |                 | ABOYLE   | 5/5/2013 4:57:13 PM |
| K9-26 | L07   | LOG             | 1 IN CUSTODY    | ABOYLE   | 5/5/2013 5:06:21 PM |
| B-34  | L07   | 1017J           | 1067            | ABOYLE   | 5/5/2013 5:08:21 PM |
| B-34  | L07   | 1023J           |                 | ABOYLE   | 5/5/2013 5:10:08 PM |
| B8    | L01   | 104             |                 | JRNUBERN | 5/5/2013 5:20:29 PM |
| B12   | L01   | 104             |                 | JRNUBERN | 5/5/2013 5:20:33 PM |
| B12   | L01   | 1024 7          |                 | TBARRY   | 5/5/2013 5:23:34 PM |
| B8    | L01   | 1024 7          |                 | TBARRY   | 5/5/2013 5:23:45 PM |
| D-20  | L07   | 1024            |                 | ABOYLE   | 5/5/2013 5:25:01 PM |
| K9-26 | L07   | 1024 5          |                 | ABOYLE   | 5/5/2013 5:25:15 PM |
| B-34  | L07   | 1024 5          |                 | ABOYLE   | 5/5/2013 5:36:50 PM |

? - manually entered time

H&R Block Bank  
PO Box 2415  
Omaha NE 68103-2415

H&R Block

H&R Block Emerald Prepaid Mastercard®

MARIO ESCALANTE  
2503 CALLAGHAN  
LAREDO, TX 78040

Account Statement Summary

Statement Period: May 01 - May 31, 2013

Account Number(s): [REDACTED] 0545 ~ old Card  
[REDACTED] 6295 ~ New Card  
[REDACTED] 7863

Account Summary

|                                   |   |           |
|-----------------------------------|---|-----------|
| Balance on May 1, 2013            |   | \$692.30  |
| Funds Added To Card               | + | \$1020.00 |
| Purchases/Withdrawals             | - | \$1643.22 |
| Fees                              | - | \$0.00    |
| Available Balance on May 31, 2013 | = | \$69.08   |

\* Balance may not reflect recent purchases.

Avoid paying high check cashing fees by having your payroll directly deposited to your H&R Block Emerald Card®. Ask your employer how to get this started today. You can also visit one of our participating reload locations like Wal-Mart® or Walgreens® through MoneyGram®, Western Union®, and Green Dot® networks. To find a reload location nearest you, visit [hrblock.com/reload](http://hrblock.com/reload) or call 1-866-353-1266. It's convenient and easy.

Detail Transactions

Date Description Amount Balance

|            |                                                 |         |         |
|------------|-------------------------------------------------|---------|---------|
| 05-01-2013 | BEGINNING BALANCE                               |         | 692.30  |
| 05-05-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 540.00  | 1232.30 |
| 05-05-2013 | (0545) SHELL SERVICE STATION, ANDERSON SC       | -14.30  | 1218.00 |
| 05-06-2013 | (0545) EXXON-MOBIL, ANDERSON SC                 | -5.00   | 1213.00 |
| 05-06-2013 | (0545) SUPER DEALS LLC, ANDERSON SC             | -18.93  | 1194.07 |
| 05-07-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 480.00  | 1674.07 |
| 05-07-2013 | (0545) FAMILY DOLLAR, ANDERSON SC               | -10.60  | 1663.47 |
| 05-07-2013 | (0545) BI-LO, ANDERSON SC                       | -11.01  | 1652.46 |
| 05-07-2013 | (0545) EL ARRIERO MEXICAN RES, ANDERSON SC      | -57.25  | 1595.21 |
| 05-08-2013 | (0545) BI-LO, ANDERSON SC                       | -11.91  | 1583.30 |
| 05-09-2013 | (0545) REDBOX *DVD RENTAL, 866-733-2693 IL      | -1.37   | 1582.03 |
| 05-09-2013 | (0545) 7-ELEVEN, SALUDA SC                      | -2.13   | 1579.90 |
| 05-10-2013 | (0545) 7-ELEVEN, LEXINGTON SC                   | -17.10  | 1562.80 |
| 05-10-2013 | (0545) TAVERN UNDER THE BRIDG, ANDERSON SC      | -24.44  | 1538.36 |
| 05-10-2013 | (0545) BOJANGLES, BATESBURG SC                  | -8.11   | 1530.25 |
| 05-10-2013 | (0545) MOM&POPS CONVEN, LEESVILLE SC            | -6.51   | 1523.74 |
| 05-13-2013 | (0545) SAN JOSE MEXICAN RESTA, LEESVILLE SC     | -23.12  | 1500.62 |
| 05-13-2013 | (0545) RYANS #2103, ANDERSON SC                 | -25.42  | 1475.20 |
| 05-14-2013 | (0545) COUNTRY CROSSROADS, TVA SC               | -10.00  | 1465.20 |
| 05-14-2013 | (0545) W/D(ATM), 691 HWY 28 BYPASS, ANDERSON SC | -502.50 | 962.70  |
| 05-14-2013 | (0545) SERVICE CHARGE (ATM FEE)                 | -2.50   | 960.20  |

Trans

file://C:\Users\A666343\AppData\Local\Temp\Temp1\_52114727863-STATEMENTS.ZI... 11/30/2013



SMELL  
704 S. HALL RD  
ANDERSON SC 29625  
57545742504

05/05/2013 4:25:26 PM  
Register: 3 Trans #: 7438 Op ID: 6  
Your cashier: Nichole

Bush Can Ca \$13.49 101

Subtotal = \$13.49  
Tax = \$0.81

Total = \$14.30

Change Due = \$0.00

\$14.30

Debit

XXXXXXXXXX0545, Debit  
INVOICE 601906  
AUTH 919978  
PINUsed

1 tell me if this sounds right. He comes in, goes to  
2 the beer cave and gets a case of beer. He comes up  
3 to you at the register. You sell it to him. He  
4 takes it out to his car. He comes back in and gets  
5 another case of beer. At this time you realize it's  
6 Sunday, you should not have sold him a case of beer  
7 in the first place. You tell him, I can't sell you  
8 that. He takes the beer back to the beer cave and  
9 then he leaves.

10 A I don't remember seeing him walk out with  
11 another case of beer. I just remember pointing and  
12 telling him he had to put that one back because I  
13 was not supposed to sell it on Sunday.

14 Q I understand. How much of the videotape  
15 did you watch? Did you watch the whole transaction  
16 the whole time that he was at the Express Mart?

17 A I don't remember.

18 Q Who did you watch it with?

19 A Dave.

20 Q Did Dave make a copy of this?

21 A I'm not sure if he did. He did not tell  
22 me about it.

23 Q Do you know what you did for further  
24 prosecution? Did you have to go to court? Did Dave  
25 go to court?

# INCIDENT REPORT

CASE NUMBER

2,0,1,3,-,1,5,3,5,1

NCIC

IND. ENT.  
N N

|                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------|
| EVENT                                                                                                                                                                                                                                                                               | INCIDENT TYPE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                     | COMPLETED                                                           | FORCED ENTRY                                                                                            | PREMISE TYPE                                                                | UNITS ENTERED                                                                                                          | TYPE VICTIM                                                                                                                                                                                                                                                                                                           |                                            |             |
|                                                                                                                                                                                                                                                                                     | 1. SHOPLIFTING (23C)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                     | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                | Convenience Store                                                           |                                                                                                                        | <input type="checkbox"/> Individual<br><input type="checkbox"/> Financial Inst.<br><input type="checkbox"/> Government<br><input type="checkbox"/> Public Orgn.<br><input type="checkbox"/> Social Public<br><input type="checkbox"/> Other<br><input type="checkbox"/> Unknown<br><input type="checkbox"/> Police Of |                                            |             |
|                                                                                                                                                                                                                                                                                     | 2.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                     | <input type="checkbox"/> YES <input type="checkbox"/> NO            | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | 3.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                     | <input type="checkbox"/> YES <input type="checkbox"/> NO            | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| VICTIM NO. 1                                                                                                                                                                                                                                                                        | INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        | ZIP CODE                                                                                                                                                                                                                                                                                                              |                                            | WEAPON TYPE |
|                                                                                                                                                                                                                                                                                     | 704 WHITEHALL RD, ANDERSON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        | 29625                                                                                                                                                                                                                                                                                                                 |                                            |             |
|                                                                                                                                                                                                                                                                                     | INCIDENT DATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 24 HR. CLOCK                                                        | TO                                                                  | DATE                                                                                                    | 24 HR. CLOCK                                                                | DISPATCH DATE/TIME 24 HR. CLOCK                                                                                        |                                                                                                                                                                                                                                                                                                                       | LOCATION NO.                               |             |
|                                                                                                                                                                                                                                                                                     | 04/01/2013                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 14:15                                                               |                                                                     | 04/01/2013                                                                                              | 14:20                                                                       | DISPATCH DATE/TIME<br>04/01/13 14:27<br>14:33<br>14:54                                                                 |                                                                                                                                                                                                                                                                                                                       | 4                                          |             |
|                                                                                                                                                                                                                                                                                     | COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                     |                                                                     | RELATIONSHIP TO SUBJECT                                                                                 |                                                                             | RESIDENT                                                                                                               | RACE                                                                                                                                                                                                                                                                                                                  | SEX                                        | AGE         |
|                                                                                                                                                                                                                                                                                     | WHITEHALL EXPRESS SHELL,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                     |                                                                     |                                                                                                         |                                                                             | <input checked="" type="checkbox"/> J <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                     |                                                                     | CITY                                                                                                    |                                                                             | STATE                                                                                                                  | ZIP CODE                                                                                                                                                                                                                                                                                                              | LOCATION NO.                               |             |
|                                                                                                                                                                                                                                                                                     | 704 WHITEHALL RD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                     |                                                                     | ANDERSON                                                                                                |                                                                             | SC                                                                                                                     | 29625                                                                                                                                                                                                                                                                                                                 | 4                                          |             |
|                                                                                                                                                                                                                                                                                     | VICTIM'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                     |                                                                     | RELATIONSHIP TO SUBJECT                                                                                 |                                                                             | RESIDENT                                                                                                               | RACE                                                                                                                                                                                                                                                                                                                  | SEX                                        | AGE         |
|                                                                                                                                                                                                                                                                                     | WHITEHALL EXPRESS,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                     |                                                                     |                                                                                                         |                                                                             | <input checked="" type="checkbox"/> J <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| SUBJECT NO. 1                                                                                                                                                                                                                                                                       | HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | WEIGHT                                                              | HAIR                                                                | EYES                                                                                                    | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                     |                                                                     | CITY                                                                                                    |                                                                             | STATE                                                                                                                  | ZIP CODE                                                                                                                                                                                                                                                                                                              | LOCATION NO.                               |             |
|                                                                                                                                                                                                                                                                                     | 704 WHITEHALL RD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                     |                                                                     | ANDERSON                                                                                                |                                                                             | SC                                                                                                                     | 29625                                                                                                                                                                                                                                                                                                                 | 4                                          |             |
|                                                                                                                                                                                                                                                                                     | VISIBLE INJURY (WGT. 1) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                     |                                                                     | EXPLAIN —                                                                                               |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | VICTIM (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                     |                                                                     | UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE/SP. ASST. <input type="checkbox"/> OTHER <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                     |                                                                     | ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>                                        |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | *J—This Jurisdiction. S—State. O—Out of State. U—Unknown                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                     |                                                                     | RACE                                                                                                    |                                                                             | SEX                                                                                                                    | AGE                                                                                                                                                                                                                                                                                                                   | ETH.                                       |             |
|                                                                                                                                                                                                                                                                                     | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                     |                                                                     | CITY                                                                                                    |                                                                             | STATE                                                                                                                  | ZIP CODE                                                                                                                                                                                                                                                                                                              | LOCATION NO.                               |             |
| NARRATIVE                                                                                                                                                                                                                                                                           | 1. Deputy J. Turner was dispatched to the above listed incident location in reference to the complainant stating that there was an unknown black male that just walked out of the store with two cases of Bud Light that he did not pay for. Upon my arrival on scene I canvassed the area for the male that was described to have been wearing a blue or black t shirt with blue jeans, sneakers to be about 600 tall, and of average build. I then made contact with an elderly white male Wade Ashley who brought the subject to the store, not knowing who he was or what his intentions were. He stated that the subject waved him down somewhere near Appleton Street asking for a ride to the convenience store. He also stated that upon the black male leaving the store that he got in the truck with the beer and requested to leave. Someone then stated that he had stolen the beer and Mr. Ashley stated that he would have to clear this up and that he was not riding with him until he did. The black male then hitched a ride with someone else. This vehicle was described as a white in color S-10 displaying a SC Tag of IDY 381, which came back to a pontiac grand prix out of Beaufort, SC. |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                     |                                                                     |                                                                                                         | JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY                          |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | 00400                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Alcohol - al                                                        |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       | TOTAL VALUE                                |             |
|                                                                                                                                                                                                                                                                                     | STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 33                                                                  |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       | 33                                         |             |
|                                                                                                                                                                                                                                                                                     | DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | BURNED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
|                                                                                                                                                                                                                                                                                     | ADMINISTRATIVE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | SUBJECT IDENTIFIED                                                  |                                                                     | SUBJECT LOCATED                                                                                         |                                                                             | ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/>                                                   |                                                                                                                                                                                                                                                                                                                       | ARRESTED UNDER 16 <input type="checkbox"/> |             |
| <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                                                     | <input type="checkbox"/> UNFOUNDED                                                                      |                                                                             | <input type="checkbox"/> ARRESTED 16 AND OVER <input type="checkbox"/>                                                 |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRACTION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                     |                                                                     |                                                                                                         |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| REPORTING OFFICER(S)                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | DATE                                                                | UNIT NUMBER                                                         | APPROVING OFFICER                                                                                       | DATE                                                                        | UNIT NUMBER                                                                                                            |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| TURNER, J. K.                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 04/01/13                                                            | 676                                                                 | SGT. HYSLOP, A. R.                                                                                      | 04/01/13                                                                    | 248                                                                                                                    |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | OFFICER                                                             |                                                                     | DATE                                                                                                    |                                                                             | UNIT NUMBER                                                                                                            |                                                                                                                                                                                                                                                                                                                       |                                            |             |
| TURNER, J. K.                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 04/01/13                                                            |                                                                     | 676                                                                                                     |                                                                             |                                                                                                                        |                                                                                                                                                                                                                                                                                                                       |                                            |             |

ELECTRONICALLY FILED - 2018 Jan 02 6:55 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

AGENCY I.D.  
SC0040000

# SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2013-15351

NOIC

NO. ENFD.  
N N

☒ ORIGINAL  
REPORT  
☐ MODIFIES  
ORIGINAL

☐ SUPPLEMENTAL  
REPORT  
☐ CASE STATUS  
CHANGE

☐ ADDITIONAL  
VICTIMS  
☐ ADDITIONAL  
OFFENDERS

☐ ADDITIONAL  
STOLEN PROPERTY  
☐ ADDITIONAL  
RECOVERED PROPERTY

PAGE 2 of 2 PAGES

|                                  |                                                                                                                |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|----------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------|-----|--------|------|
| VICT/SUBJ. I.D. OVERFLOW         | <input type="checkbox"/> COMPLAINT                                                                             | NAME (LAST, FIRST, MIDDLE) |                                                                                                            | VICTIM RELATIONSHIP TO SUBJECT |                                                                                                             |                                                                              | RESIDENT                                                                                                            | RACE          | SEX                               | AGE | D.O.B. | ETH. |
|                                  | <input type="checkbox"/> VICTIM #                                                                              |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> SUBJECT #                                                                             | HEIGHT                     | WEIGHT                                                                                                     | HAIR                           | EYES                                                                                                        | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> RUNAWAY                                                                               | ADDRESS                    |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> WANTED                                                                                | CITY                       | STATE                                                                                                      | ZIP CODE                       | LOCATION NO.                                                                                                | DAY PHONE                                                                    |                                                                                                                     | EVENING PHONE |                                   |     |        |      |
| <input type="checkbox"/> WARRANT | <input type="checkbox"/> VICTIM NO. : VISIBLE INJURY: <input type="checkbox"/> NO <input type="checkbox"/> YES |                            | COMPLAINT OF NON-VISIBLE INJURIES: <input type="checkbox"/> NO <input type="checkbox"/> YES                |                                | VICTIM USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK |                                                                              | <input type="checkbox"/> TWO-MAN VEHICLE <input type="checkbox"/> DETECTIVE/SPLASMT. <input type="checkbox"/> ALONE |               |                                   |     |        |      |
| <input type="checkbox"/> ARREST  | EXPLAIN:                                                                                                       |                            |                                                                                                            |                                | DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES TYPE: <input type="checkbox"/> UNK          |                                                                              | <input type="checkbox"/> ONE-MAN VEHICLE <input type="checkbox"/> OTHER                                             |               | <input type="checkbox"/> ASSISTED |     |        |      |
| <input type="checkbox"/> JAIL    | <input type="checkbox"/> SUBJECT NO. : USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES |                            | USING DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES → TYPE: <input type="checkbox"/> UNK |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
| <input type="checkbox"/> SUMMONS |                                                                                                                |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |

|                                  |                                                                                                                |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|----------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------|--------------------------------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------|-----|--------|------|
| VICT/SUBJ. I.D. OVERFLOW         | <input type="checkbox"/> COMPLAINT                                                                             | NAME (LAST, FIRST, MIDDLE) |                                                                                                            | VICTIM RELATIONSHIP TO SUBJECT |                                                                                                             |                                                                              | RESIDENT                                                                                                            | RACE          | SEX                               | AGE | D.O.B. | ETH. |
|                                  | <input type="checkbox"/> VICTIM #                                                                              |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> SUBJECT #                                                                             | HEIGHT                     | WEIGHT                                                                                                     | HAIR                           | EYES                                                                                                        | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> RUNAWAY                                                                               | ADDRESS                    |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
|                                  | <input type="checkbox"/> WANTED                                                                                | CITY                       | STATE                                                                                                      | ZIP CODE                       | LOCATION NO.                                                                                                | DAY PHONE                                                                    |                                                                                                                     | EVENING PHONE |                                   |     |        |      |
| <input type="checkbox"/> WARRANT | <input type="checkbox"/> VICTIM NO. : VISIBLE INJURY: <input type="checkbox"/> NO <input type="checkbox"/> YES |                            | COMPLAINT OF NON-VISIBLE INJURIES: <input type="checkbox"/> NO <input type="checkbox"/> YES                |                                | VICTIM USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK |                                                                              | <input type="checkbox"/> TWO-MAN VEHICLE <input type="checkbox"/> DETECTIVE/SPLASMT. <input type="checkbox"/> ALONE |               |                                   |     |        |      |
| <input type="checkbox"/> ARREST  | EXPLAIN:                                                                                                       |                            |                                                                                                            |                                | DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES TYPE: <input type="checkbox"/> UNK          |                                                                              | <input type="checkbox"/> ONE-MAN VEHICLE <input type="checkbox"/> OTHER                                             |               | <input type="checkbox"/> ASSISTED |     |        |      |
| <input type="checkbox"/> JAIL    | <input type="checkbox"/> SUBJECT NO. : USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES |                            | USING DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES → TYPE: <input type="checkbox"/> UNK |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |
| <input type="checkbox"/> SUMMONS |                                                                                                                |                            |                                                                                                            |                                |                                                                                                             |                                                                              |                                                                                                                     |               |                                   |     |        |      |

|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|--|----------------------------------------------------|--|-------------------------------|--|-----------------|--|-----------------|--|--|
| NARRATIVE                                       | A surveillance tape is being copied and the store manager stated that he would be calling to let us know when it was ready to be picked up. Nothing further at this time. |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
|                                                 |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
| JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY |                                                                                                                                                                           |      |  | JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY |  |                               |  |                 |  |                 |  |  |
| 00400                                           |                                                                                                                                                                           |      |  |                                                    |  |                               |  |                 |  |                 |  |  |
| STATUS                                          |                                                                                                                                                                           | TYPE |  | VIN AND/OR LICENSE NO.                             |  | BOAT HULL NO. AND/OR REG. NO. |  |                 |  |                 |  |  |
| <input type="checkbox"/> STOLEN                 | <input type="checkbox"/> VEHICLE                                                                                                                                          |      |  | SERIAL AND/OR OWNER APPLIED NO.                    |  | STATE                         |  | SC              |  |                 |  |  |
| <input type="checkbox"/> RECOVERED              | <input type="checkbox"/> GUN                                                                                                                                              |      |  | YEAR OF REGISTRATION                               |  | YEAR OF EXPIRATION            |  | YEAR            |  | MAKE BUD LI     |  |  |
| <input type="checkbox"/> FOUND                  | <input type="checkbox"/> BOAT                                                                                                                                             |      |  | MODEL                                              |  | STYLE                         |  | COLOR BLUE/SILV |  | BRAND NAME      |  |  |
| <input type="checkbox"/> TOWED                  | <input type="checkbox"/> LICENSE PLATE                                                                                                                                    |      |  | CAN                                                |  | BLUE/SILV                     |  | ISSUER          |  | SECURITIES DATE |  |  |
| <input type="checkbox"/> SUSPECT                | <input type="checkbox"/> SECURITIES/BONDS, STOCKS                                                                                                                         |      |  | HKG NO.                                            |  | DENOMINATION                  |  | ISSUER          |  | SECURITIES DATE |  |  |
| <input type="checkbox"/> VICTIM                 | <input type="checkbox"/> ARTICLE                                                                                                                                          |      |  | MISCELLANEOUS                                      |  |                               |  |                 |  |                 |  |  |

|                                      |                                                                                                                                                                                                                                                                                      |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------|-----|---------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------|-----------------------------------------------|--------------|-------------|--|
| VEH. I.D. / GUN / VEH. I.D. / ETC. 1 | TYPE (GROUP)                                                                                                                                                                                                                                                                         |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              | TOTAL VALUE |  |
|                                      | STOLEN                                                                                                                                                                                                                                                                               |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | DAMAGED                                                                                                                                                                                                                                                                              |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | BURNED                                                                                                                                                                                                                                                                               |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | RECOVERED                                                                                                                                                                                                                                                                            |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | SEIZED                                                                                                                                                                                                                                                                               |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                   |          | SUBJECT LOCATED                                                     |     | <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED |                                                                                             | <input type="checkbox"/> ARRESTED UNDER 18    |                       | <input type="checkbox"/> EX-CLEAR UNDER 18    |              |             |  |
|                                      | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                  |          | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |     | <input type="checkbox"/> UNFOUNDED                                              |                                                                                             | <input type="checkbox"/> ARRESTED 18 AND OVER |                       | <input type="checkbox"/> EX-CLEAR 18 AND OVER |              |             |  |
|                                      | REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY |          |                                                                     |     |                                                                                 |                                                                                             |                                               |                       |                                               |              |             |  |
|                                      | REPORTING OFFICER(S)                                                                                                                                                                                                                                                                 |          | DATE                                                                |     | UNIT NUMBER                                                                     |                                                                                             | APPROVING OFFICER                             |                       | DATE                                          |              | UNIT NUMBER |  |
| TURNER, J. K.                        |                                                                                                                                                                                                                                                                                      | 04/01/13 |                                                                     | 676 |                                                                                 | SGT. HYSLOP, A. R.                                                                          |                                               | 04/01/13              |                                               | 248          |             |  |
|                                      |                                                                                                                                                                                                                                                                                      |          |                                                                     |     |                                                                                 | FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |                                               | OFFICER TURNER, J. K. |                                               | 04/01/13 676 |             |  |

ELECTRONICALLY FILED - 2018 Jan 02 6:55 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

|                                         |   |                                 |
|-----------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                 | ) |                                 |
| COUNTY OF ANDERSON                      | ) | IN THE COURT OF COMMON PLEAS    |
| Mario Escalante,                        | ) |                                 |
| Plaintiff,                              | ) |                                 |
| vs.                                     | ) | DEFENDANTS' RESPONSES TO        |
|                                         | ) | PLAINTIFF'S SECOND REQUESTS FOR |
|                                         | ) | PRODUCTION                      |
| David L. Rodgers and Janice W. Rodgers, | ) |                                 |
| d/b/a Whitehall Express Mart,           | ) |                                 |
| Defendants.                             | ) | C.A. No. 2013-CP-04-1700        |

**TO: DONALD L. SMITH OF THE DONALD L. SMITH LAW FIRM, ATTORNEYS FOR THE PLAINTIFF, MARIO ESCALANTE**

The defendants, David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart, hereby respond to requests for production of documents propounded by the plaintiff pursuant to Rule 34 of the South Carolina Rules of Civil Procedure:

**GENERAL OBJECTIONS**

David L. Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart (hereinafter "Whitehall") objects to these requests insofar as they are inconsistent with the South Carolina Rules of Civil Procedure. Whitehall also objects to these requests where they are overly broad and unduly burdensome. Whitehall also objects insofar as they seek discovery of information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence. Whitehall also objects insofar as these requests seek disclosure of information protected as work product, under the attorney client privilege or under the common interest doctrine. Subject to the foregoing objections and without waiving same, Whitehall states as follows:

**RESPONSES TO REQUEST FOR PRODUCTION**

1. **Copies of any and all documents, photographs, correspondence, emails, text messages, electronically stored information, or any other materials, relating in any way to the subject action.**

RESPONSE: Whitehall objects to this request on the grounds that it is overly broad and unduly burdensome. Further, Whitehall objects on the grounds that it seeks the discovery of information that is protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving these objections, Whitehall responds that it has previously produced all documents in its possession responsive to this request.

2. **Any and all documents identified in response to Plaintiff's Second Set of Interrogatories.**

RESPONSE: Whitehall did not identify any documents in its answers to plaintiff's second set of interrogatories.

3. **Copy of the receipt for purchase of video surveillance system.**

RESPONSE: Whitehall is not in possession of the receipt for purchase of the video surveillance system.

3. **Copy of the video surveillance systems User Manual.**

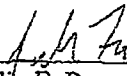
RESPONSE: A copy of the video surveillance system's user manual is produced.

4. **Copy of the invoice for installation of the surveillance system.**

RESPONSE: David Rogers d/b/a Whitehall installed the surveillance system himself. Accordingly, there is no invoice for the installation.

5. **Copy of video containing plaintiff, including twelve (12) hours of video before and after his appearance.**

RESPONSE: As discussed more fully in Whitehall's answer to interrogatory number 8 contained in the plaintiff's second set of interrogatories, video surveillance footage is stored for approximately 30 days. Thereafter, the DVR system for the surveillance system overwrites the footage. Accordingly, the surveillance footage of the plaintiff was overwritten by the system approximately 30 days after the incident.

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603  
(864) 271-9580

April 11, 2014

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart

ORDER  
JANUARY 9, 2018



**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2013 CP-04-1700**

Mario Escalante  
PLAINTIFF(S)

David Rodgers  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☒ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

**ORDER INFORMATION**

**MOTION TO STRIKE IS DENIED.**

This order ☐ ends ☒ does not end the case.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

2155

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

\_\_\_\_\_  
**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al  
**Case Number:** 2013CP0401700  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-01-09 10:44:06 page 3 of 3

TRANSCRIPT , MOTION TO VACATE HEARING  
pages 8-9  
JANUARY 5, 2018

1 would be barred from being relitigated or litigated in  
2 a state court action, but to the extent that there is  
3 additional causes of action, it may or may not be?

4 MR. SMITH: Yes, sir. And in the U.S. District  
5 Court case, each cause of action was specifically  
6 addressed and dismissed based on probable cause, but  
7 every action, cause of action, was addressed.  
8 Negligence was not addressed.

9 THE COURT: Right. So you're now saying the same  
10 thing. You're thinking that you have -- the only  
11 unasserted cause of action in state court -- in state  
12 court that was not asserted in the federal court was  
13 the negligence?

14 MR. SMITH: Yes, sir.

15 THE COURT: Thank you, gentlemen.

16 I'm sorry. I didn't see that on the back side.

17 Gentlemen, there is a motion to strike. Is that  
18 something I need to take up?

19 MR. SMITH: That was spoliation. That was trying  
20 to strike their answer based on the fact that I just  
21 explained, the fact that he didn't save the video,  
22 despite the fact he had done it the month before,  
23 despite the fact he had a duty, we think, in  
24 prosecuting using the video. He saved it for  
25 prosecution, didn't show up for prosecution, and then

1 in this case, obviously, he didn't want us to see the  
2 video. At least that's my contention.

3 THE COURT: I'm going to deny that motion, but  
4 I'll take the other one into consideration.

5 MR. SMITH: Thank you, Your Honor.

6 MR. FARR: Thank you.

7 (WHEREUPON, proceedings concluded at 3:17 p.m.)

8 \*\*\*END OF REQUESTED TRANSCRIPT OF RECORD\*\*\*  
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FORMAL ORDER  
JANUARY 16, 2018

|                                         |   |                                    |
|-----------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) |                                    |
|                                         | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF ANDERSON                      | ) |                                    |
| Mario Escalante,                        | ) |                                    |
|                                         | ) | <b>ORDER GRANTING DEFENDANTS'</b>  |
| Plaintiff,                              | ) | <b>MOTION FOR SUMMARY JUDGMENT</b> |
|                                         | ) |                                    |
| vs.                                     | ) | C.A. No.: 2013-CP-04-1700          |
|                                         | ) |                                    |
| David L. Rodgers and Janice W. Rodgers, | ) |                                    |
| d/b/a Whitehall Express Mart,           | ) |                                    |
|                                         | ) |                                    |
| Defendants.                             | ) |                                    |

This matter is before the court on the motion of the defendant, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the complaint of the plaintiff, Mario Escalante. A hearing on this motion was held before me on January 5, 2018, in the Anderson County Court of Common Pleas. Present at the hearing were Donald L. Smith of the Donald Smith Law Firm, attorneys for the plaintiff, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for the defendants. Based upon the arguments of counsel, pleadings, exhibits, applicable law and the record in this case, I grant the defendants' motion for summary judgment.

#### **LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCF. When plain, palpable and indisputable facts exist upon which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993). In considering a motion for summary judgment, this court "must view the facts in the light most favorable to the non-moving



party. Nonetheless a court “cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoir, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Citations omitted. Further, “[i]n order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. NationsBank v. Scott Farm, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

### **STATEMENT OF FACTS**

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart (“Whitehall”) owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. The plaintiff alleges that on that date the defendants wrongfully accused him of shoplifting a case of beer. As a result of the incident, the plaintiff was arrested and spent one night in jail. The charges against the plaintiff were dismissed for failure to prosecute when the defendants did not appear on his court date due to an alleged lack of notice.

On July 22, 2013, the plaintiff initiated this action against the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (“the State Action”). In the complaint, the plaintiff asserts false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud causes of action. On January 13, 2015, the plaintiff filed suit in the United States District Court for the District of South Carolina, Anderson Division, against Mr. and Mrs. Rodgers d/b/a Whitehall Express Mart, the Anderson’s County Sheriff’s Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as “the Federal Action”). The complaint in the Federal Action contains nearly identical allegations as in State Action and, with the exception of negligence which was

not clearly pled in the Federal Action, asserts the same causes of action against Mr. and Mrs. Rodgers. In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants.

Each defendant moved for summary judgment in the Federal Action. By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Mr. and Mrs. Rodgers and the police defendants as to each cause of action asserted by the plaintiff, finding:

(1) that Plaintiff has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and

(2) that probable cause ultimately supported Plaintiff's shoplifting arrest.

The plaintiff appealed the order granting summary judgment to the defendants in the Federal Action. On October 12, 2017, the Fourth Circuit Court of Appeals affirmed the order granting summary judgment to the defendants.

Following the Fourth Circuit Court of Appeals' affirmation of the order granting summary judgment in the Federal Action, the defendants moved for summary judgment in this action on the grounds that the plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel.

### **CONCLUSIONS OF LAW**

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." S.C. Pub. Interest Found. v. Greenville County, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013) (quoting Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Id. (citation and quotation

marks omitted). “Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding.” S.C. Pub. Interest Found., 401 S.C. at 386, 737 S.E.2d at 506 (quoting Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997)).

“Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action.” S.C. Pub. Interest Found., 401 S.C. at 386, 737 S.E.2d at 507 (quoting Yelsen Land Co. v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012)). “The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles.” Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) (citing Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944)). In Watson, the Supreme Court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation) . . . Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221-22, 31 S.E.2d at 319-20 (citations omitted) (emphasis added); see also First Nat'l Bank of Greenville, 207 S.C. at 24, 35 S.E.2d at 56-57 (citing Watson) (contrasting the origins of res judicata and collateral estoppel).

Here, it is clear that the State Action and the Federal Action arise out of the same transaction or occurrence – the plaintiff's May 5, 2013 arrest for allegedly shoplifting from Whitehall. While the complaint in the Federal Action includes additional parties and causes of action, the factual allegations of the federal complaint essentially mirror those contained in the complaint in the State Action. Moreover, with the exception of negligence, the plaintiff asserts

the same causes of action against the Rodgers in the complaint in the Federal Action as he does in the State Action. Because the State and Federal Actions arise out of the same transaction or occurrence and the defendants obtained summary judgment as to all causes of action in the Federal Action, res judicata bars the plaintiff from re-litigating those causes of action in the State Action.

Nonetheless, the plaintiff contends that the negligence claim contained in the complaint in the State Action is not barred by res judicata because it was not raised in the Federal Action and, thus, was not adjudicated. Under the doctrine of res judicata, however, a litigant is barred “from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” S.C. Pub. Interest Found., 401 S.C. at 385, 737 S.E.2d at 506 (emphasis added). The negligence claim asserted in the State Action arises out of the same transaction or occurrence and could have been raised by the plaintiff in the Federal Action along with the other state-law claims. The Court finds that there was nothing to prevent the plaintiff from raising his negligence claim in the Federal Action and, thus, it, too, is barred by res judicata.

Because the State and Federal Actions arise out of the same transaction or occurrence and the defendants obtained summary judgment as to all causes of action in the Federal Action, the State Action is hereby barred by the doctrine of res judicata. Accordingly, the defendants’ motion for summary judgment as to all causes of action is hereby granted.

### **CONCLUSION**

The Court has thoroughly reviewed the entire record, including the defendants’ motion for summary judgment, exhibits, and the applicable law. For the reasons state above, the Court grants the defendants’ motion for summary judgment as to all causes of action.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motion of the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment be, and it is hereby, GRANTED.

IT IS SO ORDERED.

---

The Honorable R. Lawton McIntosh, Presiding  
Judge Anderson County Court of Common Pleas

Anderson, South Carolina

January \_\_\_\_, 2018



Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al

**Case Number:** 2013CP0401700

**Type:** Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-01-16 09:15:21 page 7 of 7

**MOTION FOR RECONSIDERATION**  
**JANUARY 26, 2018**

|                           |   |                            |
|---------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA   | ) | COURT OF COMMON PLEAS      |
|                           | ) | TENTH JUDICIAL CIRCUIT     |
| COUNTY OF ANDERSON        | ) |                            |
|                           | ) |                            |
| Mario Escalante,          | ) |                            |
|                           | ) |                            |
| Plaintiff,                | ) | MOTION FOR RECONSIDERATION |
|                           | ) |                            |
| vs.                       | ) |                            |
|                           | ) |                            |
|                           | ) |                            |
| David L. Rodgers and      | ) |                            |
| Janice W. Rodgers, d/b/a, | ) |                            |
| Whitehall Express Mart,   | ) | Case No.: 2013-CP-04-01700 |
|                           | ) |                            |
| Defendants.               | ) |                            |

Plaintiff, by and through his counsel, respectfully moves to reconsider this Court's Order, filed on January 16, 2018, and alleges as follows:

**STATEMENT OF THE CASE**

This suit is brought pursuant to the arrest of Mario Escalante for allegedly shoplifting a case of beer from Defendants' retail establishment on Sunday, May 5, 2013.

Plaintiff came to Anderson County from El Paso, Texas to work a concession stand at the annual Anderson County Fair. Plaintiff had spent the morning breaking down the concession stand he had been working at and during a break, went to purchase a case of beer to celebrate his friend's birthday, later that evening. Since Plaintiff is not a resident of this state, he was unaware of the prohibition of the sale of alcohol on a Sunday. Plaintiff selected Defendants' retail establishment to make his purchase based on the close proximity of the store to the fair grounds.

After entering the store and making his way to the back of the building where the beer is located, Plaintiff picked up one case and proceeded to the register to make his purchase. When the transaction was complete, the clerk gave Plaintiff a receipt for his beer purchase and he exited the store. Upon getting into his truck, Plaintiff thought one case would not suffice based



on the number of people he expected to partake in the festivities. Plaintiff then entered the store for a second time and made his way back to the “beer cave” for a second case.

When Plaintiff approached the clerk this time, she realized the mistake she had made by selling alcohol on a Sunday; and, informed Plaintiff she would not be able to sell him the second case. Plaintiff returned the case to where he had found it, left the store and returned to the fair grounds to finish tearing down the stand.

Defendant claims that at this time, one of the clerks in his store called him on his cell phone, informing him that Plaintiff stole a case of beer, ran out of the store and drove off. Defendant David Rodgers claims that upon arriving at the store, he reviewed the video camera footage of the incident, concluding that based on the plaintiff’s wet appearance and the direction the surveillance video showed him exiting the property, he must have been a fair employee.

However, his testimony is contradicted by his 911 call following the alleged incident. In actuality, David Rodgers was at the store when Mario left the store, because he followed him back to the fairgrounds. This claim is supported by the exchange between Rodgers and the 911 operator which was memorialized by the State. (Exhibit 1, CAD Report, 5/5/2013). He stated to the 911 operator that he was behind Mario. He kept Mario in his sight from the time that he left his store until he had been cuffed and put in the back of the police car.

The case of beer that was confiscated by police was Busch beer. Mario’s receipt and associated purchase evidence on his bank statement (his bank in San Antonio, Texas), for the month of May 2013, was a \$14.30 case of Busch as well. (Exhibit 2, Bank Statement, May 1-31, 2013) (Exhibit 3, Beer Receipt, May 5, 2013). Rodgers has claimed that Mario bought the first case; and, he stole the second case. He has never presented anything tangible to support the claim. The woman who sold him the case said that she never saw a *second* case leave the store.

(Deposition, Amanda Nicole Brown, 9/5/2014, p. 19, 10.11). Only one case of beer was found in Plaintiff's truck when he was arrested at the fairgrounds. A charge was brought against Plaintiff for taking the beer, but it was later dismissed when Defendant Rodgers failed to appear at court and, in doing so, failed to prosecute.

On July 22, 2013, the Plaintiff initiated this action against the Defendants David Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart. Plaintiff asserted the following causes of action: false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion and fraud.

On or about December 14, 2014, Defendants brought a Notice of Motion and Motion for Summary Judgment. The matter was heard by the Honorable Robin B. Stilwell on February 9, 2015. On or about March 18, 2015, Judge Stilwell issued an Order based on the hearing granted Defendants' motion as to the conspiracy and fraud causes of action. However, he denied the motion with regard to false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution and conversion. (Exhibit 4, Order SMJ, 3/18/2015).

Trial was set in this matter for a date certain on February 16, 2016. On February 11, 2016, defense counsel, Phillip Reeves, Esquire, moved for a continuance because his "daughter was having a birthday". (Exhibit 5, Order for Continuance, 6/03/2016). Phil Reeves had very little to do with this matter. The date certain trial was set in the summer of 2015. Since the child's birthday is likely the same day annually, the request for a continuance, when he never appeared anyway, was done simply to cheat Plaintiff from having his day in court.

In the Order drafted by defense counsel, and endorsed by the Honorable Cordell Maddox, it is stated that the matter would be continued. Judge Maddox gave him a courtesy continuance based on the birthday. More importantly, he ordered that "The parties shall be permitted to

select a second date certain for the trial of this matter after the United States District Court for the District of South Carolina has ruled on pending motions for summary judgment.” The second date certain would be set following the ruling in the federal court. He also stated that, “defendants shall be responsible for any reasonable change fees incurred by the plaintiff, Mario Escalante, in altering his flight plans.” The plain meaning of this language is that the case would be tried; and, new tickets would need to be ordered.

Defendants were denied summary judgment on seven of nine causes of action relating to the reckless act of accusing an individual, who was 1200 miles from home of stealing a case of beer, after buying one with his bank card. Plaintiff requested and received a date certain trial to get justice in the state court. Defendants thwarted said opportunity with the “birthday continuance”. These contentions are underscored by the fact that the defense move for yet another summary judgment after they were previously denied, as well as stopping Plaintiff from a trial on the merits because of a child’s birthday. Having the audacity to request summary judgment after being given the courtesy continuance is free of integrity. Granting summary judgment with these facts sets a perilous precedent.

Judge Maddox did not change any aspect of the Order for Continuance that was prepared for him. He states affirmatively that the date certain trial will be reset upon the Federal Court’s ruling on summary judgment. He also states that Defendants shall pay for the difference of altering his flight plans for the next date certain trial. There is no language whatsoever that indicates summary judgment in the Federal Court would allow Defendants to escape the trial that they continued for a birthday.

On January 13, 2015, Plaintiff filed a federal suit against the Anderson’s County Sheriff’s Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of

Anderson Police department, James Stewart and the defendants found herein, alleging that their conduct created the following causes of action: Section 1983, False Imprisonment, Assault and Battery, Intentional Infliction of Emotional Distress, Invasion of Privacy, Defamation and Slander, Civil Conspiracy, Abuse of Process and Conversion.

The action was brought because Defendant Rodgers was not arrested for selling beer on Sunday, which violated the law, and was undisputable. The action was brought because the Hispanic U. S. citizen from El Paso was arrested for purchasing a case of beer. The action was brought because not one of the defendants listed in the federal action showed up to Court to prosecute the non-case. Mr. Escalante was forced to take a day off from fair work in Tennessee, and forfeit the \$50.00 associated with that day's work, to come to Anderson to have his face rubbed in the fact that he went to jail for nothing.

The Federal Court found that probable cause existed, despite Rodgers implicit knowledge that he sold the case of Busch beer that was located and, therefore, granted Summary Judgment on all of the actions brought in Federal Court. The Federal Court action dealt with the relationships between the State and Defendants' Rodgers. The State action dealt with the relationship between Defendants' Rodgers and his employees.

The basis for the granting of summary judgment came from the Report and Recommendation of the federal magistrate. The magistrate based all of her arguments on the fact that probable cause existed at the time of the arrest. In fact, the following was stated, "the Court declines to address...any of the Rodgers Defendants' arguments regarding personal involvement in the specific state law claims." (Exhibit 6, Report and Recommendation, 7/29/2016, p. 18).

The District Court adopted the Report and Recommendation of the Magistrate. This ruling was ultimately affirmed by the 4<sup>th</sup> Circuit Court of Appeals on November 3, 2017.

Thereafter, herein Defendants' Rodgers moved for summary judgment again, which was granted by this Court in its Order, dated January 16, 2018.

Thus, Plaintiff brings this motion to reconsider a finding that overrules the Order previously issued by Judge Stilwell. This action does not have the same parties as the federal action. The employees of the Rodgers' Defendants were not identified. In addition, there are no law enforcement parties in this action.

### **STANDARD OF REVIEW**

When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCF. *David v. McLeod Regional Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *David*, 367 S.C. at 247, 626 S.E.2d at 3.

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) *as cited in Elam v. South Carolina Department of Transportation*, 361 S.C. 9 (2004), 602 S.E.2d 772 (SC: South Carolina). A party may wish to 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. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review. *Id.*

## **ARGUMENT**

### **I.**

#### **RES JUDICATA AND ESTOPPEL DO NOT APPLY IN THIS CASE.**

##### **A. Res Judicata does not apply.**

“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Judy v. Judy*, Op. No. 26987 (S.C. Sup. Ct. filed June 20, 2011) (Shearouse Adv. Sh. No. 20 at 14, 24) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). If res judicata applies, a litigant is barred from raising any issues which were or might have been adjudicated in the former suit. *Id.*

For res judicata to apply, the following elements must exist: “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Id.* At 19 (citing *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992)). Plaintiff submits that there is no identity of the cause of action since negligence was not raised nor adjudicated in the Federal case. Plaintiff submits that there is no identity of the parties since there are no law enforcement members as parties in this matter, while there were no employees of Defendants’ Rodgers in the federal action. Plaintiff submits that there was expressly no adjudication of the negligence of Rodgers, a/k/a “personal involvement in the specific state law claims”. Since the federal magistrate refused to address the negligent conduct

of Rodgers, and Judge Stilwell specifically stated that there was a genuine issue of material fact as it relates to negligence, Mario Escalante is entitled to have this matter adjudicated.

**B. This case is not barred by collateral estoppel.**

The case of *Nelson v. Coker* discussed the doctrine of collateral estoppel. *Nelson v. Coker*, Op. No. 3626, (SC: CA, 2003). Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the re-litigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.” Ibid, citing *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986); *see also State v. Bacote*, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998).

There is no identity of issues because in the Federal case, the focus was on the State’s refusal to treat Rodgers the same way that Escalante was treated. The State allowed Rodgers to get away with selling beer on Sunday. The State arrested Escalante based on a non-eye witness account. The State did not show up to a court date that it created to “prosecute” Escalante. It was irrelevant what happened to Mario Escalante because he was an Hispanic fair worker. However, the State failed to arrest the white business owner for selling beer on Sunday, despite the receipt and bank statement proving same.

The state claim was brought because of the negligent act of Defendant Rodgers in accusing herein Plaintiff of shoplifting. His negligent training, negligent supervision, negligent maintenance of the video, etc., formed the core of the original suit. At the time this action was brought, it was unknown how different the law was applied. Plaintiff asserts that Defendant Rodgers was unable to pass muster for probable cause for shoplifting. He failed to meet the standards laid down by the Merchant’s Defense in §16-13-140.

Res judicata and collateral estoppel are not applicable in this case since the requisites for these two to apply are not present. By definition, res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. In the case at bar, the case relates to what happened in the store. The federal action related to what happened, or didn't happen, after Mario Escalante left the store, which was adjudged with finality. On the other hand, the federal action did not rule on any of the actions or inactions that occurred while he was a patron of the store.

Negligence was not raised in the Federal court, because Plaintiff believes that Defendant Rodgers' negligence, and that of their employees, is independent from and does not arise from the allegations of unconstitutional behavior by Rodgers and law enforcement. Since negligence was not raised in the Federal court, it was never adjudicated with finality. Thus, since all the requisite elements for res judicata and collateral estoppel are not met in the present case, then res judicata and collateral estoppel do not apply.

## II.

### **DEFENDANTS' SUMMARY JUDGMENT SHOULD BE DENIED.**

#### **A. Defendants should not have been allowed to move for summary judgment.**

On December 29, 2017, Plaintiff moved to strike Defendants Rodgers' Answer. While this is a drastic measure, Plaintiff's motion was warranted in this case under Rule 37(b)(2) of the South Carolina Rules of Civil Procedure. Under that rule, where a party or an officer of a party fails to obey a discovery order, the court may issue an order "refusing to allow the disobedient party to support or oppose designated claims or defenses", prohibit "him from introducing designated matters in evidence", or striking the parties' pleadings. The court may also award attorney fees and costs to the moving party.



“The duty to preserve material evidence arises not only during litigation but also extends to that period before a litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.” *Sylvestri v. General Motors Corp.* 271 F.3d 583, 590 (4<sup>th</sup> Cir. 2001).

Defendants knew that the store’s video surveillance was necessary for the prosecution of the shoplifter. (Exhibit 7, Incident Report, Shoplifting, 4/01/2013). Plaintiff approached Rodgers a short time after his release from jail to show his receipt. Rodgers said that he believed that Plaintiff was threatening him. (Depo. David Rodgers, 10/06/2015, p. 29, 6.12).

Rodgers allegedly showed the police still shots of Mario. (Depo. Brandon Surratt, 11/11/2013, p. 9, 10.12). Since there has never been any evidence to say that Rodgers was an eye witness, he had to take them from the surveillance video. He knew he brought a charge for shoplifting. He knew that there would be no excuse when the video failed to show a second case of beer being taken from the establishment. He would have been charged with giving a false police report. Video surveillance was either not maintained or destroyed.

Defendants acted with bad faith and gross indifference of Plaintiff’s rights by failing to preserve the video surveillance despite their knowledge and anticipation of litigation on the alleged incident. Like *Sylvestri*, Defendants used evidence to its advantage; and, then failed to allow Plaintiff the same opportunity. Striking Defendants’ Rodgers’ answer is harsh, but the willful indifference on saving the discovery caused irreparable prejudice. It has made the prosecution of this case impossible for Plaintiff.

This Court’s ruling on striking the answer was a mere afterthought. Defendants’ Answer should have been stricken, just as the evidence had been stricken. Without the defective pleading, Defendants Rodgers would not be able to move for summary judgment

**B. The existence of Probable Cause is an issue for the jury to determine.**

In a summary judgment, a moving party must produce evidence in support of each and every essential element of the claim. In this case, Defendant Rodgers did not submit any evidence that would prove that Plaintiff committed the shoplifting. Despite repeated demands, Defendant Rodgers did not present the video surveillance, nor did he even show the same to any of the police authorities who responded to his call/report of a shoplifting incident. By his own admission, this was not the first time a shoplifting incident occurred in his store, and in previous cases, he submitted a video surveillance.” (Exhibit 8, Incident Report, 4/1/2013). In this particular case, however, he did not show the video to the police.

To defeat a summary judgment motion, the non-moving party only has to show a scintilla of evidence that a dispute of material fact exist. In the case at bar, the existence of a receipt and bank statement showing proof of purchase of a case of Bush beer, at the time, date and place of the alleged offense, negates and run in contrast with the self-serving, unsupported testimony of Defendant Rodgers.

The ever-changing testimonies of Defendant Rodgers as to the details surrounding the commission of the alleged shoplifting undermines Defendant’s credibility. In an attempt to secure a conviction of Plaintiff for shoplifting, Defendant Rodgers claimed that Plaintiff took two cases of beer out of his store, the second one being the case the subject matter of the offense. Only one case of beer was found in the Plaintiff’s truck when he was arrested at the fairgrounds. Since the 911 call details Rodgers’ continuous surveillance of Plaintiff from the time he left his property, he would have had the opportunity to see Mario dispense with the beer. Of course, since Mario was getting the beer for the party at the end of the day, the beer would have been kept in the truck. Unfortunately, the police did not conduct even a semblance of investigation.

The pertinent provision of the crime of shoplifting, for which Plaintiff was accused of, is defined in § 16-13-110 of the South Carolina Code, which states:

*“A person is guilty of shoplifting if he:*

*(1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value.”*

Other than the uncorroborated video surveillance, Defendant Rodgers did not personally witness the alleged taking. His allegation of a second case of beer being shoplifted was not supported by either testimonial or physical evidence. The only evidence presented was the receipt and bank statement showing that a case of beer was purchased and paid for by Plaintiff at the date and time of the alleged shoplifting incident. The evidence clearly and unequivocally shows that there was no unauthorized taking of any merchandise.

Plaintiff believes that the existence of probable cause and the credibility of Defendant Rodgers are matters for the jury to determine.

**C. Defendant prevented Plaintiff from litigating his claims due to spoliation.**

In the case of *Basnight*, 346 S. Ct 248-249, 551 S.E.2d 278 cited at South Carolina Public Interest Foundation v. Greenville County, et al., No. 5016 (S.C: Court of Appeals, 2012), the Court held that a judgment must be valid in order to preclude a second action concerning the same transaction.

Plaintiff asserts that the Court erred in granting the summary judgment as there exists a genuine dispute as to a material fact. The fact that Plaintiff submitted a copy of the receipt

proving his purchase of the case of beer, conflicted with Defendant Rodgers' claim of shoplifting.

Defendant Rodgers' failure to present a video surveillance/recording of what he claimed transpired, and which became his basis for reporting the alleged shoplifting, is an act of spoliation. Spoliation is the destruction of evidence which is expected to be relevant in a case.

The South Carolina courts have long decided that a party is entitled to a favorable presumption about the contents of evidence, when an opponent is responsible for the destruction of such evidence which might otherwise be expected to have been relevant. Kevin R. Eberle, (2007), Spoliation in South Carolina, South Carolina Lawyer, available at [https://works.bepress.com/kevin\\_eberle/1/](https://works.bepress.com/kevin_eberle/1/). Accessed January 19, 2018. Two prior cases expounded on the rationale behind this presumption. *Id.*

In *Halyburton v. Kershaw*, 1810 WL 298 (S.C. Ct. App. 1810) as cited in the Eberle article, *Id.*, Plaintiff sued claiming that because the deceased's administrator cancelled and destroyed a contract to build, he was deprived of a house worth \$800 on his inherited property. *Id.* The administrators admitted that a contract once existed but that they had cancelled it. They denied however that it will have any effect on the case, since the contract would have been inadmissible against the estate. The Court of Appeals ruled in favor of the Plaintiff, and claimed that, "even absent any purposeful misbehavior, the court would have been willing to justify a negative presumption. The absence of the evidence meant that the other party was hamstrung in the proof of his own case." *Id.* It further ruled that the complainant "would be entitled to the benefit of all the presumptions which could reasonably be raised out of the circumstances for his benefit." *Id.*

In the *Executors of Blake v. Lowe*, 1811 WL 319 (S.Ct. App. 1811), as cited in *Eberle*, *Id.*, the Court of Appeals was willing to create an unfavorable presumption against a defendant who had taken the books from the store and torn out pages in an attempt to hide the difference between the value of the properties defendant took, and the gift he was to receive. *Id.* However, the Court laid down that “that there must be some reason to suspect that the destroyed evidence would have been favorable in the first place...” *Id.* In the Blake case, the Court was prevented from ruling an unfavorable presumption against defendant because there was no evidence of the value of the store’s contents.

In the case at bar, however, Plaintiff presented a receipt and a bank statement showing the purchase of the case of Busch beer at Defendant’s store on the date and time of the alleged shoplifting. When Plaintiff returned to Defendant’s store to show his receipt in May of 2013, Defendants were put on notice that he would need the video to prosecute the theft of the case of beer. He also knew that he would be suing him as well given his demeanor.

From that moment, he had a duty to obtain and preserve a copy of any relevant information recorded by that camera. This is especially true since there was written as well as verbal request for him to do so. Defendant knew, or should have known, that his accusation of shoplifting would be contested as Plaintiff took pains to return and show him proof of his purchase. And as discussed in the previous section, Defendants themselves, brought a case for shoplifting against Plaintiff. Thus, the duty to preserve the video surveillance cannot be any clearer. These events, taken together, are enough to support the fact that Respondent Rodgers’ consciously or recklessly destroyed the requested video surveillance, because it would prove the fabrication of the alleged shoplifting.

The case at bar has similarities with the case of *Silvestri v. General Motors Corp.*, 271

F.3d 583 (4<sup>th</sup> Cir. 2001 as cited in Eberle), where despite the anticipation of litigation against General Motors, the Plaintiff's counsel and plaintiff did not take any steps to preserve the vehicle. Silvestri laid down the standards for the dismissal based on spoliation:

*"To justify the harsh sanction of dismissal, the District Court must consider both the spoliator's conduct and the prejudice caused and be able to conclude either (1) that the spoliator's conduct was so egregious as to amount to a forfeiture of his claim, or (2) that the effect of the spoliator's conduct was so prejudicial that it substantially denied the Defendant the ability to defend the claim."*

Defendant Rodgers knew and, in fact, initiated a suit against Plaintiff for the alleged shoplifting. Despite this knowledge, anticipation of litigation, and written and verbal reminders, Defendant Rodgers did not preserve the video surveillance. It is quite telling that Defendant Rodgers did not attend the trial for the shoplifting case, which was dismissed for failure to prosecute. No other inference can be deduced from the non-presentation of the video than that Defendant Rodgers knew that it would prove that Plaintiff did not commit the alleged offense of shoplifting.

In this instant action, Plaintiff was prevented from proving his claims when Defendant Rodgers intentionally or recklessly failed to produce the video surveillance, despite a duty to preserve the same. Plaintiff moved to have Defendants' Answer stricken due to spoliation, which the trial court summarily dismissed. "I'm not going to do that." Plaintiff asserts that the trial court furthered Plaintiff's deprivation of due process by allowing Defendants' Rodgers to destroy the evidence which would have clearly illustrated the shoplifting charge was a hoax; and, he would have been guilty of giving a false police report.

### CONCLUSION

For the above and foregoing reasons, Plaintiff respectfully requests that this Honorable

Court reconsider its Order dismissing the case and remand the same for further proceedings in the trial court. Refusing to allow a foreign citizen to have his day in court, when there is absolutely no evidence illustrating that he stole a case of beer, would be a brand of justice that the State of South Carolina cannot afford.

Respectfully submitted by:

*s/Donald L. Smith*

Donald L. Smith (SC Bar#6699)

Attorney for Plaintiff

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Anderson, SC 29621

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[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina

Date: January 26, 2018

Print Date: 11/18/2015  
Print Time: 9:45

## Detail CAD Report

User Name: SCHITWOOD  
Terminal #: 030

ELECTRONICALLY FILED - 2018 Jan 26 9:08 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

Dispatch #: 2013-100151

Phone: (864) -  
Name: DAVID ROGERS 9400113  
Address: 3027 MARTIN LUTHER KING JR BLVD Apt.:  
Community: ANDERSON  
Caller address: 3027 MARTIN LUTHER KING JR BLVD  
Jurisdiction:  
Intersection:  
SubDivision:  
Location Info: CIVIC CENTER

ESN: 0136 AF AF S9  
EMS: MEDSHORE  
Fire: ANDERSON CIT  
Law: ANDERSON PDLs  
Rescue:  
Source: N9C  
Disp: 5  
Sit Found:

Incoming 911: 5/5/2013 4:41:27 PM  
Call Created Time: 4:41:27 PM  
Call Send Time: 4:42:46 PM  
Call Dispatch Time: 4:42:58 PM  
Call Enroute Time: 4:43:42 PM  
Call Arrival Time: 4:50:44 PM  
Call Clear Time: 5:36:51 PM  
Call Closed: 5/5/2013 5:36:51 PM  
Exempt: Reason:

Created By: JRNUBERN  
Sent By: JRNUBERN  
Priority: P 2 Event: 1049 - CIVIL DISTURBANCE  
Law:  
Fire:  
EMS:  
Rescue:

Action: Language:  
Position: 10  
Units Dispatched: 6

### Original Dispatch Remarks:

CALLER IS IN A BLACK SUBURBAN IN THE PAVED LOT ACROSS FROM THE DUCK POND AFTER HE FOLLOWED THEM FROM THE SHELL STATION// SUBJ IS A FAIR EMPLOYEE AND TOOK A CASE OF BEER

### Narratives

JRNUBERN 5/5/2013 4:44:42 PM  
CALLER IS IN THE PARKING LOT WHERE THEY ARE BREAKING DOWN EQUIPMENT

JRNUBERN 5/5/2013 4:45:00 PM  
OCCURRED AT SHELL STATION IN THE COUNTY

JRNUBERN 5/5/2013 4:57:26 PM  
13:49 05/05/2013 03367 SC0040100 \*08B3048EC1 TXT LIC CN8G626 EXPIRES JUL/13 EWT 2900 GWT 2900  
PASSENGER-TRUCK PLT, STKR REG CLASS 02 \$ 64.25 TITLE 01501540609092113 ISSUED 03/18/11  
ODOMETER N/A 00 PONT 4D 1G2NF52T1YC533823 PASS COLOR: RED PREVIOUS OWNER ROSENDO AVILA  
EMMA HERNA,SAN ANTONIO,TX OWNER JOE R CASTILLO,ID#-N/A, 319 YUKON,,SAN ANTONIO,TX 78221 PLATE  
AGE: 2 REMARKS DATE OF ASSIGNMENT:2011/03/08.PAPER TITLE..  
TBARRY 5/5/2013 5:04:08 PM  
ANDCC013. TO: ANDCC013-854638 20130505 17:01:10 00068E2CCC FROM: NC2K-9317580 20130505 17:01:10  
08B6054F1F 1L0108B6054F1F2QWA SC0040100 NO NCIC WANT NAM/ESCALANTE, MARIO DOB/19750228  
\*\*\*MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS

TBARRY 5/5/2013 5:04:27 PM  
ANDCC013. TO: ANDCC013-854630 20130505 16:59:59 00085C2F50 FROM: NLETS-6041424 20130505 16:59:59  
08B6054F1C DR.TXOLN0000 14:02 05/05/2013 65395 14:02 05/05/2013 03447 SC0040100 \*08B6054F1C TXT NAME:  
ESCALANTE, MARIO DESCRIPTION: HISPANICMALE02281975V5-08V270BROWN\BROWN SEX OFF: COMM IMPED:  
ORGAN DONOR: N VISA EXP: PHYSICAL ADD: 2503 CALLAGHAN CI/CO/ST/ZIP: LAREDO,WEBB,TEXAS,78040-0000,  
UNITED STATES MAILING ADD: 2503 CALLAGHAN CI/CO/ST/ZIP: LAREDO,TEXAS,78040-0000, UNITED STATES REC  
STATUS: NOT ELIGIBLE ADMIN STATUS: CARD STATUS: HME THR ASMT: EXP: CARD TYPE: ID #:  
16401815 EXPIR DATE: 02282018 RESTRICTIONS: ENDORSEMENTS: \*\*\*\* DRIVER RECORD INFORMATION IS  
PERSONAL INFORMATION PROTECTED UNDER THE FEDERAL DRIVER PRIVACY ACT OF 1994 (18 USC 2721, ET  
SEQ.) AS AMENDED AND THE MOTOR VEHICLE RECORDS DISCLOSURE ACT, TEXAS TRANSPORTATION CODE  
730 \*\*\*\*\* END OF RECORD\*\*\*\*\*



Print Date: 11/18/2015  
 Print Time: 9:45

# Detail CAD Report

User Name: SCHITWOOD  
 Terminal #: 030

ELECTRONICALLY FILED - 2018 Jan 26 9:08 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

| Unit  | Badges | Radio Names |
|-------|--------|-------------|
| B-34  |        |             |
| B12   |        |             |
| B8    |        |             |
| D-20  |        |             |
| K9-26 |        |             |
| SHE   |        |             |

| Unit  | Dept. | Status/DSP/CASE | Location/Remark | User     | Date/Time           |
|-------|-------|-----------------|-----------------|----------|---------------------|
| B8    | L 01  | DSP             |                 | JRNUBERN | 5/5/2013 4:42:58 PM |
| B8    | L 01  | 1088            |                 | JRNUBERN | 5/5/2013 4:43:37 PM |
| B12   | L 01  | 1017            |                 | JRNUBERN | 5/5/2013 4:43:42 PM |
| SHE   | L 07  | DSP             |                 | JRNUBERN | 5/5/2013 4:44:49 PM |
| B12   | L 01  | 1023            |                 | JRNUBERN | 5/5/2013 4:50:44 PM |
| B8    | L 01  | CASE 21068      |                 | JRNUBERN | 5/5/2013 4:51:09 PM |
| K9-26 | L 07  | 1017            |                 | JRNUBERN | 5/5/2013 4:52:23 PM |
| SHE   | L 07  | 1024            |                 | ABOYLE   | 5/5/2013 4:52:46 PM |
| D-20  | L 07  | 1017            |                 | ABOYLE   | 5/5/2013 4:53:00 PM |
| B-34  | L 07  | 1017            |                 | ABOYLE   | 5/5/2013 4:53:30 PM |
| D-20  | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:55:55 PM |
| B-34  | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:56:58 PM |
| K9-26 | L 07  | 1023            |                 | ABOYLE   | 5/5/2013 4:57:00 PM |
| K9-26 | L 07  | CASE 21492      |                 | ABOYLE   | 5/5/2013 4:57:03 PM |
| B-34  | L 07  | LOG             |                 | ABOYLE   | 5/5/2013 4:57:11 PM |
| D-20  | L 07  | LOG             |                 | ABOYLE   | 5/5/2013 4:57:13 PM |
| K9-26 | L 07  | LOG             | 1 IN CUSTODY    | ABOYLE   | 5/5/2013 5:06:21 PM |
| B-34  | L 07  | 1017J           | 1067            | ABOYLE   | 5/5/2013 5:08:21 PM |
| B-34  | L 07  | 1023J           |                 | ABOYLE   | 5/5/2013 5:10:08 PM |
| B8    | L 01  | 104             |                 | JRNUBERN | 5/5/2013 5:20:29 PM |
| B12   | L 01  | 104             |                 | JRNUBERN | 5/5/2013 5:20:33 PM |
| B12   | L 01  | 1024 7          |                 | TBARRY   | 5/5/2013 5:23:34 PM |
| B8    | L 01  | 1024 7          |                 | TBARRY   | 5/5/2013 5:23:45 PM |
| D-20  | L 07  | 1024            |                 | ABOYLE   | 5/5/2013 5:25:01 PM |
| K9-26 | L 07  | 1024 5          |                 | ABOYLE   | 5/5/2013 5:25:15 PM |
| B-34  | L 07  | 1024 5          |                 | ABOYLE   | 5/5/2013 5:36:50 PM |

? - manually entered time

H&R Block Bank  
PO Box 2415  
Omaha NE 68103-2415

H&R Block

H&R Block Emerald Prepaid Mastercard®

MARIO ESCALANTE  
2503 CALLAGHAN  
LAREDO, TX 78040

Account Statement Summary

Statement Period: May 01 - May 31, 2013

Account Number(s):

0545 ~ old Carol  
6295 ~ New Carol  
7863

Account Summary

|                                   |             |
|-----------------------------------|-------------|
| Balance on May 1, 2013            | \$692.30    |
| Funds Added To Card               | + \$1020.00 |
| Purchases/Withdrawals             | - \$1643.22 |
| Fees                              | - \$0.00    |
| Available Balance on May 31, 2013 | = \$69.08   |

\* Balance may not reflect recent purchases.

Avoid paying high check cashing fees by having your payroll directly deposited to your H&R Block Emerald Card®. Ask your employer how to get this started today. You can also visit one of our participating reload locations like Wal-Mart® or Walgreens® through MoneyGram®, Western Union®, and Green Dot® networks. To find a reload location nearest you, visit [hrblock.com/reload](http://hrblock.com/reload) or call 1-866-353-1266. It's convenient and easy.

Detail Transactions

Date Description Amount Balance

|            |                                                 |         |         |
|------------|-------------------------------------------------|---------|---------|
| 05-01-2013 | BEGINNING BALANCE                               |         | 692.30  |
| 05-05-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 540.00  | 1232.30 |
| 05-05-2013 | (0545) SHELL SERVICE STATION, ANDERSON SC       | -14.30  | 1218.00 |
| 05-06-2013 | (0545) EXXON-MOBIL, ANDERSON SC                 | -5.00   | 1213.00 |
| 05-06-2013 | (0545) SUPER DEALS LLC, ANDERSON SC             | -18.93  | 1194.07 |
| 05-07-2013 | (0545) ADD FUNDS - POS WESTERN UNION            | 480.00  | 1674.07 |
| 05-07-2013 | (0545) FAMILY DOLLAR, ANDERSON SC               | -10.60  | 1663.47 |
| 05-07-2013 | (0545) BI-LO, ANDERSON SC                       | -11.01  | 1652.46 |
| 05-07-2013 | (0545) EL ARRIERO MEXICAN RESTA, ANDERSON SC    | -37.25  | 1595.21 |
| 05-08-2013 | (0545) BI-LO, ANDERSON SC                       | -11.91  | 1583.30 |
| 05-09-2013 | (0545) REDBOX *DVD RENTAL, 866-733-2693 IL      | -1.37   | 1582.03 |
| 05-09-2013 | (0545) 7-ELEVEN, SALUDA SC                      | -2.13   | 1579.90 |
| 05-10-2013 | (0545) 7-ELEVEN, LEXINGTON SC                   | -17.10  | 1562.80 |
| 05-10-2013 | (0545) TAVERN UNDER THE BRIDG, ANDERSON SC      | -24.44  | 1538.36 |
| 05-10-2013 | (0545) BOJANGLES, BATESBURG SC                  | -8.11   | 1530.25 |
| 05-10-2013 | (0545) MOM&POPS CONVEN, LEESVILLE SC            | -6.51   | 1523.74 |
| 05-13-2013 | (0545) SAN JOSE MEXICAN RESTA, LEESVILLE SC     | -23.12  | 1500.62 |
| 05-13-2013 | (0545) RYANS #2103, ANDERSON SC                 | -25.42  | 1475.20 |
| 05-14-2013 | (0545) COUNTRY CROSSROADS, TVA SC               | -10.00  | 1465.20 |
| 05-14-2013 | (0545) W/D(ATM), 691 HWY 28 BYPASS, ANDERSON SC | -502.50 | 962.65  |
| 05-14-2013 | (0545) SERVICE CHARGE (ATM FEE)                 | -2.50   | 960.15  |

Trans

file://C:\Users\A666343\AppData\Local\Temp\Temp1\_52114727863-STATEMENTS.ZI... 11/30/2013

DELL  
704 WHITEHALL RD  
ANDERSON SC 29625  
57545742504

05/05/2013 4:25:26 PM  
Register: 3 Trans #: 7438 Op ID: 6  
Your cashier: Nichole

Bush Can Ca \$13.49 101

Subtotal = \$13.49

Tax = \$0.81

Total = \$14.30

Change Due = \$0.00

\$14.30

Debit

XXXXXX0545, Debit

INVOICE 601906

AUTH 919978

PINUsed

1 tell me if this sounds right. He comes in, goes to  
2 the beer cave and gets a case of beer. He comes up  
3 to you at the register. You sell it to him. He  
4 takes it out to his car. He comes back in and gets  
5 another case of beer. At this time you realize it's  
6 Sunday, you should not have sold him a case of beer  
7 in the first place. You tell him, I can't sell you  
8 that. He takes the beer back to the beer cave and  
9 then he leaves.

10 A I don't remember seeing him walk out with  
11 another case of beer. I just remember pointing and  
12 telling him he had to put that one back because I  
13 was not supposed to sell it on Sunday.

14 Q I understand. How much of the videotape  
15 did you watch? Did you watch the whole transaction  
16 the whole time that he was at the Express Mart?

17 A I don't remember.

18 Q Who did you watch it with?

19 A Dave.

20 Q Did Dave make a copy of this?

21 A I'm not sure if he did. He did not tell  
22 me about it.

23 Q Do you know what you did for further  
24 prosecution? Did you have to go to court? Did Dave  
25 go to court?

FILED-CLERK'S OFFICE  
STATE OF SOUTH CAROLINA ANDERSON SC  
COUNTY OF ANDERSON 2015 MAR 18 AM 11:27 IN THE COURT OF COMMON PLEAS

Mario Escalante,

Plaintiff,

vs.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants.

COMMON PLEAS AND  
GENERAL SESSIONS

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

C.A. No.: 2013-CP-04-1700

**A TRUE COPY**

**JAN 24 2018**

*Robert M. Kinter*  
ANDERSON CLERK OF COURT

This matter is before the court on the motion of the defendant, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the complaint of the plaintiff, Mario Escalante. A hearing on this motion was held before me on February 9, 2015, in the Anderson County Court of Common Pleas. Present at the hearing were Donald L. Smith of the Donald Smith Law Firm, attorneys for the plaintiff, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for the defendants. Based upon the arguments of counsel, pleadings, deposition testimony, exhibits, applicable law and the record in this case, I grant in part and deny in part the defendants' motion for summary judgment.

**PROCEDURAL HISTORY**

The plaintiff initiated this action against the defendants David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (hereinafter "Whitehall"), by filing a summons and complaint on July 22, 2013. Whitehall timely answered the complaint, denying its material allegations and asserting several affirmative defenses. Following the completion of certain discovery, Whitehall moved for summary judgment as to all the plaintiff's claims against it.

*R37*

### **LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. When plain, palpable and indisputable facts exist upon which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993). In considering a motion for summary judgment, this court "must view the facts in the light most favorable to the non-moving party. Nonetheless a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Citations omitted. Further, "[i]n order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. NationsBank v. Scott Farm, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (S.C. Ct. App. 1995).

### **STATEMENT OF FACTS**

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. The plaintiff alleges that on that date he purchased a case of beer from Whitehall. Thereafter, he returned to Whitehall and attempted to purchase a second case of beer. His attempt to purchase the second case was denied, however, due to the prohibition of Sunday alcohol sales in the City of Anderson. The plaintiff contends that he returned the second case of beer to its location, left the store, and went to the Anderson County Fairgrounds where he was employed. The defendants contend that the plaintiff took the second case of beer from the store without paying.

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In any event, the defendants notified the Anderson County Sheriff's Office of the alleged theft. Thereafter, police arrived at the fairgrounds. Mr. Rodgers informed the police about the incident. Specifically, Rodgers indicated that the plaintiff had stolen a case of beer and showed them a still shot on his phone of the surveillance footage. The officers then searched for and found the plaintiff. They discovered an open case of beer in the backseat of the plaintiff's car. The plaintiff contends that the case of beer found was the one which he had purchased from Whitehall earlier in the day. The plaintiff was placed under arrest and transported to the jail. The police returned the beer to the defendants. The defendants did not request that the plaintiff be arrested or otherwise charged with a crime.

The plaintiff was charged with shoplifting and spent one night in jail. The charges against the plaintiff were dismissed for failure to prosecute when the defendants did not appear on his court date due to an alleged lack of notice.

### **CONCLUSIONS OF LAW**

#### **I. False Arrest and Imprisonment**

The plaintiff has alleged that he was unlawfully restrained and arrested on May 5, 2013 at the Anderson County fairgrounds. To prevail against Whitehall on a claim of false arrest and imprisonment, the plaintiff must show: (1) Whitehall restrained the plaintiff; (2) the restraint was intentional; and (3) the restraint was unlawful. Andrews v. Piedmont Airlines, 377 S.E.2d 127 (S.C. Ct. App. 1989); Caldwell v. K-Mart Corp., 410 S.E.2d 21 (S.C. 1991). The Court finds that genuine issues of material fact exist as to these elements and, thus, the defendants' motion for summary judgment on the plaintiff's false arrest and imprisonment claims must be denied.

#### **II. Malicious Prosecution**

In order to survive summary judgment on a malicious prosecution claim, the plaintiff

must have some evidence of: (1) the institution or continuation of original judicial proceedings; (2) by, or at the instance of, the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. See Jordan v. Deese, 452 S.E.2d 838, 879 (S.C. 1995). The Court finds that genuine issues of material fact exist as to these elements and, thus, the defendants' motion for summary judgment on the plaintiff's malicious prosecution claim must be denied.

### III. Defamation

In order to recover for defamation, a plaintiff must allege: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." Holtzscheiter v. Thomson Newspapers, Inc., 506 S.E.2d 497, 506 (S.C. 1998) (Toal, C.J., concurring). However, a qualified privilege attaches to any statements made to law enforcement authorities for purposes of investigation. Davis v. Niederhof, 143 S.E.2d 367 (S.C. 1965) (accusation of stealing); Mains v. K-Mart Corp., 375 S.E.2d 311 (S.C. Ct. App. 1988). *See also* Crowell v. Herring, 392 S.E.2d 464, 467 (S.C. Ct. App. 1990) (similarly an "absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature, provided those steps bear reasonable relation to it").

As such, the speaker is afforded immunity unless it is shown that the defamatory statement was malicious or unnecessarily defamatory. Fulton v. Atlantic Coast Line R.R. Co., 67 S.E.2d 425 (S.C. 1951) (excessive publication of qualified privilege). The Court finds that genuine issues of material fact exist as to the elements of the defamation claim and to the applicability of the qualified privilege and, thus, the defendants' motion for summary judgment on the plaintiff's defamation claim must be denied.



#### IV. Negligence

The plaintiff has also alleged that the defendants were negligent in failing to properly investigate the allegations against him and in failing to properly train its employees to investigate. To support a negligence cause of action, the plaintiff must prove that: (1) Whitehall owed a duty of care to the plaintiff; (2) there was a breach of the duty; (3) there is causation between the plaintiff's injury and the breach of the duty owed; and (4) the plaintiff suffered damages. See, e.g., Andrade v. Johnson, 588 S.E.2d 588, 592 (2003). The Court finds that genuine issues of material fact exist as to each of these elements of negligence and, thus, the defendants' motion for summary judgment on the plaintiff's negligence claim must be denied.

#### V. Conspiracy

The plaintiff alleges that he suffered actual damage as a result of a conspiracy. In order to prove a claim for civil conspiracy, the plaintiff must prove (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. Pye v. Estate of Fox, 369 S.C. 555, 566-7, 633 S.E.2d 505, 511 (2006). If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (2009). Here, the Court finds that the plaintiff has neither pled nor produced any evidence of special damages to necessitate a civil conspiracy claim. Accordingly, the defendants' motion for summary judgment as to the plaintiff's conspiracy claim is hereby granted.

#### VI. Outrage

"[T]o recover for intentional infliction of emotional distress, or outrage, a plaintiff must establish the following:

5 PM 7

(1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and 'outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it."

Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

"Where evidence is undisputed that the defendant *acted in good faith and in a reasonable manner*, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." Hawkins v. Greene, 311 S.C. 88, 91, 427 S.E.2d 692, 693 (Ct. App. 1993). The Court finds that genuine issues of material fact exist as to each of these elements of outrage and, thus, the defendants' motion for summary judgment on the plaintiff's outrage claim must be denied.

#### VII. Invasion of Privacy

In his complaint, the plaintiff has alleged an invasion of privacy claim against the defendants. There are three types of invasion of privacy claims recognized under South Carolina law. See Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39, 42 (S.C. Ct. App. 1984). It appears that the plaintiff is alleging a claim for the publicizing of private affairs of no legitimate public concern. "A cause of action for public disclosure lies only for disclosure of private facts which are of no legitimate public concern." Parker v. Evening Post Publishing Co., 317 S.C. 236, 452 S.E.2d 640, 646 (Ct. App. 1995). "The defendant must intentionally disclose facts in which there is no legitimate public interest -- there is no right of privacy in public matters." Snakenburg v. Hartford Casualty Ins. Co., 299 S.C. 164, 383 S.E.2d 2, 6 (Ct. App. 1989). The Court finds that genuine issues of material fact exist as to the elements of the invasion of privacy claim and, thus, the defendants' motion for summary judgment must be denied.

### VIII. Fraud

Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App.1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). Here, the Court finds that the plaintiff has failed to allege each of the elements of fraud in his Complaint as required by law. Accordingly, the defendants' motion for summary judgment as to the plaintiff's fraud cause of action is hereby granted.

### CONCLUSION

The Court has thoroughly reviewed the entire record, including Defendants' Motion for Summary Judgment and Memorandum in Support, and the applicable law. For the reasons stated above, the Court grants the defendants' motion for summary judgment as to the plaintiff's conspiracy and fraud causes of action and denies their motion as to all other causes of action.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motion of the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment be, and it is hereby, GRANTED IN PART and DENIED IN PART. The defendants' motion is GRANTED as to the claims of conspiracy and fraud and DENIED as to all other causes of action.

IT IS SO ORDERED.

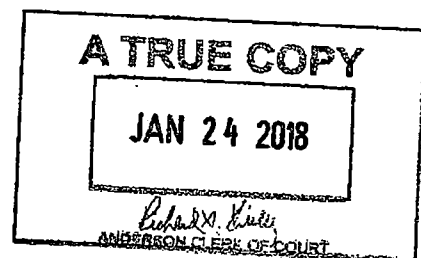


The Honorable Robin B. Stilwell, Presiding Judge  
Anderson County Court of Common Pleas

Greenville, South Carolina

March 12, 2015

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GENERAL SESSIONS



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ANDERSON SC

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

Mario Escalante,

Plaintiff,

vs.

( David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Defendants. )

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GENERAL SESSIONS

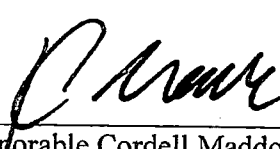
IN THE COURT OF COMMON PLEAS

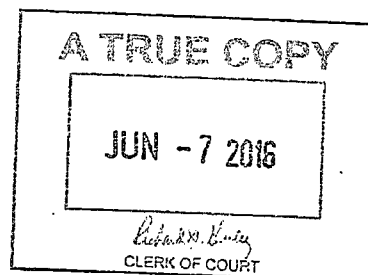
**ORDER FOR CONTINUANCE**

C.A. No.: 2013-CP-04-1700

A telephone status conference was held in the above-referenced matter on Thursday, February 11, 2016, pursuant to a request by the defendants to discuss the trial of this case which was set for a date certain trial on February 16, 2016. As a result of the status conference, for good cause shown, the Court finds that the trial of this matter shall be continued. The parties shall be permitted to select a second date certain for the trial of this matter after the United States District Court for the District of South Carolina has ruled on pending motions for summary judgment. Further, the defendants shall be responsible for any reasonable change fees incurred by the plaintiff, Mario Escalante, in altering his flight plans.

AND IT IS SO ORDERED.

  
 The Honorable Cordell Maddox, Presiding Judge  
 Anderson County Court of Common Pleas

 June 3, 2016  
 Anderson, South Carolina


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

|                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                    |                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| <p>Mario Escalante,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Anderson County Sheriff's Department;<br/>Sheriff John Skipper; Sergeant Andrew R.<br/>Hyslop; Deputy Brandon Surratt; David L.<br/>Rodgers d/b/a Whitehall Express Mart;<br/>Janice W. Rodgers d/b/a Whitehall Express<br/>Mart,</p> <p style="text-align: center;">Defendants.<sup>1</sup></p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Case No. 8:15-cv-00177-MGL-JDA</p> <p><b><u>REPORT AND RECOMMENDATION<br/>OF MAGISTRATE JUDGE</u></b></p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|

This matter is before the Court on a motion for summary judgment filed by Defendants Anderson County Sheriff's Department ("the Sheriff's Department"), Sergeant Andrew R. Hyslop ("Hyslop"), Sheriff John Skipper ("Skipper"), and Deputy Brandon Surratt ("Surratt") (collectively, "the Sheriff's Department Defendants") [Doc. 45] and a motion for summary judgment filed by Defendants David L. Rodgers ("David Rodgers") and Janice W. Rodgers, both d/b/a Whitehall Express Mart (collectively, "the Rodgers Defendants") [Doc. 47]. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under § 1983 and to submit findings and recommendations to the District Court.

Plaintiff, proceeding with the assistance of counsel, filed this action on January 13, 2015, alleging Defendants violated his constitutional rights by arresting and prosecuting

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<sup>1</sup>Defendant Chief of Police James S. Stewart was terminated from this action when his motion for judgment on the pleadings was granted on November 10, 2015. [Doc. 37.] Defendants City of Anderson Police Department and John Does 1–20 were terminated from this action pursuant to a stipulation of dismissal filed on December 18, 2015. [Doc. 59.]

Plaintiff without probable cause as well as alleging state law causes of action. [Doc. 1.] On March 4, 2015, Plaintiff filed an Amended Complaint. [Doc. 16.] On November 23, 2015, the Sheriff's Department Defendants filed a motion for summary judgment. [Doc. 45.] Plaintiff filed a response in opposition on December 17, 2015 [Doc. 56], and the Sheriff's Department Defendants filed a reply on January 22, 2016 [Doc. 68]. On November 24, 2015, the Rodgers Defendants filed a motion for summary judgment. [Doc. 47.] Plaintiff filed a response in opposition on December 17, 2015 [Doc. 57], and the Rodgers Defendants filed a reply on January 25, 2016 [Doc. 69]. Accordingly, the motions are ripe for review.<sup>2</sup>

### **BACKGROUND**<sup>3</sup>

Plaintiff alleges that on May 5, 2013, he purchased a case of beer from the Rodgers Defendants' store in Anderson, South Carolina. [Doc. 16 ¶ 13.] Plaintiff alleges that he later attempted to purchase a second case of beer for a friend but was denied due to the prohibition of Sunday alcohol sales in the County. [Id. ¶ 14.] David Rodgers contacted the

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<sup>2</sup>The Court notes that, in his response in opposition to the Rodgers Defendants' motion for summary judgment, Plaintiff contends that, pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, he is submitting "a declaration that Plaintiff is unable to properly prosecute his case due to Defendants' failure to provide discovery related to the telephones in use by said Defendants at the time of the underlying incident." [Doc. 57 at 1.] However, Plaintiff's response in opposition does not include any such declaration. Moreover, on February 2, 2016, this Court granted a motion for protective order filed by Hyslop and Surratt, finding "there is no evidence or testimony that conversations were held between the defendants involving the personal cell phones of Defendants Surratt and Hyslop and no basis to find that the production of these phone logs will lead to the discovery of relevant evidence." [Doc. 72.]

<sup>3</sup>The facts included in this Background section are taken directly from Plaintiff's Amended Complaint.

Sheriff's Department and advised that he had video evidence that Plaintiff had stolen beer from the store. [*Id.* ¶ 16.]

Several sheriff's deputies and city police officers converged on Plaintiff at the Anderson County Fair, where he was working, and arrested him for shoplifting. [*Id.* ¶ 22.] Plaintiff informed the officers that he had purchased the case of beer.<sup>4</sup> [*Id.* ¶ 23.] Plaintiff was cuffed and led through the fairgrounds to a patrol car. [*Id.* ¶ 24.] When Plaintiff returned to Anderson, South Carolina, from Texas for criminal proceedings related to the alleged theft, David Rodgers informed Plaintiff he would not be pressing charges. [*Id.* ¶ 31.]

Plaintiff alleges the following causes of action: violation of constitutional rights under 42 U.S.C. § 1983; false imprisonment; assault; battery; intentional infliction of emotional distress; invasion of privacy; defamation; slander; civil conspiracy; abuse of process; and conversion. [Doc. 16.] He seeks actual and punitive damages; attorneys fees, costs, and interest; and any other relief the Court deems just and proper. [*Id.*]

### **APPLICABLE LAW**

#### **Requirements for a Cause of Action Under § 1983**

Section 1983 provides a private cause of action for plaintiffs alleging constitutional violations by persons acting under color of state law. Section 1983 provides, in relevant part,

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or

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<sup>4</sup>Plaintiff contends that David Rodgers has been cited for alcohol violations in the past and that David Rodgers alleged Plaintiff had stolen the beer in an effort to protect himself from prosecution for violating the Sunday alcohol ordinance. [Doc. 16 ¶¶ 26–27.]



causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements:

(1) that the defendant “deprived [him] of a right secured by the Constitution and laws of the United States” and (2) that the defendant “deprived [him] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage.” *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the “state action” requirement under the Fourteenth Amendment,

reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed.

*Id.* at 310 (quoting *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, “the deed of an ostensibly private organization or individual” may at times be treated “as if a State has caused it to be performed.” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001). Specifically, “state action may be found if, though only if, there is such a ‘close nexus between the State and the challenged action’ that seemingly private behavior ‘may be fairly treated as that of the State itself.’” *Id.* (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)). State action requires both an alleged constitutional deprivation “caused by the exercise of some right or privilege created by the

State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,” and that “the party charged with the deprivation must be a person who may fairly be said to be a state actor.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). A determination of whether a private party’s allegedly unconstitutional conduct is fairly attributable to the State requires the court to “begin[ ] by identifying ‘the specific conduct of which the plaintiff complains.’” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

### **Summary Judgment Standard**

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). A fact is “material” if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is “genuine” if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the

allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc'ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. Further, Rule 56 provides in pertinent part:

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits.

### **DISCUSSION**

As stated, Plaintiff contends David Rodgers alleged Plaintiff had stolen beer in an effort to protect himself from prosecution for violating the Sunday alcohol ordinance. [Doc. 16 ¶¶ 26–27; *see also* Doc. 57 at 3–4 (“In essence, Mario was arrested because he unknowingly participated in the illegal sale of beer on Sunday by the Rodgers, or Whitehall Express Mart.”).] Indeed, all of his claims rely in part on this assertion. However, as discussed in more detail below, Plaintiff has failed to direct the Court to any evidence tending to establish that David Rodgers falsely accused Plaintiff of shoplifting.<sup>5</sup> Instead, this argument is based on speculation and Plaintiff’s conclusory allegations, which are insufficient to preclude granting summary judgment. *See Ross*, 759 F.2d at 365. The Court addresses each of Plaintiff’s claims in turn.

#### **Section 1983 Claim**

Section 1983 actions premised on alleged false arrest and/or false imprisonment claims are analyzed as unreasonable seizures under the Fourth Amendment. *See, e. g., Brown v. Gilmore*, 278 F.3d 362, 367–68 (4th Cir. 2002) (recognizing that a plaintiff alleging

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<sup>5</sup>Although Plaintiff subsequently produced a copy of a receipt for the purchase of a case of beer on May 5, 2013, Plaintiff did not produce a copy of the receipt on the date of the arrest [Doc. 45-2 at 16:14–17], and all causes of action in this case stem from Plaintiff’s arrest and Defendants’ behavior surrounding Plaintiff’s arrest. Moreover, in the Amended Complaint, Plaintiff alleges he purchased one case of beer but was prevented from purchasing a second case. [Doc. 16 ¶¶ 13–14.] David Rodgers contends Plaintiff stole the second case of beer after the store clerk, presumably realizing it was Sunday, refused to sell it to Plaintiff. [Doc. 47-2 at 6:14–7:11.] Thus, Plaintiff’s receipt for the purchase of one case of beer fails to establish that he purchased the second case of beer, and Plaintiff has failed to direct the Court to any evidence in the record tending to establish that David Rodgers did not believe Plaintiff had stolen a case of beer when he notified the police about the incident or that David Rodgers had some other motive for reporting the stolen case of beer.

a § 1983 false arrest claim needs to show that the officer decided to arrest him without probable cause to establish an unreasonable seizure under the Fourth Amendment); *Rogers v. Pendleton*, 249 F.3d 279, 294 (4th Cir. 2001) (stating claims of false arrest and false imprisonment “are essentially claims alleging a seizure of the person in violation of the Fourth Amendment”). The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “[A] claim for false arrest may be considered only when no arrest warrant has been obtained.” *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998); see also *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181–82 (4th Cir. 1996) (determining that when the arresting official makes the arrest with a facially valid warrant, it is not false arrest).

To state a claim for malicious prosecution under § 1983, “a plaintiff must allege that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff’s favor.” *Evans v. Chalmers*, 703 F.3d 646, 647 (4th Cir. 2012) (citing *Durham v. Horner*, 690 F.3d 183, 188 (4th Cir. 2012)). The test to determine whether probable cause existed for a seizure is an objective one, based on the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230–31 (1983); see also *Mazuz v. Maryland*, 442 F.3d 217, 224 (4th Cir. 2006) (citing *Maryland v. Macon*, 472 U.S. 463, 470–71 (1985)) (“Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time, and not on the officer’s actual state of mind at the time the challenged action was taken.”) (abrogated on other grounds by *Pearson v. Callahan*, 555 U.S. 223, 235 (2009)). Specifically, the totality of the

circumstances includes “the facts and circumstances within [the officers’] knowledge and of which they had reasonably trustworthy information,” *Beck v. Ohio*, 379 U.S. 89, 96 (1964), and such facts and circumstances constitute probable cause if they are “sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense,” *id.*

Here, the Court finds there was probable cause to arrest Plaintiff. Hyslop testified that he was notified by dispatch that there was a shoplifting incident that occurred at the Whitehall Express and that the suspect had left in a vehicle and was at the Anderson County Civic Center (“the Civic Center”). [Doc. 45-3 at 3:10–15.] The dispatcher gave a description of the vehicle the suspect left in as a red vehicle with a Texas tag. [Doc. 45-6 at 4:9–14.] When Hyslop got to the Civic Center, David Rodgers was there and stated that the suspect had shoplifted a case of beer from his store, and David Rodgers had a still shot of the suspect on his camera. [Doc. 45-3 at 4:2–6.] At that time, Surratt arrived, and there were also two Anderson City units at the scene. [*Id.* at 7–10.] They located the red vehicle, and Hyslop looked in and saw a case of beer in the front passenger seat. [Doc. 45-6 at 4:15–24.] Subsequently, the suspect was located and indicated the red vehicle was his. [*Id.* at 5:12–14.] After looking at the picture of the suspect leaving the store; David Rodgers’ saying that the suspect had shoplifted a case of beer; the vehicle matching the description given by the dispatcher; Plaintiff matching the photo on David Rodgers’ camera; and a case of beer found in the car, Hyslop determined there was probable cause to make an arrest for shoplifting based on the information known to him at that time. [*Id.* at 5:18–24.] Based on a totality of the circumstances, the facts and circumstances known by Hyslop at the time of the arrest were “sufficient to warrant a prudent man in believing that

[Plaintiff] had committed . . . an offense.” *Beck*, 379 U.S. at 96. The Court finds unpersuasive Plaintiff’s argument, unsupported by any legal authority, that the officers should have further investigated; based on the facts known to Hyslop at the time of the arrest,<sup>6</sup> it was reasonable for him to believe that Plaintiff had shoplifted a case of beer. Accordingly, the Court finds probable cause existed to arrest Plaintiff, and the motions for summary judgment should be granted with respect to Plaintiff’s § 1983 claim.<sup>7</sup>

Moreover, the Sheriff’s Department Defendants are entitled to qualified immunity. Qualified immunity protects government officials performing discretionary functions from civil damage suits as long as the conduct in question does not “violate clearly established rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, qualified immunity does not protect an official who violates a constitutional or statutory right of a plaintiff that was clearly established at the time of the alleged violation such that an objectively reasonable official in the official’s position would have known of the right. *Id.* Further, qualified immunity is “an immunity from suit rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

To determine whether qualified immunity applies, a court must determine “whether the plaintiff has alleged the deprivation of an actual constitutional right at all[ ] and . . . whether that right was clearly established at the time of the alleged violation.” *Wilson v.*

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<sup>6</sup>As previously stated, Plaintiff did not produce a copy of the receipt on the date of the arrest. [Doc. 45-2 at 16:14–17.]

<sup>7</sup>Because the Court has determined probable cause existed to arrest Plaintiff, the Court declines to address the Sheriff’s Department Defendants’ argument that the Sheriff’s Department and Skipper are entitled to summary judgment because a municipality is not liable under § 1983 [Doc. 45-1 at 2] or the Rodgers Defendants’ argument that they are entitled to summary judgment because they are private actors [Doc. 47-1 at 7].

*Layne*, 526 U.S. 603, 609 (1999) (quoting *Conn v. Gabbert*, 526 U.S. 286, 290 (1999)). “[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the ‘objective legal reasonableness’ of the action[,] assessed in light of the legal rules that were ‘clearly established’ at the time it was taken.” *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (citing *Harlow*, 457 U.S. at 819). For purposes of this analysis, a right is “clearly established” if “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Id.* at 640.

Here, the Court has determined there was no constitutional violation. Accordingly, the Sheriff’s Department Defendants are entitled to qualified immunity.

## **State Law Claims**

### ***False Imprisonment***

Under South Carolina law, to prevail on a claim for false arrest or imprisonment, Plaintiff must prove both that he was deprived of his liberty and that the deprivation was done without lawful justification. *Jones v. City of Columbia*, 389 S.E.2d 662 (S.C.1990). Stated differently, a plaintiff must show that “(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.” *Law v. S.C. Dep’t of Corrs.*, 629 S.E.2d 642, 651 (S.C. 2006).

Because, as discussed above, Hyslop had probable cause to arrest Plaintiff for shoplifting, Plaintiff is unable to satisfy the elements of a false imprisonment claim. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s false imprisonment claims.



***Assault and Battery***

Under South Carolina law, “an assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant, and a battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of degree.” *Jones v. Winn-Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. Ct. App.1995). “A police officer who uses reasonable force in effectuating a lawful arrest is not liable for assault or battery.” *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671–72 (D.S.C. 1995) (footnote omitted). It is well settled that “[a]lthough a law enforcement officer is privileged to use lawful force, he is nevertheless liable for assault if he uses force greater than is reasonably necessary under the circumstances.” *Moody v. Ferguson*, 732 F.Supp. 627, 632 (D.S.C. 1989); *see also Roberts*, 902 F.Supp. at 671 n.2.

Here, as discussed above, Plaintiff’s arrest was lawful because it was supported by probable cause. Plaintiff has failed to direct the Court to any evidence to support a claim for assault or battery stemming from his arrest. The only evidence in the record that Plaintiff relies on in his discussion of this claim is that he “was swarmed by law enforcement officials from multiple agencies, at his place of work.” [Docs. 56 at 7–8 (citing Surratt’s deposition); 57 at 7–8 (citing same).] However, he has provided no evidentiary support to establish that he feared he would suffer bodily harm. Further, he fails to allege the officers used greater force than was necessary to effectuate the arrest. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s claims for assault and battery.

***Intentional Infliction of Emotional Distress***

Under South Carolina law, to recover for intentional infliction of emotional distress, a plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was severe such that no reasonable man could be expected to endure it.

*Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 68, 70–71 (S.C. 2007) (quoting *Ford v. Hutson*, 276 S.E.2d 776, 778 (S.C. 1981) (internal quotation marks omitted)). Whether a defendant's conduct may be reasonably regarded as so extreme and outrageous to permit recovery is initially one for a court, and only where reasonable persons might differ is it a question for a jury. *Hawkins v. Greene*, 427 S.E.2d 692, 693 (S.C. Ct. App. 1993). "Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." *Id.*

Plaintiff has failed to direct the Court to any evidence to support a claim for intentional infliction of emotional distress. [Docs. 56 at 8–9 (citing no record evidence); 57 at 8–9 (citing no record evidence).] Instead, he conclusorily alleges that Defendants' conduct was extreme and outrageous and that Plaintiff suffered emotional distress. However, as stated, the arrest was supported by probable cause; thus, no Defendants

conduct can be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's claim for intentional infliction of emotional distress.

### ***Invasion of Privacy***

The Supreme Court of South Carolina has identified three separate acts which may give rise to a cause of action for invasion of the right of privacy:

- (1) the unwarranted appropriation or exploitation of one's personality,
- (2) the publicizing of one's private affairs with which the public has no legitimate concern, or
- (3) the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

*Meetze v. Associated Press*, 95 S.E.2d 606, 608 (1956) (quoting 41 Am. Jur., Privacy, § 2; citing *Cont'l Optical Co. v. Reid*, 86 N.E.2d 306 (Ind. App. 1949) and *Smith v. Doss*, 37 So.2d 118 (Ala. 1948)). Here, Plaintiff asserts that his invasion of privacy cause of action is based upon the publicizing of one's private affairs with which the public has no legitimate concern. [Docs. 56 at 9; 57 at 9.] "The elements of this tort include (1) publicizing, (2) absent any waiver or privilege, (3) private matters in which the public has no legitimate concern, (4) so as to bring shame or humiliation to a person of ordinary sensibilities." *Swinton Creek Nursery v. Edisto Farm Credit*, 514 S.E.2d 126, 131 (S.C. 1999).

Here, Plaintiff has failed to direct the Court to any evidence to support a claim for invasion of privacy. [Docs. 56 at 9–10 (citing no record evidence); 57 at 9–10 (citing no

record evidence).] Moreover, Plaintiff is unable to establish a publication of a private matter in which the public has no legitimate concern. As stated, he was arrested based on probable cause. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's invasion of privacy claim.

### ***Defamation and Slander***

Under South Carolina law, to state a cause of action for defamation, a plaintiff must show: "(1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm." *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002). Slander is spoken defamation. *Swinton Creek Nursery*, 514 S.E.2d at 134. "[U]nder longstanding South Carolina case law, contents of governmental records-such as judicial proceedings, case reports, published cases, investigative reports, or arrest records-do not give rise to liability for slander or libel." *Williams v. S.C.*, No. 0:06-2590-CMC-BM, 2006 WL 3843608, at \*6 (Dec. 22, 2006) (citing *Heyward v. Cuthbert*, 15 S.C.L. (4 McCord) 354, 356–59 (1827); *Padgett v. Sun News*, 292 S.E.2d 30, 32–33 (S.C. 1982)).

Here, as previously stated, Plaintiff is unable to establish a false statement was made. Plaintiff has failed to direct the Court to any evidence to support a claim for defamation or slander. [See Docs. 56 at 10 (citing no record evidence); 57 at 10–11 (citing no record evidence).] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's defamation and slander claims.

### ***Civil Conspiracy***

To be successful on a claim for civil conspiracy in South Carolina, the plaintiff must show (1) a combination of two or more persons; (2) for the purposes of injuring the plaintiff; (3) causing the plaintiff special damages. *Vaught v. Waites*, 387 S.E.2d 91, 95 (S.C. Ct. App. 1989) (citing *Lee v. Chesterfield Gen. Hosp. Inc.*, 344 S.E.2d 379 (S.C. Ct. App. 1986)). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 682 S.E.2d 871, 874 (S.C. 2009). Stated differently, the acts pled in furtherance of the conspiracy must be "separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." *Id.* at 875. "Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.* at 874. "If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of [his] civil conspiracy claim, the[] conspiracy claim should be dismissed." *Id.*

Here, Plaintiff has failed to identify concrete acts independent of any other alleged wrongdoing. [See Doc. 16 ¶ 66 (claim for civil conspiracy, alleging "[t]he aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute a civil conspiracy to harm the plaintiff").] Additionally, Plaintiff has failed to allege Defendants joined together for the purpose of injuring Plaintiff. Finally, Plaintiff has not pled special damages as required for a civil conspiracy claim. [*Id.* ¶ 67 ("As a direct and proximate result of the defendants' conspiracy to harm the plaintiff, plaintiff has been damaged, for

which damages the defendants are liable.”.)] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s civil conspiracy claim.

### ***Abuse of Process***

“The two essential elements of an abuse of process claim are (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the conduct of the proceeding.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 697 S.E.2d 551 (S.C. 2010). “Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required.” *Hainer v. Am. Med. Int’l, Inc.*, 492 S.E.2d 103 (S.C. 1997).

Plaintiff has failed to direct the Court to any evidence to support a claim for abuse of process. [Docs. 56 at 11–12 (citing no record evidence); 57 at 14 (citing no record evidence).] Instead, he relies on conclusory allegations that are insufficient to overcome summary judgment. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s abuse of process claim.

### ***Conversion***

“Conversion is the ‘unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner’s rights.’” *Green v. Waidner*, 324 S.E.2d 331, 333 (S.C. Ct. App. 1984) (quoting *Powell v. A.K. Brown Motor Co.*, 20 S.E.2d 636, 637 (S.C. 1942)).

Here, Plaintiff cannot establish Defendants assumed control of Plaintiff’s property without authorization because, as discussed above, Plaintiff’s arrest was supported by probable cause. Plaintiff has failed to direct the Court to any evidence to support a claim for conversion. [Docs. 56 at 12 (citing no record evidence); 57 at 14–15 (citing no record

evidence).] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's conversion claim.<sup>8</sup>

**CONCLUSION AND RECOMMENDATION**

Wherefore, based upon the foregoing, the Court recommends that the Sheriff's Department Defendant's motion for summary judgment be GRANTED and that the Rodgers Defendants' motion for summary judgment be GRANTED.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin  
United States Magistrate Judge

July 29, 2016  
Greenville, South Carolina

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<sup>8</sup>Because the Court has determined Defendants are entitled to summary judgment on the merits of each of Plaintiff's state law claims, the Court declines to address the Sheriff's Department Defendants' argument that they are entitled to summary judgment pursuant to the South Carolina Tort Claims Act [Doc. 45-1 at 9–10] or any of the Rodgers Defendants' arguments regarding personal involvement in the specific state law claims [see Doc. 47-1].

INCIDENT REPORT

CASE NUMBER

NCIC

2,0,1,3,-,1,5,3,5,1

INC. NO. N  
EXTD. N

|               |                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| EVENT         | INCIDENT TYPE                                                                                                                                                                                                                                                                                 |              | COMPLETED                                                                                                                                                                                                                                                                                      | FORCED ENTRY                                             | PREMISE TYPE                                                                                                                                  | UNIT ENTERED                    | TYPE VICTIM                                                                                                                                                                                                                                                                                                                                         |
|               | 1. SHOPLIFTING (23C)                                                                                                                                                                                                                                                                          |              | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                            | <input type="checkbox"/> YES <input type="checkbox"/> NO | Convenience Store                                                                                                                             |                                 | <input type="checkbox"/> Individual<br><input type="checkbox"/> Business<br><input type="checkbox"/> Financial<br><input type="checkbox"/> Government<br><input type="checkbox"/> Police Org.<br><input type="checkbox"/> Social Public<br><input type="checkbox"/> Other<br><input type="checkbox"/> Unknown<br><input type="checkbox"/> Police Of |
|               | 2.                                                                                                                                                                                                                                                                                            |              | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                       | <input type="checkbox"/> YES <input type="checkbox"/> NO |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | 3.                                                                                                                                                                                                                                                                                            |              | <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                       | <input type="checkbox"/> YES <input type="checkbox"/> NO |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| VICTIM NO. 1  | INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)                                                                                                                                                                                                                 |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               | ZIP CODE                        | WEAPON TYPE                                                                                                                                                                                                                                                                                                                                         |
|               | 704 WHITEHALL RD, ANDERSON                                                                                                                                                                                                                                                                    |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               | 29625                           |                                                                                                                                                                                                                                                                                                                                                     |
|               | INCIDENT DATE                                                                                                                                                                                                                                                                                 | 24 HR. CLOCK | TO                                                                                                                                                                                                                                                                                             | DATE                                                     | 24 HR. CLOCK                                                                                                                                  | DISPATCH DATE/TIME 24 HR. CLOCK | LOCATION NO.                                                                                                                                                                                                                                                                                                                                        |
|               | 04/01/2013                                                                                                                                                                                                                                                                                    | 14:15        |                                                                                                                                                                                                                                                                                                | 04/01/2013                                               | 14:20                                                                                                                                         | 04/01/13 14:27 14:33 14:54      | 4                                                                                                                                                                                                                                                                                                                                                   |
| SUBJECT NO. 1 | COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                      |              | RELATIONSHIP TO SUBJECT                                                                                                                                                                                                                                                                        |                                                          | RESIDENT                                                                                                                                      | RACE                            | SEX                                                                                                                                                                                                                                                                                                                                                 |
|               | WHITEHALL EXPRESS SHELL, .                                                                                                                                                                                                                                                                    |              |                                                                                                                                                                                                                                                                                                |                                                          | <input checked="" type="checkbox"/> J <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U                        |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | ADDRESS                                                                                                                                                                                                                                                                                       |              | CITY                                                                                                                                                                                                                                                                                           |                                                          | STATE                                                                                                                                         | ZIP CODE                        | LOCATION NO.                                                                                                                                                                                                                                                                                                                                        |
|               | 704 WHITEHALL RD                                                                                                                                                                                                                                                                              |              | ANDERSON                                                                                                                                                                                                                                                                                       |                                                          | SC                                                                                                                                            | 29625                           | 4                                                                                                                                                                                                                                                                                                                                                   |
| SUBJECT NO. 1 | VICTIM'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                           |              | RELATIONSHIP TO SUBJECT                                                                                                                                                                                                                                                                        |                                                          | RESIDENT                                                                                                                                      | RACE                            | SEX                                                                                                                                                                                                                                                                                                                                                 |
|               | WHITEHALL EXPRESS, .                                                                                                                                                                                                                                                                          |              |                                                                                                                                                                                                                                                                                                |                                                          | <input checked="" type="checkbox"/> J <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U                        |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | ADDRESS                                                                                                                                                                                                                                                                                       |              | CITY                                                                                                                                                                                                                                                                                           |                                                          | STATE                                                                                                                                         | ZIP CODE                        | LOCATION NO.                                                                                                                                                                                                                                                                                                                                        |
|               | 704 WHITEHALL RD                                                                                                                                                                                                                                                                              |              | ANDERSON                                                                                                                                                                                                                                                                                       |                                                          | SC                                                                                                                                            | 29625                           | 4                                                                                                                                                                                                                                                                                                                                                   |
| SUBJECT NO. 1 | VISIBLE INJURY (VICT. 1) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> EXPLAIN —                                                                                                                                                               |              | COMPLAINT OF ANY NON-VISIBLE INJURIES: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                     |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | VICTIM (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE/PLASUT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/> ASSISTED <input type="checkbox"/>                                                                        |              | *J—This Jurisdiction. S—State. O—Out of State. U—Unknown                                                                                                                                                                                                                                       |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | O SUSPECT NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                          |              | RACE                                                                                                                                                                                                                                                                                           |                                                          | SEX                                                                                                                                           | AGE                             | ETH.                                                                                                                                                                                                                                                                                                                                                |
| SUBJECT NO. 1 | O RUNAWAY                                                                                                                                                                                                                                                                                     |              | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                                                                                                                                                                                                                    |                                                          | DATE OF BIRTH                                                                                                                                 |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | O WANTED                                                                                                                                                                                                                                                                                      |              | ADDRESS                                                                                                                                                                                                                                                                                        |                                                          | CITY                                                                                                                                          |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | O ARREST                                                                                                                                                                                                                                                                                      |              | CITY                                                                                                                                                                                                                                                                                           |                                                          | STATE                                                                                                                                         |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | O JAIL                                                                                                                                                                                                                                                                                        |              | CITY                                                                                                                                                                                                                                                                                           |                                                          | STATE                                                                                                                                         |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | O SUICIDES                                                                                                                                                                                                                                                                                    |              | SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> DRUGS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE |                                                          | ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> DATE/TIME OF OFFENSE |                                 | DATE/TIME OF ARREST                                                                                                                                                                                                                                                                                                                                 |
|               | I, Deputy J. Turner was dispatched to the above listed incident location in reference to the complainant stating that there was                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | an unknown black male that just walked out of the store with two cases of Bud Light that he did not pay for. Upon my arrival on                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | scene I canvassed the area for the male that was described to have been wearing a blue or black t shirt with blue jeans,                                                                                                                                                                      |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | sneakers to be about 600 tall, and of average build. I then made contact with an elderly white male Wade Ashley who brought                                                                                                                                                                   |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | the subject to the store, not knowing who he was or what his intentions were. He stated that the subject waved him down                                                                                                                                                                       |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | somewhere near Appleton Street asking for a ride to the convenience store. He also stated that upon the black male leaving the                                                                                                                                                                |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | store that he got in the truck with the beer and requested to leave. Someone then stated that he had stolen the beer and Mr.                                                                                                                                                                  |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | Ashley stated that he would have to clear this up and that he was not riding with him until he did. The black male then hitched a                                                                                                                                                             |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | ride with someone else. This vehicle was described as a white in color S-10 displaying a SC Tag of IDY 381, which came back                                                                                                                                                                   |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | to a pontiac grand prix out of Beaufort, SC.                                                                                                                                                                                                                                                  |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               |                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | JURISDICTION OF THE OFFENSE: LAW ENFORCEMENT AGENCY                                                                                                                                                                                                                                           |              | 00400                                                                                                                                                                                                                                                                                          |                                                          | JURISDICTION OF RECOVERY: LAW ENFORCEMENT AGENCY                                                                                              |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | TYPE (GROUP)                                                                                                                                                                                                                                                                                  |              | Alcohol - al                                                                                                                                                                                                                                                                                   |                                                          | TOTAL VALUE                                                                                                                                   |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | STOLEN                                                                                                                                                                                                                                                                                        |              | 33                                                                                                                                                                                                                                                                                             |                                                          | 33                                                                                                                                            |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | DAMAGED                                                                                                                                                                                                                                                                                       |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | BURNED                                                                                                                                                                                                                                                                                        |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | RECOVERED                                                                                                                                                                                                                                                                                     |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | SEIZED                                                                                                                                                                                                                                                                                        |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               |                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
| SUBJECT NO. 1 | SUBJECT IDENTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>                                                                                                                                                                               |              | SUBJECT LOCATED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>                                                                                                                                                                                   |                                                          | ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOLLOWED <input type="checkbox"/>                                      |                                 | ARRESTED UNDER 16 <input type="checkbox"/> ARRESTED 16 AND OVER <input type="checkbox"/>                                                                                                                                                                                                                                                            |
|               | REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE - NO CUSTODY          |              | EX-CLEAR UNDER 12 <input type="checkbox"/> EX-CLEAR 18 AND OVER <input type="checkbox"/>                                                                                                                                                                                                       |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               | REPORTING OFFICER(S)                                                                                                                                                                                                                                                                          |              | DATE                                                                                                                                                                                                                                                                                           |                                                          | UNIT NUMBER                                                                                                                                   |                                 | APPROVING OFFICER                                                                                                                                                                                                                                                                                                                                   |
|               | TURNER, J. K.                                                                                                                                                                                                                                                                                 |              | 04/01/13                                                                                                                                                                                                                                                                                       |                                                          | 676                                                                                                                                           |                                 | SGT. HYSLOP, A. R.                                                                                                                                                                                                                                                                                                                                  |
| SUBJECT NO. 1 | FOLLOW-UP INVESTIGATION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>                                                                                                                                                                          |              | OFFICER                                                                                                                                                                                                                                                                                        |                                                          | DATE                                                                                                                                          |                                 | UNIT NUMBER                                                                                                                                                                                                                                                                                                                                         |
|               |                                                                                                                                                                                                                                                                                               |              | TURNER, J. K.                                                                                                                                                                                                                                                                                  |                                                          | 04/01/13                                                                                                                                      |                                 | 676                                                                                                                                                                                                                                                                                                                                                 |
|               |                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |
|               |                                                                                                                                                                                                                                                                                               |              |                                                                                                                                                                                                                                                                                                |                                                          |                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                     |

ELECTRONICALLY FILED - 2018 Jan 26 9:08 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700



AGENCY I.D.  
SC0040000

# SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2013-15351

NOIC

NO. ENTD.  
N N

☒ ORIGINAL  
REPORT  
☐ MODIFIED  
ORIGINAL

☐ SUPPLEMENTAL  
REPORT  
☐ CASE STATUS  
CHANGE

☐ ADDITIONAL  
VICTIMS  
☐ ADDITIONAL  
OFFENDERS

☐ ADDITIONAL  
STOLEN PROPERTY  
☐ ADDITIONAL  
RECOVERED PROPERTY

PAGE 2 OF 2 PAGES

|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |  |  |  |  |  |  |  |                                |  |  |  |  |  |  |  |  |  |          |  |          |  |                                                                              |  |           |  |               |  |      |  |  |  |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--------------------------------|--|--|--|--|--|--|--|--|--|----------|--|----------|--|------------------------------------------------------------------------------|--|-----------|--|---------------|--|------|--|--|--|
| VICTIM # | COMPLAINANT NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |  |  |  |  |  |  |  | VICTIM RELATIONSHIP TO SUBJECT |  |  |  |  |  |  |  |  |  | RESIDENT |  | RACE     |  | SEX                                                                          |  | AGE       |  | D.O.B.        |  | ETH. |  |  |  |
|          | HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |  |  |  |  |  |  |  | WEIGHT                         |  |  |  |  |  |  |  |  |  | HAIR     |  | EYES     |  | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. |  |           |  |               |  |      |  |  |  |
|          | ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |  |  |  |  |  |  |  | CITY                           |  |  |  |  |  |  |  |  |  | STATE    |  | ZIP CODE |  | LOCATION NO.                                                                 |  | DAY PHONE |  | EVENING PHONE |  |      |  |  |  |
|          | <input type="checkbox"/> VICTIM NO. <input type="checkbox"/> VISIBLE INJURY: <input type="checkbox"/> NO <input type="checkbox"/> YES<br><input type="checkbox"/> COMPLAINT OF NON-VISIBLE INJURIES: <input type="checkbox"/> NO <input type="checkbox"/> YES<br><input type="checkbox"/> VICTIM USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK. <input type="checkbox"/> TWO-MAN VEHICLE <input type="checkbox"/> DETECTIVE/PLASMT. <input type="checkbox"/> ALONE<br><input type="checkbox"/> EXPLAIN: <input type="checkbox"/> NO <input type="checkbox"/> YES<br><input type="checkbox"/> DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES TYPE: <input type="checkbox"/> UNK. <input type="checkbox"/> ONE-MAN VEHICLE <input type="checkbox"/> OTHER <input type="checkbox"/> ASSISTED<br><input type="checkbox"/> SUBJECT NO. <input type="checkbox"/> USING ALCOHOL: <input type="checkbox"/> NO <input type="checkbox"/> YES<br><input type="checkbox"/> USING DRUGS: <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> TYPE: <input type="checkbox"/> UNK. |  |  |  |  |  |  |  |  |  |                                |  |  |  |  |  |  |  |  |  |          |  |          |  |                                                                              |  |           |  |               |  |      |  |  |  |

A surveillance tape is being copied and the store manager stated that he would be calling to let us know when it was ready to be picked up. Nothing further at this time.

|                                                 |  |                                                    |  |
|-------------------------------------------------|--|----------------------------------------------------|--|
| JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY |  | JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY |  |
| 00400                                           |  |                                                    |  |
| VIN AND/OR LICENSE NO.                          |  | BOAT HULL NO. AND/OR REG. NO.                      |  |
| SERIAL AND/OR OWNER APPLIED NO.                 |  | STATE                                              |  |
| YEAR OF REGISTRATION                            |  | YEAR OF EXPIRATION                                 |  |
| MODEL                                           |  | STYLE                                              |  |
| HKG NO.                                         |  | DENOMINATION                                       |  |
| MISCELLANEOUS                                   |  | ISSUER                                             |  |
| SECURITIES DATE                                 |  | SECURITIES DATE                                    |  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                       |        |                                            |        |                                                                                                                       |        |                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|--------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------|--------|---------------------------------------------------------------------------------------------|
| TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                          | STOLEN | DAMAGED                                    | BURNED | RECOVERED                                                                                                             | SEIZED | TOTAL VALUE                                                                                 |
| STATUS TYPE<br><input type="checkbox"/> STOLEN <input type="checkbox"/> VEHICLE<br><input type="checkbox"/> RECOVERED <input type="checkbox"/> GUN<br><input type="checkbox"/> FOUND <input type="checkbox"/> BOAT<br><input type="checkbox"/> TOWED <input type="checkbox"/> LICENSE PLATE<br><input type="checkbox"/> SUSPECT <input type="checkbox"/> SECURITIES/BONDS, STOCKS<br><input type="checkbox"/> VICTIM <input type="checkbox"/> ARTICLE |        |                                            |        |                                                                                                                       |        |                                                                                             |
| SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                                    |        | SUBJECT LOCATED                            |        | <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED<br><input type="checkbox"/> UNFOUNDED |        | <input type="checkbox"/> ARRESTED UNDER 15<br><input type="checkbox"/> ARRESTED 16 AND OVER |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH                                                                                                                                                                                                                                                                                                                                                                          |        | 2. <input type="checkbox"/> NO PROSECUTION |        | 3. <input type="checkbox"/> EXTRADITION DENIED                                                                        |        | 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION                                     |
| REPORTING OFFICER(S)                                                                                                                                                                                                                                                                                                                                                                                                                                  |        | DATE                                       |        | UNIT NUMBER                                                                                                           |        | APPROVING OFFICER                                                                           |
| TURNER, J. K.                                                                                                                                                                                                                                                                                                                                                                                                                                         |        | 04/01/13                                   |        | 676                                                                                                                   |        | SGT. HYSLOP, A. R.                                                                          |
| FOLLOW-UP INVESTIGATION                                                                                                                                                                                                                                                                                                                                                                                                                               |        | OFFICER                                    |        | DATE                                                                                                                  |        | UNIT NUMBER                                                                                 |
| YES NO                                                                                                                                                                                                                                                                                                                                                                                                                                                |        | TURNER, J. K.                              |        | 04/01/13                                                                                                              |        | 248                                                                                         |

David L. Rodgers

29

- 1 Q. Okay.
- 2 A. He came to my store, and I saw him in
- 3 the parking lot.
- 4 Q. Okay. And what did he say when he saw
- 5 you in the parking lot?
- 6 A. He came up and told me I needed to get
- 7 this stuff straightened out, and I
- 8 don't remember the exact words. I felt
- 9 as though he was somewhat threatening
- 10 me with his -- with his words and
- 11 shaking a sales receipt in his -- in my
- 12 direction. And I -- you know, the
- 13 first thing I thought was, well, you
- 14 know, perhaps he had purchased that and
- 15 got the receipt and she had voided the
- 16 transaction when she sent him back. So
- 17 then I went in and looked, and that's
- 18 when I first found out that he had
- 19 indeed came in and purchased another
- 20 case of beer.
- 21 Q. So when he's out there what did you say
- 22 when he's shaking a receipt in your
- 23 face?
- 24 A. "It's out of my hands."
- 25 Q. What did you mean by that?

JUDY COMP &amp; ASSOCIATES, INC.

David L. Rodgers

29

1 Q. Okay.

2 A. He came to my store, and I saw him in  
3 the parking lot.

4 Q. Okay. And what did he say when he saw  
5 you in the parking lot?

6 A. He came up and told me I needed to get  
7 this stuff straightened out, and I  
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20 case of beer.

21 Q. So when he's out there what did you say  
22 when he's shaking a receipt in your  
23 face?

24 A. "It's out of my hands."

25 Q. What did you mean by that?

JUDY COMP &amp; ASSOCIATES, INC.

Brandon Surratt

1 A. I did.

2 Q. All right. And what did he say about this  
3 incident?

4 A. I didn't speak to him about it.

5 Q. So you're the one that did the arrest warrant?

6 A. I did the -- yes, sir.

7 Q. Ticket?

8 A. Yeah, ticket.

9 Q. And that was based on what?

10 A. My sergeant saying that he observed a video  
11 surveillance or something on David's cell phone  
12 for shoplifting.

13 Q. So on his phone?

14 A. That's what he said, yes, sir.

15 Q. Are you aware whether that was downloaded from  
16 surveillance video in the place, or was it his  
17 phone?

18 A. I don't know if it was downloaded or not, but he  
19 said it was from his cell phone.

20 MR. SMITH:

21 Could we mark these Plaintiff's Exhibit 1?

22 [B. Surratt Deposition Exhibit No. 1 was marked.]

23 EXAMINATION RESUMED BY MR. SMITH:

24 Q. What I'm going to show you here is Plaintiff's  
25 Exhibit 1, and what it is, is a -- what kind of

Brandon Surratt

- 1 beer was it; do you know?
- 2 A. Busch, I think.
- 3 Q. Okay. This is a receipt, as you can see, from
- 4 May 5th. And is it can beer or bottle beer?
- 5 A. Can.
- 6 Q. All right. What these consist of is a receipt
- 7 from Whitehall Express, as you can see --
- 8 A. Uh-huh.
- 9 Q. -- and his Emerald card, right? And there's a
- 10 monthly thing you can see here.
- 11 Did, at any time, Mr. Rodgers tell you or anyone
- 12 that you're aware of that he in fact had sold
- 13 this case of beer?
- 14 A. Not that I'm aware of, no, sir.
- 15 Q. Do you know if the Whitehall Express Mart has
- 16 surveillance cameras?
- 17 A. It does.
- 18 Q. Did you see the film or any photos?
- 19 A. No, sir, I did not.
- 20 Q. Have you dealt with Express Mart before?
- 21 A. Yes, sir.
- 22 Q. For what?
- 23 A. Shoplifting.
- 24 Q. Who was the -- who has been the person that's
- 25 called on those?

Brandon Surratt

- 1 A. Usually David.
- 2 Q. Have you ever had to deal with them over underage  
3 sales for beverages?
- 4 A. I have not, no, sir.
- 5 Q. Do you have knowledge of that happening?
- 6 A. I want to say that maybe they've charged him  
7 before for that as far as selling alcohol to a  
8 minor, but I don't have that in concrete  
9 evidence. That's just something that somebody's  
10 talked about before.
- 11 Q. Yes, sir. With regard to the Sunday sale of  
12 alcohol, are you aware of any occasions that  
13 that's occurred?
- 14 A. Not to my knowledge, no, sir.
- 15 Q. How many times have you dealt with Mr. Rodgers?
- 16 A. A few.
- 17 Q. Is he helpful?
- 18 A. Is he helpful?
- 19 Q. Yes.
- 20 A. As far as?
- 21 Q. Helping your prosecution.
- 22 A. I don't recall to be honest. I mean, as far as  
23 him showing up, I don't recall. I'm sorry. I  
24 deal with shopliftings every day.
- 25 Q. Yes, sir.

Brandon Surratt

- 1 A. You know, and about the most current one that  
2 shows up on a daily basis used to be Wal-Mart  
3 until they got annexed into the city but.
- 4 Q. So did you talk to Mr. Rodgers at all?
- 5 A. Not that day.
- 6 Q. Based on what I've shown you, do you believe that  
7 he should have been arrested?
- 8 A. Based off the sales receipt there?
- 9 Q. Yeah.
- 10 A. I mean, it looks like he sold him the alcohol to  
11 me.
- 12 Q. And as we stated, the sale of alcohol in the city  
13 -- in the county, right?
- 14 A. It's county.
- 15 Q. All right. Is that permitted on Sundays?
- 16 A. No, sir.
- 17 Q. Do you know where Mr. Escalante is from?
- 18 A. I think it was Texas.
- 19 Q. Are there -- well, the county is not -- prohibits  
20 the sale of alcohol, right, Anderson County?
- 21 A. They are prohibited --
- 22 Q. Right.
- 23 A. -- in Anderson.
- 24 Q. On Sundays?
- 25 A. That's right.

Brandon Surratt

1 Q. Are you aware that other jurisdictions allow  
2 Sunday sales?

3 A. I think Myrtle Beach does.

4 Q. And obviously your knowledge of other states is  
5 limited?

6 A. Yeah. I don't know anything about other states.

7 MR. SMITH:

8 I don't have anything further at this point.

9 EXAMINATION BY MR. FARR:

10 Q. Mr. Rodgers, my name is Nick Farr. Excuse me.  
11 Officer Surratt, my name is Nick Farr. I  
12 represent Dave Rodgers in this matter.

13 [B. Surratt Deposition Exhibit No. 2 was marked.]

14 EXAMINATION RESUMED BY MR. FARR:

15 Q. Officer Surratt -- or, excuse me, Deputy Surratt,  
16 do you recognize what's been marked as Exhibit 2?

17 A. Yes, sir.

18 Q. And what is that?

19 A. It's the Incident Report from the date that this  
20 incident occurred.

21 Q. Okay. Were you involved in the preparation of  
22 that report?

23 A. As far as?

24 Q. Let me just -- the narrative portion on that,  
25 where it kind of describes the incident, who



FORM 4  
FEBRUARY 2, 2018

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-04-01700

MARIO ESCALANTE

DAVID L. RODGERS AND JANICE W.  
RODGERS, D/B/A WHITEHALL EXPRESS  
MART

PLAINTIFF(S)

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

## ORDER INFORMATION

**MOTION FOR RECONSIDERATION IS DENIED WITHOUT HEARING. NO FORMAL ORDER REQUESTED UNLESS NEEDED BY EITHER PARTY.**

This order ☒ ends ☐ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge  
SCRPC Form 4C (02/2017)

2155  
Judge Code

Date  
Page 1 of 4

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or  
 placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or  
 to parties (when appearing pro se) as follows:

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**


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**ATTORNEY(S) FOR THE DEFENDANT(S)**


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**CLERK OF COURT**
**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON  
 PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al

**Case Number:** 2013CP0401700

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-02-02 11:03:41 page 3 of 3

NOTICE OF APPEAL  
FEBRUARY 20, 2018

85967

FORM 1  
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

RECEIVED  
FEB 22 2018  
SC Court of Appeals

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart

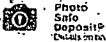
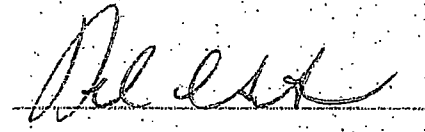
Respondents.

NOTICE OF APPEAL

Appellant Mario Escalante appeals the Orders of Judge R. Lawton McIntosh, dated January 9, 2018 and February 2, 2018.

February 20, 2018

  
Donald L. Smith, (SC Bar#6699)  
Attorney for Appellant  
122.N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

|                                                                                                                                             |                                        |                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|-------------------------------------------------------------------------------------|
| <b>DONALD SMITH SOLE PROP</b><br><b>DBA DON SMITH ATTORNEY AT LAW</b><br><b>EXPENSE ACCOUNT</b><br>122 N MAIN ST<br>ANDERSON, SC 29621-5609 |                                        | 5400<br>67-448/539 SC<br>0736                                                       |
| PAY<br>TO THE<br>ORDER OF                                                                                                                   | Clerk of Court                         | DATE <u>2/20/18</u>                                                                 |
| One hundred <u>00/100</u>                                                                                                                   | \$ <u>100.00</u>                       | DOLLARS                                                                             |
| <b>Bank of America</b><br>ACH R/T 053904483                                                                                                 | FOR <u>Escalante - 2013-CP-04-1700</u> |  |
|                                                         |                                        | MP                                                                                  |

**RECEIVED**

FEB 22 2018

SC Court of Appeals

**FORM 7  
PROOF OF SERVICE  
NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart

Respondents.

**RECEIVED**  
FEB 22 2018  
SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served a copy of Appellant's Notice of Appeal, Appealed Orders, dated January 9, 2018 and February 2, 2018, Letter Ordering Transcript from Court Reporter, and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, The Honorable Richard A. Shirley, Anderson County Clerk of Court, at PO Box 8002, Anderson, SC 29622-8002, Respondents, by and through their counsels of record, Phillip Reeves, Esquire and Nicholas A. Farr, Esquire, at Gallivan White and Boyd, P.A., Post Office Box 10589, Greenville, SC 29603, Diane L. Marcengill, Court Reporter at P.O. Box 1175, Walhalla, SC 29691, and the Office of Court Administration, at 1220 Senate Street, Suite 200, Columbia, SC 29201, by depositing a copy of it in the United States Mail, postage prepaid, on February 20, 2018.

February 20, 2018



Donald L. Smith, Esquire  
Attorney for Appellant  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)



**FORM 8**  
**LETTER TO THE APPEALS COURT CLERK**  
**NOTICE OF APPEAL**

February 20, 2018

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

**RECEIVED**  
**FEB 22 2018**  
**SC Court of Appeals**

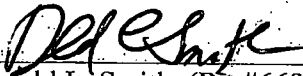
**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers,**  
**d/b/a Whitehall Express Mart**  
**C.A. No.: 2013-CP-04-1700**

Dear Honorable Kitchings:

Please find enclosed the following:

- 1) Notice of Appeal;
- 2) A copy of Appealed Order, (Form 4) dated January 9, 2018;
- 3) A copy of Appealed Order, (Form 4) dated February 2, 2018;
- 4) A check amounting to \$100.00 as filing fee;
- 5) Form 11, Letter Ordering Transcript from Court Reporter;
- 6) Form 7, Proof of Service.

Sincerely,

  
Donald L. Smith, (Bar#6699)  
Attorney for Appellant  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

cc:

The Honorable Richard A. Shirley, Anderson County Clerk of Court  
Phillip Reeves, Esquire  
Nicholas A. Farr, Esquire  
Diane Marcengill, Court Reporter  
Office of Court Administration

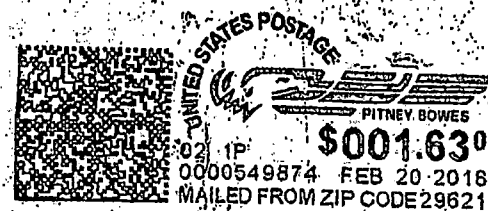
Attorney Office of Donald Smith  
122 N. Main Street,  
Anderson, SC 29621

**RECEIVED**

FEB 22 2018

**SC Court of Appeals**

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



364

2018 FEB 22 5012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-04-1700

Mario Escalante  
PLAINTIFF(S)

David Rodgers  
DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

MOTION FOR SUMMARY JUDGMENT GRANTED AS TO ALL CAUSES OF ACTION. RES JUDICATA BARS SUBSEQUENT ACTIONS BY THE SAME PARTIES WHEN THE CLAIM ARISES OUT OF THE SAME TRANSACTION OR OCCURRENCE THAT WAS THE SUBJECT OF A PRIOR ACTION BETWEEN THE PARTIES. UNDER THE DOCTRINE OF RES JUDICATA, A LITIGANT IS BARRED FROM RAISING ANY ISSUES WHICH WERE ADJUDICATED IN THE FORMER SUIT AND ANY ISSUES WHICH MIGHT HAVE BEEN RAISED IN THE FORMER SUIT. SC PUBLIC INTEREST FOUNDATION-V-GREENVILLE COUNTY 401 SC 377, 737 SE2D 502 (CT APP 2013). PLAINTIFF'S ALLEGATIONS IN THE FEDERAL CASE ESSENTIALLY TRACK HIS STATE COURT ALLEGATIONS. THE CAUSE OF ACTION FOR NEGLIGENCE COULD HAVE BEEN RAISED IN THE FEDERAL ACTION. DEF. ROGERS' COUNSEL TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

RECEIVED  
FEB 22 2018  
SC Court of Appeals

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.  
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                     |            |      |
|---------------------|------------|------|
|                     | 2155       |      |
| Circuit Court Judge | Judge Code | Date |

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

|                                  |                                  |
|----------------------------------|----------------------------------|
|                                  |                                  |
|                                  |                                  |
| ATTORNEY(S) FOR THE PLAINTIFF(S) | ATTORNEY(S) FOR THE DEFENDANT(S) |
|                                  | CLERK OF COURT                   |

**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ELECTRONICALLY FILED - 2018 Jan 09 2:22 PM - ANDERSON - COMMON PLEAS : CASE#2013CP0401700



Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al  
**Case Number:** 2013CP0401700  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-01-09 12:38:51 page 3 of 3

ELECTRONICALLY FILED - 2018 Jan 09 2:22 PM - ANDERSON - COMMON PLEAS - CASE#2013CP0401700

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-04-01700

MARIO ESCALANTE

DAVID L. RODGERS AND JANICE W.  
RODGERS, D/B/A WHITEHALL EXPRESS  
MART

PLAINTIFF(S)

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or                                                                                   |
|               | <input type="checkbox"/> Self-Represented Litigant                                   |

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

## ORDER INFORMATION

MOTION FOR RECONSIDERATION IS DENIED WITHOUT HEARING. NO FORMAL ORDER REQUESTED UNLESS NEEDED BY EITHER PARTY.

This order ☒ ends ☐ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|                                                                                                                                                                                                              |                                          | \$ <b>RECEIVED</b>                                       |
|                                                                                                                                                                                                              |                                          | \$ <b>FEB 22 2018</b>                                    |
|                                                                                                                                                                                                              |                                          | \$ <b>SC Court of Appeals</b>                            |
| If applicable, describe the property, including tax map information and address, referenced in the order.                                                                                                    |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge  
SCRCP Form 4C (02/2017)

2155  
Judge Code

Date  
Page 1 of 4

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al

**Case Number:** 2013CP0401700

**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2018-02-02 11:03:41 page 3 of 3

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## CERTIFICATION OF COUNSEL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

CERTIFICATION OF COUNSEL

I HEREBY CERTIFY that this Record on Appeal contains all materials proposed to be included by the parties, and not any other material.

June 21, 2018

  
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**RECEIVED**

JUL 02 2018

SC Court of Appeals

## APPENDIX B

### FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

RECEIVED  
JUL 02 2018  
SC Court of Appeals

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

### FINAL BRIEF OF APPELLANT

June 25, 2018

  
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## **STATEMENT OF ISSUE ON APPEAL**

### **WHETHER THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS.**

## **STATEMENT OF THE CASE**

This suit is brought pursuant to the arrest of Mario Escalante for allegedly shoplifting a case of beer from Respondents' retail establishment on Sunday, May 5, 2013.

Appellant came to Anderson County from El Paso, Texas to work a concession stand at the annual Anderson County Fair. Appellant had spent the morning breaking down the concession stand he had been working at and during a break, went to purchase a case of beer to celebrate his friend's birthday, later that evening. Since Appellant is not a resident of this county, he was unaware of the prohibition of the sale of alcohol on a Sunday. Appellant selected Respondents' retail establishment to make his purchase based on the close proximity of the store to the fair grounds.

After entering the store and making his way to the back of the building where the beer is located, Appellant picked up one case and proceeded to the register to make his purchase. When the transaction was complete, the clerk gave Appellant a receipt for his beer purchase and he exited the store. Upon getting into his truck, Appellant thought one case would not suffice based on the number of people he expected to partake in the festivities. Appellant then entered the store for a second time and made his way back to the "beer cave" for a second case.

When Appellant approached the clerk this time, she realized the mistake she had made by selling alcohol on a Sunday; and, informed Appellant she would not be able to sell him the second case. Appellant returned the case to where he had found it, left the store and returned to the fair grounds to finish tearing down the stand.

Respondent David Rodgers claimed that at this time, one of the clerks in his store called him on his cell phone, informed him that Appellant stole a case of beer, ran out of the store and drove off. He stated that upon arriving at the store, he reviewed the video camera footage of the incident, concluded that based on the Appellant's wet appearance and the direction the surveillance video showed him exiting the property, he must have been working the fairgrounds.

However, his testimony was contradicted by his 911 call following the alleged incident. In actuality, Respondent Rodgers was at the store when Appellant left the store, because he followed him back to the fairgrounds. This claim was supported by the exchange between Rodgers and the 911 operator which was memorialized by the State. (R.p. 250-251). Respondent Rodgers informed the 911 operator that he was behind Appellant's truck. He kept Appellant in his sight from the time that he left his store until he had been cuffed and placed on the back of the police car.

The case of beer that was confiscated by police was Busch beer. Appellant's receipt and associated purchase evidence on his bank statement (his bank in San Antonio, Texas), for the month of May 2013, was a \$14.30 case of Busch as well. (R.p. 252). Rodgers has claimed that Mario bought the first case; and, he stole the second case. He has never presented anything tangible to support the claim. The woman who sold him the case said that she never saw a *second* case leave the store. (R.p. 254). Only one case of beer was found in Appellant's truck when he was arrested at the fairgrounds. A charge was brought against Appellant for taking the beer, but it was later dismissed when Respondent Rodgers failed to appear at court and, in doing so, failed to prosecute.

On July 22, 2013, the Appellant initiated this action against the Respondents David Rodgers and Janice W. Rodgers, d/b/a Whitehall Express Mart. Appellant asserted the following



causes of action: false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion and fraud.

On or about December 14, 2014, Respondents brought a Notice of Motion and Motion for Summary Judgment. The matter was heard by the Honorable Robin B. Stilwell on February 9, 2015. On or about March 18, 2015, Judge Stilwell's Order based on the hearing granted Respondents' motion as to the conspiracy and fraud causes of action. However, he denied the motion with regard to false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution and conversion. (R.p. 57).

Trial was set in this matter for a date certain on February 16, 2016. On February 11, 2016, defense counsel, Phillip Reeves, Esquire, moved for a continuance because his "daughter was having a birthday". (R.p. 197-199). Mr. Reeves had nothing to do with this matter. The trial was set in the summer of 2015. Since the child's birthday is likely the same day annually, the request for a continuance, when he knew he was not participating in the trial anyway, was done simply to deprive Appellant from having his day in court.

In the Order drafted by defense counsel, and endorsed by the Honorable Cordell Maddox, it is stated that the matter would be continued. More importantly, he ordered that "(T)he parties shall be permitted to select a second date certain for the trial of this matter after the United States District Court for the District of South Carolina has ruled on pending motions for summary judgment." The second date certain would be set following the ruling in the federal court. He also stated that, "Respondents shall be responsible for any reasonable change fees incurred by the Appellant, Mario Escalante, in altering his flight plans."

Respondents were denied summary judgment on seven of nine causes of action relating to the reckless act of accusing an individual, who was 1200 miles from home of stealing a case

of beer, after buying one with his bank card. Appellant requested and received a date certain trial to get justice in the state court. Respondents thwarted said opportunity with the "birthday continuance". These contentions are underscored by the fact that the defense move for yet another summary judgment after they were previously denied, as well as stopping Appellant from a trial on the merits because of a child's birthday. Having the audacity to request summary judgment based on these facts is free of integrity. Granting summary judgment with these facts sets a perilous precedent.

Judge Maddox did not change any aspect of the Order for Continuance that was prepared for him. He states affirmatively that the date certain trial will be reset upon the Federal Court's ruling on summary judgment. He also states that Respondents shall pay for the difference of altering his flight plans for the next date certain trial. There is no language whatsoever that indicates summary judgment in the Federal Court would allow Respondents to escape the trial that they continued for a birthday.

On January 13, 2015, Appellant filed a federal suit against the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police department, James Stewart and the Respondents found herein, alleging that their conduct created the following causes of action: Section 1983, False Imprisonment, Assault and Battery, Intentional Infliction of Emotional Distress, Invasion of Privacy, Defamation and Slander, Civil Conspiracy, Abuse of Process and Conversion.

The action was brought because Defendant Rodgers was not arrested for selling beer on Sunday, which violated the law, and was undisputed. The action was brought because the Hispanic U. S. citizen from El Paso was arrested for purchasing a case of beer. The action was brought because not one of the Respondents listed in the federal action showed up to Court to

prosecute the non-case. Mr. Escalante was forced to take a day off from fair work in Tennessee, and forfeit the \$50.00 associated with that day's work, to come to Anderson to have his face rubbed in the fact that he went to jail for nothing.

The Court found that probable cause existed, despite Rodgers implicit knowledge that he sold the case of Busch beer that was located and, therefore, granted Summary Judgment on all of the actions brought in Federal Court. The Federal Court action dealt with the relationships between the State and Respondents' Rodgers. The State action dealt with the relationship between Respondents' Rodgers and his employees.

The basis for the granting of summary judgment came from the Report and Recommendation of the federal magistrate. The magistrate based all of her arguments on the fact that probable cause existed at the time of the arrest. In fact, the following was stated, "the Court declines to address...any of the Rodgers Respondents' arguments regarding personal involvement in the specific state law claims." (R.p. 342).

The District Court adopted the Report and Recommendation of the Magistrate. This ruling was ultimately affirmed by the 4<sup>th</sup> Circuit Court of Appeals on November 3, 2017.

Thereafter, herein Respondents moved for summary judgment again, which was granted by this Court in its Order, dated January 16, 2018.

Thus, Appellant brings this motion to reconsider a finding that overruled the Order previously issued by Judge Stilwell. This action does not have the same parties as the federal action. The employees of the Rodgers' Respondents were not identified. In addition, there are no law enforcement parties in this action.

## **STANDARD OF REVIEW**

When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court. Lanham v. Blue Cross and Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002); David v. McLeod Regional Medical Center, 367 S.C. 242, 247, 626 S.E.2d 12 (2006). Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. The appellate court must view the facts in the light most favorable to the non-moving party below. Id. If the slightest doubt exists as to whether there are genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law, the summary judgment must be reversed.

Furthermore, the issue of res judicata is a question of law, and this Court reviews questions of law de novo. Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

## **ARGUMENTS**

### **THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENTSS.**

#### **I. The claims presented in this case are not barred by res judicata.**

Respondents contend that summary judgment is warranted because the Federal court has previously ruled on a case involving the same parties. Appellant believes that he is not precluded from raising the cause of action for negligence against Respondents.

The principle behind the doctrine of *res judicata* is that it is in the public interest that there should be an end to litigation and that no one should be twice sued for the same cause of action. *First Nat'l Bank v. United States Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945) as cited in Nelson v. Coker, No. 3626, SC: Court of Appeals, April 14, 2003. This

doctrine bars claims that have been litigated or that could have litigated from being litigated again.

In addressing whether there is res judicata, the court usually looks at three (3) factors: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992)). Appellant maintains that res judicata does not apply in this case.

There was no identity of parties between the two cases. In the Federal case, the primary party involved was the law enforcement officers responsible for Appellant’s unlawful arrest and detention. Respondents Rodgers was included to establish his participation in the conspiracy against Appellant. In the state case, the parties involved were Respondents Rodgers and/or his establishment.

There was no identity of subject matter. The cause of action for the Federal case is the conspiracy perpetrated by Respondents Rodgers and certain elements of the Anderson County Sheriff Office, to deprive Appellant of his right to liberty. The subject matter in that case is the deprivation of the constitutional rights of the Appellant. In the instant case, Appellant Rodgers was sued for his gross negligence, negligent hiring, training and supervision, and damages. Appellant submits that the actions arose from different transactions and occurrences.

The Federal action arose from the unconstitutional conduct and behavior of the law officers, and concerns itself with the conduct of the parties after Appellant left the store. The State case arose from the sale of the case of beer, and concerns itself with the actions of the parties inside the store. The two actions involve claims that are substantially unrelated.

Appellant submits that there was expressly no adjudication of the negligence of Rodgers, a/k/a “personal involvement in the specific state law claims”. Since the federal magistrate

refused to address the negligent conduct of Rodgers, and Judge Stilwell specifically stated that there was a genuine issue of material fact as it relates to negligence, Appellant is entitled to have this matter adjudicated.

**II. The issues in the present case are not barred by collateral estoppel.**

Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the re-litigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.” *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986) as cited in *Nelson v. Coker*, Ibid.

There is no identity of issues between the two cases. The issue in the Federal case is the State’s violation of Appellant’s rights: his rights against deprivation of liberty and equal protection clause. The focus in the Federal suit was the State’s refusal to treat Rodgers the same way that Escalante was treated. The State allowed Rodgers to get away with what is a clear violation of the law: selling beer on Sunday, yet arrested Escalante based on a non-eye witness account. The State did not show up to a court date that it created to “prosecute” Escalante. It was irrelevant what happened to Mario Escalante because he was an Hispanic fair worker. However, the State failed to arrest the white business owner for selling beer on Sunday, despite the receipt and bank statement proving same.

The state claim was brought because of the negligent act of Defendant Rodgers in accusing herein Appellant of shoplifting. His negligent training, negligent supervision, negligent maintenance of the video, etc., formed the core of the original suit.

Negligence was not raised in the Federal court, because Appellant believes that Defendant Rodgers’ negligence, and that of their employees, is independent from and does not

arise from the allegations of unconstitutional behavior by Rodgers and law enforcement. Since negligence was not raised in the Federal court, it was never adjudicated with finality. Thus, since all the requisite elements for res judicata and collateral estoppel are not met in the present case, then res judicata and collateral estoppel do not apply.

Furthermore, the court held in the case of Johns v. Johns, 309 S.C. 203; 420 S.E.2d 856, 859 (Ct. App. 1992), that even when a party meets all the required elements, res judicata will not be applied “where it will contravene other important public policies; the courts must weigh the competing public policies.” As cited in Nelson v. Coker, *Ibid.* In balancing the public policies (public policy of finality of judgment against the basic human rights to liberty, privacy, due process and equal protection of law, the court should give deference to the overriding right granted by the US Constitution.

Another exception to the preclusion by reason of res judicata is when the party sought to be precluded, as a result of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action. Ibid. Appellant maintains that due to Respondents’ failure to provide the video surveillance and the trial court’s unwillingness to rule on spoliation, he was deprived of a full adjudication of his case. Thus, even assuming that the court found the elements of res judicata and collateral estoppel are met, this will not prevent Appellant from pursuing the State action under these exceptions

**III. Respondents’ Answer should have been stricken for non-compliance with discovery rules.**

On December 29, 2017, Appellant moved to strike Respondents’ Answer. While this is a drastic measure, Appellant’s motion was warranted in this case under Rule 37(b)(2) of the South

Carolina Rules of Civil Procedure.<sup>1</sup> The rule provides that, where a party to the action fails to obey an order to provide or permit discovery, the court may issue an order “refusing to allow the disobedient party to support or oppose designated claims or defenses”, prohibit “him from introducing designated matters in evidence”, or striking the parties’ pleadings. The court may also award attorney fees and costs to the moving party.

“The duty to preserve material evidence arises not only during litigation but also extends to that period before a litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.” Silvestri v. General Motors Corp., 271 F.3d 583, 590 (4<sup>th</sup> Cir. 2001).

Respondents knew that the store’s video surveillance was necessary for the prosecution of the shoplifter. (Exhibit 4; Incident Report, Motion to Stricken Answer). Appellant approached Rodgers a short time after his release from jail to show his receipt proving that he did not steal anything. Appellant pleaded for Rodgers to correct the mistaken accusation against him. Instead of calling the police to explain the situation, Rodgers refused to clear Appellant’s

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<sup>1</sup> Rule 37 (b) Failure to Comply With Order.

(2) **Sanctions by Court in Which Action Is Pending.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.



name. In his deposition, Respondent Rodgers further accused Appellant of threatening him. (R.p. 345-346).

Respondent Rodgers allegedly showed the police still shots of Appellant. (R.p. 347-351). He admitted taking Appellant's picture from the video surveillance. Rodgers knew he brought a charge for shoplifting. He knew that there would be no excuse when the video failed to show a second case of beer being taken from the establishment. He would have been charged with giving a false police report. The only logical conclusion in his failure to present the video surveillance was that it was deliberately destroyed.

Respondents acted with bad faith and gross indifference of Appellant's rights by failing to preserve the video surveillance despite their knowledge and anticipation of litigation on the alleged incident. Like *Silvestri*, Respondents used evidence to its advantage; and, then failed to allow Appellant the same opportunity. Striking Respondents' Rodgers' answer is harsh, but the willful indifference on saving the discovery caused irreparable prejudice. It has made the prosecution of this case impossible for Appellant.

This Court's ruling on striking the answer was a mere afterthought. Respondents' Answer should have been stricken, just as the evidence had been stricken. Without the defective pleading, Respondents would not be able to move for summary judgment

#### **IV. Respondent's act of spoliation prevented Appellant from litigating his claims.**

In the case of *Basnight*, 346 S. Ct 248-249, 551 S.E.2d 278 cited at *South Carolina Public Interest Foundation v. Greenville County, et al.*, No. 5016 (S.C: Court of Appeals, 2012), the Court held that a judgment must be valid in order to preclude a second action concerning the same transaction.

Respondent Rodgers failure to present a video surveillance/recording of what he claimed transpired, and which became his basis for reporting the alleged shoplifting, is an act of spoliation. Spoliation is the destruction of evidence which is expected to be relevant in a case.

South Carolina courts have long recognized the court's power to sanction parties for mishandling evidence. In Welch v. Gibbons, 211 S.C. 516, 46 S.E.2d 147 (1948) where plaintiff sued bottling company for poison on in the soft drink, but refused to have the bottled tested by the defendant bottling company, the court held that the jury should be able to consider the missing evidence. Welch, as cited in Stokes v. Spartanburg Regional Medical Center, No. 4078 (S.C: Ct. App, 2006). In Wisconsin Motor Corp. v. Green, 224 S.C. 460, 79 S.E.2d 718 (1954), Respondent contested the amount billed by Appellant, alleging having paid in cash and checks showing payment, but failed to submit bookkeeping records, cancelled checks nor presented bookkeepers for testimony), the court held that if a "a party fails to produce testimony of an available witness or witnesses or a material issue in the cause, or produce available records, it may be inferred that the testimony or contents of the records, if presented would be adverse to the party who fails to call the witness or present the records. Id.

In Kershaw County Bd. of Educ. vs. U.S. Gypsum Co., 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990), Gathers v. South Carolina Electric and Gas Co., 427 S.E.2d 687 (1993), Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 156 (4<sup>th</sup> Cir., 1995), and Stokes v Spartanburg Regional Medical Center, Ibid., South Carolina courts have permitted an adverse inference that withheld or destroyed evidence would be adverse to the party failing to produce said evidence. This inference applies whether the reason for the loss or destruction of evidence is intentional (Wisconsin Motors Corp., Ibid.) or accidental (Gathers, Ibid.). Furthermore, even if there was

a valid explanation for the evidence missing, the court should have allowed the jury to hear adverse instruction and give the latter the opportunity to apply it if justified. Stokes, Ibid.

In the case of Pringle v. SLR, Inc. of Summerton, the court advised that the party advocating for the adverse inference must be able to show that the missing evidence might reasonably support whatever presumption is being requested. Pringle v. SLR, Inc. of Summerton, 382 S.C. 397, 405-06, 675 S.E.2d 783, 787-88 (Ct. App. 2009), citing Kevin Eberle, *Spoliation in South Carolina*, South Carolina Lawyer, Sept. 2007, 26, 32.

Here, Appellant has presented a receipt and a bank statement showing payment of a case of Busch beer. He believed that the missing video would have collaborated his assertions, and would show that only one case of beer was purchased and taken out of Respondent's store. Based on the fact that the clerk who sold the beer to Appellant watched him take it to his truck, and testified that she only saw him leave the store with one case, there can be no other deduction. (R.p. 315).

In Vodusek, the court required a showing that the delinquent party knew that the evidence was relevant to some issue at trial, and that his willful conduct resulted in its loss or destruction. In the case at bar, Respondent caused the arrest of the Appellant, using the latter's photo, allegedly taken from the video. Respondent Rodgers knew or should have known that a suit was filed against Appellant. He was put on notice that he would need the video to prosecute the theft of the case of beer.

As previously established, sometime after his arrest, Appellant returned to Respondents' store to present his receipt showing the purchase of case of Busch beer. When Respondent refused to clear Appellant's name, he knew or should have known, that his accusation of shoplifting would be contested by the Appellant who took pains to return and show proof of

purchase. From that moment, Respondent Rodgers had a duty to obtain and preserve a copy of any relevant information recorded by his surveillance video. This is especially true since there was written, as well as verbal request for him to do so.

As discussed in the previous section, Respondents themselves, brought the case for shoplifting against Appellant. Thus, the duty to preserve the video surveillance cannot be any clearer. These events, taken together, are enough to support the inference that Respondent Rodgers' consciously or recklessly destroyed the requested video surveillance, because it would prove the fabrication of the alleged shoplifting.

The case at bar has similarities with the case of Silvestri v. General Motors Corp., 271 F.3d 583 (4<sup>th</sup> Cir., 2001), where despite the anticipation of litigation against General Motors, the plaintiff's counsel and plaintiff did not take any steps to preserve the vehicle. Silvestri laid down the standards for the dismissal based on spoliation:

*"To justify the harsh sanction of dismissal, the District Court must consider both the spoliator's conduct and the prejudice caused and be able to conclude either (1) that the spoliator's conduct was so egregious as to amount to a forfeiture of his claim, or (2) that the effect of the spoliator's conduct was so prejudicial that it substantially denied the Defendant the ability to defend the claim."*

Respondent Rodgers knew and, in fact, initiated a suit against Appellant for the alleged shoplifting. Despite this knowledge, anticipation of litigation, and written and verbal reminders, Respondent Rodgers did not preserve the video surveillance. It is quite telling that Respondent Rodgers did not attend the trial for the shoplifting case, which was dismissed for failure to prosecute. No other inference can be deduced from the non-presentation of the video than that Respondent Rodgers knew that it would prove that Appellant did not commit the alleged offense of shoplifting.

In this instant action, Appellant was prevented from proving his claims when Respondent Rodgers intentionally or recklessly failed to produce the video surveillance, despite a duty to preserve the same. Appellant moved to have Respondents' Answer stricken due to spoliation, which the trial court summarily dismissed, stating "I'm going to deny that motion, but I'll take the other one into consideration." (R.p. 285). Appellant asserts that, by failing to rule on the issue of spoliation, or to issue an adverse inference instruction, the trial court allowed Respondents to destroy the evidence which would have clearly illustrated that the shoplifting charge was a hoax; thereby, making him guilty of filing false report or giving false statement. These acts, by the trial court and Respondents, deprived Appellant of his right to due process.

**V. There is a genuine dispute of material fact that will prevent summary judgment,**

Appellant asserts that the Court erred in granting the summary judgment as there exists a genuine dispute as to a material fact. Appellant submitted a copy of the receipt proving his purchase of the case of beer, conflicted with Respondent Rodgers' claim of shoplifting.

In a summary judgment, a moving party must produce evidence in support of each and every essential element of the claim. In this case, Respondent Rodgers did not submit any evidence that would prove that Plaintiff committed the shoplifting. Despite repeated demands, he did not present the video surveillance, nor did he show the same to any of the police authorities who responded to his call/report of a shoplifting incident. By his own admission, this was not the first time a shoplifting incident occurred in his store, and in previous cases, he submitted a video surveillance." (R.p. 255-256). In this particular case, however, he did not show the video to the police.

To defeat a summary judgment motion, the non-moving party only has to show a scintilla of evidence that a dispute of material fact exist. In the case at bar, the existence of a receipt and

bank statement showing proof of purchase of a case of Bush beer, at the time, date and place of the alleged offense, negates and runs in contrast with the self-serving, unsupported testimony of Respondent Rodgers.

The inconsistent and ever-changing testimonies of Respondent Rodgers as to the details surrounding the commission of the alleged shoplifting undermines his credibility. In an attempt to secure a conviction of Appellant for shoplifting, Respondent Rodgers claimed that Appellant took two cases of beer out of his store, the second one being the subject matter of the offense. Only one case of beer was found in Appellant's truck when he was arrested at the fairgrounds. Since the 911 call details Rodgers' continuous surveillance of Appellant from the time he left his property, he would have had the opportunity to see the latter dispense with the beer. Of course, since Appellant was getting the beer for the party at the end of the day, the beer would have been kept in the truck.

The pertinent provision of the crime of shoplifting, for which Plaintiff was accused of, is defined in § 16-13-110 of the South Carolina Code, which states:

*"A person is guilty of shoplifting if he:*

*(1) takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value."*

Other than the uncorroborated video surveillance, Respondent Rodgers did not personally witness the alleged taking. His allegation of a second case of beer being shoplifted was not supported by either testimonial or physical evidence. The only evidence presented was the

receipt and bank statement showing that a case of beer was purchased and paid for by Appellant at the date and time of the alleged shoplifting incident. The evidence clearly and unequivocally shows that there was no unauthorized taking of any merchandise.

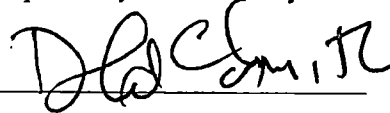
Appellant believes that the credibility of Respondent Rodgers and the application of adverse inference on the missing video, are matters for the jury to determine.

This case is more than a person being in a wrong place at a wrong time. Appellant suffered manifest injustice. Appellant, a foreign traveler, was deprived of his liberty against his will, due to a reckless, grossly negligent and baseless accusations by a callous businessman, who had no qualms at circumventing the law to secure his business. It is time for the Court to recognize the intentional destruction of evidence that cost a visiting litigant any shot he may have had at due process.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully prays that the trial court's Orders, granting Respondents' Motion for Summary Judgment be reversed, and this cause be remanded for a jury trial on the merits.

Respectfully submitted by:



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June 25, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

**RECEIVED**  
JUL 02 2018  
SC Court of Appeals

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

**CERTIFICATE OF COUNSEL FOR FINAL BRIEF**

I HEREBY CERTIFY that Appellant's Final Brief in the above-captioned case complies  
with Rule 211 (b) SCACR.

June 25, 2018



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# APPENDIX C

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

---

R. Lawton McIntosh, Circuit Court Judge

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Case No. 2018-000289

---

Mario Escalante, ..... Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart ..... Respondents.

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## FINAL BRIEF OF RESPONDENTS

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RECEIVED

JUL 02 2018

SC Court of Appeals

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**STATEMENT OF ISSUES ON APPEAL**

I. DID THE TRIAL COURT PROPERLY GRANT RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT THE APPELLANT'S CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA AND COLLATERAL ESTOPPEL?

## **INTRODUCTION**

The circuit court's grant of the motion for summary judgment filed by David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (hereinafter referred to as "Whitehall" or "Respondents") should be affirmed because Appellant's claims are barred by operation of the doctrine of res judicata. While Appellant has tried to raise a host of issues on appeal, many of which are not properly before this Court, the only real issue is whether the circuit court correctly determined that the claims asserted in this action arise out of the same transaction or occurrence as those claims asserted by Appellant against Respondents in a related action filed in the United States District Court for the District of South Carolina. Because the two actions arise out of the same transaction or occurrence and Respondents obtained summary judgment in the federal action (and such decision was affirmed by the Fourth Circuit Court of Appeals), the circuit court correctly granted Respondents' motion for summary judgment in this state court action.

## **STATEMENT OF THE CASE**

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart ("Whitehall") owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. Appellant alleges that on that date Respondents wrongfully accused him of shoplifting a case of beer. As a result of the incident, Appellant was arrested and spent one night in jail. The charges against Appellant were dismissed for failure to prosecute when Respondents did not appear on his court date due to an alleged lack of notice.

On July 22, 2013, Appellant initiated an action in the Anderson County Court of Common Pleas against Respondents ("the State Action"). In the complaint, Appellant asserts false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious

prosecution, conspiracy, conversion, and fraud causes of action. (R. pp. 1-13).<sup>1</sup> Appellant alleges Respondents filed a complaint with the Anderson's County Sheriff's Department and stated that they had video footage of Appellant stealing beer. (R. p. 6 at ¶ 7). Appellant alleges that David Rodgers followed Appellant, aided the Sheriff's Department in locating him, and instructed the police that Appellant had stolen beer from his store. (R. p. 6 at ¶¶ 9-10). As such, the police arrested Appellant for shoplifting. (R. p. 6 at ¶ 12). Further, Appellant alleges that Respondents accused Appellant of stealing the beer in an effort to protect themselves from prosecution for violating local ordinances prohibiting the sale of alcohol on Sundays. (R. p. 7 at ¶ 17).

With the State Action still pending, on January 13, 2015, Appellant filed suit in the United States District Court for the District of South Carolina, Anderson Division, against Respondents, the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as "the Federal Action"). The complaint in the Federal Action contains nearly identical allegations as in State Action and, with the exception of negligence which was not clearly pled in the Federal Action, asserts the same causes of action against Mr. and Mrs. Rodgers. (R. pp. 219-233). In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants. (*Id.*)

---

<sup>1</sup> Appellant's brief on appeal is replete with many bald assertions disguised as "facts." These purported "facts" find no support in the record and were not considered by the circuit court in any context. *See Becker v. Uhe*, 221 S.C. 334, 339, 70 S.E.2d 346 (1952) ("[F]acts improperly stated in the brief will not be considered."). In addition, Appellant fails to include proper reference to the materials from which many of the statements are included in Appellant's Statement of Fact were taken. *See* Rule 208(b)(4), SCACR.

While Respondents dispute many of the allegations in Appellant's brief, because the issue before the Court is one involving issues of res judicata and/or collateral estoppel, Respondents refer only to the allegations contained in the pleadings.

Respondents and the co-defendants filed separate motions for summary judgment in the Federal Action. While the motions were pending, the State Action was set for a date certain trial on February 16, 2016. The parties held a telephone status conference with Judge Cordell Maddox to discuss the trial of the case. (R. p. 198). Due to the pending motions for summary judgment in the Federal Action, Judge Maddox continued the trial of the State Action until such time as the outcome of the Federal Action was known. (R. p. 198)

By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Respondents and the police defendants as to each cause of action asserted by Appellant, finding that the evidence in the record supported the Magistrate Judge's "central conclusions":

(1) that Plaintiff has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and

(2) that probable cause ultimately supported Plaintiff's shoplifting arrest.

(R. p. 235). Appellant appealed the order granting summary judgment to the Respondents in the Federal Action. On October 12, 2017, the Fourth Circuit Court of Appeals affirmed the order granting summary judgment to Respondents for the reasons stated by the district court in its August 16, 2016 order. (R. pp. 236-238).

Following the Fourth Circuit Court of Appeals' affirmation of the order granting summary judgment in the Federal Action, on October 18, 2017, Respondents moved for summary judgment in the State Action on the grounds that Appellants' claims are barred by the doctrines of res judicata and collateral estoppel. (R. pp. 204-238). That motion was granted by the trial court by order dated January 16, 2018. Appellant filed a motion for reconsideration, which was denied by the trial court. Appellant now appeals that ruling.



## ARGUMENT

For the reasons outlined below, the circuit court's order was proper and should be affirmed.

### **I. Appellant Cannot Rely Upon Facts and Arguments Not Properly Before the Court.**

Before delving into the merits of the circuit court's decision, it is important to note that many of the issues raised in Appellant's brief are not properly before this court. Specifically, Appellant rests the majority of his arguments on the grounds that Respondents' answer should have been stricken on account of the alleged spoliation of video surveillance evidence. Appellant previously filed a motion to compel (R. pp. 29-30), a complaint for contempt and rule to show cause (R. pp. 60-63), and a motion to strike (R. pp. 241-249) which all involve the issue of the video surveillance. All of these motions were denied. Appellant has not appealed the circuit court's denial of any of these motions as they are not included in the notice of appeal nor are they identified in his statements of issue on appeal. *See* Rule 208(b)(1)(B), SCACR ("ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *Allen v. Pinnacle Healthcare Sys., LLC*, 394 S.C. 268, 715 S.E.2d 362 (2011) (declining to address argument on the merits which was not included in appellant's sole statement of the issue on appeal).

Rather, the only orders from which Appellant now appeals are the circuit court's order granting Respondents' motion for summary judgment and order denying Appellant's motion for reconsideration. The circuit court's order makes no mention of spoliation of evidence but, rather, properly found that Appellant's claims are barred by res judicata.

## **II. The Circuit Court Properly Granted Summary Judgment to Respondents' Because Appellant's Claims Are Barred By Res Judicata And/Or Collateral Estoppel**

While Appellant makes much ado about being deprived of his day in court, such cannot be further from the truth. Rather, Appellant is now attempting to relitigate the same issues before a fourth tribunal. The procedural history of this matter is admittedly convoluted, but the issues related thereto were created by Appellant's decision to simultaneously file suit against Respondents in two separate forums, both of which relate to his May 5, 2013 shoplifting arrest. For the reasons discussed below, Appellant cannot get a second (or fourth) bite at the apple after Respondents obtained judgment in their favor in the Federal Action.

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013) (quoting *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.* (citation and quotation marks omitted). "Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding." *S.C. Pub. Interest Found.*, 401 S.C. at 386, 737 S.E.2d at 506 (quoting *Pye v. Aycock*, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997)).

"Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *S.C. Pub. Interest Found.*, 401 S.C. at 386, 737 S.E.2d at 507 (quoting *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012)). "The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable

principles.” *Town of Sullivan's Island v. Felger*, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) (citing *Watson v. Goldsmith*, 205 S.C. 215, 31 S.E.2d 317 (1944)). In *Watson*, the Supreme Court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation) . . . Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221-22, 31 S.E.2d at 319-20 (citations omitted) (emphasis added); *see also First Nat'l Bank of Greenville*, 207 S.C. at 24, 35 S.E.2d at 56-57 (citing *Watson*) (contrasting the origins of res judicata and collateral estoppel).

Here, as much as Appellant would like to distinguish the State and Federal Actions, a cursory review of the complaints in the two suits reveals two nearly identical actions. Aside from the addition of the police defendants and a few additional causes of action (§1983, Assault, Battery), the factual allegations of the Federal Action are essentially repeated verbatim from the complaint in the State Action. Moreover, with the exception of negligence, Appellant asserts the same causes of action against Respondents in the complaint in the Federal Action as he does in the State Action.

While Appellant argues in this appeal that Respondent Rodgers was included as a party in the Federal Action, merely to establish his involvement in the “conspiracy” to deprive the Appellant of his constitutional rights, such a distinction is not reflected in the pleadings.<sup>2</sup>

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<sup>2</sup> While admittedly not a part of the record in the State Action, Respondents would also represent to the Court that, in seeking to hold Rodgers liable under § 1983 as a private citizen, Appellant submitted in his briefing to both the United States District Court and the Fourth Circuit Court of Appeals that Respondent Rodgers was essentially the driving force behind his arrest.

Appellant also sought to hold Respondents liable for conspiracy in the State Action. (R. p. 12 at ¶¶ 54-57). Appellant did not posit Respondent Rodgers as a mere co-conspirator in the Federal Action but, rather, alleged that Respondent Rodgers was the one who “instigated the unlawful arrest of [Appellant] by, among other fraudulent means, providing false information and misleading still photographs to authorities.” (R. p. 223 at ¶ 10(first)).

Moreover, just as is the case in the State Action (R. p. 7 at ¶ 17), the crux of Appellant’s case in the Federal Action is the notion “Rodgers and his employees alleged that [Appellant] had stolen the beer, in an effort to protect themselves from prosecution for violating the Sunday alcohol ordinance.” (R. p. 221 at ¶ 21). As the District Court held and the Fourth Circuit affirmed:

[Appellant] has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation.

(R. p. 235).

It is clearly apparent that the State and Federal Actions arise out of the same transaction or occurrence, the May 5, 2013 shoplifting incident, and involve the same legal theory against Respondents (i.e. manufacturing a shoplifting crime to cover a Sunday alcohol sale). Because Respondents obtained summary judgment as to all causes of action in the Federal Action, res judicata bars Appellant from re-litigating those causes of action in the State Action.

Nonetheless, Appellant contends that the negligence claim contained in the complaint in the State Action is not barred by res judicata because it was not raised in the Federal Action and, thus, was not adjudicated.<sup>3</sup> Under the doctrine of res judicata, however, a litigant is barred “from

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<sup>3</sup> It appears that Appellant is not contesting that his false imprisonment, invasion of privacy, defamation, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud

raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *S.C. Pub. Interest Found.*, 401 S.C. at 385, 737 S.E.2d at 506 (emphasis added). As such, even if negligence was not formally adjudicated in the Federal Action, it is barred by res judicata if it could have been raised in the Federal Action. That is clearly the case here. While Appellant wants to construe the negligence claim as one involving conduct inside Respondent’s store as opposed to claims in the Federal Action which purportedly involve conduct that occurred after Appellant left the store, the negligence claim asserted in the State Action arises out of the same transaction or occurrence – the May 5, 2013 shoplifting incident. There was nothing prohibiting Appellant from raising the negligence claim in the Federal Action along with the other state-law claims. As such, the negligence claim is also barred by res judicata.

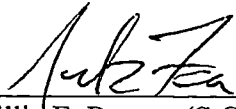
Because the State and Federal Actions arise out of the same transaction or occurrence and Respondents obtained summary judgment as to all causes of action in the Federal Action, this action is barred by the doctrine of res judicata. Accordingly, the circuit court’s order granting Respondents’ motion for summary judgment should be affirmed.

### **CONCLUSION**

For the foregoing reasons, Respondent requests that the Court deny the appeal and affirm the decision of the circuit court.

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causes of action are barred by res judicata. *See* Appellant’s Initial Brief, p. 7 (“Appellant believes that he is not precluded from raising the cause of action for negligence against Respondents.”) (emphasis added). In fact, counsel for Appellant admitted at the hearing on Respondents’ motion that negligence was the only cause of action which could potentially survive. (R. p. 284).



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2018-000289

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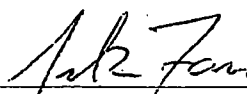
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d/b/a Whitehall Express Mart ..... Respondents.

RULE 211, SCACR CERTIFICATION  
FINAL BRIEF OF APPELLANT

I, Nicholas A. Farr, Esquire, hereby certify that the *Final Brief of Respondents* complies  
with the requirements of Rule 211(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_  
Nicholas A. Farr, Esquire

Greenville, South Carolina

June 27, 2018

## APPENDIX D

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

**RECEIVED**

JUL 24 2018

**SC Court of Appeals**

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

### FINAL REPLY BRIEF OF APPELLANT

July 19, 2018



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## STATEMENT OF THE CASE

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief. This suit is brought pursuant to the arrest of Mario Escalante for allegedly shoplifting a case of beer from Defendants' retail establishment on Sunday, May 5, 2013.

Appellant was wrongfully accused with shoplifting a case of Busch beer. Respondent, using an image of Appellant allegedly taken from a video surveillance in his store, caused the arrest and detention of Appellant despite lack of probable cause. When Appellant presented proof of purchase of the allegedly stolen item and requested Respondent to clear his name, the later refused to accede. A charge was filed against Appellant, which was later dismissed for non-prosecution.

On July 22, 2013, Appellant initiated this action against Respondent Rodgers, asserting among others negligence and negligent (including negligent training and supervision), in Anderson County Court of Common Pleas (state case).

On January 13, 2015, Appellant filed a Federal suit against Anderson County Sheriff Office, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police department, James Stewart and the defendants found herein, alleging that their conduct created the following causes of action: Section 1983, False Imprisonment, Assault and Battery, Intentional Infliction of Emotional Distress, Invasion of Privacy, Defamation and Slander, Civil Conspiracy, Abuse of Process and Conversion.

The action was brought because Defendant Rodgers was not arrested for selling beer on Sunday, which violated the law, and was undisputable. The action was brought because the

Hispanic U. S. citizen from El Paso was arrested for purchasing a case of beer. The action was brought because not one of the defendants listed in the federal action showed up to Court to prosecute the non-case. Mr. Escalante was forced to take a day off from fair work in Tennessee, and forfeit the \$50.00. associated with that day's work, to come to Anderson to have his face rubbed in the fact that he went to jail for nothing.

The Federal Court found that probable cause existed, despite Rodgers implicit knowledge that he sold the case of Busch beer that was located and, therefore, granted Summary Judgment on all of the actions brought in Federal Court. The Federal Court action dealt with the relationships between the State and Defendants' Rodgers. The State action dealt with the relationship between Defendants' Rodgers and his employees.

Thereafter, herein Defendants' Rodgers moved for summary judgment again, which was granted by this Court in its Order, dated January 16, 2018.

Respondent avers that res judicata and/or collateral estoppel bar the adjudication of this case, since the Federal court ruled against the Appellant in that case. Respondent avers that the state claims and federal suit involve the same parties and same issues. It further states the cause of action of negligence should have been raised in the former suit, and since Appellant did not raise the issue then it is barred from relitigating such.

Appellant argues that the two cases do not involve the same parties, issues nor cause of action, and as such, the state claim for negligence is not barred by res judicata and/or collateral estoppel. He further asserts that he has presented sufficient proof that there exists a genuine issue of material fact that will preclude summary judgment.

## ARGUMENTS

### I. THE ISSUE OF SPOILIATION WAS PROPERLY BEFORE THE COURT.

The act of spoliation goes into the heart of summary judgment. As established, summary judgment is appropriate when it is clear that there is no genuine issue of material fact. Gadson v. Hembree, 364 S.C. 316, 320 (Ct. App. 2005).

In arguing that spoliation should not be considered by this Court, Respondents relied on the ruling in Allen v. Pinnacle Healthcare Sys., LLC, 295 S.C. 268, 715 S.E.2d 362 (2011). In Allen, the court declined to address the issue of attorney's fees in a case of wage dispute, for failure to set forth the same in the statement of issues on appeal. Appellant contends that, the Allen ruling does not apply in this case, as the attorney's fees is a stand-a-lone issue in Allen. Appellant asserts that the issue of spoliation in this case forms a part of the argument why the summary judgment should have been denied. It is well-established that if the slightest doubt exists as to whether there are genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law, the summary judgment must be reversed. In this case, Appellant presented a testimony by Respondent himself that a video existed. Respondent alleged that he took a snippet or an image of the Appellant from the video and submitted the same to the police to identify him. When Appellant requested the video during the discovery proceedings, the same was conveniently unavailable. The possibility that the Appellant was entitled to the adverse inference instruction is sufficient to grant a reversal of the summary judgment.

### II. APPELLANT'S CLAIMS ARE NOT BARRED BY RES JUDICATA AND/OR COLLATERAL ESTOPPEL

Under the facts and circumstances of this case, neither the doctrine of res judicata and collateral estoppel bar adjudication of this present action. As was argued in the initial appeal

brief, this action for (gross) negligence claims is not barred by the doctrine of res judicate because the requisite elements are not satisfied in the present action. There is no identity of parties, nor identity of subject matter. *Appellant's Final Brief*, p. 7-8, (June 20, 2018).

The Federal action arose from the unconstitutional conduct and behavior of the law officers and concerns itself with the conduct of the parties after Appellant left the store. The State case arose from the sale of the case of beer and concerns itself with the actions of the parties inside the store. The two actions involve claims that are substantially unrelated.

Appellant submits that there was expressly no adjudication of the negligence of Rodgers, a/k/a "personal involvement in the specific state law claims". Since the federal magistrate refused to address the negligent conduct of Rodgers, and Judge Stilwell specifically stated that there was a genuine issue of material fact as it relates to negligence, Appellant is entitled to have this matter adjudicated.

Neither does collateral estoppel set in as there is no identity of issues between the federal case and the state case.

The issue in the Federal case is the State actors' violation of Appellant's rights against deprivation of liberty and equal protection clause. The focus in the Federal suit was the State's refusal to treat Rodgers the same way that Escalante was treated. The State allowed Rodgers to get away with what is a clear violation of the law: selling beer on Sunday, yet arrested Escalante based on a non-eye witness account. The State did not show up to a court date that it created to "prosecute" Escalante. It was irrelevant what happened to Mario Escalante because he was an Hispanic fair worker. However, the State failed to arrest the white business owner for selling beer on Sunday, despite the receipt and bank statement proving same.

The state claim was brought because of the negligent act of Defendant Rodgers in accusing herein Appellant of shoplifting. His negligent training, negligent supervision, negligent maintenance of the video, etc., formed the core of the State claim.

Negligence was not raised in the Federal court, because Appellant believes that Defendant Rodgers' negligence, and that of their employees, is independent from and does not arise from the allegations of unconstitutional behavior by Rodgers and law enforcement. Since negligence was not raised in the Federal court, it was never adjudicated with finality. Thus, since all the requisite elements for res judicata and collateral estoppel are not met in the present case, then res judicata and collateral estoppel do not apply.

Furthermore, the court held in the case of *Johns v. Johns*, that even when a party meets all the required elements, res judicata will not be applied "where it will contravene other important public policies; the courts must weigh the competing public policies." *Johns v. Johns*, 309 S.C. 203, 420 S.E.2d 856, 859 (Ct. App. 1992) as cited in *Nelson v. Coker*, No. 3626, SC: Court of Appeals, April 14, 2003. In balancing the public policies (public policy of finality of judgment against the basic human rights to liberty, privacy, due process and equal protection of law, the court should give deference to the overriding right granted by the US Constitution.

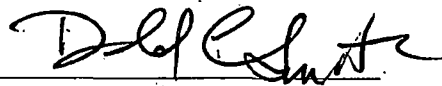
Another exception to the preclusion by reason of res judicata is when the party sought to be precluded, as a result of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action. *Ibid.* Appellant maintains that due to Respondents' failure to provide the video surveillance and the trial court's unwillingness to rule on spoliation, he was deprived of a full adjudication of his case. Thus, even assuming that the court found the elements of res judicata and collateral

estoppel are met, this will not prevent Appellant from pursuing the State action under these exceptions.

**CONCLUSION**

For these reasons, as well as those addressed in his Initial Brief to this Court, Appellant respectfully requests that lower court's judgment or orders be reversed, and the case be remanded for trial.

Respectfully submitted by:



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*Attorney for Appellant*

Anderson, South Carolina  
July 19, 2018

---

**CERTIFICATE OF COUNSEL FOR FINAL REPLY BRIEF**

---

I HEREBY CERTIFY that Appellant's Final Reply Brief in the above-captioned case complies with Rule 211 (b) SCACR.

July 19, 2018

**RECEIVED**

**JUL 24 2018**

**SC Court of Appeals**



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## APPENDIX E

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

### **THE STATE OF SOUTH CAROLINA In The Court of Appeals**

Mario Escalante, Appellant,

v.

David L. Rodgers and Janice W. Rodgers, d/b/a  
Whitehall Express Mart, Respondents.

Appellate Case No. 2018-000289

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Appeal From Anderson County  
R. Lawton McIntosh, Circuit Court Judge

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Unpublished Opinion No. 2020-UP-021  
Submitted January 1, 2020 – Filed January 29, 2020

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**AFFIRMED**

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Donald Loren Smith, of Attorney Office of Donald  
Smith, of Anderson, for Appellant.

Phillip E. Reeves and Nicholas Andrew Farr, both of  
Gallivan, White & Boyd, PA, of Greenville, for  
Respondents.

---

**PER CURIAM:** Mario Escalante appeals the circuit court's order granting summary judgment in favor of David L. Rodgers and Janice W. Rodgers. On appeal, Escalante argues the circuit court erred in granting summary judgment

because res judicata does not apply to his claims. Because the state and federal actions involved the same parties, arose from the same occurrence, and the federal court granted summary judgment in the federal action, we hold res judicata barred Escalante's state action. *See S.C. Pub. Interest Found. v. Greenville Cty.*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (2013) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." (quoting *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011))). Additionally, res judicata barred Escalante's negligence claim because he should have brought the claim in the federal action. *See id.* ("Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." (quoting *Judy*, at 172, 712 S.E.2d at 414)). Accordingly, the circuit court did not err in granting summary judgment.

**AFFIRMED.**<sup>1</sup>

**THOMAS, GEATHERS, and HEWITT, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

## APPENDIX F

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

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SC Court of Appeals

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

### PETITION FOR REHEARING

Pursuant to SCACR Rule 22 (a) and SCACR Rule 240(i) Appellant Mario Escalante respectfully petitions this Court for a Rehearing of Opinion 2020-UP-021, filed January 29, 2020. Rehearing is warranted when the Court has overlooked or misapprehended an argument. Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001).

### SUMMARY OF ARGUMENTS

The Honorable Court of Appeals affirmed the dismissal of Appellant's case, finding that res judicata applies to herein case. This Court rationalized its Opinion by finding that the state and federal actions involved the same parties, arose from the same occurrence, and the federal court granted summary judgment in the federal action. This Court further held that res judicata barred Appellant's negligence claim because he should have brought the same in the federal action.

Appellant believes that this Honorable Court misappreciated the application of the

doctrine of res judicata and overlooked some facts that would distinguish the present case from the federal action.

Appellant believes that the elements of res judicata are not present in this case. Appellant will show that there is no identity of parties nor subject matter between the State and Federal actions. Neither did the two suits arise from the same transaction or occurrence. Furthermore, Appellant did not have a decision on the merits.

In the alternative, assuming arguendo that this Court finds that the requirements for res judicata have been met, this case falls within the exceptions. Appellant maintains that he has been deprived of his right to full adjudication of his case by a series of actions and conduct of Respondents.

#### **COURSE OF PROCEEDINGS AND DISPOSITION BELOW**

This State Action is for damages sustained by Appellant as a result of Respondents' and its employees' negligent actions. As the main question is whether the issues raised in the State action have been adjudicated in a Federal action subsequently filed by Appellant, it will be necessary to state briefly the proceedings in the two cases.

This suit is brought pursuant to the arrest of Appellant for allegedly shoplifting a case of beer from Respondents' retail establishment on Sunday, May 5, 2013. Respondent said that Appellant stole a case of beer. Appellant said he did not steal a case of beer. There was a genuine issue of material fact.

Appellant came to Anderson County from El Paso, Texas to work a concession stand at the annual Anderson County Fair. Appellant had spent the morning breaking down the concession stand he had been working and during a break, went to purchase a case of beer to enjoy in celebration of a co-worker's birthday, later that evening. Since Appellant is not a

resident of this county, he was unaware of the prohibition of the sale of alcohol on a Sunday. Appellant selected Respondents' retail establishment to make his purchase based on the close proximity of the store to the fair grounds.

After entering the store and making his way to the back of the building where the beer is located, Appellant picked up one case and proceeded to the register to make his purchase. When the transaction was complete, the clerk gave Appellant a receipt for his beer purchase and he exited the store. Upon getting into his truck, Appellant thought one case would not suffice based on the potential number of people that he thought may partake in the festivities. Appellant entered the store for a second time and made his way back to the "beer cave" for a second case.

When Appellant approached the clerk this time, she realized the mistake she had made by selling alcohol on a Sunday; and, informed Appellant she would not be able to sell him the second case. Appellant returned the case to where he had found it, left the store and returned to the fair grounds to finish tearing down the stand.

Respondent David Rodgers claimed in his depositions, one of the clerks in his store called him on his cell phone, informed him that Appellant stole a case of beer, ran out of the store and drove off. He stated that upon arriving at the store, he reviewed the video camera footage, which revealed a red pick-up truck with a Texas license plate, that exited the store parking lot to the left. He also recognized that the San Antonian was "noticeably wet" and, from these facts deduced that Appellant was a fair worker.

It should be noted he could not recall who called him. Depositions taken of three (3) employees from Defendants' store did not disclose the individual. Moreover, none of

them corroborated the story offered by Respondent. This version of the facts related to the happenings of May 5, 2013, was not the only account offered by Mr. Rodgers

However, his testimony was contradicted by his 911 call following the alleged incident. In actuality, Respondent Rodgers was at the store when Appellant left the store, because he followed him back to the fairgrounds. This claim was supported by the exchange between Rodgers and the 911 operator which was memorialized by the State. (Exhibit 1, CAD Report, Motion to Stricken Answer, or in the Alternative, Motion for Adverse Inference due to Spoliation, December 29, 2017). Respondent Rodgers informed the 911 operator that he was behind Appellant's truck. He kept Appellant in his sight from the time that he left his store until he had been cuffed and placed on the back of the police car.

The case of beer that was confiscated by police was Busch beer. Appellant's receipt and associated purchase evidence on his bank statement (his bank in San Antonio, Texas), for the month of May 2013, was a \$14.30 case of Busch as well. (Exhibit 2, Bank Statement, May 1-31, 2013) (Exhibit 3, Beer Receipt, May 5, 2013). Rodgers has claimed that Mario bought the first case; and, he stole the second case. He has never presented anything tangible to support the claim. The woman who sold him the case said that she never saw a second case leave the store. (Deposition, Amanda Nicole Brown. 9/5/2014, p. 19, 10.11). Only one case of beer was found in Appellant's truck when he was arrested at the fairgrounds-a case of Busch. A charge was brought against Appellant for taking the beer, but it was later dismissed when Rodgers and law enforcement failed to appear at court, bringing with it a dismissal for the failure to prosecute.

When he was released from jail, Appellant returned to the area where he had been apprehended. He managed to locate the receipt from the purchase of the beer. He returned to Whitehall Express Mart to confront Rodgers about the charge brought against him. Rodgers told him that he had him on film based on the fact that he had thirty-two (32) or thirty-three (33) cameras. No video was ever produced.

On July 23, 2013, Appellant filed a suit for false imprisonment, invasion of privacy, defamation, false arrest, outrage, malicious prosecution, conversion, fraud, negligence, negligent hiring, training, supervision or monitoring. The action was filed with the Anderson Common Pleas Court, and named David Rogers and Janice Rodgers, d/b/a Whitehall Express Mart as defendants.

On or about December 14, 2014, Defendants brought a Notice of Motion and Motion for Summary Judgment. The matter was heard by the Honorable Robin B. Stilwell on February 9, 2015. On or about March 18, 2015, Judge Stilwell's Order based on the hearing granted Defendants' motion as to the conspiracy and fraud causes of action. However, he denied the motion with regard to false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution and conversion. (Exhibit 4. Order SMJ, 3/18/2015).

Trial was set in this matter for a date certain on February 16, 2016. On February 11, 2016, defense counsel, Phillip Reeves, Esquire, moved for a continuance because his "daughter was having a birthday". (Exhibit 5, Order for Continuance, 6/03/2016). Nicholas Farr was the only individual who appeared for hearings and depositions. Reeves' participation was minimal at best. The date certain trial was set in the summer of 2015.

In the meantime, Appellant prepared for the trial of his State action. As he lived out of state, he had to purchase a ticket to attend trial. Unfortunately, the trial was continued. On

February 11, 2016, counsel for Respondents, Phillip Reeves, Esquire moved for a continuance because “his daughter was having a birthday”. (Order of Continuance, June 3, 2016). Appellant believed that this continuance was a dilatory action on the part of the Respondents. The trial was set six (6) months prior. Respondent Counsel agreed to that scheduled date. Ironically, on February 11, 2016, Reeves also filed for protection in the Federal action for two additional time periods under docket entry 77.

(02/11/2016) 77 NOTICE of Request for Protection from Court Appearance by Phillip Earl Reeves for February 29,2016 through March 4, 2016 and May 4, 2016 through May 17,2016 (Reeves, Phillip) (Main Document 77 replaced on 2/11/2016) (gpre, ). (Entered: 2/11/2016)

Mr. Reeves was well aware of what is necessary for protection. It was unnecessary in State Court.

On January 13, 2015, Plaintiff filed a federal suit against the Anderson’s County Sheriff’s Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police department, James Stewart and the defendants found herein, alleging that their conduct created the following causes of action: Section 1983, False Imprisonment, Assault and Battery, Intentional Infliction of Emotional Distress, Invasion of Privacy, Defamation and Slander, Civil Conspiracy, Abuse of Process and Conversion.

The action was brought because Defendant Rodgers was not arrested for selling beer on Sunday, which violated the law, and was undisputable. The action was brought because the Hispanic U. S. citizen from El Paso was arrested for purchasing a case of beer. The action was brought because not one of the defendants listed in the federal action showed up to Court to prosecute the non-case. Mr. Escalante was forced to take a day off from fair work in Tennessee, and forfeit the \$50.00 associated with that day’s work, to come to Anderson to have his face



rubbed in the fact that he went to jail for nothing.

The Court found that probable cause existed and, therefore, granted Summary Judgment on all of the actions brought in Federal Court. The Federal Court action dealt with the relationships between the State actors and Defendants' Rodgers upon Appellant before he left the store. The State action dealt with the relationship between Defendants' Rodgers and their employees prior to leaving the store.

The basis for the granting of Summary Judgment came from the Report and Recommendation of the federal magistrate. The magistrate based her arguments on the fact that probable cause existed at the time of the arrest. In fact, the following was stated, "the Court declines to address...any of the Rodgers Defendants' arguments regarding personal involvement in the specific state law claims." (Report and Recommendation, 7/29/2016, p. 18).

The District Court adopted the Report and Recommendation of the Magistrate. This ruling was ultimately affirmed by the 4th Circuit Court of Appeals on November 3, 2017.

Armed with judgment from the Federal Court, Respondents moved for summary judgment of the State action, based on res judicata. The lower court granted the summary judgment, which on appeal, was affirmed by this Court on January 29, 2020. Thus, this Petition for Rehearing.

## **ARGUMENTS**

### **I.**

#### **THE STATE ACTION IS NOT BARRED BY RES JUDICATA.**

In its Order affirming the circuit court ruling granting summary judgment in favor of Respondent David L. Rodgers and Janice W. Rodgers, this Court held that res judicata applied to Appellant's claims. This Court states that since the action brought in the State court and the

Federal court involved the same parties and arose from the same occurrence, then Appellant's claims in the State action were barred by res judicata. The Court further held that res judicata barred Appellant's cause of action for negligence in the State action because he should have brought it in the Federal action.

Appellant believes that this Court misappreciated the facts and the laws applied in this case. Appellant reiterates that none of the elements of res judicata are present in this case.

Well settled is the principle that "res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, Op. No. 26987 (S.C. Sup. Ct. filed June 20, 2011) (Shearouse Adv. Sh. No. 20 at 14, 24) (quoting *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). If res judicata applies, a litigant is barred from raising any issues which were or might have been adjudicated in the former suit. *Id.*

Res judicata requires proof of three elements: (1) a final judgment entered on the merits of the first suit; (2) the parties to both suits are the same; and, (3) the subsequent action involves matters properly included in the first action. *Plott v. Justin Ent.* 374 S.C. 504, 511, 649 S.E.2d 92, 95 as cited in *Judy v. Judy*, Op. No. 4528, April 8, 2009.

Appellant submits that res judicata does not apply in this case because the claims in both actions do not meet the requirements of res judicata.

**The claims did not arise from same occurrence.**

Appellant reiterates his position that the two actions arose from different occurrences. While the State actions are confined to facts that transpired within the store premises, the Federal action was primarily concerned with facts that occurred outside the store premise.

**There is no identity of subject matter.**

Appellant asserts that the issues raised in the two actions are different. In the case of Plum Creek Dev. Co. v. City of Conway, the Court laid down the criteria for comparing two causes of action.

The test utilized by this court for comparing two causes of action is to determine whether the primary right and duty and the delict or wrong are the same in both actions.

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999).

In the State action, Appellant raised claims of negligence and/or gross negligence on the part of the Respondents in failing to train, supervise or monitor their employees. Appellant believed and asserted that this negligence reflected in the way Respondents and/or their employees conducted their business which led them to falsely and unfairly accuse Appellant of stealing or shoplifting. Appellant asserted in his State action that Respondents' baseless accusations defamed his reputation and invaded his privacy. This State action was focused solely on Appellant and his interaction with Respondents and/or their employee(s).

On the other hand, Appellant's federal action was to address the deprivation of his constitutional rights by the named defendants. The Federal action arose from the unconstitutional conduct of the law enforcement officers.

Appellant submits that the primary right held by the Appellant in the State Court are his right as a consumer to avail of a good customer service; and, the primary wrong committed by the Respondents is the false and baseless accusation of shoplifting. In the Federal action, the primary wrongs committed by the defendants were the unlawful deprivation of his liberty; the failure by the State to treat the Hispanic visitor to South Carolina the same as the resident white business owner in applying the laws associated with the case; and, the failure by the State to provide Plaintiff

with the opportunity to be heard so he could prove his innocence. Appellant's Constitutional rights of liberty, equal protection and due process were apparently left on the county line when he entered Anderson County.

The deprivation of liberty occurred when law enforcement arrested Appellant for a theft which would have been disproved conclusively had they taken the time to ascertain the video collected by Respondents. The withholding of the Equal Protection of the laws occurred when the State chose to ignore undeniable proof that Respondents illegally sold beer on Sunday, while arresting appellant for a crime for which they had no evidence from the same man who had the evidence Plaintiff purchased the beer he was accused of stealing. The denial of Due Process occurred when Plaintiff was unable to have his criminal case heard by a jury of his peers to prove his *innocence*.

In sum, the nature of the subjects of the two actions are not identical, nor are the parties.

**Res Judicata does not apply to issues not raised nor adjudged in a suit.**

Appellant insists that the cause of action for negligence and negligent hiring, supervision or monitoring in the State action must subsist as they were not raised, nor can they be raised, in the Federal action. In fact, Federal court did not address the issue of Respondents' negligence, and Judge Stilwell expressly stated that there was genuine issue of material fact as it relates to negligence, Appellant is entitled to have this matter adjudicated.

Appellant further avers that Respondent have waived their right to raise res judicata in the State action. Respondents stated all along that the Federal Court should abstain from taking jurisdiction in that case due to the pending state action. In fact, Respondents moved the Federal Court to abstain from taking jurisdiction over them due to the pending case in the State Court, moving for a dismissal based on the Colorado River abstention doctrine. Judge Lewis opined:

Neither party has adequately addressed the fact that Plaintiff's state court case is against only the Rodgers while this federal action is against the Rodgers, seven additional named defendants, and twenty John Does. Further, the federal action raises additional causes of action against the defendants. The Court requires additional briefing on these issues before it can determine whether Colorado River abstention is appropriate. Accordingly, by August 21, 2015, the Rodgers shall refile their motion to dismiss.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 30).

The Court required Respondents to refile their motion, with additional briefing on the issues listed above to determine whether Colorado River abstention is appropriate. The Federal court said the Respondents shall refile their motion to dismiss. However, Respondents never filed such a brief. Appellant believes that by failing to refile their motion to dismiss as required by the Federal Court, Respondents waived their right to be tried in one court, and/or to raise res judicata as a defense.

In sum, res judicata cannot operate to bar the claims of damages and negligence in the State action because the: (1) it is the "prior action" that is referred to in the doctrine; and, (2) the claims in the State action has not been adjudicated even in the subsequent action in the Federal court; and, (3) failure by Respondents to refile their motion for dismissal was tantamount to waiver of the defense of res judicata.

**There is no identity of subject matter.**

Appellant asserts that the issues raised in the two actions are different. In the case of Plum Creek Dev. Co. v. City of Conway, the Court laid down the criteria for comparing two causes of action.

The test utilized by this court for comparing two causes of action is to determine whether the primary right and duty and the delict or wrong are the same in both actions.

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999).

In the State action, Appellant raised claims of negligence and/or gross negligence on the part of the Respondents in failing to train, supervise or monitor their employees. Appellant believed and asserted that this negligence reflected in the way Respondents and/or their employees conducted their business which led them to falsely and unfairly accuse Appellant of stealing or shoplifting. Appellant asserted in his State action that Respondents' baseless accusations defamed his reputation and invaded his privacy. This State action was focused solely on Appellant and his interaction with Respondents and/or their employees.

On the other hand, Appellant's federal action was to address the deprivation of his constitutional rights by the named defendants. The Federal action arose from the unconstitutional conduct and behavior of the law enforcement officers.

Appellant submits that the standards to be applied are different in each case and, therefore, the cases are not parallel. The Federal court went out of its way to hold that the fact Sergeant Hyslop made a constitutional arrest based on probable cause. Respondents were sued as having color of law. With the finding of probable cause, the Federal court has, in essence, ruled that Respondents were not State actors. Despite this finding, the Federal Court applied all the defenses available for the State actors to herein Respondents.

Plaintiff believed that Defendant David Rodgers had been responsible for his arrest; and, he sued him for working with the police to have him arrested. This conclusion was reached upon reviewing the evidence before him. Rodgers called law enforcement and offered that Plaintiff had stolen a case of beer. Rodgers followed Plaintiff back to the fairgrounds. Rodgers met with the police and offered them alleged still images from his surveillance equipment. Therefore, Plaintiff believed Rodgers was essentially acting as a member of law enforcement; or, acting under color of law.

In order to find that a private entity was acting under the color of law, there has to be a state action that has caused damage to a plaintiff. Additionally, the nexus between the State and complained of action must be so close that it appears that the private actor's actions could be attributed to those of the State. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001).

State action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State responsible," and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor."

*Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

As stated in *Lugar*, there has to be an illegal deprivation of a constitutional right in order for there to be state action. Plaintiff alleged that the illegal deprivation was his arrest for the stealing the beer, which he believed that Rodgers had manufactured. However, in order for there to be an illegal deprivation in relation to an arrest, it must have been done without probable cause, which the Court found in this matter. "Here, the Court finds there was probable cause to arrest Plaintiff." (8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Page 9 of 18).

The Federal Court recognized Plaintiff had brought the Federal claim due to his arrest. "...all causes of action in this case stem from Plaintiff's arrest and Defendants' behavior surrounding Plaintiff's arrest." (8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Page 9 of 18). The Court's finding of probable cause meant Plaintiff was not a "State actor". Unfortunately for Plaintiff, despite the Court finding that he was not a State actor, it applied the State's defenses to all the causes of action in the Amended Complaint that related to Rodgers.

Based on the facts known to Hyslop at the time of the arrest, it was reasonable for him to believe that Plaintiff had shoplifted a case of beer. Accordingly, the Court finds probable cause existed to arrest Plaintiff, and the motions for summary judgment should be granted with respect to Plaintiff's § 1983 claim.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Pages 9 and 10 of 18).

Because, as discussed above, Hyslop had probable cause to arrest Plaintiff for shoplifting, Plaintiff is unable to satisfy the elements of a false imprisonment claim. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's false imprisonment claims.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Page 11 of 18).

However, as stated, the arrest was supported by probable cause; thus, no Defendant's conduct can be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's claim for intentional infliction of emotional distress.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Pages 13 and 14 of 18).

As stated, he was arrested based on probable cause. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's invasion of privacy claim.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Page 15 of 18).

Here, as discussed above, Plaintiff's arrest was lawful because it was supported by probable cause. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's conversion claim.

(8:15-cv-00177-MGL Date Filed 07/29/16 Entry Number 92 Page 17 and 18 of 18).

The finding of probable cause eliminated Respondents as defendants in the Federal Court when they moved for summary judgment. In the State case, however, the Supreme Court has held that only a mere scintilla is necessary to defeat summary judgment.

Accordingly, we hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of



evidence to withstand a motion for summary judgment.<sup>3</sup>

Hancock v. Mid-South Management Co., Inc. Op. No. 26587, (S.C.: Sup. Ct., 2009).

## II.

### THE STATE ACTION IS AN EXCEPTION TO THE PRECLUSION BY REASON OF RES JUDICATA.

In the alternative, even assuming that an issue is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, litigation of the issues in a subsequent action between the parties is not precluded where “it will contravene other public policies; the court must weigh the competing public policies.” Johns v. Johns, 309 S.C. 203, 420 S.E.2d 856, 859 (Ct. App, 1992) as cited in Nelson v. Coker, No. 3626, (Ct. App. 2003). In balancing the public policies, which in this case, public policy of finality of judgment against the basic human rights to liberty, privacy, due process and equal protection of law, the court should give deference to the overriding right granted by the United States Constitution.

The Court in Pye v. Ack presented exceptions for the application of res judicata. Pye v. Ack, 325 S.C. 426. One such exception is that of a clear and convincing need for a determination of the issue because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action. Id.

Appellant maintains that the combination of circumstances that occurred in the lower court deprived him of a full adjudication of his case: (1) when the Respondents did not show up to a court date; (2) when Respondent’s counsel unfairly and unceremoniously moved for a continuance of a trial due to a “child’s birthday party”; (3) failure by Respondents to preserve the store’s security camera despite their knowledge and anticipation of litigation on the alleged

incident; (4) lower court failure to rule on Appellant's motion for adverse inference due to spoliation; and, (5) the court's refusal to acknowledge the evidence (receipt, bank statement, etc.) submitted by Appellant as exhibits to establish his case.

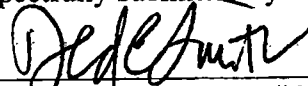
The State action had been set for trial for a date certain. Appellant lived in another state and had to travel for the trial only for the Court to Order a continuance, for purely dilatory purpose--- a birthday party. Respondents failed to refile their motion to dismiss and to submit an explanation for the issue of Colorado abstention despite the Court's order. Appellant firmly believed that this is tantamount to a waiver of their right to raise the defense of res judicata.,

Due to the foregoing, Appellant was deprived of a full adjudication of his case. Thus, even assuming the court found the elements of res judicata to apply in this case, this will not prevent Appellant from pursuing the State's action on negligence under these exceptions.

### **CONCLUSION**

For the above and foregoing reasons, Appellant respectfully requests this Honorable Court reconsider its Order affirming the lower court's ruling in dismissing the State action and remand the same for further proceedings in the trial court.

Respectfully submitted by:



Donald L. Smith (SC Bar#6699)  
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Anderson, South Carolina  
Date: February 13, 2020

**FORM 16**  
**CERTIFICATE OF COUNSEL**  
**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

**APPEAL FROM ANDERSON COUNTY**  
**Court of Common Pleas**

**The Honorable R. Lawton McIntosh, Circuit Court Judge**

**C.A. No.: 2013-CP-04-1700**  
**Appellate Case No. 2018-000289**

**Mario Escalante,**

**Appellant,**

**v.**

**David L. Rodgers and Janice W. Rodgers,**  
**d/b/a Whitehall Express Mart,**

**Respondents.**

**CERTIFICATE OF COUNSEL**

The undersigned certified that this Petition for Rehearing complies with Rule 240 in relation to Rule 267, SCACR.

Anderson, South Carolina  
Date: February 13, 2020

Respectfully submitted by:



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

**RECEIVED**

FEB 13 2016

SC Court of Appeals

Mario Escalante,

Plaintiff,

vs.

Anderson County Sheriff's Department;  
Sheriff John Skipper, in his official and  
individual capacities; Sergeant Andrew R.  
Hyslop, in his official and individual  
capacities; Deputy Brandon Surratt, in his  
official and individual capacities; City of  
Anderson Police Department; James S.  
Stewart, Chief of Police, in his official and  
individual capacities; David L. Rodgers  
and Janice W. Rodgers, d/b/a Whitehall  
Express Mart; and John Does 1-20.

Defendants.

**DEFENDANTS DAVID L. RODGERS AND  
JANICE W. RODGERS D/B/A  
WHITEHALL EXPRESS MART'S  
MEMORANDUM IN SUPPORT OF THEIR  
MOTION TO DISMISS**

C.A. No. 8:15-cv-00177-MGL-JDA

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the defendants David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (hereinafter referred to as "Mr. and Mrs. Rodgers") file this memorandum of law in support of their motion to dismiss in the above-referenced matter. For the reasons set forth below, Mr. and Mrs. Rodgers move and respectfully request that this Court dismiss the plaintiff's complaint pursuant to the *Colorado River* abstention doctrine or, in the alternative stay the proceedings.

**PROCEDURAL BACKGROUND**

This case arises out of an incident which occurred on May 5, 2013, at the Whitehall Express Mart (hereinafter referred to as "Whitehall") owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. The plaintiff alleges that on that date

Case of Court File      Date Filed      Entry Number      Page 2 of 3

he was wrongfully arrested and charged with shoplifting a case of beer from Whitehall. On July 22, 2013, the plaintiff filed suit in the Anderson County Court of Common Pleas against Mr. and Mrs. Rodgers, arising out of the incident (hereinafter referred to as "the State Action"). The case is captioned, "*Marion Escalante v. David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart,*" C.A. No. 2013-CP-04-01700. The complaint in that action contains false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud causes of action against Mr. and Mrs. Rodgers. (See Plaintiff's Complaint attached hereto as Exhibit A). On August 19, 2013, Whitehall filed an answer to the complaint, in which it denied liability. Thereafter, discovery, including depositions taken from the plaintiff, the arresting officers, David Rodgers, and several Whitehall employees were completed. The State Action is currently pending.

On January 13, 2015, the plaintiff commenced this action by filing a summons and complaint against Mr. and Mrs. Rodgers, the Anderson's County Sheriff's Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as "the Federal Action"). The complaint in this action contains nearly identical allegations as the State Action and asserts the same causes of action against Mr. and Mrs. Rodgers. In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants.

In other words, although the State Court is postured to provide the determinations and relief under South Carolina law that the plaintiff has also sought in this case, the plaintiff would apparently prefer that this Court decide those issues as well. The plaintiff's forum manipulation justifies abstention.

## ARGUMENT

### **I. This Court Should Abstain from Exercising Jurisdiction Pursuant to the *Colorado River* Doctrine.**

Abstention is appropriate in this case in light of the plaintiff pursuing parallel, duplicative proceedings. Under the *Colorado River* abstention doctrine, a district court may abstain from exercising jurisdiction “in the exceptional circumstances where a federal case duplicates contemporaneous state proceedings, and wise judicial administration, giving regard to conservation of judicial resources, and comprehensive disposition of litigation clearly favors abstention.” *Vulcan Chem. Techs., Inc. v. Barker*, 297 F.3d 332, 340-41 (4th Cir. 2002) (internal citation and quotation marks omitted) (citing *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976)). To date, the Supreme Court has “declined to prescribe a hard and fast rule” for determining whether *Colorado River* abstention is appropriate. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15 (1983). As an initial matter, however, the court must determine “whether there are parallel federal and state suits.” *Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 207 (4th Cir. 2006). “Suits are parallel if substantially the same parties litigate substantially the same issues in different forums.” *Chase Brexton Health Servs., Inc. v. Maryland*, 411 F.3d 457, 464 (4th Cir. 2005).

Here, it is clear that the State Action and the Federal Action constitute parallel proceedings. Both actions arise out of the same incident, and the allegations contained in the complaints in the two actions are virtually identical. Most of the causes of action asserted against Mr. and Mrs. Rodgers in the State Action are duplicative of those asserted against them in the Federal Action. Although the plaintiff asserts additional claims against “the defendants,” each of those claims arise out of the same facts and circumstances as the State Action and could

have been asserted therein. As such, the State Action and the Federal Action constitute parallel proceedings.

If parallel suits exist, the court “must carefully balance” six factors: (1) whether the subject matter of the litigation involves property where the first court may assume jurisdiction to the exclusion of others; (2) whether the federal forum is an inconvenient one; (3) the desirability of avoiding piecemeal litigation; (4) the relevant order in which the courts obtained jurisdiction and the progress achieved in each action; (5) whether state law or federal law provides the rule of decision on the merits; and (6) the adequacy of the state proceeding to protect the parties' rights. *Vulcan Chemical Technologies, Inc. v. Barker*, 297 F.3d 332, 341 (4th Cir. 2002). “No one factor is necessarily determinative,” and the court's decision must not “rest on a mechanical checklist.” *Colo. River Water Conservation Dist.*, 424 U.S. at 818–19. Instead, the court applies the factors in “a pragmatic, flexible manner with a view to the realities of the case at hand,” *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 13, taking into account “both the obligation to exercise jurisdiction and the combination of factors counseling against that exercise,” *Colo. River Water Conservation Dist.*, 424 U.S. at 818.

In this case, the above factors resoundingly favor abstention. The State Action was initiated first, and numerous depositions, discovery, and motions have already taken place. Moreover, the state court can determine the ultimate issue in this case, thus avoiding piecemeal litigation. Findings of fact must be made by both courts and those findings could be inconsistent and determined at differing points in time. This kind of piece meal litigation could ultimately cause each issue to be litigated twice - especially if a state court precedential ruling occurs subsequent to a federal court ruling on the same issue. Finally, there is no doubt that the state court can adequately protect Plaintiffs' rights; as another judge of this Court recently observed

when considering abstention, "[t]here is no indication or allegation that normal hearing, trial, or appeal processes available in this pending state-court proceeding are unavailable to vindicate Plaintiff's concerns." *Stanfield v. Wigger*, No. 2:14-CV-00839-PMD, 2015 WL 58077, at \*10 (D.S.C. Jan. 5, 2015). For all of these reasons, the state court is the proper forum, and *Colorado River* favors this Court's abstention.

In the alternative, if this Court elects not to dismiss the plaintiff's complaint, the Federal Action should be stayed until the State Action has been completed.

### **CONCLUSION**

For the reasons stated herein, the Court should dismiss the plaintiff's claims against Mr. and Mrs. Rodgers and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Phillip E. Reeves

Phillip E. Reeves (Fed. Bar No. 3232)

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February 12, 2015

Attorneys for Defendants, David L. Rodgers and  
Janice W. Rodgers, d/b/a Whitehall Express Mart



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FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

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**RECEIVED**

FEB 13 2016

SC Court of Appeals

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JANICE W. RODGERS D/B/A  
WHITEHALL EXPRESS MART'S  
MEMORANDUM IN SUPPORT OF THEIR  
MOTION TO DISMISS**

C.A. No. 8:15-cv-00177-MGL-JDA

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### **CONCLUSION**

For the reasons stated herein, the Court should dismiss the plaintiff’s claims against Mr. and Mrs. Rodgers and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Phillip E. Reeves

Phillip E. Reeves (Fed. Bar No. 3232)

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February 12, 2015

Attorneys for Defendants, David L. Rodgers and

Janice W. Rodgers, d/b/a Whitehall Express Mart



Don Smith <attorneydonaldsmith@gmail.com>

## Activity in Case 8:15-cv-00177-MGL-JDA Escalante v. Anderson County Sheriff's Department et al Order on Motion to Dismiss

1 message

SCDEfilingstat@scd.uscourts.gov <SCDEfilingstat@scd.uscourts.gov>  
To: scd\_ecf\_nef@scd.uscourts.gov

Fri, Jul 31, 2015 at 10:07 AM

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U.S. District Court

District of South Carolina

### Notice of Electronic Filing

The following transaction was entered on 7/31/2015 at 10:07 AM EDT and filed on 7/31/2015

Case Name: Escalante v. Anderson County Sheriff's Department et al

Case Number: 8:15-cv-00177-MGL-JDA

Filer:

Document Number: 30(No document attached)

#### Docket Text:

**TEXT ORDER dismissing [12] Motion to dismiss without prejudice with leave to refile.** Defendants David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart ("the Rodgers") have moved to dismiss Plaintiff's Complaint pursuant to the Colorado River abstention doctrine or, in the alternative, to stay the proceedings. [Doc. 12.] The threshold question in deciding whether Colorado River abstention is appropriate is whether there are parallel federal and state suits. Great Am. Ins. Co. v. Gross, 468 F.3d 199, 207 (4th Cir. 2006). "Suits are parallel if substantially the same parties litigate substantially the same issues in different forums." McLaughlin v. United Va. Bank, 955 F.2d 930, 934 (4th Cir. 1992). Neither party has adequately addressed the fact that Plaintiff's state court case is against only the Rodgers while this federal action is against the Rodgers, seven additional named defendants, and twenty John Does. Further, the federal action raises additional causes of action against the defendants. The Court requires additional briefing on these issues before it can determine whether Colorado River abstention is appropriate. Accordingly, by August 21, 2015, the Rodgers shall refile their motion to dismiss, addressing more thoroughly whether the suits have substantially the same parties and substantially the same issues. Additionally, the Rodgers should clarify in their subsequent motion to dismiss whether they seek to have the Court apply the Colorado River abstention doctrine to dismiss only the Rodgers, and whether such an application is appropriate, or to abstain from the entire suit. Signed by Honorable Mary G Lewis on 7/31/2015.(gpre, )

8:15-cv-00177-MGL-JDA Notice has been electronically mailed to:

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**8:15-cv-00177-MGL-JDA Notice will not be electronically mailed to:**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION.

Mario Escalante, ) Case No. 8:15-cv-00177-MGL-JDA  
)  
Plaintiff, )  
)  
v. ) **REPORT AND RECOMMENDATION**  
) **OF MAGISTRATE JUDGE**  
)  
Anderson County Sheriff's Department; )  
Sheriff John Skipper; Sergeant Andrew R. )  
Hyslop; Deputy Brandon Surratt; David L. )  
Rodgers d/b/a Whitehall Express Mart; )  
Janice W. Rodgers d/b/a Whitehall Express )  
Mart, )  
)  
Defendants.<sup>1</sup> )

This matter is before the Court on a motion for summary judgment filed by Defendants Anderson County Sheriff's Department ("the Sheriff's Department"), Sergeant Andrew R. Hyslop ("Hyslop"), Sheriff John Skipper ("Skipper"), and Deputy Brandon Surratt ("Surratt") (collectively, "the Sheriff's Department Defendants") [Doc. 45] and a motion for summary judgment filed by Defendants David L. Rodgers ("David Rodgers") and Janice W. Rodgers, both d/b/a Whitehall Express Mart (collectively, "the Rodgers Defendants") [Doc. 47]. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under § 1983 and to submit findings and recommendations to the District Court. Plaintiff, proceeding with the assistance of counsel, filed this action on January 13, 2015, alleging Defendants violated his constitutional rights by arresting and prosecuting

<sup>1</sup>Defendant Chief of Police James S. Stewart was terminated from this action when his motion for judgment on the pleadings was granted on November 10, 2015. [Doc. 37.] Defendants City of Anderson Police Department and John Does 1–20 were terminated from this action pursuant to a stipulation of dismissal filed on December 18, 2015. [Doc. 59.]



Plaintiff without probable cause as well as alleging state law causes of action. [Doc. 1.] On March 4, 2015, Plaintiff filed an Amended Complaint. [Doc. 16.] On November 23, 2015, the Sheriff's Department Defendants filed a motion for summary judgment. [Doc. 45.] Plaintiff filed a response in opposition on December 17, 2015 [Doc. 56], and the Sheriff's Department Defendants filed a reply on January 22, 2016 [Doc. 68]. On November 24, 2015, the Rodgers Defendants filed a motion for summary judgment. [Doc. 47.] Plaintiff filed a response in opposition on December 17, 2015 [Doc. 57], and the Rodgers Defendants filed a reply on January 25, 2016 [Doc. 69]. Accordingly, the motions are ripe for review.<sup>2</sup>

### **BACKGROUND<sup>3</sup>**

Plaintiff alleges that on May 5, 2013, he purchased a case of beer from the Rodgers Defendants' store in Anderson, South Carolina. [Doc. 16 ¶ 13.] Plaintiff alleges that he later attempted to purchase a second case of beer for a friend but was denied due to the prohibition of Sunday alcohol sales in the County. [Id. ¶ 14.] David Rodgers contacted the

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<sup>2</sup>The Court notes that, in his response in opposition to the Rodgers Defendants' motion for summary judgment, Plaintiff contends that, pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, he is submitting "a declaration that Plaintiff is unable to properly prosecute his case due to Defendants' failure to provide discovery related to the telephones in use by said Defendants at the time of the underlying incident." [Doc. 57 at 1.] However, Plaintiff's response in opposition does not include any such declaration. Moreover, on February 2, 2016, this Court granted a motion for protective order filed by Hyslop and Surratt, finding "there is no evidence or testimony that conversations were held between the defendants involving the personal cell phones of Defendants Surratt and Hyslop and no basis to find that the production of these phone logs will lead to the discovery of relevant evidence." [Doc. 72.]

<sup>3</sup>The facts included in this Background section are taken directly from Plaintiff's Amended Complaint.

Sheriff's Department and advised that he had video evidence that Plaintiff had stolen beer from the store. [*Id.* ¶ 16.]

Several sheriff's deputies and city police officers converged on Plaintiff at the Anderson County Fair, where he was working, and arrested him for shoplifting. [*Id.* ¶ 22.] Plaintiff informed the officers that he had purchased the case of beer.<sup>4</sup> [*Id.* ¶ 23.] Plaintiff was cuffed and led through the fairgrounds to a patrol car. [*Id.* ¶ 24.] When Plaintiff returned to Anderson, South Carolina, from Texas for criminal proceedings related to the alleged theft, David Rodgers informed Plaintiff he would not be pressing charges. [*Id.* ¶ 31.]

Plaintiff alleges the following causes of action: violation of constitutional rights under 42 U.S.C. § 1983; false imprisonment; assault; battery; intentional infliction of emotional distress; invasion of privacy; defamation; slander; civil conspiracy; abuse of process; and conversion. [Doc. 16.] He seeks actual and punitive damages; attorneys fees, costs, and interest; and any other relief the Court deems just and proper. [*Id.*]

#### **APPLICABLE LAW**

##### **Requirements for a Cause of Action Under § 1983**

Section 1983 provides a private cause of action for plaintiffs alleging constitutional violations by persons acting under color of state law. Section 1983 provides, in relevant part,

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or

<sup>4</sup>Plaintiff contends that David Rodgers has been cited for alcohol violations in the past and that David Rodgers alleged Plaintiff had stolen the beer in an effort to protect himself from prosecution for violating the Sunday alcohol ordinance. [Doc. 16 ¶¶ 26–27.]

causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements: (1) that the defendant "deprived [him] of a right secured by the Constitution and laws of the United States" and (2) that the defendant "deprived [him] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage." *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the "state action" requirement under the Fourteenth Amendment,

reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed.

*Id.* at 310 (quoting *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, "the deed of an ostensibly private organization or individual" may at times be treated "as if a State has caused it to be performed." *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). Specifically, "state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" *Id.* (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)). State action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the

State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," and that "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). A determination of whether a private party's allegedly unconstitutional conduct is fairly attributable to the State requires the court to "begin[ ] by identifying 'the specific conduct of which the plaintiff complains.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

### **Summary Judgment Standard**

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the

allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc'ns Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985), *overruled on other grounds*, 490 U.S. 228 (1989). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. Further, Rule 56 provides in pertinent part:

**A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:**

**(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;**

**(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.**

**Fed. R. Civ. P. 56(c)(1).** Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits.

## DISCUSSION

As stated, Plaintiff contends David Rodgers alleged Plaintiff had stolen beer in an effort to protect himself from prosecution for violating the Sunday alcohol ordinance. [Doc. 16 ¶¶ 26–27; see also Doc. 57 at 3–4 (“In essence, Mario was arrested because he unknowingly participated in the illegal sale of beer on Sunday by the Rodgers, or Whitehall Express Mart.”).] Indeed, all of his claims rely in part on this assertion. However, as discussed in more detail below, Plaintiff has failed to direct the Court to any evidence tending to establish that David Rodgers falsely accused Plaintiff of shoplifting.<sup>5</sup> Instead, this argument is based on speculation and Plaintiff’s conclusory allegations, which are insufficient to preclude granting summary judgment. See *Ross*, 759 F.2d at 365. The Court addresses each of Plaintiff’s claims in turn.

### **Section 1983 Claim**

Section 1983 actions premised on alleged false arrest and/or false imprisonment claims are analyzed as unreasonable seizures under the Fourth Amendment. See, e.g., *Brown v. Gilmore*, 278 F.3d 362, 367–68 (4th Cir. 2002) (recognizing that a plaintiff alleging

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<sup>5</sup> Although Plaintiff subsequently produced a copy of a receipt for the purchase of a case of beer on May 5, 2013, Plaintiff did not produce a copy of the receipt on the date of the arrest [Doc. 45-2 at 16:14–17], and all causes of action in this case stem from Plaintiff’s arrest and Defendants’ behavior surrounding Plaintiff’s arrest. Moreover, in the Amended Complaint, Plaintiff alleges he purchased one case of beer but was prevented from purchasing a second case. [Doc. 16 ¶¶ 13–14.] David Rodgers contends Plaintiff stole the second case of beer after the store clerk, presumably realizing it was Sunday, refused to sell it to Plaintiff. [Doc. 47-2 at 6:14–7:11.] Thus, Plaintiff’s receipt for the purchase of one case of beer fails to establish that he purchased the second case of beer, and Plaintiff has failed to direct the Court to any evidence in the record tending to establish that David Rodgers did not believe Plaintiff had stolen a case of beer when he notified the police about the incident or that David Rodgers had some other motive for reporting the stolen case of beer.

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a § 1983 false arrest claim needs to show that the officer decided to arrest him without probable cause to establish an unreasonable seizure under the Fourth Amendment); *Rogers v. Pendleton*, 249 F.3d 279, 294 (4th Cir. 2001) (stating claims of false arrest and false imprisonment “are essentially claims alleging a seizure of the person in violation of the Fourth Amendment”). The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “[A] claim for false arrest may be considered only when no arrest warrant has been obtained.” *Porterfield v. Lott*, 156 F.3d 563, 568 (4th Cir. 1998); see also *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181–82 (4th Cir. 1996) (determining that when the arresting official makes the arrest with a facially valid warrant, it is not false arrest).

To state a claim for malicious prosecution under § 1983, “a plaintiff must allege that the defendant (1) caused (2) a seizure of the plaintiff pursuant to legal process unsupported by probable cause, and (3) criminal proceedings terminated in plaintiff’s favor.” *Evans v. Chalmers*, 703 F.3d 646, 647 (4th Cir. 2012) (citing *Durham v. Homer*, 690 F.3d 183, 188 (4th Cir. 2012)). The test to determine whether probable cause existed for a seizure is an objective one, based on the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230–31 (1983); see also *Mazuz v. Maryland*, 442 F.3d 217, 224 (4th Cir. 2006) (citing *Maryland v. Macon*, 472 U.S. 463, 470–71 (1985)) (“Whether a Fourth Amendment violation has occurred turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time, and not on the officer’s actual state of mind at the time the challenged action was taken.”) (abrogated on other grounds by *Pearson v. Callahan*, 555 U.S. 223, 235 (2009)). Specifically, the totality of the

circumstances includes "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information," *Beck v. Ohio*, 379 U.S. 89, 96 (1964), and such facts and circumstances constitute probable cause if they are "sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense," *id.*

Here, the Court finds there was probable cause to arrest Plaintiff. Hyslop testified that he was notified by dispatch that there was a shoplifting incident that occurred at the Whitehall Express and that the suspect had left in a vehicle and was at the Anderson County Civic Center ("the Civic Center"). [Doc. 45-3 at 3:10–15.] The dispatcher gave a description of the vehicle the suspect left in as a red vehicle with a Texas tag. [Doc. 45-6 at 4:9–14.] When Hyslop got to the Civic Center, David Rodgers was there and stated that the suspect had shoplifted a case of beer from his store, and David Rodgers had a still shot of the suspect on his camera. [Doc. 45-3 at 4:2–6.] At that time, Surratt arrived, and there were also two Anderson City units at the scene. [*Id.* at 7–10.] They located the red vehicle, and Hyslop looked in and saw a case of beer in the front passenger seat. [Doc. 45-6 at 4:15–24.] Subsequently, the suspect was located and indicated the red vehicle was his. [*Id.* at 5:12–14.] After looking at the picture of the suspect leaving the store; David Rodgers' saying that the suspect had shoplifted a case of beer; the vehicle matching the description given by the dispatcher; Plaintiff matching the photo on David Rodgers' camera; and a case of beer found in the car, Hyslop determined there was probable cause to make an arrest for shoplifting based on the information known to him at that time. [*Id.* at 5:18–24.] Based on a totality of the circumstances, the facts and circumstances known by Hyslop at the time of the arrest were "sufficient to warrant a prudent man in believing that



[Plaintiff] had committed . . . an offense.” *Beck*, 379 U.S. at 96. The Court finds unpersuasive Plaintiff’s argument, unsupported by any legal authority, that the officers should have further investigated; based on the facts known to Hyslop at the time of the arrest,<sup>6</sup> it was reasonable for him to believe that Plaintiff had shoplifted a case of beer. Accordingly, the Court finds probable cause existed to arrest Plaintiff, and the motions for summary judgment should be granted with respect to Plaintiff’s § 1983 claim.<sup>7</sup>

Moreover, the Sheriff’s Department Defendants are entitled to qualified immunity. Qualified immunity protects government officials performing discretionary functions from civil damage suits as long as the conduct in question does not “violate clearly established rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, qualified immunity does not protect an official who violates a constitutional or statutory right of a plaintiff that was clearly established at the time of the alleged violation such that an objectively reasonable official in the official’s position would have known of the right. *Id.* Further, qualified immunity is “an immunity from suit rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

To determine whether qualified immunity applies, a court must determine “whether the plaintiff has alleged the deprivation of an actual constitutional right at all[ ] and . . . whether that right was clearly established at the time of the alleged violation.” *Wilson v.*

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<sup>6</sup>As previously stated, Plaintiff did not produce a copy of the receipt on the date of the arrest. [Doc. 45-2 at 16:14–17.]

<sup>7</sup>Because the Court has determined probable cause existed to arrest Plaintiff, the Court declines to address the Sheriff’s Department Defendants’ argument that the Sheriff’s Department and Skipper are entitled to summary judgment because a municipality is not liable under § 1983 [Doc. 45-1 at 2] or the Rodgers Defendants’ argument that they are entitled to summary judgment because they are private actors [Doc. 47-1 at 7].

*Layne*, 526 U.S. 603, 609 (1999) (quoting *Conn v. Gabbert*, 526 U.S. 286, 290 (1999)). “[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the ‘objective legal reasonableness’ of the action[,] assessed in light of the legal rules that were ‘clearly established’ at the time it was taken.” *Anderson v. Creighton*, 483 U.S. 635, 639 (1987) (citing *Harlow*, 457 U.S. at 819). For purposes of this analysis, a right is “clearly established” if “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Id.* at 640.

Here, the Court has determined there was no constitutional violation. Accordingly, the Sheriff's Department Defendants are entitled to qualified immunity.

## **State Law Claims**

### ***False Imprisonment***

Under South Carolina law, to prevail on a claim for false arrest or imprisonment, Plaintiff must prove both that he was deprived of his liberty and that the deprivation was done without lawful justification. *Jones v. City of Columbia*, 389 S.E.2d 662 (S.C.1990). Stated differently, a plaintiff must show that “(1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful.” *Law v. S.C. Dep't of Corrs.*, 629 S.E.2d 642, 651 (S.C. 2006).

Because, as discussed above, Hyslop had probable cause to arrest Plaintiff for shoplifting, Plaintiff is unable to satisfy the elements of a false imprisonment claim. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's false imprisonment claims.



### ***Assault and Battery***

Under South Carolina law, “an assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant, and a battery is the actual infliction of any unlawful, unauthorized violence on the person of another, irrespective of degree.” *Jones v. Winn-Dixie Greenville, Inc.*, 456 S.E.2d 429, 432 (S.C. Ct. App.1995). “A police officer who uses reasonable force in effectuating a lawful arrest is not liable for assault or battery.” *Roberts v. City of Forest Acres*, 902 F.Supp. 662, 671–72 (D.S.C. 1995) (footnote omitted). It is well settled that “[a]lthough a law enforcement officer is privileged to use lawful force, he is nevertheless liable for assault if he uses force greater than is reasonably necessary under the circumstances.” *Moody v. Ferguson*, 732 F.Supp. 627, 632 (D.S.C. 1989); *see also Roberts*, 902 F.Supp. at 671 n.2.

Here, as discussed above, Plaintiff’s arrest was lawful because it was supported by probable cause. Plaintiff has failed to direct the Court to any evidence to support a claim for assault or battery stemming from his arrest. The only evidence in the record that Plaintiff relies on in his discussion of this claim is that he “was swarmed by law enforcement officials from multiple agencies, at his place of work.” [Docs. 56 at 7–8 (citing Surratt’s deposition); 57 at 7–8 (citing same).] However, he has provided no evidentiary support to establish that he feared he would suffer bodily harm. Further, he fails to allege the officers used greater force than was necessary to effectuate the arrest. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s claims for assault and battery.

### ***Intentional Infliction of Emotional Distress***

Under South Carolina law, to recover for intentional infliction of emotional distress, a plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;
- (3) the actions of the defendant caused plaintiff's emotional distress; and
- (4) the emotional distress suffered by the plaintiff was severe such that no reasonable man could be expected to endure it.

*Hansson v. Scalise Builders of S.C.*, 650 S.E.2d 68, 70–71 (S.C. 2007) (quoting *Ford v. Hutson*, 276 S.E.2d 776, 778 (S.C. 1981) (internal quotation marks omitted)). Whether a defendant's conduct may be reasonably regarded as so extreme and outrageous to permit recovery is initially one for a court, and only where reasonable persons might differ is it a question for a jury. *Hawkins v. Greene*, 427 S.E.2d 692, 693 (S.C. Ct. App. 1993). "Where evidence is undisputed that the defendant acted in good faith and in a reasonable manner, his conduct cannot be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community." *Id.*

Plaintiff has failed to direct the Court to any evidence to support a claim for intentional infliction of emotional distress. [Docs. 56 at 8–9 (citing no record evidence); 57 at 8–9 (citing no record evidence).] Instead, he conclusorily alleges that Defendants' conduct was extreme and outrageous and that Plaintiff suffered emotional distress. However, as stated, the arrest was supported by probable cause; thus, no Defendants

conduct can be characterized as so extreme and outrageous as to exceed all possible bounds of decency and atrocious and utterly intolerable in a civilized community. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's claim for intentional infliction of emotional distress.

### ***Invasion of Privacy***

The Supreme Court of South Carolina has identified three separate acts which may give rise to a cause of action for invasion of the right of privacy:

- (1) the unwarranted appropriation or exploitation of one's personality,
- (2) the publicizing of one's private affairs with which the public has no legitimate concern, or
- (3) the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

*Meetze v. Associated Press*, 95 S.E.2d 606, 608 (1956) (quoting 41 Am. Jur., Privacy, § 2; citing *Cont'l Optical Co. v. Reid*, 86 N.E.2d 306 (Ind. App. 1949) and *Smith v. Doss*, 37 So.2d 118 (Ala. 1948)). Here, Plaintiff asserts that his invasion of privacy cause of action is based upon the publicizing of one's private affairs with which the public has no legitimate concern. [Docs. 56 at 9; 57 at 9.] "The elements of this tort include (1) publicizing, (2) absent any waiver or privilege, (3) private matters in which the public has no legitimate concern, (4) so as to bring shame or humiliation to a person of ordinary sensibilities." *Swinton Creek Nursery v. Edisto Farm Credit*, 514 S.E.2d 126, 131 (S.C. 1999).

Here, Plaintiff has failed to direct the Court to any evidence to support a claim for invasion of privacy. [Docs. 56 at 9–10 (citing no record evidence); 57 at 9–10 (citing no

record evidence).] Moreover, Plaintiff is unable to establish a publication of a private matter in which the public has no legitimate concern. As stated, he was arrested based on probable cause. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's invasion of privacy claim.

### ***Defamation and Slander***

Under South Carolina law, to state a cause of action for defamation, a plaintiff must show: "(1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm." *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002). Slander is spoken defamation. *Swinton Creek Nursery*, 514 S.E.2d at 134. "[U]nder longstanding South Carolina case law, contents of governmental records-such as judicial proceedings, case reports, published cases, investigative reports, or arrest records-do not give rise to liability for slander or libel." *Williams v. S.C.*, No. 0:06-2590-CMC-BM, 2006 WL 3843608, at \*6 (Dec. 22, 2006) (citing *Heyward v. Cuthbert*, 15 S.C.L. (4 McCord) 354, 356-59 (1827); *Padgett v. Sun News*, 292 S.E.2d 30, 32-33 (S.C. 1982)).

Here, as previously stated, Plaintiff is unable to establish a false statement was made. Plaintiff has failed to direct the Court to any evidence to support a claim for defamation or slander. [See Docs. 56 at 10 (citing no record evidence); 57 at 10-11 (citing no record evidence).] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's defamation and slander claims.

### ***Civil Conspiracy***

To be successful on a claim for civil conspiracy in South Carolina, the plaintiff must show (1) a combination of two or more persons; (2) for the purposes of injuring the plaintiff; (3) causing the plaintiff special damages. *Vaught v. Waites*, 387 S.E.2d 91, 95 (S.C. Ct. App. 1989) (citing *Lee v. Chesterfield Gen. Hosp. Inc.*, 344 S.E.2d 379 (S.C. Ct. App. 1986)). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 682 S.E.2d 871, 874 (S.C. 2009). Stated differently, the acts pled in furtherance of the conspiracy must be "separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." *Id.* at 875. "Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.* at 874. "If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of [his] civil conspiracy claim, the[] conspiracy claim should be dismissed." *Id.*

Here, Plaintiff has failed to identify concrete acts independent of any other alleged wrongdoing. [See Doc. 16 ¶ 66 (claim for civil conspiracy, alleging "[t]he aforementioned actions, conduct, and/or omissions of the defendants in their individual capacities, and/or by and through their agents, servants, and/or employees, who were acting within the course and scope of their agency and/or employment with the defendants, constitute a civil conspiracy to harm the plaintiff").] Additionally, Plaintiff has failed to allege Defendants joined together for the purpose of injuring Plaintiff. Finally, Plaintiff has not pled special damages as required for a civil conspiracy claim. [*Id.* ¶ 67 ("As a direct and proximate result of the defendants' conspiracy to harm the plaintiff, plaintiff has been damaged, for



which damages the defendants are liable.”.)] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s civil conspiracy claim.

### **Abuse of Process**

“The two essential elements of an abuse of process claim are (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the conduct of the proceeding.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 697 S.E.2d 551 (S.C. 2010). “Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required.” *Hainer v. Am. Med. Int’l, Inc.*, 492 S.E.2d 103 (S.C. 1997).

Plaintiff has failed to direct the Court to any evidence to support a claim for abuse of process. [Docs. 56 at 11–12 (citing no record evidence); 57 at 14 (citing no record evidence).] Instead, he relies on conclusory allegations that are insufficient to overcome summary judgment. Accordingly, the motions for summary judgment should be granted with respect to Plaintiff’s abuse of process claim.

### **Conversion**

“Conversion is the ‘unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner’s rights.’” *Green v. Waidner*, 324 S.E.2d 331, 333 (S.C. Ct. App. 1984) (quoting *Powell v. A.K. Brown Motor Co.*, 20 S.E.2d 636, 637 (S.C. 1942)).

Here, Plaintiff cannot establish Defendants assumed control of Plaintiff’s property without authorization because, as discussed above, Plaintiff’s arrest was supported by probable cause. Plaintiff has failed to direct the Court to any evidence to support a claim for conversion. [Docs. 56 at 12 (citing no record evidence); 57 at 14–15 (citing no record

evidence).] Accordingly, the motions for summary judgment should be granted with respect to Plaintiff's conversion claim.<sup>8</sup>

### **CONCLUSION AND RECOMMENDATION**

Wherefore, based upon the foregoing, the Court recommends that the Sheriff's Department Defendant's motion for summary judgment be GRANTED and that the Rodgers Defendants' motion for summary judgment be GRANTED.

IT IS SO RECOMMENDED.

**s/Jacquelyn D. Austin**  
**United States Magistrate Judge**

July 29, 2016  
 Greenville, South Carolina

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<sup>8</sup>Because the Court has determined Defendants are entitled to summary judgment on the merits of each of Plaintiff's state law claims, the Court declines to address the Sheriff's Department Defendants' argument that they are entitled to summary judgment pursuant to the South Carolina Tort Claims Act [Doc. 45-1 at 9-10] or any of the Rodgers Defendants' arguments regarding personal involvement in the specific state law claims [see Doc. 47-1].

**FORM 7**  
**PROOF OF SERVICE**  
**PETITION FOR REHEARING**

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

**APPEAL FROM ANDERSON COUNTY**  
**Court of Common Pleas**

**The Honorable R. Lawton McIntosh, Circuit Court Judge**

**C.A. No.: 2013-CP-04-1700**  
**Appellate Case No. 2018-000289**

**Mario Escalante,**

**Appellant,**

**v.**

**David L. Rodgers and Janice W. Rodgers,**  
**d/b/a Whitehall Express Mart,**

**Respondents.**

**PROOF OF SERVICE**

I certify that I have served a copy of the Petition for Rehearing and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at 1231 Gervais Street Columbia SC 29201 by hand delivery and Respondents, by and through their counsels of record, Phillip Reeves, Esquire and Nicholas A. Farr, Esquire, at Gallivan White and Boyd, P.A., Post Office Box 10589, Greenville, SC 29603, by depositing a copy of it in the United States Mail, postage prepaid, on February 13, 2020.

  
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[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

February 13, 2020.

**ATTORNEY OFFICE OF DONALD SMITH**

122 N. Main St.  
Anderson SC 29621  
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Donald L. Smith, Esquire

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February 13, 2020

Phillip Reeves, Esquire  
Nicholas A. Farr, Esquire  
GALLIVAN, WHITE & BOYD, P.A.  
Post Office Box 10589  
Greenville, SC 29603

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FEB 13 2020

SC Court of Appeals

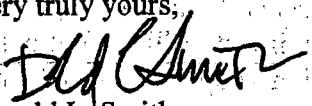
**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart  
Appellate Case No. 2018-000289  
C.A. No.: 2013-CP-04-1700**

Dear Mr. Reeves and Mr. Farr:

Please find a copy of the Petition for Rehearing which I have filed in the above-referenced matter. Attached as well is Proof of Service of same.

If you have any questions or concerns regarding the enclosed materials, please do not hesitate to contact my office to discuss.

With highest regards, I remain  
Very truly yours,

  
Donald L. Smith  
DLS/aaf  
Enclosures

cc: Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals

**FORM 8**  
**LETTER TO THE APPEALS COURT CLERK**  
**FILING OF PETITION FOR REHEARING**

February 13, 2020

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

92157  
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FEB 13 2020

**SC Court of Appeals**

**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers,**  
**d/b/a Whitehall Express Mart**  
**Appellate Case No. 2018-000289**  
**C.A. No.: 2013-CP-04-1700**

Dear Ms. Kitchings:

Please find enclosed the following materials for filing:

- (1) Petition for Rehearing; and,
- (2) Proof of Service for same.

Sincerely,



Donald L. Smith, (SC Bar#6699)  
Attorney for Appellant  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

cc: Phillip Reeves, Esquire  
Nicholas A. Farr, Esquire

# APPENDIX G

FORM 8  
LETTER TO THE APPEALS COURT CLERK  
FILING OF PETITION FOR REHEARING

March 3, 2020

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

**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart  
Appellate Case No. 2018-000289  
C.A. No.: 2013-CP-04-1700**

Dear Honorable Kitchings:

**RECEIVED**

Please find enclosed the following materials for filing:

MAR 05 2020

- (1) Addendum to Appellant's Petition for Rehearing; and,
- (2) Proof of Service for same.

SC Court of Appeals

Sincerely



Donald L. Smith, (Bar#6699)

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

*Attorney for Appellant*

cc: Phillip Reeves, Esquire  
Nicholas A. Farr, Esquire

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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. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

RECEIVED

MAR 05 2020

Appellant  
SC Court of Appeals

Mario Escalante,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

ADDENDUM TO APPELLANT'S  
PETITION FOR REHEARING

Appellant, by and through his counsel of record, respectfully submits this Addendum to his Petition for Rehearing, and offers the following:

**RES JUDICATA DOES NOT APPLY IN THE STATE ACTION  
AS IT WAS NOT PROPERLY RAISED.**

Appellant submits that *res judicata* is one of the affirmative defenses that a defendant in a case may avail of. Rule 8(c) SCRPC.<sup>1</sup> Affirmative defenses must be asserted or pled in an

<sup>1</sup> Rule 8(c) states "in pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses.

Answer on any responsive pleading. Rule 12(b) SCRC<sup>2</sup>. A review of the Answer shows that the following affirmative defenses were alleged by Respondents: failure to state facts constituting a cause of action, failure to mitigate damages, assumption of risk, failure to join party, good faith, truth, comparative and contributory negligence, proximate cause, and unconstitutionality of imposition of punitive damages. *Res judicata* was not among those pled in Defendants' Answer, dated August 19, 2013.

Not having claimed the defense in their Answer, Respondents are not entitled to raise *res judicata* as a defense for the first time in their Motion for Summary Judgment. South Carolina Supreme Court held that "(E)ven if these affirmative defenses were not procedurally barred, we disapprove of the practice of orally raising unpled issues for the first time at a summary judgment motion." Resolution Trust Corp. v. Eagle Lake and Golf Condominiums, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993). Failure to plead an affirmative defense is a waiver of right to assert, pursuant to Rule 12. Town of Kingstree v. Chapman, 405 S.C. 282, 313 747 S.E.2d 494, 510 (2013).

### CONCLUSION

For the above and foregoing reasons, Appellant respectfully requests this Honorable Court reconsider its Order affirming the lower court's ruling in dismissing the State action and grant his Petition for Rehearing.

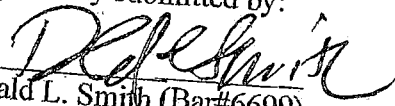
{SIGNATURE TO FOLLOW}

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<sup>2</sup> Rule 12(b) of the SCRC<sup>2</sup> states that, "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim.

Anderson, South Carolina  
Date: March 3, 2020.

Respectfully submitted by:



Donald L. Smith (Bar#6699)

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Plaintiff

**FORM 16**  
**CERTIFICATE OF COUNSEL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

**RECEIVED**

MAR 05 2020

SC Court of Appeals

Mario Escalante,

v.

Appellant,

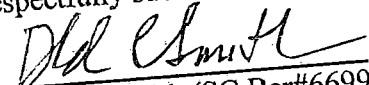
David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned certified that this Addendum to Appellant's Petition for Rehearing  
complies with Rule 240 in relation to Rule 267, SCACR.

Respectfully submitted by:

  
Donald L. Smith (SC Bar#6699)  
Attorney for Plaintiff  
122 N. Main Street  
Anderson, SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
attorneydonaldsmith@gmail.com.

Anderson, South Carolina  
Date: March 3, 2020

**FORM 7**  
**PROOF OF SERVICE**  
**PETITION FOR REHEARING**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

C.A. No.: 2013-CP-04-1700  
Appellate Case No. 2018-000289

**RECEIVED**

MAR 05 2020

SC Court of Appeals

Mario Escalante,

Appellant,

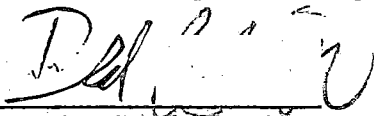
v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart,

Respondents.

**PROOF OF SERVICE**

I certify that I have served a copy of the Addendum to Appellant's Petition for Rehearing and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and Respondents, by and through their counsels of record, Phillip Reeves, Esquire and Nicholas A. Farr, Esquire, at Gallivan White and Boyd, P.A., Post Office Box 10589, Greenville, SC 29603, by depositing a copy of it in the United States Mail, postage prepaid, on March 3, 2020.

  
Donald L. Smith, Esquire  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
attorneydonaldsmith@gmail.com  
*Attorney for Appellant*

March 3, 2020.

# APPENDIX H

## The South Carolina Court of Appeals

Mario Escalante, Appellant,

v.

David L. Rodgers and Janice W. Rodgers, d/b/a  
Whitehall Express Mart, Respondents.

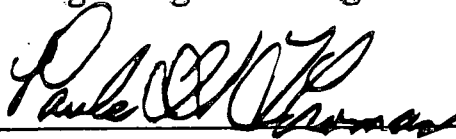
Appellate Case No. 2018-000289

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### ORDER

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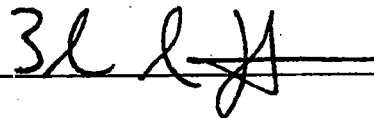
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_

J.

  
\_\_\_\_\_

J.

  
\_\_\_\_\_

J.

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire  
Phillip E. Reeves, Esquire  
Nicholas Andrew Farr, Esquire

**FILED**

March 27, 2020