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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-01127

Appellate Case No. 2020-000818

Lisa Styles,

Respondent-Appellant,

v.

Southeastern Grocers, LLC
And BI-LO, LLC.

Appellants-Respondents.

THE SUBSTITUTED RECORD ON APPEAL – VOL. 1

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Lisa Styles, *Plaintiff*, *vs.* Southeastern Grocers, Inc. and BI-LO, LLC *Defendants*.	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT *Civil Action No. 2018-CP-04-01127* **ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER comes before the Court by way of Defendants' Motion for Summary Judgment with respect to Plaintiff's claims for False Imprisonment, Fraud, Abuse of Process, and Malicious Prosecution. A hearing was held in connection with same on March 6, 2019 at which time all parties appeared by and through their respective counsel of record.

After hearing the arguments presented by counsel during the same, and upon review of the memoranda and applicable case law submitted by Counsel, this Court respectfully denies the Defendants' Motion for Summary Judgment as to each of Plaintiffs claims.

IT IS SO ORDERED!

The Hon. J. Cordell Maddox, Jr.
Circuit Judge, Tenth Judicial Circuit

March 8, 2020

Anderson, South Carolina

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Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case No.: 2018-CP-04-01127
	)	
Lisa Styles,	)	
	)	**VERDICT**
Plaintiff	)	
	)	
v.	)	
	)	
Southeastern Grocers, LLC, Bi-Lo, LLC,	)	
	)	
Defendant.	)	
	)	

Punitive Damages

__√__ We the jury, unanimously find that the Plaintiff is entitled to punitive damages in the amount of $10,000.00 Dollars.

-- OR –

_____ We the jury, unanimously find that the plaintiff is not entitled to punitive damages.

Maria Morales

Maria Morales, Foreperson
March 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case No.: 2018-CP-04-01127
	)	
	)	
Lisa Styles,	)	
	)	**VERDICT**
Plaintiff	)	
	)	
v.	)	
	)	
Southeastern Grocers, LLC, Bi-Lo, LLC,	)	
	)	
Defendant.	)	
	)	

False Imprisonment

√ We, the jury, by unanimous consent find for the Plaintiff and award damages in the amount of $100,000 Dollars.

-- OR –

_____ We, the jury, by unanimous consent find for the Defendants.

Maria Morales

Maria Morales, Foreperson
March 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Case No.: 2018-CP-04-01127
	)	
	)	
Lisa Styles,	)	
	)	**VERDICT**
Plaintiff	)	
	)	
v.	)	
	)	
Southeastern Grocers, LLC, Bi-Lo, LLC,	)	
	)	
Defendant.	)	
	)	

Fraud

_____ We, the jury, by unanimous consent find for the Plaintiff and award damages in the amount of _____ Dollars.

-- OR –

_✓_ We, the jury, by unanimous consent find for the Defendants.

Maria Morales

Maria Morales, Foreperson
March 13, 2020

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-04-01127

Lisa Styles
PLAINTIFF(S)

Southeastern Grocers, LLC and BI-LO, LLC
DEFENDANT(S)

Submitted by: Judge Sprouse	**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), 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: See statement of judgment below.

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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	2752 **Judge Code**	04/22/2020 **Date**

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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.

This matter is before the Court pursuant to post trial motions filed by the parties. This case was tried by jury during the week of March 9, 2020 in Anderson County, resulting in a verdict for the Plaintiff in the amount of $100,000 in actual damages and $10,000 in punitive damages. The Court gave the parties ten (10) days in which to make post trial motions and make arguments regarding the Court's review of the punitive damages award in light of the applicable statutory law and case law.

After careful consideration of the materials filed along with the evidence and arguments presented during the trial, the Court denies the Plaintiff's Motions to Alter or Amend and/or New Trial regarding the malicious prosecution cause of action. The Court granted the Defendants' Motion for a Directed Verdict as to that cause of action after the conclusion of the evidence. The Court further considered the Defendants' motions. The Defendants moved for a Judgment Notwithstanding the Verdict (JNOV), a New Trial Absolute based on the Defendants' allegation that improper evidence was admitted, for the verdict to be set aside under the Thirteenth Juror Doctrine, and a New Trial Absolute or Nisi Remittitur based on the Defendant's allegation that the verdict was excessive.

The Court finds that there was not sufficient evidence presented to support a cause of action for malicious prosecution. Accordingly, the Plaintiff's Motion to Alter or Amend and/or New Trial on that cause of action is denied.

The Court finds that, in viewing the evidence regarding the cause of actions submitted to the jury in a light most favorable to the Plaintiff, there was evidence to support the Plaintiff's other causes of actions. Accordingly, the Defendants' motion for JNOV is denied. The Court finds that there is evidence that could justify the verdict. Accordingly, the Defendants' Motion for a New Trial under the Thirteenth Juror Doctrine is denied. In considering the Defendant's

Motion for New Trial-Nisi Remittitur and the Motion for New Trial Absolute, the Court finds that the amount of actual damages awarded by the jury in this case is not the result of passion, caprice or prejudice. Accordingly, the Defendants' motions are denied.

In reviewing the punitive damages awarded in this case, the Court is required to review the factors of the statutory law (SC Code § 15-32-520) and the Fortis factors along with the Gamble factors. First, the court looks to subsections (E) and (F). Subsection (E) sets forth eleven factors: (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm;(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

Subsection (F) reads: "If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice."

The Court then looks to the Fortis and Gamble factors. Under *Gamble*, the court must consider (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991)

As to *Fortis*, three added factors are included: (1) Reprehensibility: a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. (2) Ratio: the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. (3) Comparative Penalty Awards: the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587–89, 686 S.E.2d 176, 185–86 (2009)

In applying these factors, the Court does not find the award of punitive damages unreasonable. The Court notes that, while a strict ratio has not been set under South Carolina law, the award in this case is one-tenth of the amount of the actual damages. The Court denies the Defense motion to set aside the award of punitive damages.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

ELECTRONICALLY FILED - 2018 Jun 08 4:04 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Anderson	)	**2018-CP-04-**
	)	
Lisa Styles,	)	
	)	
Plaintiff,	)	
v.	)	**COMPLAINT**
	)	
Michael Craig Brickman, Southeastern Grocers, LLC, BI-LO, LLC, Ken Miller, and Ronnie Duncan,	)	**Jury Trial Demanded**
	)	
Defendants.	)	

Plaintiff, though her attorney, would respectfully show as follows:

1. Plaintiff is a resident of Anderson County.

2. Defendant Michael Craig Brickman is a citizen of South Carolina and resident of Anderson County.

3. Defendant Duncan is a South Carolina resident.

4. Defendant Miller is a South Carolina resident.

5. Defendant Southeastern Grocers, LLC is a limited liability company with a principal place of business in Florida.

6. Defendant BI-LO, LLC is a limited liability company with a principal place of business in Florida.

7. Defendant Southeastern Grocers and BI-LO are referred to herein jointly as the “Corporate Defendants.”

8. Plaintiff was employed by the Corporate Defendants at a BI-LO store in Pendleton, Anderson County.

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9. Defendant Brickman is employed by the Corporate Defendants as the Pendleton store manager.

10. In March, 2018, Plaintiff arranged for donations of merchandise to AIM in March on behalf of Corporate Defendants.

11. Brinkman approved the donations.

12. In late April 2018, Plaintiff and others complained to the Corporate Defendants about Brinkman's discriminatory conduct towards female employees, including disparate discipline on the basis of sex.

13. After Brinkman learned about the complaints, he and others concocted a claim that Plaintiff stole the donated merchandise.

14. With full knowledge that Plaintiff had done nothing wrong, the loss prevention department brought Plaintiff in and interrogated her. Corporate Defendants told Plaintiff she was not free to leave until she gave a full written statement and Defendants dictated to Plaintiff what she had to put in the statement.

15. Corporate Defendants then coerced Plaintiff to purchase a money order at the store for the purported value of the donated goods ($450) in order to avoid her being arrested for theft. Distraught, Plaintiff purchased the money order. This ploy was a transparent attempt to whipsaw Plaintiff into taking action to create the appearance of an admission.

16. Despite the fact that Defendants coerced Plaintiff into purchasing the money order, Defendants still attempted to have Plaintiff arrested by filing a complaint with the Pendleton Police Department more than two months after Brickman claims he learned of the alleged theft.

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17. Defendants furthered their efforts to secure an arrest by lying to Pendleton Police. For example, Defendants Brickman, Duncan and Miller blatantly misrepresented their actions and communications with Plaintiff. Further, Duncan attempted to interject during his interview that Plaintiff had made the coerced payment to create the illusion of an admission and to further the case for prosecution.

18. Plaintiff cooperated fully with the investigation, which established that Brinkman was aware of the complaints against him when he filed the criminal complaint, and that the alleged "theft" happened two months prior.

19. Based on the investigation, the Magistrate refused to issue a warrant for Plaintiff's arrest.

20. Corporate Defendants terminated Plaintiff's employment knowing full well that she had done nothing wrong.

21. Defendants' actions establish an intent to harm Plaintiff, and the matters complained of herein do not arise as a result of an accident.

Count I
Abuse of Process

22. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

23. Defendants willfully instituted criminal process against Plaintiff for ulterior purposes and for the illegitimate collateral objective of discrediting Plaintiff after she made serious complaints about Brickman.

24. Defendants lied and provided false information to the Pendleton Police and used a coerced payment acquired under false pretenses to mislead the police.

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WHEREFORE, Plaintiff requests a trial by jury on her claim of abuse of process and for entry of judgment in amounts to be determined by the jury but which should include nominal or actual damages, compensatory damages, special damages, and punitive damages, as well as any other relief shown to be appropriate including, but not limited to, costs and and pre-judgment as well as post-judgment interest.

Count II
Malicious Prosecution

25. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

26. Defendants maliciously instituted criminal proceedings against Plaintiff, which were terminated in Plaintiff's favor.

27. There was no probable cause for believing that Plaintiff committed any crime as she acted, at all times, with the permission and agreement of Brickman and never diverted any goods or money for her own personal advantage.

28. Plaintiff has been injured by Defendants' malicious prosecution and caused her to suffer injury to her reputation and person, to be frightened, humiliated, nervous, upset, and embarrassed, and to suffer the indignity of enduring a criminal investigation.

WHEREFORE, Plaintiff requests a trial by jury on her claim of malicious prosecution and for entry of judgment in amounts to be determined by the jury but which should include nominal or actual damages, compensatory damages, special damages, and punitive damages, as well as any other relief shown to be appropriate including, but not limited to, costs and and pre-judgment as well as post-judgment interest.

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Count III
False Imprisonment

29. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

30. Defendants intentionally restrained Plaintiff in an unlawful manner.

31. Defendants' improper restraints caused Plaintiff's humiliation, indignity, and mental suffering.

WHEREFORE, Plaintiff requests a trial by jury on her claim for false imprisonment and seek entry of judgments to redress her losses of liberty as well as any other relief to which Plaintiff is entitled including, but not limited to, nominal and punitive damages, compensatory damages, pre-judgment and post-judgment interest and costs.

Count IV
Interference with Contract
Defendant Brickman

32. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

33. Plaintiff and Corporate Defendants are parties to an employer-employee relationship.

34. Defendant Brickman knew of the terms of the employment between Plaintiff and the Corporate Defendants.

35. Notwithstanding such knowledge, Brickman procured the termination of Plaintiff's employment without justification.

36. Brickman's conduct has interfered with Plaintiff's employment relationship.

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37. Brickman has caused damage to Plaintiff and will cause future damage to Plaintiff.

WHEREFORE, Plaintiff requests a trial by jury on her claim of interference with contract and entry of judgment in amounts to be determined by the jury but which should include nominal or actual damages, compensatory damages, and punitive damages, as well as any other relief shown to be appropriate including, but not limited to, costs and and pre-judgment as well as post-judgment interest.

Count V
Fraud

38. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

39. Defendants coerced $450 under false pretenses from Plaintiff by telling her that this was the price of not being arrested.

40. In reliance on Defendants' promise, Plaintiff paid $450 to Defendants that she did not owe them.

41. Defendants' statement was false in that Defendants still intended to have Plaintiff arrested.

42. Plaintiff reasonably relied on Defendants' false statement to her detriment as Defendants intended for her to do.

43. Plaintiff would not have paid $450 she did not owe to Corporate Defendants had she known of the falsity of their promise.

WHEREFORE, Plaintiff requests a trial by jury on her fraud claim and entry of judgment in amounts to be determined by the jury but which should include nominal or actual damages, compensatory damages, and punitive damages, as well as any other

relief shown to be appropriate including, but not limited to, costs and pre-judgment as well as post-judgment interest.

Respectfully submitted June 8, 2018.

s/ Brian P. Murphy
Brian P. Murphy, Bar No. 6770
Attorney for Plaintiff

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601

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ELECTRONICALLY FILED - 2018 Jul 16 10:31 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	Civil Action No.: 2018-CP-04-01127
	)	
	)	
Lisa Styles,	)	
	)	
Plaintiff,	)	**ANSWER & AFFIRMATIVE DEFENSES**
	)	
v.	)	
	)	
Michael Craig Brickman, Southeastern Grocers, LLC, BI-LO, LLC, Ken Miller, And Ronnie Duncan,	)	
	)	
Defendants.	)	
	)	

As to each and every allegation not hereinafter specifically admitted Defendants would deny the same and demand strict proof thereof. In further Answering Plaintiff's Complaint, the Defendants, Southeastern Grocers, Inc.[1] and BI-LO, LLC (collectively "Defendants"), respond to the corresponding numbered paragraphs in Plaintiff's Complaint as follows:

1. Without knowledge, therefore denied.
2. Without knowledge, therefore denied.
3. Without knowledge, therefore denied.
4. Without knowledge, therefore denied.
5. Admitted to the extent that Southeastern Grocers, Inc. has a principal place of business in Florida, otherwise denied.
6. Admitted.
7. No response required.
8. Admitted.

[1] Southeastern Grocers, LLC is now Southeastern Grocers, Inc. and will be responding to this action as Southeastern Grocers, Inc.

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9. Admitted to the extent that Brickman is an employee of BI-LO, LLC, otherwise denied.

10. Without knowledge, therefore denied.

11. Without knowledge, therefore denied.

12. Admitted to the extent that the complaints were made in April 2018, otherwise denied.

13. Denied.

14. Denied.

15. Denied.

16. Admitted only insofar as that an alleged theft was reported to police, otherwise denied.

17. Denied.

18. Without knowledge therefor denied.

19. Without knowledge and therefore denied.

20. Denied.

21. Denied.

COUNT I
Abuse of Process

22. Defendants incorporate by reference the foregoing responses to allegations above as if set forth here in full.

23. Denied.

24. Denied.

COUNT II
Malicious Prosecution

25. Defendants incorporate by reference the foregoing responses to allegations above as if set forth here in full.

26. Denied.

27. Denied.

28. Denied.

COUNT III
False Imprisonment

29. Defendants incorporate by reference the foregoing responses to allegations above as if set forth here in full.

30. Denied.

31. Denied.

COUNT IV
Interference with Contract Defendant Brickman

32. Defendants incorporate by reference the foregoing responses to allegations above as if set forth here in full.

33. Denied.

34. Without knowledge, therefore denied.

35. Denied.

36. Denied.

37. Denied.

COUNT V
Fraud

38. Defendants incorporate by reference the foregoing responses to allegations above as if set forth here in full.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Without knowledge as to Plaintiff's state of mind. Otherwise, denied.

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IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A FIRST AFFIRMATIVE DEFENSE
(*Rule 12(b)(6), SCRCP*)

44. Plaintiff has failed to state facts sufficient to constitute any cognizable cause(s) of action and accordingly this case ought be dismissed pursuant to Rule 12(b)(6), SCRCP.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A SECOND AFFIRMATIVE DEFENSE
(*Equitable Estoppel*)

45. The relief requested by Plaintiff is barred, in whole or in part, by the doctrine of equitable estoppel.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A THIRD AFFIRMATIVE DEFENSE
(Laches)

46. The relief requested by Plaintiff is barred, in whole or in part, by the doctrine of laches.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A FOURTH AFFIRMATIVE DEFENSE
(*Unclean Hands*)

47. The relief requested by Plaintiff is barred, in whole or in part, by the doctrine of unclean hands.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A FIFTH AFFIRMATIVE DEFENSE
(*Statute of Limitations*)

48. Plaintiff's claims, in whole or in part, are barred by the statute of limitations applicable hereto.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
(*Mitigation of Damages*)

49. Plaintiff has failed to mitigate their damages and, as a result, are not entitled to recovery from the Defendants.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE
(*Promissory Estoppel/Accord & Satisfaction/Release & Contract*)

50. Plaintiff's claims are barred, in whole or in part, by the doctrine of promissory estoppel, accord and satisfaction, and/or release and contract.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A EIGHTH AFFIRMATIVE DEFENSE
(*Business Judgment Rule*)

51. Plaintiff's claims fail on account of the Business Judgement Rule.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A NINTH AFFIRMATIVE DEFENSE
(*Waiver*)

52. Plaintiff's claims, in whole or in part, are barred by the doctrine of waiver by virtue of Plaintiff's conduct.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A TENTH AFFIRMATIVE DEFENSE
(*Non-Reliance*)

53. Plaintiff did not rely upon any representations made by the Defendants. To the extent Plaintiff alleges that they have relied upon any alleged representations or promises made by the Defendants (the existence of which is expressly denied) any such reliance by Plaintiff was unjustified.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A ELEVENTH AFFIRMATIVE DEFENSE
(*Punitive Damages Not Allowed by Law*)

54. The Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments of the Constitution of the United States and the Constitution of the State of South Carolina, in the following particulars:

(a) Plaintiff's claim for punitive damages violates the Fifth Amendment to the U.S. Constitution for the following reasons:

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i. The double jeopardy clause is violated because multiple awards of punitive damages can be imposed upon the Defendant for the same act or omission and because an award of punitive damages can be imposed upon the Defendant even where Defendant has been convicted or acquitted of a factually-related offense in an underlying criminal proceeding; and,

ii. The self-incrimination clause is violated because the Defendant can be compelled to testify against themselves despite facing quasi-criminal punishment, or an award of damages which is penal in nature.

(b) Plaintiff's claim for punitive damages violates the Sixth and Fourteenth Amendments to the U.S. Constitution because such damages may be imposed based upon the burden of proof applicable in civil cases, despite the fact that Defendants are facing a fine, penalty, or an award of damages which are quasi-criminal and penal in nature.

(c) Plaintiff's claim for punitive damages, if granted, would be excessive and would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that:

i. Defendant's conduct was not deliberate, and the damages, if any, to Plaintiff, were nominal;

ii. The punitive damages sought by Plaintiffs would be greatly disproportionate to any actual damages;

iii. The standard or test for determining the requisite mental state of the Defendant for imposing punitive damages is void for vagueness; and,

iv. Plaintiff's claim for punitive damages would violate the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution because it discriminates against Defendant on the basis of wealth and because different amounts can be awarded

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against two or more Defendants for the same act(s) when those Defendants differ only in material wealth.

(d) Plaintiff's claim for punitive damages would violate the Eighth Amendment to the United States Constitution as it seeks to impose an excessive fine upon the Defendant, is penal in nature, and seeks to punish Defendant upon vague standards.

(e) Any award of punitive damages in this case would violate the Separation of Powers Doctrine since this Court and/or the jury would be usurping the exclusive power of the legislature to define crimes and establish punishment.

(f) Any award of punitive damages in this case would be constitutionally defective as an *ex post facto* law prohibited by United States Constitutions. The jury, in making any such punitive award, would effectively be criminalizing conduct after it has occurred and without appropriate advance notice to a defendant that such conduct may subject it to criminal punishment.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A TWELFTH AFFIRMATIVE DEFENSE

(*Punitive Damages – Statutory Limitation Pursuant to S.C. Code Ann. § 15-32-530*)

55. The Plaintiff's claim for punitive damages falls within the statutory limitations contained in the S.C. Code of Laws and therefore an award of punitive damages in any event may not exceed the greater of three times the amount of compensatory damages awarded to the Plaintiff or the sum of five hundred thousand dollars.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A THIRTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

56. Defendants assert that any report made to the police, and any statements made in connection thereto, was proper as the reporting Defendants believed in good faith that Plaintiff

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committed a theft. In addition, Defendants did not attempt to coerce Plaintiff to do anything. Any process involving the police was justified and proper. Moreover, Defendants had no intent to abuse any process.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A FOURTEENTH AFFIRMATIVE DEFENSE
(No Damages)

57. Plaintiff has no damages which flow from the alleged abuse of process. Moreover, Plaintiff has failed to specifically plead damages suffered as a result of having to explain to the police that she was not allegedly guilty of theft as she claims. If Plaintiff was never arrested or incarcerated as claimed, then she suffered no recoverable damages. In addition, the vague damages claimed are speculative and not recoverable.

58. Moreover, Plaintiff has failed to allege sufficient facts to support alleged damages in the form of humiliation, indignity, mental suffering or punitive damages. To the extent any such allegations were alleged, such damages were not foreseeable and are speculative.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A FIFTEENTH AFFIRMATIVE DEFENSE
(Consent)

59. Defendants state that Plaintiff was not detained against her will. Plaintiff appeared voluntarily. To the extent that Plaintiff was confronted in the store to be questioned about an alleged theft, the questioning was reasonable in time, manner and scope.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A SIXTEENTH AFFIRMATIVE DEFENSE
(Insufficient Pleadings)

60. Plaintiff has failed to allege with sufficient specificity allegations supporting a claim of fraud. Plaintiff fails to allege any specific statements allegedly made by individual defendants and fails to provide any specificity as to time or place of the alleged statements and acts. Vague

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references to all defendants does not satisfy the particularity requirement of S.C .R. Civ. P. 9(b). Moreover, Plaintiff fails to allege whether any of the individual defendants were authorized to act on behalf of the corporate defendants under the circumstances relied upon.

IN FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT BY WAY OF A SEVENTEENTH AFFIRMATIVE DEFENSE
(*Reservation & Non-Waiver of Additional Defenses*)

61. Defendants hereby give notice that they intend to rely upon such other affirmative defenses as are asserted by other parties in this matter and/or as may become available or apparent during the course of discovery and litigation of this matter and accordingly fully reserve the right to amend their Answer to assert any such defenses at any time, whether affirmative or otherwise, including any counterclaims, cross claims, or third party claims at any point in time up to, and including, the final trial or hearing in this matter. Defendant(s) accordingly reserves their right to amend their Answer to this Complaint to assert any such defense(s) and/or claim(s).

WHEREFORE, having fully answered Plaintiff's complaint, Defendants respectfully and humbly pray this honorable Court issue an Order dismissing this action; awarding the Defendants all costs and expenses incurred as a result of Defending same, to include reasonable attorneys' fees; and, to grant any and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Respectfully submitted,
SLOTCHIVER & SLOTCHIVER, L.L.P.

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&

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ATTORNEYS FOR DEFENDANTS

***Application for Admission *Pro Hac Vice* Forthcoming

ELECTRONICALLY FILED - 2019 Dec 03 6:10 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Anderson	)	**2018-CP-04-01127**
	)	
Lisa Styles,	)	
	)	
Plaintiff,	)	
v.	)	**Partial Dismissal Without Prejudice**
	)	
Michael Craig Brickman, Southeastern Grocers, LLC, BI-LO, LLC, Ken Miller, and Ronnie Duncan,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 41(a)(1)(A), Plaintiff dismisses claims against Defendants Brickman, Miller, and Duncan individually without prejudice.

Pursuant to Rule 41(a)(1)(A), Plaintiff dismisses Count IV without prejudice.

Respectfully submitted this 3rd day of December 2019.

For the Plaintiff:

s/ Brian P. Murphy
Brian P. Murphy, Bar No. 6770

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ELECTRONICALLY FILED - 2020 Jan 02 1:35 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT Civil Action No.: 2018-CP-04-01127
Lisa Styles, Plaintiff, v. Southeastern Grocers, LLC and BI-LO, LLC Defendants.	)	**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC ("Defendants"), pursuant to South Carolina Rules of Civil Procedure 56, move for summary judgment as to Counts I, II, III and V of the Plaintiff, Lisa Styles', ("Plaintiff") Complaint and as grounds therefore, Defendants state:

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Turner v. Milliman, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011) (citing Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citation omitted), Rule 56(c), SCRCP). "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." Id. "In order to withstand a motion for summary judgment 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." Turner v. Milliman, 392 S.C. at 122 (citing Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). "In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id.

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Count I: Abuse of Process

The essential elements of a claim for abuse of process are: first, an ulterior purpose, and second, a willful act in the use of the process not proper in the regular conduct of the proceeding. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 694 (1967) (quoting Prosser, Handbook of the Law of Torts, Second Edition, Section 100, pp. 668, 669). "Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." Id.; accord Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 70, 567 S.E.2d 251, 253 (Ct. App. 2002).

To sustain a claim for abuse of process, it is axiomatic that "the judicial process must in some manner be involved." Food Lion, 351 S.C. at 70 (citing W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 121 at 897-98 (5th ed. 1984), Kirchner v. Greene, 294 Ill.App.3d 672, 229 Ill. Dec. 171, 691 N.E.2d 107 (Ill. Ct. App. 1998) (holding that where no court process is involved there can be no abuse of process); 72 C.J.S. *Process* § 106 at 697 (1987) ("[I]f the process is not used at all, no action can lie for its abuse.")). The foucs in the abuse of process action is on the improper use of process after it has been issued. Scott v. McCain, 275 S.C. 599, 600, 274 S.E.2d 299, 300 (1981) (citing Annot., Abuse of Process, 8 A.L.R. 580; 1 Am.Jur.2d Abuse of Process s 13; 72 C.J.S. Process s 120). Assuming a judicial process has been invoked, then the plaintiff must also establish it was used for an improper purpose. Id.

"The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club." Huggins, 249 S.C. at 209. "There is, in other

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words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort." Id.[1] However, "there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant." Food Lion, 351 S.C. at 75 (citing Restatement (Second) of Torts § 682 cmt. b. at 475 (1977)). In other words, a party cannot be held liable because the party merely seeks to gain a collateral advantage by using some legal process; rather, the collateral objective must be its sole or paramount reason for acting. Food Lion, 351 S.C. at 75; Scott, 275 S.C. at 600.

The Plaintiff here cannot show any abuse of process. First, there is no dispute that no court process was ever used. Rather, the Judge declined to issue an arrest warrant and, thus, Plaintiff was never arrested let alone tried by the court. Thus, Plaintiff is missing the first essential element required to show an abuse of process. Food Lion, 351 S.C. at 70.

Second, even if reporting Plaintiff to the police could be considered "use of court process" absent any further action - and there is no authority to support any such contention - there is no record evidence that Defendants reported Plaintiff for the sole purpose of achieving some objective that was not authorized by the process. Plaintiff's allegation is that the store manager's goal was to discredit her because she had complained about him (Complaint, ¶ 23), but there is no evidence to support her claim, let alone that it was the "sole" purpose of reporting her to the police. The interview with Plaintiff was conducted by Defendants' Asset Protection Specialist, Olin Duncan,

[1] To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may be justified in itself; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process. Huggins, 249 S.C. at 209 (citations omitted). The distinction between an action for malicious prosecution and one for abuse of process is "that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect—the improper use of a regularly issued process." Id.

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and the interview was witnessed by Defendants' Human Resource Business Partner, Kenneth Miller. Mr. Brickman was not involved in the meeting and the decision to call the police was made by Mr. Duncan after Plaintiff admitted to removing items from the store without paying for them. (Duncan Depo., pp. 29, l. 1-23, 54, l. 22-25, 55, l. 1-25, 56, l. 1-5); (Styles Depo., p. 127, l. 22-25) (testifying that Brickman was not in the room and didn't convince her to do anything that day). In fact, there is no evidence that Mr. Duncan even knew about her complaint regarding the store manager. (Duncan Depo. pp. 32, l.19-25, 35, l.16 – 25, 36, l. 1-6).

The record evidence indisputably demonstrates that Defendants' goal was to have Plaintiff held accountable for her actions as the process is intended. (Duncan Depo., pp. 54, l. 22-25, 55, l. 1-25, 56, l. 1-25, 57, l. 1-25). (Styles Depo., pp. 103, l. 19-25, 104, l. 1-2); (Styles Depo., Ex. 4). In other words, just as Church's did in the Guider case, Defendants attempted to use the legal process to seek redress against an employee who admittedly took and retained company property.[2] Guider v. Churpeyes, Inc., 370 S.C. 424, 432, 635 S.E.2d 562, 566 (Ct. App. 2006). In contrast, Defendants did not threaten Plaintiff that if she did not reimburse it for five-times more ($2,250) than what she agreed she took ($450) from Defendants, that Defendants would have her arrested as the shop owner did in Huggins. Huggins, 249 S.C. at 212. Thus, Defendants' attempt to avail itself of the criminal process was clearly a legitimate use, not a perversion, of the legal process. Id.; Food Lion, 351 S.C. at 70.

Count II: Malicious Prosecution

"A plaintiff in a malicious prosecution action must show (1) institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the insistence of, the defendant;

[2] This is the case regardless of whether Plaintiff had offered to reimburse Defendants for the $450 worth of property, as the plaintiff in the Guider case did, or whether Defendants asked her to do so, as seeking restitution is a proper and ordinary goal of the criminal process.

(3) termination of such proceeding in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. Guider v. Churpeyes, Inc., 370 S.C. 424, 430, 635 S.E.2d 562, 565 (Ct. App. 2006) (citing Parrott v. Plowden Motor Co., 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965)). Here, Plaintiff cannot show the requisite elements.

First, the record evidence is undisputed that no judicial proceedings were ever instituted against Plaintiff. The Judge did not issue an arrest warrant and Plaintiff was never arrested. (Burdette, Chief Doyle Depo., pp. 16, l. 1-15, 32, l. 17-19). Accordingly, Plaintiff cannot establish the first element of a malicious prosecution claim; she was never prosecuted. Clemmons v. Nicholson, 180 S.C. 54, 185 S.E. 34, 35 (1936) ("Under the former decisions of this court, in order to maintain an action for malicious prosecution, it is indispensable that there be an arrest.").

Second, even if Plaintiff had been prosecuted, there is no record evidence to establish the fifth and essential element that judicial proceedings were instituted without probable cause. Guider v. Churpeyes, Inc., 370 S.C. 424, 430, 635 S.E.2d 562, 566 (Ct. App. 2006) ("An essential element of malicious prosecution is the institution of judicial proceedings without probable cause against the plaintiff.") (quoting Kinton v. Mobile Home Indus., Inc., 274 S.C. 179, 181, 262 S.E.2d 727, 728 (1980)). "Probable cause in this context does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged." Id. When determining if probable cause exists, the court must consider the facts from the point of view of the party prosecuting. Guider, 370 S.C. 424, 430 (citing Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982)). "[T]he question is not what the actual facts were, but what [the prosecuting party] honestly believed them to be." Id.

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In Guider the appellate court reversed the denial of Church's motion for directed verdict on the plaintiff's malicious prosecution claim because the plaintiff did not meet her burden of proving that Church's did not honestly believe she had committed a breach of trust. Guider, 370 S.C. at 428. Church's had withheld money from the plaintiff's pay check to cover money stolen in a robbery. In turn, plaintiff took back the money from a bank deposit of Church's with which she was entrusted. However, the plaintiff then called the district manager, admitted what she did, and offered to meet him to return the money. The manager ignored her for six days and instead asked the police to issue an arrest warrant on breach of trust charges. The arrest warrant affidavit he provided alleged that the plaintiff admittedly withheld the money she was entrusted to deposit for Church's and retained the money "for her own personal use." Two days later, the plaintiff returned the money by depositing it into Church's bank account. Nonetheless, a judge signed the warrant a few days later and she was arrested. Id. The appellate court held that, even viewing the evidence in the light most favorable to the plaintiff, a reasonable party could only conclude Church's had probable cause to believe Guider guilty of breach of trust since she had held the money for eight days even though she offered to return it:

> Looking at the facts from Church's point of view for the determination of probable cause, Church's filed the breach of trust charges knowing Guider had admittedly retained $800 in company funds with which she had been entrusted on June 5, 2003. Moreover, Guider retained possession of the $800 for a total of eight days before she returned the money to Church's. Church's filed the charges after Guider told Bailey, "I got my money back," "I did something that was wrong," and "I took money out of that $1,004 deposit." Guider had not returned the funds when the charges were filed.

Id. at 430–31.

Similarly, looking at the facts of this case from Defendants' point of view, Defendants had video evidence of Plaintiff removing product from the store weeks prior without scanning it and paying for it. (Duncan Depo. p. 24, l. 6-25 and Exhibits 1 and 2). Plaintiff was seen secreting

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product while on duty, then removing the product when leaving for the day without paying. (Duncan Depo., p. 47, l. 1-25, 48, l. 1-18; Ex. 1). When confronted with this information, Plaintiff admitted to taking the property and estimated that she had taken $450 worth of product. (Styles Depo., Ex. 4); (Glenn, Officer Carl Anthony, Depo., pp. 6, l. 11-24, 12, l. 18-25, 13, l. 1-6); (Miller Depo., p. 55, l. 5-12); (Styles Depo., p. 95, l. 6-11). In her interview with Duncan, Plaintiff said she took Easter products to donate to charity even though the Store Manager, Mike Brickman, had denied her request for the charity, and that she took other products for herself. (Duncan Depo., pp. 47, l. 1-25, 48, l. 1-18; Ex. 1); (Miller Depo., pp. 41, l. 12-25, 42, l. 1-25, 44, l. 1-7; Ex. 3); (Glenn Depo., pp. 14, l. 17-25, 15, l.1).

From Defendants' standpoint, there was probable cause that Plaintiff had committed theft and a breach of trust when Defendants reported her to the police. (Duncan Depo., pp. 74, l. 25, 75, l. 1-14). Plaintiff provided Defendants with a written statement admitting to the theft and though she recanted the statement the *following* day, on the day in question, Plaintiff admitted the theft to the police officer responding to the call which reaffirmed Defendant's beliefs. (Styles Depo., p. 108, l. 21-25). The Chief of Police testified that the only charge he presented to the Judge was for breach of trust (not larceny) and that, if Plaintiff had not paid the $450 back before he took the case to the judge, there would have been probable cause to go forward with charging her. (Burdette, Chief Doyle Depo., p. 16, l. 1-15). Thus, the Chief admitted that there was probable cause when Defendants reported Plaintiff, as the video clearly demonstrates that she did not purchase the money order to repay Defendants until after the police had come and gone. (Styles Depo., pp. 103, l. 19-25, 104, l. 1-2, 145, l. 8-25, 148, l. 3-25, 149, l. 1-23, p. 150, l. 8-22); (Styles Depo., Exs. 4 and 7).

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As such, even if Plaintiff had been criminally prosecuted – which is not the case – she could not succeed on her malicious prosecution claim, as a matter of law, because Defendants had an honest belief based upon video and Plaintiff's own admissions that she had committed crimes when Defendants called the police to report her conduct.

Count III: False Imprisonment

"To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." Law v. S.C. Dep't of Corr., 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006) (citations omitted). "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification." Id. "False imprisonment may be committed by words alone, or by acts alone or by both, and by merely operating on the will of the individual, or by personal violence, or by both." Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995) (citing Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 317 S.E.2d 748 (Ct. App. 1984)).

In order to establish that the restraint was unlawful, the plaintiff must establish a lack of probable cause. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). Thus, Plaintiff must establish that, at the time of questioning Plaintiff on May 23, 2018, Defendants did not have a good faith belief that she was guilty of shoplifting. This requires showing that its belief did not rest on such grounds as would induce ordinarily prudent and cautious person, under the circumstances, to believe likewise. Id. If Defendants had probable cause, it does not matter whether Plaintiff was restrained, she is not entitled to recover because the restraint was not unlawful. Faulkenberry v. Springs Mills, Inc., 271 S.C. 377, 379, 247 S.E.2d 445, 446–47 (1978) ("Since we conclude that the actions of appellant's agents were done with legal justification we need not

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determine whether the delay or restraint of respondent at the gatehouse as she left work constituted the restraint required to make out false imprisonment. [citation omitted] If appellant was legally justified in restraining respondent, she is not entitled to recover.").

Moreover, even if Plaintiff could establish a *prima facie* claim of false imprisonment, there is an affirmative defense available to a merchant in an action for false imprisonment if there is reasonable cause to believe the person has shoplifted merchandise and the person is delayed for a reasonable time and in a reasonable manner for investigation. S.C. Code Ann. § 16–13–140 (1976); Caldwell v. K-Mart Corp., 306 S.C. 27, 29, 410 S.E.2d 21, 23 (Ct. App. 1991). The defense applies to claims by employees as well as customers. Faulkenberry v. Springs Mills, Inc., 271 S.C. 377, 380, 247 S.E.2d 445, 447 (1978) ("We find no sound reason to deny the same defense, afforded under Section 16-13-140, to employers who reasonably delay employees in an attempt to determine the ownership of property.").

Here, the record evidence indisputably establishes that Plaintiff cannot demonstrate that the alleged restraint was unlawful because there was clearly probable cause. Under similar circumstances, the appellate court reversed a judgment for an employee where the record showed that the employee was delayed by her employer's security officers for about twenty minutes for the purpose of making a legitimate inquiry into the charge that the employee was then in the act of unlawfully taking the employer's property. Faulkenberry, 271 S.C. at 380–81. The information from two fellow employees, upon which the employer acted in making the inquiry of respondent, was properly deemed reliable. Thus, the appellate court held that the inquiry or investigation was reasonable in nature. Id.

The same result is compelled here. Defendants' loss prevention specialist had video evidence clearly showing Plaintiff had taken Defendants' property without scanning it let alone

paying for the property. This video evidence undoubtedly provided reliable evidence to question Plaintiff. In fact, Mr. Duncan testified that during the interview with Plaintiff, there was no question in his mind that Plaintiff had stolen merchandise from Defendants. (Duncan Depo., pp. 74, l. 19-25, 75, l. 1-8). Thus, Defendants clearly had probable cause which defeats Plaintiff's false imprisonment claim even if she could show she was restrained. Faulkenberry, 271 S.C. at 379.

Even if there were any question concerning Defendants' probable cause, however, Plaintiff was not intentionally restrained. Plaintiff was on-duty at the time the loss prevention department asked to speak to her, so she was not free to leave any more than any other employee was free to leave and regardless of the loss prevention department's desire to speak with her. Further, Plaintiff was not forced to go into the office or stay there; she walked into the office willingly - an office she routinely entered and she stayed to speak with the asset protection specialist willingly as well. (Duncan Depo., p. 75, l. 7-14). In fact, Plaintiff does not even claim that she was physically restrained; she claims only that she was told she could not leave until she gave a written statement regarding whether she took Defendants' property and she subjectively did not know what Duncan's authority was. (Styles Depo., pp. 75, l.1-25, 76, l. 1-16). While her testimony in this regard is disputed, even if it were true, it does not suffice to constitute false imprisonment. By her own admission, Plaintiff could have simply written her statement and left. As the testimony and video evidence from that day establishes, the entire encounter lasted less than 30 minutes before the police were called, after which Plaintiff left the office to go outside and smoke. (Styles Depo., p. 138, l. 3-5; Ex. 7); (Duncan Depo., p. 38, l. 17-19). As such, the alleged "restraint" is insufficient to support her claim of false imprisonment, as it was more than reasonable in nature. For instance, the plaintiff in Faulkenberry was detained for questioning *after* her shift had ended – so it was on

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her own time and she was therefore otherwise free to leave. Her detention lasted approximately the same amount of time as Plaintiff's. Those circumstances were insufficient to support the claim of false imprisonment, thus, Plaintiff's circumstances – even taking her testimony as true – are insufficient as well. Faulkenberry, 271 S.C. at 380-81.

Count V: Fraud

To establish 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. Id. In addition to these nine elements, to establish fraud in the inducement, which is what Plaintiff's claim amounts to, Plaintiff must prove "(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him." Anthony v. Atl. Grp., Inc., 909 F. Supp. 2d 455, 483 (D.S.C. 2012), aff'd (July 12, 2013) (citing, among other cases, Darby v. Waterboggan of Myrtle Beach, Inc., 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct.App.1986); Moseley v. All Things Possible, Inc., 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct.App.2010), reh'g denied (June 24, 2010), cert. granted (Mar. 17, 2011), aff'd, 395 S.C. 492, 719 S.E.2d 656 (2011)).

Fraud must be shown by clear, cogent, and convincing evidence. Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993); Anthony v. Atl. Grp., Inc., 909 F. Supp. 2d 455, 483 (D.S.C. 2012), aff'd (July 12, 2013) ("fraud claims must be supported by clear and convincing evidence") (citation omitted). Thus, to withstand a motion for summary judgment, a plaintiff must provide clear and convincing evidence in support of a claim alleging fraudulent conduct. Anthony,

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909 F. Supp. 2d at 475 (citations omitted). Clear and convincing "has been defined as 'evidence ... of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established,' ... and, as well, as evidence that proves the facts at issue to be 'highly probable.'" Id. (quoting Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001)). "Consequently, where the ...'clear and convincing' evidence requirement applies, the trial judge's summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant." Id.

A mere showing that a party has failed to keep his promises "is not sufficient to demonstrate actionable fraud." Woodward v. Todd, 270 S.C. 82, 240 S.E.2d 641, 643 (1978) (cited by Tom Hughes Marine, Inc. v. Am. Honda Motor Co., 219 F.3d 321, 324 (4th Cir. 2000)). This is because the general rule is that an alleged fraudulent misrepresentation must relate to a present or pre-existing fact and cannot ordinarily be predicated on unfulfilled promises or statements as to future events. Tom Hughes Marine, 219 F.3d at 324–25 (citations omitted). An exception to this rule exists only when a person makes a promise "having at the time no intention of keeping his agreement." Id. at 325 (citations omitted). To come within the exception, the plaintiff must prove that the defendant made promises while contemporaneously harboring an intention to dishonor them, otherwise the claim fails. Id. at 326. Evidence of broken promises does not suffice unless there is proof that the defendant made demonstrably false *statements of fact.* Id.

In the present case, the video evidence irrefutably demonstrates that the police were called *before* Plaintiff purchased the money order to repay Defendants for the goods she stole:

> Q. If the time stamps in Exhibit 7 are accurate, that would show that the police officers arrived before you purchased the money order; isn't that correct?

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A. Yes.

Q. And, in fact, it appears there was only about five minutes between you purchasing the money order, before you walked out the door for the last time on that day?

A. Yes, sir, it appears that way.

(Styles Depo., p. 150, l. 13-22).

In fact, that is what Plaintiff told the Chief of Police the following day. (Styles Depo., pp. 112, l. 25, 113, l. 1-20; Ex. 5, p. 16). However, in her deposition, Plaintiff claimed she had no idea as to the sequence of events upon which her fraud claim is based. Id. (testifying "I don't – I don't recall when I purchased the money order. I don't remember if it was before the police, after – I don't remember"). Plaintiff repeatedly testified in her deposition that she did not recall whether the police were called before or after she paid the $450 and, thus, cannot support her own fraud claim:

Q. If you look at the sentence at the bottom of page 4, and it's going to run into the next page, it says, "The officer informed me of my rights and he would contact me after to inform me when I needed to turn myself in." I said, "Okay. After the officer left, Ronnie took me to the service desk to purchase the money order." So in that instance, are you suggesting that the officer came first and the money order was purchased afterwards?

A. According to this, it seems that way. But in my mind, I cannot recall. I'm sorry.

(Styles Depo., p. 123, l. 2-12). The asset protection investigator also testified that Plaintiff did not purchase the money order to reimburse Defendants until after he had called the police and the police officer had come and gone. (Duncan Depo., pp. 57, l. 2-11, 60, l. 7-16).

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Furthermore, despite the allegations in the Complaint that Plaintiff obtained a money order for Defendants before the police were called, in her deposition, Plaintiff tried to change her story, testifying that there was an *agreement* to pay the Defendants the $450 before the police were called. (Styles Depo., pp. 103, l. 19-25, 104, l. 1-2). When asked whether the allegation in her Complaint was true or false, Plaintiff testified, "So I can't 100 percent be positive on that, sir." (Styles Depo., pp. 104, l. 3-25, 105, l. 1-9).

Given Plaintiff's own statements and testimony, she cannot possibly establish clear and convincing evidence of fraud. The evidence could not support a firm belief or conviction, without hesitancy, that Defendants promised her not to report her to the police if she reimbursed Defendants let alone establish the facts alleged in her Complaint are 'highly probable.'" Anthony, 909 F. Supp. 2d at 475. Thus, summary judgment should be entered against Plaintiff. Id.

Nonetheless, even taking Plaintiff's other version of the facts as true, that Defendants told her they would not call the police if she paid for the stolen goods but did not keep the "promise", the evidence shows only that Defendants made promises or statements as to future events which went unfulfilled. There was no statement concerning any present or preexisting fact. Thus, Plaintiff cannot establish fraud, as a matter of law. Darby, 288 S.C. at 584 ("At most, taking Waterboggan's version of the conflicting testimony as true, the evidence established that Shine made promises or statements as to future events which later were unfulfilled. Such evidence may establish a breach of promise; it is not evidence of fraud.").

Further, there is no evidence to establish that Defendants intended not to follow through with the alleged promise not to call the police when the statement was supposedly made. As such, summary judgment is appropriate, as "[e]vidence of mere nonperformance of a promise is not sufficient to establish either fraud or a lack of intent to perform." Turner v. Milliman, 392 S.C.

116, 123–24, 708 S.E.2d 766, 770 (2011) (citing Woods v. State, 314 S.C. 501, 506, 431 S.E.2d 260, 263 (Ct.App.1993)). "An inference of a lack of intent to perform a promise can only be made when nonobservance of a promise is coupled with other evidence." Id. There is no such evidence here, let alone evidence that could meet the standard of clear and convincing which is required to sustain Plaintiff's claim of fraud. Id. at 125 (affirming summary judgment based upon heightened standard of review applied to fraud claims).

CONCLUSION

Defendants are entitled to summary judgment on all remaining counts of the Complaint because they had a reasonable belief that Plaintiff had taken items without paying for them and merely interviewed Plaintiff to determine what took place. Plaintiff provided a written statement to Defendants admitting to theft, admitted her theft to the police that was called to the store that day, and only recanted her story the next day without ever relaying her decision to recant her story to Defendants. Moreover, by the time Plaintiff recanted her story, she had already set into motion the police's investigation since she admitted to the first officer that she had taken items from the store without payment. In addition, Plaintiff was never arrested and never charged with a crime. Plaintiff was working her shift as an employee of Defendants at the time she was interviewed and she discussed the matter with the asset protection specialist voluntarily. Defendants also had a shopkeeper's privilege to investigate any alleged theft which they did in a reasonable manner. Finally, Plaintiff admitted under oath that she has no facts to support her fraud claim. As a result, Defendants are entitled to summary judgment on Counts I, II, III and IV of the Complaint.

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ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT

Lisa Styles,

Plaintiff,

vs.

Civil Action No. 2018-CP-04-01127

DEFENDANTS' MOTION TO EXCLUDE ANY EVIDENCE REGARDING PLAINTIFF'S TERMINATION FROM EMPLOYMENT AND ALL ALLEGED DAMAGE RELATING THERETO.

Southeastern Grocers, LLC and BI-LO, LLC

Defendants.

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC, pursuant to South Carolina Rules of Evidence 103 and 104, move to exclude from trial any evidence regarding Plaintiff's termination from employment with Defendants and any alleged damage relating thereto. As grounds therefore, Defendants state:

1. In March 2018, Defendants' agent observed Plaintiff removing goods from Defendant's store without paying for them. Following an investigation, on May 23, Plaintiff was interviewed in a room by Ronnie Duncan from Defendants' Loss Prevention Department with Ken Miller, a member of Defendants' Human Resources Department. According to Plaintiff, during the interview, Duncan told Plaintiff that they would not seek her arrest if she paid the value ($450) of the items taken. Complaint ¶15. In this regard, Plaintiff alleges in her Complaint that "[d]espite the fact that Defendants coerced Plaintiff into purchasing the money order, Defendants still attempted to have Plaintiff arrested by filing a complaint with the Pendleton Police Department…"

Id at ¶16. Plaintiff alleges that the interview constitutes false imprisonment, that Defendants committed fraud by calling the police even after the money order had been purchased, and that the complaints to the police constitutes malicious prosecution and abuse of process.

2. Plaintiff was terminated from employment following her misconduct, and she filed a Charge of Discrimination with the EEOC mirroring the substantive allegations in her Complaint, alleging, in part, that she was retaliated against for complaining about her supervisor engaging in gender discrimination. See Exhibit A, attached. Indeed, it is undisputed that Plaintiff made an internal complaint of gender discrimination. However, when asked about damages she is seeking in this lawsuit, Plaintiff testified that she is seeking "lost wages" and that she was "out of work." (Id. at 162). Plaintiff also testified that she "loved her job", she thought she "would retire from there," that she "had to start a whole new career, start over with all my benefits." Plaintiff even seeks to hold the entire Human Resources team responsible for her damages, when they had nothing to do with the facts asserted in this case. As Plaintiff testified:

> Q. Okay. Who else were you treated badly by, other than I assume you would say Mr. Duncan, Mr. Miller in the meeting [on May 23].
> A. I mean, I feel like the whole HR team, period, and my superiors failed in this entire situation by not addressing or working on what was going on.

(Plaintiff Depo. at 164). Plaintiff's counsel succinctly confirmed that her (unpled) termination claim is a central element of this lawsuit. As Plaintiff's counsel argued in his Memorandum in Opposition to Summary Judgement:

> The dispute centers around the store manager, Michael Brickman's, denials that he knew and approved of Plaintiff gathering the items and taking them to [charity], Defendants' efforts to have Plaintiff prosecuted **to support Brickman's desire to terminate her employment**, and Defendants' confinement of her and threats to exact a confession they knew was false. (Plaintiff's Memorandum in Opposition to Summary Judgment, p.1)(emphasis added)

Plaintiff, however, never included in this lawsuit the retaliation or gender discrimination claims that her EEOC charge allowed her to pursue. Clearly, the claims asserted in this lawsuit allow for tort-like damages, but there is no basis to contend that Plaintiff's termination from employment is an element of damage available to her, or more importantly, that it is an element of damage proximately caused by the alleged misconduct. To the contrary, the damage for the false imprisonment is the alleged emotional distress resulting from an unlawful detention. The fraud claim arises from an alleged agreement to not seek Plaintiff's arrest if she paid $450.00. It has nothing to do with her termination from employment. And of course, in this case, there is no contention that either the malicious prosecution claims nor claims for abuse of process relate to her termination from employment in any way. Clearly, Plaintiff could have pled that these actions were in retaliation for her complaint of gender discrimination, but she obviously didn't do that. The Supreme Court of South Carolina makes clear that "the public policy exception does not however extend to situations where the employee has an existing statutory remedy for wrongful termination." *Barron v. Labor Finders*, 393 S.C. 609, 615, 713 S.E.2d 634 (2011). Although not pled as a public policy violation, by litigating her wrongful termination claim under the guise of this Complaint, Plaintiff is attempting to do what the Supreme Court has insisted she cannot.

3. As such, any evidence regarding Plaintiff's termination from employment or any alleged damages therefrom is irrelevant and inadmissible because there is no claim of discrimination or retaliation at issue. S.C. R. Evid. 401 ("Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); see generally Whaley v. CSX Transp., Inc., 362 S.C. 456, 484, 609 S.E.2d 286, 300 (2005) (trial judge erred by admitting evidence that some CSX locomotive cabs had fans or air conditioners which was not

relevant to Whaley's claim that the locomotives in which he was injured were not properly ventilated).

4. Moreover, even if Plaintiff could come up with some arguable relevance, evidence of Plaintiff's termination from her employment and any claim for damages associated with it must be excluded because any probative value it arguably has would be far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see generally Jamison v. Ford Motor Co., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (quoting Watson ex rel. Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)). Plaintiff's professed damages relate almost entirely to the loss of her job and "having to start over". Because there is no claim of sex discrimination or retaliation at issue, it would be unduly prejudicial to Defendants as well as confusing and misleading to the jury to admit evidence relating to claims that are not at issue.

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order limiting Plaintiff from introducing any evidence about her termination from employment or damages relating thereto.

DATED March 9, 2020

SLOTCHIVER & SLOTCHIVER, L.L.P.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Court's CM/ECF system this 9th day of March 2020 to:

Brian P. Murphy, Esq.
Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, South Carolina 29601
brian@stephensonmurphy.com
Attorneys for Plaintiff

/s/ Andrew J. McCumber, Esquire
Andrew J. McCumber, Esq.

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented to: Agency(ies) Charge No(s):

___ FEPA
_X_ EEOC 436-2018-01281

South Carolina Human Affairs Act and EEOC
State or local Agency, if any

Name (*indicate Mr. Ms. Mrs.*)	Home Phone (Incl. Area Code)	Date of Birth
Lisa Styles	(864) 934-6609	8/24/80

Street Address	City, State and ZIP Code
1011 Shennandoah Dr.	Anderson, SC 29625

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. (Include Area Code)
Southeastern Grocers/Bi-Lo	>500	

Street Address	City, State and ZIP Code
8928 Prominence Parkway, #200	Jacksonville, FL 32256

RECEIVED
DIRECTOR
JUN 07 2018
Greenville Local Office
Greenville, SC

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

__ RACE __ COLOR _X_ SEX __ RELIGION __ NATIONAL ORIGIN

_X_ RETALIATION __ AGE __ DISABILITY __ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest
Unkn 5/23/18

__ CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attached extra sheet(s)*):

I worked for a Bi-Lo store in Anderson, South Carolina for approximately eight years. Respondent assigned a store manager (Michael Craig Brickman) about whom female employees have made numerous complaints. In late April 2018, myself and other females complained about disparate treatment on the basis of sex. I was personally subjected to disparate treatment, including disparate discipline and treatment. Soon after I complained, Brickman, with the assistance of others in the company, attempted to frame me for theft of goods that were, in fact, donated to a local charity with Brickman's approval. Respondent's loss prevention office lied during the investigation, detained me unlawfully, and cajoled me into paying $450 on the promise that it would keep me from being "arrested." After I paid the money to avoid problems, Respondent still attempted to have me charged with breach of trust. The judge refused to issue a warrant. Respondent also terminated my employment.

I have been discriminated against and retaliated against for my opposition to Respondent's unlawful discrimination and for my participation in its internal processes. I am filing this Charge on behalf of myself and others similarly situated.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

6-7-18 × Lisa M Styles
Date *Charging Party Signature*

NOTARY – *When necessary for State and Local Agency Requirements*

Notary Commission Exp: 9/9/25

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLANANT

× Lisa M Styles

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(*month, day, year*) 6/7/18

A

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE *(ISSUED ON REQUEST)*

To: Lisa Styles
1011 Shennandoah Dr.
Anderson, SC 29625

From: Greenville Local Office
301 North Main St
Suite 1402
Greenville, SC 29601

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
436-2018-01281	Terrence J. O'Brien, Investigator	(864) 241-4407

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- [X] More than 180 days have passed since the filing of this charge.
- [ ] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- [X] The EEOC is terminating its processing of this charge.
- [ ] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- [ ] The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- [ ] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Patricia B. Fuller,
Local Office Director

DEC 14 2018
(Date Mailed)

Enclosures(s)

cc:

SOUTHEASTERN GROCERS/BILO
7709 Highway 76
Pendleton, SC 29670

Brian Murphy
STEPHENSON + MURPHY
207 Whitsett St
Greenville, SC 29601

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT

Lisa Styles,

Plaintiff,

vs.

Civil Action No. 2018-CP-04-01127

DEFENDANTS' MOTION TO EXCLUDE CHIEF OF POLICE'S TESTIMONY & REPORT

Southeastern Grocers, LLC and BI-LO, LLC

Defendants.

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC, pursuant to South Carolina Rules of Evidence 103 and 104, move to exclude from the testimony and report of the Chief of Police of Pendleton, South Carolina, Boyle Burdette. As grounds therefore, Defendants state:

1. Plaintiff Lisa Styles subpoenaed the Chief of Police of Pendleton, South Carolina, Boyle Burdette, to testify at trial.

2. Chief Burdett was not a witness to or participant in any of the alleged incidents that form the basis for any of Plaintiff's claims. He was not present either when: Plaintiff took items from the BI-LO without paying for them; when BI-LO investigated Plaintiff's actions and then interviewed Plaintiff; when one of his officers was called and responded to the BI-LO after Plaintiff admitted to stealing BI-LO's property; or when Plaintiff offered to repay $450 to BI-LO for the goods she stole. As such, Chief Burdette has no personal knowledge of any fact at issue and his testimony is inadmissible. SCRE 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.").

3. The only knowledge Chief Burdette has is information he obtained after-the-fact and consists entirely of inadmissible hearsay. SCRE 801 (hearsay is inadmissible); State v. King, 422 S.C. 47, 66, 810 S.E.2d 18, 28 (2017) ("Officer Butler's testimony was hearsay as it was based exclusively on what the witnesses told her during the neighborhood canvas and was offered to prove that King fired more than one gunshot."). As the South Carolina Supreme Court explained, there is no special exception to the hearsay rule for law enforcement:

> An out-of-court statement made to a police officer is judged by the same rules of evidence that govern any out-of-court statement by any out-of-court declarant. If it is relevant and probative *only* to prove the truth of the matter asserted by the out-of-court declarant, then the statement is hearsay, and its admission into evidence is governed by the traditional hearsay rule. And, as any other statement, if the out-of-court statement made to a police officer has relevance and probative value that is *not* dependent upon its truthfulness, and it is *not* offered into evidence as proof of the matter asserted, then by definition the evidence is *not* hearsay.

King, 810 S.E.2d at 28 (quoting Ruiz v. Commonwealth, 471 S.W.3d 675 (Ky. 2015)).

4. Additionally, the hearsay statements Chief Burdette would testify to are also inadmissible because they are not relevant. What witnesses told Chief Burdette after-the-fact has no relevance to Plaintiff's claims, aside from possibly being used to establish an inconsistent statement under the appropriate circumstances by referencing those portions of the police report. However, any such inconsistent statements contained in the police report are clearly inadmissible as substantive evidence. SCRE 80; King, 810 S.E.2d at 28.

5. The only potentially relevant evidence Chief Burdette possesses other than the possibility that a witness will testify inconsistently with statements contained in his report is the undisputed fact that the potential criminal charge of breach of trust against Plaintiff was deemed

"unfounded" so that no arrest warrant was issued or executed.[1] However, since this fact is not in dispute, his testimony in this regard is irrelevant.

6. Moreover, any testimony the Chief could provide regarding the criminal charge being "unfounded" is likewise based upon a hearsay statement he attributes to Judge Whitman and is therefore inadmissible on that basis as well, SCRE 80; King, 810 S.E.2d at 28, as well as on the grounds set forth in *Defendants' Motion to Exclude Voicemail and Statements of Chief of Police and Judge*.

7. In sum, since Chief Burdette has no first-hand knowledge of any relevant fact, his testimony is not relevant and is inadmissible on the grounds stated above.

8. The only purpose of calling Chief Burdette to testify would be to improperly bolster the credibility of Plaintiff and attempt to discredit Defendants' witnesses by having the head of the city's law enforcement agency testify regarding his after-the-fact investigation and Judge Whitman's resulting determination that there was not probable cause to charge Plaintiff with a breach of trust, which determination was based entirely upon the Chief's biased representation of the evidence to Judge Whitman. However, as stated above, the fact that there was no arrest warrant issued or executed because the breach of trust claim was deemed unfounded is undisputed. Accordingly, any potential relevance his testimony would have is outweighed by the danger of unfair prejudice to the Defendants and is therefore inadmissible on this basis as well. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.");

---

[1] This is potentially relevant only to Plaintiff's malicious prosecution claim to show that the alleged "prosecution" of Plaintiff was resolved in her favor. However, since Plaintiff was not prosecuted at all, that claim should not go before the jury as detailed in *Defendants' Motion for Summary Judgment*.

see generally Jamison v. Ford Motor Co., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (quoting Watson ex rel. Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)). The prejudicial effect of testimony by the Chief of Police supporting the Plaintiff's case as a law enforcement officer is far outweighed by any probative value his testimony might have. Id.

9. Likewise, no portion of the police report written by Chief Burdette, nor any of the witness statements he obtained, are admissible. SCRE 80; King, 810 S.E.2d at 28.

10. The only portion of the police report that is admissible is the portion written by Officer Carl Glenn, who responded to the BI-LO the day of the incident at issue, which contains his personal observations on the day in question as well the admissions of guilt made by Plaintiff day. SCRE 801(d)(2)(A) (admission by party-opponent is not hearsay if the statement is offered against a party and is the party's own statement).

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order precluding the Plaintiff from calling the Chief of Police of Pendleton, South Carolina, Doyle Burdette, as a witness and excluding all portions of the police report written by him and all witness statements obtained by him.

DATED March 9, 2020

SLOTCHIVER & SLOTCHIVER, L.L.P.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Court's CM/ECF system this 9th day of March 2020 to:

Brian P. Murphy, Esq.
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Greenville, South Carolina 29601
brian@stephensonmurphy.com
Attorneys for Plaintiff

/s/ Andrew J. McCumber, Esquire
Andrew J. McCumber, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT

Lisa Styles,

Plaintiff,

vs.

Civil Action No. 2018-CP-04-01127

DEFENDANTS' MOTION TO EXCLUDE STATEMENTS OF CHIEF OF POLICE CONCERNING THE CREDIBILITY OF WITNESSES

Southeastern Grocers, LLC and BI-LO, LLC

Defendants.

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC, pursuant to South Carolina Rules of Evidence 103 and 104, move to exclude from trial certain statements made by the Chief of Police opining on the credibility of Plaintiff and other witnesses. As grounds therefore, Defendants state:

1. In his deposition testimony, the Chief of Police of Pendleton, South Carolina, Doyle Burdette, made several statements that are inadmissible at trial because they constitute improper opinion testimony concerning the credibility of Plaintiff and other witnesses. For example, the Chief testified that he believed Plaintiff over Defendant's witnesses concerning the incidents at issue because Plaintiff offered to take a polygraph test. In contrast, the Chief claimed Store Manager Michael Craig Brickman reluctantly agreed to take a polygraph and appeared nervous. The Chief also claimed that, in his 25 years as a police officer, he has never seen a lying witness volunteer to take a polygraph.

2. The Chief's opinions are inadmissible and highly prejudicial.

3. "It is a well-recognized principle of our trial system that 'determining the weight and credibility of [a witness's] testimony.... belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men....'" Nimely v. City of N.Y., 414 F.3d 381, 397 (2d Cir. 2005) (quoting Aetna Life Ins. Co. v. Ward, 140 U.S. 76, 88, 11 S. Ct. 720, 35 L. Ed. 371 (1891)) (citing United States v. Scop, 846 F.2d 135, 142 (2d Cir.1988) ("The credibility of witnesses is exclusively for the determination by the jury, and *witnesses may not opine as to the credibility of the testimony of other witnesses at the trial.*") (internal citation omitted and emphasis added); State v. Smith, 411 S.C. 161, 170, 767 S.E.2d 212, 217 (Ct. App. 2014) ("The assessment of witness credibility is within the exclusive province of the jury.") (citing State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (citing State v. Wright, 269 S.C. 414, 417, 237 S.E.2d 764, 766 (1977))). "Therefore, a witness may not give an opinion on whether he or she believes another witness is telling the truth or comment on another witness' veracity." Smith, 411 S.C. at 170 (citing State v. Kromah, 401 S.C. 340, 358–59, 737 S.E.2d 490, 499–500 (2013)).

4. This rule applies to experts as well as to lay witnesses. Smith, 411 S.C. at 170. Thus, even when the witness is "qualified as an expert" to testify as to a particular matter and his or her opinion is based upon reliable data and methodology, the trial court must also determine whether the expert's testimony will "assist the trier of fact." Nimely, 414 F.3d at 397; Fed. R. Evid. 702. Courts have consistently held that:

> expert testimony that "usurp[s] either the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it," United States v. Bilzerian, 926 F.2d 1285, 1294 (2d Cir.1991), by definition does not "aid the jury in making a decision"; rather, it "undertakes to tell the jury what result to reach," and thus "attempts to substitute the expert's judgment for the jury's," United States v. Duncan, 42 F.3d 97, 101 (2d Cir. 1994).

Nimely, 414 F.3d at 397. "Thus, this court, echoed by our sister circuits, has consistently held that expert opinions that constitute evaluations of witness credibility, even when such evaluations are rooted in scientific or technical expertise, are inadmissible under Rule 702." Nimely, 414 F.3d at 397-98 (citing United States v. Lumpkin, 192 F.3d 280, 289 (2d Cir.1999); Scop, 846 F.2d at 142–43; United States v. Charley, 189 F.3d 1251, 1267 (10th Cir.1999); Westcott v. Crinklaw, 68 F.3d 1073, 1076–77 (8th Cir.1995)).

5. For these reasons, in Nimely, the Second Circuit held that the district court erred by not striking the testimony of an expert witness in an excessive force case. The expert in that case testified that he "rejected" the possibility that the police officers involved had lied, and explained various reasons why police officers have no incentive to give false statements in excessive force cases, and that the police officers were "telling the truth as they perceived it." Nimely, 414 F.3d at 398. The Court stated that the question was not even close: such testimony does not "assist the trier of fact," Fed. R. Evid. 702, but rather "undertakes to tell the jury what result to reach," and "attempts to substitute the expert's judgment for the jury's," Nimely, 414 F.3d at 398 (citing Duncan, 42 F.3d at 101).

6. Moreover, as Nimely explained, expert witnesses should not be permitted to base their conclusions on the in-court testimony of fact witnesses out of concern that such expert testimony may improperly bolster the account given by the fact witnesses. Nimely, 414 F.3d at 398 (citing United States v. Dukagjini, 326 F.3d 45, 53 (2d Cir. 2003); United States v. Cruz, 981 F.2d 659, 663 (2d Cir. 1992)). The expert's testimony in Nimely went a step further in that he commented directly, under the guise of expert opinion, on the credibility of trial testimony from crucial fact witnesses. The expert was permitted not only to state his belief that the officers were not lying, but also to give to the jury a series of rationales for that belief. As such, it was reversible error to admit it. Nimely, 414 F.3d at 398.

5. For these reasons, permitting the Chief of Police to inject into the trial his opinion regarding the credibility of the witnesses would be extremely prejudicial to Defendants and is therefore inadmissible on this basis as well. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see generally Jamison v. Ford Motor Co., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (quoting Watson ex rel. Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)). The prejudicial effect of testimony by the Chief of Police supporting the Plaintiff's case by strongly suggesting that Plaintiff, not the Defendants' witnesses, is telling the truth, is far outweighed by any probative value his opinions might have. Id.

6. In short, the Chief's opinions on witness' credibility and his reasons therefore are inadmissible. Thus, Defendants' request that this Court enter an Order precluding the introduction of the voicemail or any mention of its contents at trial and precluding the Chief of Police from commenting on the credibility of any party or witness at trial.

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order limiting Plaintiff from introducing the voicemail or any evidence concerning the Chief of Police's opinions relating to the credibility of Plaintiff or any other individuals involved including trial witnesses.

DATED March 9, 2020

SLOTCHIVER & SLOTCHIVER, L.L.P.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Court's CM/ECF system this 9th day of March 2020 to:

Brian P. Murphy, Esq.
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Greenville, South Carolina 29601
brian@stephensonmurphy.com
Attorneys for Plaintiff

/s/ Andrew J. McCumber, Esquire
Andrew J. McCumber, Esq.

Pendleton Police Department

Officer Incident Report for Incident # 2018-00979

Disposition: **UNFOUNDED**

Incident Date:	From 02-15-2018 10:00 pm GMT -5.00 To 05-23-2018 09:00 am GMT -5.00	**Report Created:**	05-23-2018 02:10 pm GMT -5.00
Incident Type:	Larceny/Theft Offenses - All Other Larceny (23H)	**Reported By:**	Glenn, Carl (US01188O0000006V)
Origination:	Phone	**Reporting Agency:**	Pendleton Police Department
Current Status:	Approved, Access Level 1	**Reported From:**	IP ADDR 24.213.117.50
Incident Location:	7709 US-76 Pendleton, SC 29670 US	**Jurisdiction:**	This Jurisdiction
Incident Lex #:	IN017I7E000000NL	**Assigned To:**	Glenn, Carl (US01188O0000006V)
		Agency:	Pendleton Police Department

Jacket Notes: none.

LOCATION:

Name:	Bi-Lo	**Location Lex #:**	LO019DWF00000008
Address:	7709 US-76 Pendleton, SC 29670 US	**Units Entered:**	
Latitude / Longitude:	34.6343169 / -82.7854773	**Forced Entry:**	No
Location Type:	Grocery/Supermarket (12)	**Location Notes:**	
Zone / Beat:	/		

ARRESTS / ARREST OFFENSES:

name	party type	offense code	statute	description	off status

No arrests associated with this incident.

PARTIES:

name	party type	arrested	injured	description	lex #
Bi-Lo	Victim	No	No	'C' Corporation	0
Brickman, Michael Craig	Complainant	No	No	White, M, lbs, 0' 0", DOB:	EP017F6V000001DH
Duncan, Olin Ronald	Complainant	No	No	White, M, lbs, 5' 10", DOB:	EP017F60000001AK
Styles, Lisa Marie	Suspect	No	No	White, F, 145 lbs, 5' 1", 37 (at time of incident), DOB: 08-24-1980	EP017J4W0000019I
	864-934-6609 (mobile)				

VEHICLES:

No vehicles specified.

NARRATIVE:

05-23-2018 16:36:18 (GMT -5.00) GLENN, CARL US01188O0000006V

I was dispatched to the above IncIdent location in reference to a "Breach-of-Trust." After arrival I spoke with the above complainant #1, who is the Loss Prevention officer for the above victim. He told me the above subject had taken items from the victim inwhich she was entrusted to safeguard and/ or sell. The subject took the items for her personal use without giving any type of compensation. The subject is an employee of the above victim. After speaking with the complainant #1 I spoke with the victim. I cited "Miranda" to the subject then asked the subject for her personal information, i.e,. name, d.o.b., address, phone number, etc.... The subject did admit to the act, the subject also wrote a statment to the fact of her committing the act. I also received printouts of the items taken from complainant #1. Approximate total amount of items taken $450.00. Nothing further.

05-24-2018 15:45:07 (GMT -5.00) BURDETTE, DOYLE US0118AJ00000022

Ms. Styles came into the office concerning the incident which happened yesterday at Bi-Lo. I asked her about the statement she provided and she stated that was a copy of the statement given to Loss Prevention. She stated she had been told she had to provide a statement. She refused several times but was told she had to provide a statement before she could leave the office and they told her what to put in the statement. She was then told if she paid back the $450 the police would not be called. She purchased a money order for that amount there at the store and gave the money order to them. She was then told the police had been called. I asked her to provide a statement of the incident and she did. She stated she would also take a polygraph examination if necessary. She stated she believes this incident stems from a complaint her and several others made on the current store manager (Brickman) which he was informed of. She states the store has helped AIM with charitable donations for the kids for Easter for several years. AIM came to them again this year and she informed her store manager who told her to proceed with the donations. Due to information being given back and forth between AIM and Styles there were three donations at different times. She states she told the manager (Brickman) and he stated to deliver the donations and he would ring it up since she could not ring up the donations. She states the incidents of merchandise leaving the store she is being accused of are those donations he stated he would ring up and he told her to collect and deliver. According to the Loss Prevention report he (Brickman) states he never had a conversation concerning the donations with her. I will speak with Brickman and Loss Prevention at a later date.

05-25-2018 15:37:53 (GMT -5.00) BURDETTE, DOYLE US0118AJ00000022

On 05/25/18 at approximately 1215 I spoke with the manager, Michael Brickman (10/25/1969) about the incident. I had a question concerning the timing of the reporting of the incident. He appeared nervous and questioned whether he was supposed to be talking to me about the incident. I explained it was part of the investigation. He suggested he should call loss prevention but then decided not to. I asked why, according to the report from loss prevention, he reported incidents which occurred in the middle of March on April 30th. He said he couldn't remember when he had called loss prevention. He told me he was going to call Ronnie Duncan with loss prevention to see if it was OK for him to speak with me and to find out when he contacted him. He contacted Duncan and then stated Duncan told him he could answer my questions and Duncan told him they had first spoken on April 11th. In regards to the question of the timing, he stated the store was supposed to get a "deep clean" of the bathrooms and when he came in the next morning he checked the camera to see if they were there the night before. He states they were not there and neither was the manager (Styles) who was supposed to be working. He states managers often have other employees close the store but they are supposed to let him know if they change their schedule. He states he began looking through other times Styles was working and that is when he found she was taking items. I then asked about donations. He stated the store did provide donations to charities. This is done with a gift card or other ways. I asked if he and Styles had discussed a donation and he stated not that he was aware of. I asked if he instructed her to take the donations to the charity and he stated he did not. I then told him that since this was developing into a case of he said/she said, would he be willing to submit to a polygraph examination. He hesitantly stated he would and then amended that by stating he would have to check with corporate but he would if it was OK with them. He stated throughout the interview he just reported the actions, he did not have anything to do with the investigation and I should speak with Duncan. I told him I appreciated him answering the questions and I would speak with Duncan.

05-25-2018 15:58:38 (GMT -5.00) BURDETTE, DOYLE US0118AJ00000022

On 05/25/18 at approx. 1535 I spoke with Ronnie Duncan who is the loss prevention officer who investigated the incident. He stated the date of April 30th on his statement was when he started the review. He stated he was actually contacted on April 11th. I asked if the items taken matched what would usually be for donations and he stated there was shampoo and other things. I asked if the items were for a donation and he stated the new manager (Brickman) had refused to donate this year. He stated Brickman had told them they were not doing donations. He interrupted my next question and asked if I knew that she had paid for the loss. I stated I did. I asked if he told her she must write a statement before she could leave and he stated he did not. I asked if he told her what to write and he said he told her to "put her name, address and a line stating she spoke to Ronnie Duncan concerning," and then what they had discussed. He stated she could have left at anytime. I asked if they made her pay and he stated they did not. He stated she offered to pay from the beginning. He stated she could pay the judge on the court date. He stated he did tell her before they would allow her to do PTI it has to be paid. I will contact the HR rep. Ken Miller after the holiday.

05-29-2018 15:38:18 (GMT -5.00) BURDETTE, DOYLE US0118AJ00000022

I contacted Miller and he returned my call on 05/29/18. I asked him about the interview and if they had told Styles she could not leave until she provided a statement. He stated they did not say that. I asked him how the amount of $450 was reached and he stated that was an estimate agreed upon by Styles. He stated she paid the amount prior to leaving the day she was terminated. I asked if he was aware of a HR complaint by Styles against Brickman. He stated that complaint was handled by the Jacksonville office. When asked when the complaint had been presented to Jacksonville he stated he believed it was in late March or April. I asked if Brickman was aware a complaint had been lodged against him and he stated Brickman did know. I asked if there had been any other issues with Styles he was aware of during her employment and he stated none he was aware of. He further stated it was "quite a surprise" to hear the allegations against her since he had heard "only good things" about her since 2014 when he first came to the area. I also spoke with Styles and asked her to forward me the emails she had exchanged with the program director at Anderson Interfaith Ministries regarding the donations. She sent the emails which show she delivered the donation on March 28th. I also spoke with Judge Whitman regarding warrants for the Breach of Trust. He denied a warrant for Breach of Trust on the grounds there was no personal gain by Styles, stating that was one of the elements of Breach of Trust. Not only was there no personal gain but she had paid Bi-Lo $450 and they were therefore out nothing. This case is unfounded.

SUPPLEMENTAL:

no entries.

ADMINISTRATION:

disposition	reviewed by	review date	cleared by	cleared date
Unfounded	Burdette, Doyle	05-29-2018 11:38 am GMT -5.00	Burdette, Doyle	05-29-2018 11:38 am GMT -5.00

Cover Page Printed: 07-30-2018 10:43 am GMT -5.00

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT

Lisa Styles,

Plaintiff,

vs.

Civil Action No. 2018-CP-04-01127

DEFENDANTS' MOTION TO EXCLUDE VOICEMAIL AND STATEMENTS OF CHIEF OF POLICE AND JUDGE

Southeastern Grocers, LLC and BI-LO, LLC

Defendants.

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC, pursuant to South Carolina Rules of Evidence 103 and 104, move to exclude from trial the voicemail left by the Chief of Police for Plaintiff any and all evidence concerning the statements made or referenced therein. As grounds therefore, Defendants state:

1. On December 5, 2019, Plaintiff produced an audio recording that is apparently a voicemail from the Chief of Police of Pendleton, South Carolina, Doyle Burdette, who identifies himself as "Doyle" in the message to Plaintiff. The Chief informs Plaintiff that he spoke to "the Judge," presumably referring to Judge Ronnie W. Whitman, a Magistrate Judge in the Anderson County Summary Court.[1] The Chief relays that "the Judge" found there were "no grounds for the breach of trust" charge so he "unfounded" the case. He then adds that the Judge called him back and said, "she probably should get an attorney and sue 'em."

2. The voicemail constitutes inadmissible hearsay and is highly prejudicial.

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[1] The police report identifies the Judge as "Judge Whitman."

3. The voicemail constitutes hearsay as to the Chief of Police's statements, as they are out-of-court statements which Plaintiff seeks to introduce to prove the truth of the matter asserted, i.e., that there was no probable cause to arrest Plaintiff. See, e.g., SCRE 801-802 (making hearsay inadmissible).

4. Likewise, the voicemail constitutes double hearsay as to the Judge's out-of-court statements to the Chief of Police which the Chief relays in his message to Plaintiff. Again, Plaintiff seeks to introduce to the Judge's statements to prove the truth of the matters asserted, i.e., that there was no probable cause to arrest Plaintiff and that Defendant acted wrongfully toward Plaintiff, which is inadmissible hearsay. Id.

5. The statements in the voicemail also amount to inadmissible opinion testimony. The law is well settled that "a witness typically may not 'give purely legal conclusions,' such as that an officer lacked probable cause to arrest, Owen v. Kerr-McGee Corp., 698 F.2d 236, 240 (5th Cir. 1983), or that a search conducted without a warrant violated the Fourth Amendment, Specht v. Jensen, 853 F.2d 805, 808 (10th Cir. 1988), as such conclusory testimony would "tell the jury what result to reach" on ultimate issues only the jury should resolve, Owen, 698 F.2d at 240." Washington v. City of Waldo, Florida, No. 1:15CV73-MW/GRJ, 2016 WL 3545909, at *3 (N.D. Fla. Mar. 1, 2016). This type of testimony is not helpful to the jury even when it comes from a well-qualified expert witness; rather, it invades the jury's province. Id. ("Expert evidence that consists merely of legal conclusions is usually not helpful, for purposes of this requirement, when it unduly invades the province of the jury by essentially telling the jury what result to reach on an ultimate issue.") (citing Samples v. City of Atlanta, 916 F.2d 1548, 1551 (11th Cir. 1990)). Whether there was probable cause is the issue of fact that the jury must decide and neither the Chief of Police nor Judge may tell the jury how to rule. Id.

6. Even when such testimony comes from a duly qualified expert witness, it is not helpful and is potentially confusing for the jury when it purports to articulate the requirements of the law. Washington, 2016 WL 3545909, at *4 (citing Berry v. City of Detroit, 25 F.3d 1342, 1353 (6th Cir. 1994) ("It is the responsibility of the court, not testifying witnesses, to define legal terms"); Hygh v. Jacobs, 961 F.2d 359, 364 (2d Cir. 1992) (noting that an expert witness "is not qualified to compete with the judge in the function of instructing the jury."); Specht v. Jensen, 853 F.2d 805, 808-09 (10th Cir. 1988) (distinguishing "permissible testimony on issues of fact" and "testimony that articulates the ultimate principles of law governing the deliberations of the jury," which is not permissible, and noting the confusion that would result from competing expert testimony on the requirements of the law)). As such, it is not permissible.

7. Likewise, permitting the Jury to learn that a Judge recommended Plaintiff sue Defendant would clearly suggest to the jury that they should find in Plaintiff's favor, since a judicial officer recommended that she sue Defendants. Again, this would be inadmissible even if the Judge were testifying as an expert witness in this case, as it constitutes an impermissible legal opinion. Id.; see also Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (stating expert witnesses cannot offer legal opinions or arguments). It would similarly be error to allow such a comment if "the Judge" were the trial judge in this case and is no less prejudicial because a different Judge made the statement. See generally State v. Simmons, 209 S.C. 531, 535–36, 41 S.E.2d 217, 219 (1947) ("[I]t has been frequently held that a trial Judge should not by remarks in ruling upon testimony offered, indicate opinions or express views reasonably calculated to influence the jury in deciding a material issue of fact.") (citing Powers v. Rawles, 119 S.C. 134, 112 S.E. 78; State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244).

8. Moreover, the voicemail as well as any mention of its contents at trial would be extremely prejudicial to Defendants and is therefore inadmissible on this basis as well for the

reasons described above. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see generally Jamison v. Ford Motor Co., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (quoting Watson ex rel. Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)). A comment by a Judge supporting the Plaintiff's case by strongly suggesting that the Defendants acted wrongfully and should be sued could hardly be any more prejudicial and is therefore inadmissible. Washington, 2016 WL 3545909, at *4. (Dr. Thomas will not be permitted to state his opinion on ultimate legal issues in the case, including that Cpl. Smith lacked probable cause to arrest Plaintiff, thereby making the arrest unlawful, and that Cpl. Smith used excessive force in effectuating the arrest, as such testimony "offers nothing more than what lawyers for the parties can argue in closing arguments.") (citing, among other cases, United States v. Frazier, 387 F.3d 1244, 1262-63 (11th Cir. 2004)). For these reasons, Plaintiff should be precluded from introducing the statements of the Chief and Judge opining as to whether there was a basis to arrest Plaintiff and/or a basis for Plaintiff to sue Defendants. Id.

9. In short, the voice mail and the Chief's and Judge's comments are inadmissible on multiple grounds. Thus, Defendants' request that this Court enter an Order precluding the introduction of the voicemail or any mention of its contents at trial.

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order limiting Plaintiff from introducing the voicemail or any evidence concerning what either the Chief

of Police said or what he asserted the Judge said regarding whether there was a basis to arrest Plaintiff and/or whether Plaintiff has a meritorious claim against Defendants.

DATED March 9, 2020

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT

Lisa Styles,

Plaintiff,

vs.

Civil Action No. 2018-CP-04-01127

DEFENDANTS' MOTION TO EXCLUDE EVIDENCE OF PLAINTIFF'S COMPLAINT OF DISCRIMINATION

Southeastern Grocers, LLC and BI-LO, LLC

Defendants.

Defendants Southeastern Grocers, LLC and Bi-Lo, LLC, pursuant to South Carolina Rules of Evidence 103 and 104, move to exclude from trial any and all evidence concerning Plaintiff's complaint of sexual harassment, discrimination or retaliation. As grounds therefore, Defendants state:

1. Plaintiff intends to introduce evidence that she complained to a District Manager that Store Manager Michael Brickman harassed or discriminated against her and other female employees because of sex (hereafter "Plaintiff's complaint").

2. Plaintiff previously filed an administrative charge of discrimination alleging sex discrimination and retaliation but chose not to pursue those claims further, presumably because they were meritless.

3. As such, any evidence regarding Plaintiff's complaint is irrelevant and inadmissible because there is no claim of discrimination or retaliation at issue. S.C. R. Evid. 401 ("Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

without the evidence."); see generally Whaley v. CSX Transp., Inc., 362 S.C. 456, 484, 609 S.E.2d 286, 300 (2005) (trial judge erred by admitting evidence that some CSX locomotive cabs had fans or air conditioners which was not relevant to Whaley's claim that the locomotives in which he was injured were not properly ventilated).

5. Nevertheless, Plaintiff wants to suggest to the jury that the alleged wrongful actions at issue were motivated by Plaintiff's complaint, essentially arguing the retaliation claim she chose not to pursue in this Court. However, there is no evidence that the individuals involved in the allegedly wrongful actions at issue in Plaintiff's claims of fraud, false imprisonment, malicious prosecution and abuse of process had *any knowledge* of Plaintiff's complaint of discrimination at the time of their actions. Thus, the alleged wrongful actions could not have been motivated by Plaintiff's complaint, rendering Plaintiff's complaint irrelevant and inadmissible not to mention that her retaliation claim was and remains meritless. See, e.g., Crapp v. City of Miami Beach, 242 F.3d 1017, 1020 (11th Cir. 2001) (stating a decision-maker's true motive can only be determined based upon his knowledge at the precise moment when he made the employment decision); Turnes v. Amsouth Bank, N.A., 36 F.3d 1057, 1062 (11th Cir. 1994) (stating a decision-maker cannot be motivated by knowledge he did not have at the time); Lloyd v. Georgia Gulf Corp., 961 F.2d 1190 (5th Cir. 1992) (upholding exclusion of employer's testimony about facts unknown to decision-maker at the time of decision because those facts were wholly irrelevant). Rather, the only relevant evidence concerns what the decision-makers knew *at the time* of their allegedly wrongful actions. Id.; Walker v. Mortham, 158 F.3d 1377, 1182 n. 8 (11th Cir. 1998) (employer's proffered non-discriminatory reasons must include facts which the decision-maker knew at the time the decision at issue was made). As such, all evidence and argument regarding Plaintiff's complaint should be excluded. Id. Here, the decisionmaker pertaining to investigation of Plaintiff for theft was Ronnie Duncan.

4. Moreover, even if Plaintiff could come up with some arguable relevance, evidence of Plaintiff's complaint must be excluded because any probative value it arguably has would be far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); see generally Jamison v. Ford Motor Co., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (quoting Watson ex rel. Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)). Since there is no claim of sex discrimination or harassment or retaliation at issue, it would be unduly prejudicial to Defendants as well as confusing and misleading to the jury to admit evidence relating to claims that are not at issue. Likewise, allowing this evidence would waste judicial resources as well as the time of all involved because Defendant would have to litigate collateral issues relating to Plaintiff's baseless claims of discrimination and retaliation to counter evidence concerning Plaintiff's complaint.

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order limiting Plaintiff from introducing any evidence concerning Plaintiff's complaint.

DATED March 6, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Court's CM/ECF system this 9th day of March 2020 to:

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STATE OF SOUTH CAROLINA **COUNTY OF ANDERSON**	)	**IN THE COURT OF COMMON PLEAS** **FOR THE TENTH JUDICIAL CIRCUIT** **Civil Action No.: 2018-CP-04-01127**
Lisa Styles,	)	
Plaintiff, **v.**	)	**DEFENDANTS' POST TRIAL MOTIONS**
Southeastern Grocers, LLC and BI-LO, LLC	)	
Defendants.	)	

Defendants, Southeastern Grocers, LLC and Bi-Lo, LLC ("Defendants"), by and through its undersigned attorneys and pursuant to Rules 50 and 59 of the South Carolina Rules of Civil Procedure and applicable common law, move this Court for entry of an order granting Defendants a judgment notwithstanding the verdict, or, in the alternative, a new trial based on the Thirteenth Juror Doctrine, a new trial absolute or a new trial *nisi remittitur*. In support of these motions, Defendants state as follows:

FACTUAL BACKGROUND

Plaintiff, Lisa Styles ("Plaintiff") worked for Defendants as a customer service manager at its store in Pendleton, SC. In early April 2018, Defendants' Store Manager and Asset Protection Specialist observed store security video showing Plaintiff removing goods from Defendants' store without paying for them. Following an investigation, on May 23, 2018, while on-duty, Plaintiff was interviewed in her office (shared with other managers) at the store by Ronnie Duncan, an Asset Protection Specialist with Defendants. Present as a witness was Ken Miller, a member of Defendants' Human Resources Department. Plaintiff admitted both orally and in writing that she had taken items from the store without paying for them and offered to pay for the items she took.

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Defendants called the Pendleton Police Department while Plaintiff was still at the store and an officer came to the store to investigate the matter. Defendants gave a copy of Plaintiff's statement to the officer who interviewed Plaintiff, who in turn admitted again that she had taken the items without paying for them.

Officer Carl Glenn prepared an incident report and told Plaintiff that she would eventually have to turn herself in to the police department. After the matter was reported to Defendants' corporate management, Plaintiff's employment was terminated.

The next day, Plaintiff went to the Pendleton Police Department and spoke with Chief of Police Doyle Burdette about the matter. Chief Burdette independently decided to follow up with the witnesses and further investigate the incident. Chief Burdette also communicated with Magistrate Judge Ronnie W. Whitman of the Anderson County Summary Court about the matter and later left a voicemail for Plaintiff indicating that the Judge thought the Defendants' allegations were "unfounded" and that Plaintiff "probably should get an attorney and sue 'em."

On June 8, 2018, Plaintiff filed the Complaint in this action seeking compensatory and punitive damages from Defendants for abuse of process, malicious prosecution, false imprisonment and fraud. In her Complaint, Plaintiff alleged that the interview conducted by Defendants' agents constituted false imprisonment, that Defendants committed fraud by calling the police even after she purchased a money order to pay for the stolen items, and that Defendants' complaints to the police constituted malicious prosecution and abuse of process. Plaintiff also filed a Charge of Discrimination with the EEOC mirroring the substantive allegations in her Complaint and also alleging that her termination was in retaliation for her prior complaints to management about her supervisor engaging in gender discrimination.[1]

[1] After filing her initial charge with the EEOC, Plaintiff did not pursue the EEOC matter further.

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Prior to the trial, Defendants moved for summary judgment on all claims asserted in the Complaint and pointed out that Plaintiff's claims for malicious prosecution and abuse of process were particularly deficient because, as a matter of law, no arrest was made nor was any warrant issued, both of which are essential elements to the asserted claims. A hearing on the Motion was scheduled for February 12, but was subsequently continued to March 6 (the Friday before trial commenced. Judge Maddox denied the motion in its entirety.[2]

At the Court's direction, Motions in Limine were submitted on the first day of trial. Defendant filed five separate Motions in Limine requesting this Court exclude (1) evidence relating to Plaintiff's termination from employment or any damages related thereto; (2) any testimony from Chief Burdette of the Pendleton Police Department, any portion of the police report written by him and any witness statements obtained by him; (3) evidence concerning Chief Burdette's opinions relating to the credibility of Plaintiff or any other individuals involved in the matter; (4) Chief Burdette's voicemail or any evidence concerning what Chief Burdette said on the voicemail or what Chief Burdette asserted Judge Whitman said regarding whether there was a basis to arrest Plaintiff and/or whether Plaintiff had a meritorious claim against Defendants; and (5) evidence concerning Plaintiff's complaints that her store manager harassed or discriminated against her and other female employees because of sex. The Court granted the Motions to exclude evidence of the voicemail, the police report, references to gender discrimination and retaliation and the written complaints of other employees, but otherwise denied the Motions. The Court specifically noted Defendants' objection to the admission of such evidence during trial was preserved.

[2] At trial before this Court, Defendants asked that the Court renew consideration of the issues, explaining that the inclusion of such claims would allow for a broad swath of evidence irrelevant to the remaining claims. This request was denied.

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Upon conclusion of the Plaintiff's case, Defendants moved for directed verdict on all counts. The Court denied the motion as it related to Plaintiff's claim for false imprisonment, but deferred ruling on the remaining claims, allowing the additional examination and submission of evidence from Plaintiff regarding matters which were not only irrelevant but also unduly and highly prejudicial to the false imprisonment and fraud claims.

At the conclusion of evidence, Defendants renewed their motions for directed verdict as to all counts. In response thereto, Plaintiff abandoned her abuse of process claim, and the Court directed a verdict for Defendants on Plaintiff's malicious prosecution count. The jury rendered a verdict in favor of the Defendants on the fraud count and in Plaintiff's favor on the false imprisonment claim. The jury awarded Plaintiff $100,000 in compensatory damages. Following this verdict, Defendant moved the Court to deny submission of Plaintiff's punitive damages claim to the jury as the evidence did not support a claim that the Defendants' conduct was either willful or wanton. The Court denied the motion and the jury subsequently rendered a verdict of $10,000 in punitive damages.

For the reasons set forth in detail below, Defendants request the Court enter judgment for Defendants notwithstanding the verdict pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure or, alternatively, grant Defendants a new trial absolute or a new trial nisi remittitur pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and the Thirteenth Juror Doctrine.

ARGUMENT

I. Defendants are Entitled to Entry of a Judgment Notwithstanding the Verdict.

In considering a motion for a judgment notwithstanding the verdict, the trial judge is concerned with the existence of evidence, not its weight. *Garrison v. Target Corp*., 838 S.E.2d 18,

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26 (Ct. App. 2020) (citing *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). While a trial court must construe all reasonable inferences and ambiguities in the evidence in favor of the non-moving party, if the evidence could only produce one reasonable conclusion, the motion must be granted. *Carter v. Bryant*, No. 2016-002556, 2020 WL 215933, at *7 (S.C. Ct. App. Jan. 15, 2020); *Brady Dev. Co. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993); *Young v. Tide Craft Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978). Moreover, a motion for judgment notwithstanding the verdict may be granted only if no reasonable jury could have reached the challenged verdict. *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998); *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003) (trial court should grant motion when the evidence is insufficient to support the verdict).

A. The Evidence Did Not Establish False Imprisonment.

The record in this case clearly shows that Plaintiff failed to produce sufficient evidence upon which a reasonable juror could conclude that she was falsely imprisoned by Defendants. "To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006) (citations omitted). "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. *Id.* Here, Plaintiff failed to present evidence that she was even restrained, much less that any alleged restraint was unlawful.

While South Carolina law recognizes that it is not necessary for an individual to be confined within a prison or within walls, or be physically assaulted or even touched, the tort of false imprisonment does require the actual restraint of a person. *Westbrook v. Hutchison,* 195 S.C. 101, 109, 10 S.E.2d 145, 148 (1940). For example, sufficient restraint to state a cause of action

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was found where a store employee called over a group of four people to surround a customer, and that employee stood inside the driver's side door of the customer's car preventing him from closing it and leaving. *Callum v. CVS Health Corporation*, 137 F. Supp. 3d 817 (D.S.C. 2015). Similarly, Air Force officials and agents were found to have sufficiently restrained civilian employees to support the employees' false arrest claims where the employees were told that they could not leave the officers' club until their interviews were completed, were denied food and water, and were denied use of telephones or use of bathroom facilities without escort. *Zimbelman v. Savage*, 745 F. Supp. 2d 664 (D.S.C. 2010). Accordingly, it is critical that "[f]orce of some sort must be used, and it must be a detention against the will… for if [the plaintiff] voluntarily place[s] himself in a situation where another may lawfully do that which has the effect of restraining liberty, especially if he refuse[s] to depart when he may, he cannot complain that he is unlawfully imprisoned against his will." *Beraho v. South Carolina State College*, 302 S.C. 129, 131, 394 S.E.2d 28, 29 (Ct. App. 1990) (citations omitted). No one can enforce a right arising out of a transaction which he has voluntarily assented to. *Gathers v. Harris Teeter Supermarket, Inc*., 282 S.C. 220, 229, 317 S.E.2d 748, 754 (Ct. App. 1984).

At trial, the evidence submitted did not prove that Plaintiff was restrained by Defendants. To the contrary, the unrefuted testimony established that Plaintiff was on-duty at the time the loss prevention department asked to speak with her, and in fact was being compensated for her time. She walked into the office willingly and voluntarily stayed to speak with the Asset Protection Specialist for at least six minutes before she contends she wanted to leave. Plaintiff admitted she was not physically restrained. In fact, by her own admission, she could have simply walked out of the room as she was sitting closest to the door and Defendants' agents were further away and

sitting behind a desk. Moreover, Plaintiff testified that although she was an employee of Defendants, no one threatened her in any way.

Further, Plaintiff's testimony belied her contention that she was restrained. Plaintiff testified that the only alleged restriction upon her was that she could not leave the room without giving a written statement. Plaintiff testified that she entered the room at 12:16 p.m., that three to six minutes later she realized she was "in trouble" and that she was in "fight or flight" mode. Plaintiff claimed that at this point she asked to leave but was told she had to submit a statement first, which she did 20 minutes later at 12:42 p.m. Notably, however, after submitting the requested statement, the evidence showed that Plaintiff did not leave the office or even attempt to leave until 12:59 p.m., when she went outside to smoke a cigarette. Plaintiff then voluntarily returned to the office at 1:05 p.m.

Testimony from Officer Glenn confirmed that Plaintiff was not in distress nor did she ask if she could leave. Further, it is undisputed that another police officer (Officer Davis) was also in the store during these events, and Plaintiff never advised either officer that she was being restrained against her will. Yet, in closing argument, Plaintiff's counsel repeatedly argued that she was restrained until the time she repaid the money to Defendants at 1:29 p.m. Thus, the entire encounter which Plaintiff claims constituted the alleged false imprisonment (i.e., that Plaintiff could not leave the room without giving a statement) lasted 20 minutes. Plaintiff's unsubstantiated closing argument notwithstanding, the record is simply devoid of any evidence that Defendants' intentionally restrained Plaintiff.

Moreover, even if Plaintiff presented sufficient (or any) evidence of restraint (which she did not), there are no uncontroverted issues of fact on which reasonable persons could differ with respect to the issue of whether such restraint was unlawful. The uncontroverted testimony at trial

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established that Defendants had probable cause to believe Plaintiff engaged in misconduct by removing products without paying for them and it was Plaintiff's burden to establish a lack of probable cause. *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005).[3] But Plaintiff did not sustain this burden since she admitted during the interview and again at trial that she took the items without paying for them. The evidence admitted at trial could only yield one conclusion: Defendants had probable cause to believe that Plaintiff had shoplifted from their store. As a result, the "restraint" was not unlawful and the jury's verdict must be vacated.

Further, Defendants' agents questioned Plaintiff while she was on-duty at work, in private, and away from other employees for approximately 20 minutes. Plaintiff was neither physically restrained nor blocked from the room's exit at any time and she was not threatened in any way. In fact, she even went outside at one point to smoke a cigarette. The manner in which Defendants conducted this investigatory interview was undoubtedly reasonable under South Carolina law. *See Faulkenberry,* 271 S.C. at 380-81, 247 S.E.2d at 447 (finding employees actions reasonable where evidence conclusively showed employee was not physically restrained, was asked to come to the security gatehouse to speak with the security guard, after checking out was asked but refused to open her purse and was told the reason for the request and then left after approximately 20 minutes without hinderance). As such, on this basis as well, Defendants cannot be held liable for the restraint as they had a legal right to question Plaintiff in a reasonable manner under the

[3] Plaintiff must establish that, at the time of questioning Plaintiff on May 23, 2018, Defendants did not have a good faith belief that she was guilty of shoplifting. This requires showing that its belief did not rest on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. *Id.* If Defendants had probable cause, it does not matter whether Plaintiff was restrained, she is not entitled to recover because the restraint was not unlawful. *Faulkenberry v. Springs Mills, Inc.*, 271 S.C. 377, 379, 247 S.E.2d 445, 446–47 (1978) ("Since we conclude that the actions of appellant's agents were done with legal justification we need not determine whether the delay or restraint of respondent at the gatehouse as she left work constituted the restraint required to make out false imprisonment. [citation omitted] If appellant was legally justified in restraining respondent, she is not entitled to recover."). Here, Plaintiff admitted her removal of product to Defendants and to the jury and thus it is legally impossible to suggest that there was no probable cause for the alleged restraint.

shopkeeper's statute. Indeed, if this verdict is permitted to stand, every employer/employee meeting will now support a claim for false imprisonment because any employee can simply claim, after the fact, that he or she felt pressured to attend the meeting for fear of being fired for refusing to meet with her superior. This cannot be the law.

B. The Evidence Did Not Support Damages.

Defendants also request this Court enter a judgment notwithstanding the verdict because the compensatory and punitive damages awarded to Plaintiff by the jury were not supported by the record evidence. As stated above, in a claim for false imprisonment, the basic injury is the deprivation of the plaintiff's liberty. *Caldwell v. K–Mart*, 306 S.C. 27, 30, 410 S.E.2d 21, 23 (1991). Such things as humiliation, indignity, and mental suffering are general damages that naturally and proximately result from false imprisonment. *Westbrook v. Hutchison*, 195 S.C. 101, 10 S.E.2d 145, 150 (1940).

In contrast, Plaintiff did not present any evidence at trial upon which the jury could have based its compensatory award of $100,000 or its punitive award of $10,000. Plaintiff's delay was for 20 minutes and her interview was conducted in a private room. There was no testimony that she suffered any public humiliation or mental distress which would justify this award. There was also no testimony regarding any medical or mental health treatment needed or sought. Additionally, any damages incurred by Plaintiff's loss of her employment are not casually related to any alleged false imprisonment—they are the direct result of Plaintiff stealing merchandize, which she admitted she did at the time. Plaintiff's claimed concerns about being arrested and having her reputation tarnished were similarly unsubstantiated and of no consequence because she was never arrested.

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Similarly, the jury's award of $10,000 for punitive damages is improper because the trial record is devoid of any evidence that Defendants acted in willful, wanton or reckless disregard of Plaintiff's rights. *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996); *cf. Whitmire v. Publix Theatre Corp*., 164 S.C. 487, 162 S.E. 753, 755 (1932) (upholding punitive damages where detention was uncalled for and the conduct of defendant was "high–handed and in reckless disregard of plaintiff's rights, causing her needless humiliation").

In *Gamble v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991), the South Carolina Supreme Court enumerated eight factors a trial court must consider post-verdict in determining whether a jury's award of punitive damages is proper: (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and finally, (8) "other factors" deemed appropriate. For the reasons explained above, the evidence at trial did not establish that Defendants were culpable for falsely imprisoning Plaintiff. Defendants acted entirely reasonably in questioning Plaintiff about her on-duty misconduct while she was on duty and did so within a reasonable time and in a reasonable manner. Further, the investigation was based upon Defendants' good faith belief that Plaintiff was stealing and was grounded upon video evidence showing her secreting merchandise while on duty and then taking it out of the store without scanning or paying for it. In fact, Plaintiff admitted to stealing the merchandise at the time. As such, neither the degree of culpability, the duration of Defendants' conduct, or any existence of past similar conduct (there was none) warrant punitive damages. Likewise, there is no reason to believe that an award of punitive damages will deter Defendants or others from questioning employees accused of

wrongdoing. To the contrary, employers must investigate wrongdoing and take appropriate remedial measures and if they did not do so, including giving employees like Plaintiff an opportunity to explain their actions, then employers would risk greater liability.

Finally, even assuming, *arguendo* that the jury believed Plaintiff's unsubstantiated contention that her store manager, Michael Brickman, "tricked" her (i.e., that he gave her permission to steal the items but did not disclose his alleged permission to do so when relaying the evidence of theft to Ronnie Duncan in Asset Protection), such actions by a low level manager do not rise to the requisite level of culpability to justify a punitive damage award against Defendants. Defendants' were unaware of any such motivation. As such, this third and final *Gamble* factor weighs against punitive damages as well.

In summary, punitive damages in this case are wholly improper and application of the *Gamble* factors demonstrate that the jury's award of punitive damages must be set aside.

II. Alternatively, Defendants are Entitled to a New Trial Due to the Improper Admission of Highly Prejudicial Evidence.

It is axiomatic that courts possess broad, inherent authority to grant a new trial for prejudicial errors committed during the trial as a matter of fundamental fairness. *Ex parte Kent*, 379 S.C. 633, 640–41, 666 S.E.2d 921, 925 (Ct. App. 2008); *Howard v. State Farm Mut. Auto. Ins. Co.*, 316 S.C. 445, 449, 450 S.E.2d 582, 584–85 (1994) (holding the court may order a new trial based upon the erroneous admission of testimony when the record shows error and prejudice).

Prior to the trial, Defendants filed Motions in Limine most of which were denied. During the course of this trial, most of the prejudicial evidence identified in the Motions in Limine was presented to the jury, along with other prejudicial evidence which was admitted into evidence over Defendants' objections. These prejudicial errors, which entitle Defendants to a new trial on Plaintiff's false imprisonment claim include, but are not limited to, the following:

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a. Admission of prejudicial and irrelevant evidence relating to Plaintiff's unasserted hostile work environment and retaliation claims and the termination of her employment;

b. Admission of prejudicial and irrelevant testimony and evidence from Chief Burdette of the Pendleton Police Department;

c. Admission of prejudicial and irrelevant evidence relating to Chief Burdette's opinions relating to the credibility of Plaintiff and other individuals involved in the matter;[4]

d. Admission of prejudicial and irrelevant evidence relating to Plaintiff's complaints that her store manager harassed or discriminated against her and other female employees; and

e. The Court's failure to provide the jury with an instruction to disregard all of the evidence related to Plaintiff's claim for abuse of process which Plaintiff later abandoned and on the malicious prosecution claim which the Court directed a verdict on at the conclusion of the evidence.

In particular, in violation of Rule of Evidence 403 and over Defendants' objections, Plaintiff was allowed to improperly introduce evidence of motive which was entirely irrelevant to the false imprisonment claim. This highly prejudicial and irrelevant evidence should have never been permitted due to the clear absence of any arrest or warrant for arrest under the malicious prosecution and abuse of process claims. Nonetheless, the jury was allowed to infer from the evidence (or their judgment was so grossly prejudiced by the admission of motive-related evidence they believed) that: (1) Plaintiff could recover damages resulting from Brickman's treatment of

[4] Although the Court instructed that the Chief of Police could not testify about the credibility of witnesses or try to bolster credibility, the Court nevertheless permitted the Chief to testify that Brickman was "nervous" when the Chief interviewed him well after the date of the alleged false imprisonment.

her on the job, (2) Defendants did a poor investigation of her complaints about Brickman, (3) Defendants did not conduct "proper investigations" of Plaintiff's complaints or the complaints of 1200 other unnamed and unknown employees, and/or (4) Plaintiff had to go to the police to recant her claims in order to avoid arrest. The jury was also helplessly confused when hearing the testimony of Chief Burdette that there was no probable cause for an arrest. Notably, however, the standard for probable cause for an arrest (which was the standard Chief Burdette was testifying about) is completely different and substantially greater than the probable cause standard applicable when one citizen detains another citizen. Because the only relevant consideration regarding probable cause for false imprisonment is what the person knew at the time of the alleged detention, Chief Burdette's testimony should never have been permitted. Moreover, the unjust and prejudicial impact of this evidence was compounded when Plaintiff's counsel took advantage of the error and blatantly amplified it in closing and in the punitive damage phase of the trial stating, for example, "Thank God for Chief Burdette!" Plaintiff's counsel also improperly argued that the jury should punish Bi-Lo for the 1200 other investigations it conducted concerning other employees, suggesting without any supporting evidence that all of those irrelevant investigations were somehow improper. This prejudicial argument did not relate to Plaintiff's false imprisonment claim and should have also been excluded.

Clearly confused, this jury thought this case was about on-the-job harassment and alleged retaliation against Plaintiff for complaining about Brickman. That entire line of testimony should have never been admitted. But, once admitted, the jury should have been given Defendants' requested curative instructions which limited the jury's consideration (in terms of probable cause) to what Ronnie Duncan knew and what he decided to do and identified what evidence the jury could consider in determining damages. Defendants' requested instructions were not given to the

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jury.[5] This misleading, irrelevant and prejudicial evidence clearly confused and prejudiced the jury, as the record is completely devoid of sufficient evidence actually supporting the jury's verdict on Plaintiff's false imprisonment claim. The jury clearly disregarded both the law and the record evidence in finding for Plaintiff on her false imprisonment claim. The jury was inundated with highly prejudicial and irrelevant information that was presented solely to distract them from Plaintiff's woefully inadequate evidence of Defendants' alleged wrongdoing and to appeal to their emotions—and, that is exactly what occurred. As a result, Defendants' did not receive a fair trial. Accordingly, pursuant to this Court's inherent authority and as a matter of fundamental fairness, this Court should vacate the jury's verdict and award Defendants a new trial on Plaintiff's false imprisonment claim or enter judgment in favor of Defendants on the false imprisonment count and for such other and further relief as this Court deems proper and just.

III. Defendants are Entitled to a New Trial on Plaintiff's False Imprisonment Claim Based on the Thirteenth Juror Doctrine.

Alternatively, Defendants move pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and the Thirteenth Juror Doctrine for a new trial because the jury's verdict is contrary to the fair preponderance of the evidence. The Thirteenth Juror Doctrine is a vehicle by which the trial judge may grant a new trial absolute or nisi when he or she is convinced that justice has not been served by the verdict. *Watson v. Town of Pendleton,* 294 S.C. 155, 157, 363 S.E.2d 234, 235 (Ct. App. 1987); *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975) ("there can be no doubt that a trial judge has the discretionary power to grant a new trial absolute or nisi in a law case upon his disapproval of the verdict on factual grounds…") (citing *Worrell v. South Carolina Power Co.*, 186 S.C. 306, 195 S.E. 638 (1938)). The South

[5] Defendants requested that the jury not be instructed to consider punitive damages because there was no evidence presented that would satisfy the applicable standard. The Court denied the motion.

Carolina Supreme Court has described the trial judge, when acting as thirteenth juror, as "possessing the veto power to the Nth degree," and declared that "it must be presumed ... [that the trial judge] recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality." *Worrell,* 186 S.C. at 313–14, 195 S.E. at 641; *Norton v. Norfolk Southern Ry. Co*., 350 S.C. 473, 480, 567 S.E.2d 851, 855, (2002). The doctrine entitles the trial judge to grant a new trial solely "upon the facts." *Norton*, 350 S.C. at 478, 567 S.E.2d at 854 (citing *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990). In addition, where the court finds that the evidence is so outweighed by the countervailing evidence, and in this case the misleading and prejudicial evidence, it is within the court's discretion to set aside the verdict under the Thirteenth Juror Doctrine, but the trial court is not compelled to state the reasons for its ruling on such a motion. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*., 399 S.C. 322, 334, 732 S.E.2d 166, 172 (2012).

As discussed above, the evidence introduced at the trial of this matter relating to Plaintiff's false imprisonment claim overwhelmingly supports a judgment in favor of Defendants. There was no evidence that Defendants' conduct amounted to a restraint of Plaintiff. In addition, both the facts elicited and the applicable law establish that Defendants' conduct was completely reasonable and there was probable cause to delay Plaintiff for questioning in light of the video evidence showing her removing items from the store without authorization and without paying for them. That evidence was corroborated by her admission at trial that she, in fact, did what she was accused of doing. Accordingly, Defendants request that the Court invoke the Thirteenth Juror Doctrine and order a new trial on Plaintiff's false imprisonment claim.

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IV. In the Alternative, Defendants are Entitled to a New Trial Absolute or Nisi Remittitur Because the Jury's Damage Award was Excessive.

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004); *accord Evans v. Taylor Made Sandwich Co.,* 337 S.C. 95, 99-100, 522 S.E.2d 350, 352 (Ct. App. 1999).

"If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute." *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003) (internal quotation marks omitted) (quoting *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)). If the trial court finds the amount of the verdict to be merely inadequate or excessive it has the power to grant a new trial nisi. *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005) (citing *McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995)); *see also Evans*, 337 S.C. at 99, 522 S.E.2d at 352 (Ct. App. 1999); *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co*., 321 S.C. 1, 9, 466 S.E.2d 727, 731 (1996) (a motion for new trial nisi remittitur requests the trial court to reduce the verdict because it is merely excessive). In considering a motion for a new trial nisi remittitur the trial judge must consider the adequacy of the verdict in light of the evidence presented. *Cf. Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

The grant or denial of new trial motions rests within the discretion of the trial judge, and the court's decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Chapman,* 364 S.C. at 88–

89, 610 S.E.2d at 856 (Ct. App. 2005); *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000); *Vinson,* 324 S.C. at 405, 477 S.E.2d at 723.

Here, there was no evidence that Defendant's "restraint" of Plaintiff caused her any damage whatsoever. The jury was clearly impacted by Plaintiff's tears over how she felt she was treated by Mike Brickman, and how the Defendants allegedly "mishandled" her complaints about Brickman. That testimony was not, however, relevant to *any* of the claims submitted to the jury. The jury was improperly influenced by the "#metoo" movement in a case where there was no claim of a hostile work environment or gender discrimination or retaliation under the civil rights laws. Yet, there was substantial testimony permitted to suggest such claims. The jury was similarly improperly influenced by the testimony of the highest local law enforcement official who testified, essentially as an expert, that there was no probable cause to charge the Plaintiff with a crime.

This evidence was intended to, and did, improperly ignite the passions and prejudices of the jury and resulted in their award of grossly excessive compensatory and punitive damages based on influences other than the proper record evidence. The damages awarded do not bear any reasonable relation to the alleged injury suffered by Plaintiff and are not supported by the evidence. The only damage Plaintiff suffered was the loss of her job which she admitted she could not recover for based upon her claims. Moreover, that damage was caused by Plaintiff's decision to steal from Defendants; not by any action of Defendants. Accordingly, this Court should grant Defendants a new trial absolute on Plaintiff's false imprisonment claim or, in the alternative, grant a new trial nisi remittitur to reduce the verdict.

CONCLUSION

WHEREFORE, based on the foregoing, Defendants hereby respectfully request that the Court enter an order granting Defendants a judgment notwithstanding the verdict on Plaintiff's

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false imprisonment claim, or, in the alternative, order a new trial or a new trial nisi remittitur, and for such other relief this Court deems proper and just.

DATED: March 23, 2020

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State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Anderson	)	**2018-CP-04-01127**
	)	
Lisa Styles,	)	
	)	
Plaintiff,	)	
v.	)	**Plaintiff's Motion to Alter or Amend (Reconsideration) and for New Trial as to Malicious Prosecution Claim**
Southeastern Grocers, LLC, BI-LO, LLC	)	
	)	
Defendants.	)	
	)	

I. Introduction

Plaintiff now moves, pursuant to Rule 59(e), for an Order to reconsider and alter the directed verdict granted to Defendants on Plaintiff's malicious prosecution claim. Plaintiff further moves, pursuant to Rule 59(a) for a new trial as to the same claim on the grounds that the Court erroneously excluded relevant evidence.

II. Argument

A. Motion to Reconsider/Alter or Amend Directed Verdict

This Court granted Defendants' Motion for Directed Verdict as to the malicious prosecution claim on the basis that there was not "process." Plaintiff respectfully submits that this was error, and that the evidence at trial was more than sufficient to satisfy this aspect of the tort.

There is not dispute that Defendants called the police, seeking to have Plaintiff arrested. Nor was there any dispute that, even after Defendants had learned of the judicial determination as to the requested prosecution, they persisted in pleading their case to have Plaintiff prosecuted.

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Chief Burdette laid out the criminal process applicable to his jurisdiction. First, a complainant makes allegations to the police. Then the police seek to interview both sides. At the conclusion of the investigation, the police involve a member of the judiciary (here, Judge Whitman). The Magistrate reviews the matter and makes a determination as to probable cause. There is no dispute in this case that:

- Defendants initiated the process;
- that the process was followed, and
- the process concluded only because of Judge Whitman's action.

A malicious prosecution merely requires "employment of legal process" or "judicial process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967) (citing Am. Jur). Defendants' decision to call the police was all that was necessary. "It has been held that the requirement for instituting and maintaining a prosecution is satisfied where a store manager calls police for the purpose of arresting a customer . . . ." F. Patrick Hubbard & Robert L. Felix, The South Carolina Law of Torts 496 (4th ed. 2011). Professors Hubbard and Felix cite *Elletson v. Dixie Home Stores*, 231 S.C. 565, 99 S.E.2d 384 (1957).

In *Elletson*, a store detained a customer after he walked out with a can of coffee in his coat that he did not pay for. The store merely detained the customer and called the police. The store appealed a jury verdict for the plaintiff/customer, stating that it had not instituted any process against the plaintiff by merely detaining him for arrest. The South Carolina Supreme Court rejected this attempt to narrow the tort. In what is still perfectly good law in South Carolina, the South Carolina Supreme Court made clear that all that is required is that a defendant take steps that start or facilitate the process:

> There is no merit in appellant's contention that it did not institute and maintain the prosecution of plaintiff. Appellant's manager confined respondent to his stockroom until the police officers arrived in response to his call for the purpose of arresting respondent, whereupon he pointed

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> respondent out and stated he wanted him "carried in"; that it was his intention to treat respondent the same as a "professional shoplifter." He restrained respondent, procured, instigated and set the proceedings in motion. The unlawful arrest of respondent was the proximate result of its manager's instigation and conduct and it is liable therefor even though he did not make or sign the affidavit or warrant, *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 30 S.E.2d 307; see also, 54 C. J. S., Malicious Prosecution, §§ 13-14, p. 966."

Id. at 575, 99 S.E.2d at 389.

In the civil context, the Court of Appeals has more recently emphasized that the term "process" should not be given a restrictive interpretation. the *Food Lion* Court made clear that "process" should not be given a narrow interpretation and includes any action incident to the use of legal proceedings:

> [W]e agree with Food Lion that the trial court erroneously circumscribed its meaning by giving it the technical construction found in *Royal Exchange Assurance of London v. Bennettsville & C.R. Co.*, 95 S.C. 375, 79 S.E. 104 (1913). In our view, "process," as it pertains to the abuse of process tort, embraces the full range of activities and procedures attendant to litigation. *See Hart v. O'Malley*, 436 Pa. Super. 151, 647 A.2d 542, 551 (Pa. Super. Ct. 1994) ("The word 'process' as used in the tort of abuse of process has been interpreted broadly and encompasses the entire range of procedures incident to the litigation process.") (citation omitted); *Nienstedt v. Wetzel*, 133 Ariz. 348, 651 P.2d 876, 880 (Ariz. 1982) ("'Process' as used in the tort . . . is not restricted to the [traditionally] narrow sense of that term."); 72 C.J.S. § 106 at 694 ("For purposes of the tort, the word 'process' may encompass a range of court procedures incident to the litigation."); *Harper*, supra, § 4.9 at 4:104, n.52 ("That a tort action, loosely called 'abuse of process,' requires the use of the word process as that word is technically defined in other contexts is no more self-evident than that a tort action loosely called 'false imprisonment' should require a 'prison.'").

Food Lion, Inc. v. United Food & Commer. Workers Int'l Union, 351 S.C. 65, 70, 567 S.E.2d 251, 253 (Ct. App. 2002) (emphases added).

Cases cited by Defendants at summary judgment actually belie the argument that efforts to prosecute must result in an arrest, even though they arise under a different criminal procedure.

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In *Clemmons v. Nicholson*, 180 S.C. 54, 185 S.E. 34 (1936), the relative of a decedent swore out warrant, claiming that the plaintiff killed a man and set fire to his home. There were resulting false reports that the plaintiff was arrested and taken to the penitentiary. Upon demand by the plaintiff, the magistrate held a preliminary hearing even though there was no arrest. The plaintiff testified and there was no evidence, so the case was dismissed. The plaintiff sued, and the defendant successfully had his civil action dismissed on grounds that there was no valid preliminary hearing without an arrest. On appeal the South Carolina Supreme Court reversed the dismissal. The Clemmons Court noted that, "Under the **former** decisions of this Court, in order to maintain an action for malicious prosecution, it is indispensable that there be an arrest. This was decided in the case of *Mathew O'Driscoll v. Hugh M'Burney*, 11 S.C.L. 54, 2 Nott & McC. 54 . . . ." *Clemmons*, 180 S.C. at 57, 185 S.E. at 35 (emphasis added).

The *Clemmons* Court noted that other "old" cases also confused the issue. The Court remarked, however, that older cases stand for the proposition that there just needs to be some proceeding that puts the person in the position of acting to clear their name. *Id.* at 58, 185 S.E. at 36. The *Clemmons* Court then squarely determined that an arrest was not required once the process was set in motion:

> '[U]nder these circumstances, the appellant had the right to have his guilt or innocence established by the Court accusing him, and as speedily as possible, and when he voluntarily appeared and submitted himself to the jurisdiction of the Court, and the Court acted thereupon, it cannot be said that there was not at least a constructive arrest.

Clemmons, 180 S.C. at 59, 185 S.E. at 36.

The second case relied on by Defendants picks up on this reasoning. In *Barber v. Whirlpool Corp.*, 34 F.3d 1268 (4th Cir. 1994), the employer defendant accused the employee plaintiff of stealing painting equipment. The company gave two statements to

police, which obtained warrants. The company's HR manager informed the plaintiff of the warrants, and the plaintiff argued he had not stolen anything. The plaintiff then called a lawyer, who contacted the Sheriff's office. The Sherriff's office informed the plaintiff that he could turn himself in or be arrested. The plaintiff made arrangements to turn himself in. Before the appointed time, however, the employer had second thoughts. Ultimately, the employer decided to terminate the plaintiff, but no charges were pursued by the authorities and the warrants were "eventually dismissed." 34 F.3d at 1277.

The *Barber* Court flatly rejected argument that because "Barber was never arrested, proceedings were not instituted against him." *Id.* The Fourth Circuit cited *Gibson v. Brown*, 245 S.C. 547, 550, 141 S.E.2d 653, 654 (1965) for proposition that liability lies if one "causes" a prosecution to be maintained or "voluntarily aids or assists in its prosecution." 34 F.3d. at 1277.

As with the plaintiff in *Clemmons*, Plaintiff was placed in a situation where she had every right to seek a speedy resolution. Like the plaintiff in *Barber*, Plaintiff was told that the matter would proceed to the judge, and that she would have to turn herself in. There is no question that Defendants procured the process and put the wheels in motion. Defendants not only provided documentation, Brickman told the officer that "corporate wanted to press charges," and Duncan persisted in seeking to have Plaintiff charged even after the judge determined that the elements of the crime were not met. Defendants did far more than the actions giving rise to liability in *Elletson*.

For the foregoing reasons, Plaintiff respectfully submits that this Court should reconsider and reverse its grant of a directed verdict to Defendants as to the malicious prosecution claim and order a new trial on the same.

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B. Motion for New Trial

Out of an abundance of caution,[1] Plaintiff moves for a new trial on the grounds that this Court erred in barring evidence of the substance of the complaints submitted by Plaintiff's and coworkers. This includes the testimony proffered by Plaintiff, proposed exhibits 6 and 8, the edited deposition of Randy Ellison, and the deposition testimony not objected to timely, but stopped during reading.

Defendants' own opening statement highlights the importance of this evidence. Counsel for Defendants told the jury that the *substance* of the complaints did not rise to the level to which Defendants would have been motivated to retaliate. Throughout trial, Defendants suggested the complaints were contrived or overblown, for example pointing to the timing of independent customer complaints about Brickman. By refusing to allow the jury to hear what those complaints were about, the Court unfortunately allowed the evidence to be steered right to Defendants' theory of the case.

Defendants improperly achieved this objective with the red-herring argument that this case was not a Title VII case. That is both true and immaterial. Whether or not Plaintiff could have sought relief under Title VII is not the issue. The issue is whether the evidence was more likely or not to make a fact in contention true. Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.") Defendants' motive is not only squarely at issue by the nature of the cause of action, e.g. *McBride v. School District of South Carolina*, 389 S.C. 546, 565, 698 S.E.2d 845, 854-55 (Ct. App. 2010), but also by both the theories put forth by Plaintiff *and* Defendants.

---

[1] Plaintiff raises this evidentiary issue to avoid any argument that it is not preserved, or that the Court's rulings are law of the case. *Cf. State v. Sampson*, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995).

For the foregoing reasons, Plaintiff respectfully submits that the Court should order a new trial as to the malicious prosecution claim and admit evidence as to the substance of the complaints raised by Plaintiff and other employees.

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion.

Respectfully submitted this 23rd day of March 2020.

For the Plaintiff:

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State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Anderson	)	**2018-CP-04-01127**

Lisa Styles,	)
	)
Plaintiff,	)
v.	)
	)
Southeastern Grocers, LLC, BI-LO, LLC	)
	)
Defendants.	)
	)

Plaintiff's Response to Defendants' Motion for JNOV or New Trial

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I. Introduction

Defendants urge the Court to commit reversible error by ignoring Plaintiff's evidence and by viewing the facts in the light most favorable to Defendants. Defendants also seek judgment with mere speculation, for example, that "[t]he jury was improperly influenced by the '#metoo' movement," (Motion at 17) and that "this jury thought this case was about on-the-job harassment" (*id.* at 13) when no such words or concepts ever were presented. Defendants even cite evidence never introduced at trial. None of this could justify upending a jury's decision. This was a split decision with a relatively moderate verdict when compared to other false imprisonment verdicts in South Carolina. Defendants vowed to the jury that they would accept its decision.

II. Defendants' Factual Background

Defendants begin their tale with Ronnie Duncan, who, they claim, just happened to notice Plaintiff removing goods while "observ[ing] store security video." (Motion at 1). That's obviously not where the story begins.[1] But they continue with Duncan bringing Ken Miller (a passive observer in Defendants' tale) to a meeting with Plaintiff where she freely admits to stealing. (*Id.*) Defendants make no mention of Plaintiff's testimony as to what was said during that meeting. Nor do they mention Defendants' knowledge of her complaints. Defendants argued throughout that this is an "open and shut" case coupled with an airtight confession. To the surprise of nobody but Defendants, the jury didn't buy it.

[1] As the Court may recall, Brickman testified that he stumbled across the video from March when, later in April, he was reviewing video about cleaning and his concerns about bathrooms that are in an entirely different part of the store. None of that made sense either.

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The established standard precludes ignoring or weighing Plaintiff's evidence of false imprisonment. Mainly:

- Plaintiff repeatedly requested to leave, and Defendants rebuffed each request.
- Defendants told Plaintiff that, if she went outside the room, she had to be escorted.
- Plaintiff could not simply leave the premises as her keys and purse were locked in the other office.
- Plaintiff testified that Miller escorted her and, while outside, stayed within a few feet of her, which video evidence confirmed.

Defendants' fairy tale recount also fails to mention that they violated numerous aspects of their own policy on detentions:

- Duncan did not document any conversations with Brickman in the APIN system;
- Duncan failed to provide Styles the statement to sign to inform her of her rights, including the right to not participate;
- Duncan failed to follow the policy's requirement that the witness to any meeting be of the same sex as the person interviewed to avoid appearance of coercion;
- Duncan and Miller violated both the requirement to take detailed notes of the detention as well as the requirement to enter notes into APIN;
- Duncan never interviewed other potential witnesses, looked for others being involved, or investigated claims made by Styles against Brickman as

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the policy requires, including interviewing other potential witnesses who might know of the lists Plaintiff provided Brickman.

Further, the jury considered the fact that Duncan declined to record the interrogation of Styles as the policy permits, which is especially curious in that there are no notes of the meeting.

The efforts of Duncan and Miller to explain what happened, including the absence of required notes, devolved into a bad Abbott and Costello routine. Duncan and Miller were repeatedly impeached by the testimony of Defendants' other witnesses, including that of each other.

Defendants next claim that they called the police and Plaintiff again confessed. (Motion at 1-2). That certainly is not what happened. Contrary to Duncan and Miller's testimony, Officer Glenn confirmed that Plaintiff said that ***all*** the items she took with Brickman's knowledge were donations.[2]

Defendants then recite evidence that Judge Whitman left a voice mail, advising that Plaintiff should sue Defendants. (Motion at 2). On the very next page of the Motion, Defendants acknowledge that all evidence of what Judge Whitman said was kept from the jury. (*Id.* at 3). Defendants' effort to attack a jury verdict based on evidence the jury never heard is emblematic of the impunity with which they waste everyone's time and resources.

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[2] Q. Did she say she gave them all -- all the products she had taken as donations or some of the products?

A. All of them to different -- either to a one specific or to others. And I don't recall the names of the establishments that she give them to.

(Glenn Dep. 13:14-19)

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Defendants then make other factual claims, recite issues not before the Court, and even discuss an EEOC Charge that also was never in evidence. (Motion at 2). This is all a distraction. The issue before the Court is whether there was any evidence that Plaintiff was confined improperly.

III. Argument

A. Defendants should be judicially estopped from challenging the jury's verdict.

At the punitive damage phase of the trial, counsel for Defendants told the jury that Defendants had "heard" them and that Defendants accepted their actual damages verdict. Defendants stressed that their acceptance of the actual damages verdict made it unnecessary for the jury to punish them further.

"A court must be able to rely on the statements made by the parties because truth is the bedrock of justice." *Quinn v. Sharon Corp.*, 343 S.C. 411, 416, 540 S.E.2d 474, 476 (Ct. App. 2000). Having gained the benefit of telling the jury that they accepted the actual damages verdict through a muted punitive damages verdict, Defendants should not be permitted to do what they promised they would not.

> "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). "The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." Id. To prevail on a judicial estoppel claim, a party must prove the following:
>
> > (1) two inconsistent positions taken by the same party . . . ; (2) the positions must be taken in the same . . . proceedings . . . ; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

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Patterson v. Witter, 418 S.C. 66, 76, 791 S.E.2d 294, 300 (Ct. App. 2016) (quoting *Cothran*, 357 S.C. at 215-16, 592 S.E.2d at 632).

Defendants should be estopped from challenging the actual damages verdict after gaining the benefit of the jury hearing that its actual damages verdict would be accepted.[3] Estoppel is precisely the vehicle to avoid having the Court tolerate Defendants lying to the jury.

B. JNOV

"'Motions for . . . JNOV should be denied if the evidence yields more than one reasonable inference or its inference is in doubt.'" *Byrd v. McLeod Physician Assocs. II*, 427 S.C. 407, 412-13, 831 S.E.2d 152, 154 (Ct. App. 2019) (quoting *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016)).

> "[A] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000).

Jamison v. Hilton, 775 S.E.2d 58, 62, 413 S.C. 133 (Ct. App. 2015). As the Court of Appeals most recently affirmed:

> "In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). "When considering a JNOV, 'neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.'" *Id.* (alteration in original) (quoting *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998)). "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Id.*

Garrison v. Target Corp., 838 S.E.2d 18, 26 (S.C. Ct. App. 2020).

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[3] In fairness, this argument would not apply to the punitive damage verdict since Defendants could not have "accepted" it at the time they made their representation.

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Defendants begin their argument by properly citing *Garrison* for the proposition that this *Court cannot weigh evidence*. Then they ask the Court to do precisely that. For the following reasons, there is evidence as to each element of the false imprisonment claim. Defendants' subjective belief that their narrative is the better one is not the issue.

1. Evidence of false imprisonment

a. Was Plaintiff detained?

Defendants did not object to this Court's jury instructions on false imprisonment. This Court properly summarized the law.

- False imprisonment merely requires use of "words sufficient to impart to Plaintiffs that they are not free to go." *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 672 (D.S.C. 2010); *Westbrook v. Hutchison*, 195 S.C. 101, 109, 10 S.E.2d 145, 148 (1940)); *accord Jones v. Winn-Dixie Greenville*, 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct. App. 1995) (citing *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 230-31, 317 S.E.2d 748, 755 (Ct. App. 1984)).
- "No threat of imminent use of force" is required." *Zimbelman*, 745 F. Supp. at 683 (citing *Wingate v. Postal Tel. & Cable Co.*, 204 S.C. 520, 30 S.E.2d 307 (1944)).
- All that was required is that Defendants "operat[ed] on the will of Plaintiff." *Gathers*, 282 S.C. at 230-31, 317 SE2d at 755.
- "It is not necessary that the individual be confined within a certain area." *Gathers*, 282 S.C. at 231, 317 S.E.2d at 755.

Plaintiff's belief that she could not leave was based on:

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- *Defendants' own statements*. Defendants told Plaintiff she could not leave and that they would not allow her to move about freely.
- *Plaintiff's understanding as to the authority of loss prevention and management*. As a member of management herself, with experience in loss prevention issues, Plaintiff understood that management had the power to detain her.
- *Defendants' own policies*. Defendants' loss prevention policies detail Defendants' power to detain Plaintiff. *See, e.g.*, Pl. Exh. 17 at 2 (Bates 277) ("Only authorized Asset Protection Team Members may detain a Team Member"); *id.* at 14 (Bates 289) ("[A]s long as the observations are recorded and/or well documented, the probability is that the loss will be recovered when the Team Member is ultimately detained"). In fact, the manual has an entire section on the detention of team members. (*See id.* at 17-19 (Bates 292-94)).[4] These manuals are directly relevant on the issue of the reasonableness of a detention. *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 23 (Ct. App. 1991) ("[T]he loss prevention manual was relevant on the material issue of the reasonableness of K-Mart's actions.")

Defendants continue to argue that they were justified in detaining Plaintiff on the grounds that there was probable cause to detain her. (Motion at 8; *id.* n. 3; *id.* at 15. Defendants should not be able to have it both ways. They cannot claim there was enough

[4] Further, although Defendants abandoned the argument, they earlier sought judgment based on South Carolina law, recognizing the right of store owners to detain individuals. (Def. Motion for Summary Judgment at 9).

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of a basis to detain Plaintiff while, at the same time, arguing that Plaintiff did not reasonably believe they could detain her.

Defendants next argue that, "by [Plaintiff's] own admission, she could have simply walked out of the room . . . ." (Motion at 6). Plaintiff said no such thing. She merely admitted that there was no touching or physical restraint which, as shown above, has never been a requirement under South Carolina law. *Westbrook*, 195 S.C. at 109, 10 S.E.2d at 48; *Jones*, 318 S.C. at 175, 456 S.E.2d at, 432; *Gathers*, 282 S.C. at 230-31, 317 S.E.2d at 755.

Defendants also claim that Plaintiff admitted that "no one threatened her in any way." (*Id.* at 7). Plaintiff testified clearly that she was threatened with prosecution. To the extent Defendants are referring to being physically threatened, there is no requirement to show such under the law of false imprisonment. *Zimbelman*, 745 F. Supp. at 683 ("No threat of imminent use of force" is required") (citing *Wingate*).

Remarkably, after Defendants claim that Plaintiff admitted she *was not* restrained, they argue in the next breath that "Plaintiff's testimony belied her contention that she *was* restrained." (Motion at 7 (emphasis added)). Defendants' tacit (and contradictory) acknowledgement that Plaintiff did, in fact, testify that she was restrained ends the inquiry. That testimony is all the jury needed.

Defendants assert that Plaintiff "voluntarily returned to the office" (*id.*), which was just another disputed assertion the jury chose not to accept. Buried within Defendants' argument, however, is their own assertion that Plaintiff was told she could not leave the room without providing a written statement. (*Id.*) While that is *not* the full extent of the false imprisonment here, Defendants begrudging acknowledgement of one piece of evidence is all that is necessary to illustrate the frivolity of this Motion. Even Defendants

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recognize there is evidence that Plaintiff was not free to leave on her own terms. Again, that should end the inquiry under the governing standard for JNOV motions.

Defendants falsely contend that the false imprisonment lasted only twenty minutes. (*Id.*) How 12:16 pm until 1:29 pm is only twenty minutes is beyond understanding. That said, Defendants' argument lacks a point. There is no minimum time requirement for the tort of false imprisonment. Lesser detentions have resulted in liability, and our appellate courts stress that these are all issues of fact for the jury. *E.g.*, *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991) (Fifteen-minute detention with no touching or physical restraint); *Mains v. K Mart Corp.*, 297 S.C. 142, 150, 375 S.E.2d 311, 315 (Ct. App. 1988) (Twenty-minute detention: "Whether Mains was delayed in a reasonable manner and for a reasonable time to permit investigation, under the circumstances of this case, was an issue for the jury; so also was the question of whether there was reasonable cause to believe that Mains committed the crime of shoplifting.")

b. Probable cause

Defendants next claim that, "The uncontroverted testimony at trial established that Defendants had probable cause to believe Plaintiff engaged in misconduct . . ." (Motion at 7-8). This statement leads to only one question: What do Defendants believe to be the meaning of the word "uncontroverted?"

"Probable cause is defined as a **good faith belief** that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, **under the circumstances**, to believe likewise." *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 228, 317 S.E.2d 748, 754 (Ct. App. 1984) (emphasis added). "The issue of probable cause is essentially a question of fact and ordinarily for the determination of the jury." *Id.*

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Defendants knew both before the confinement -- and were told again at the very start of the confinement -- that Plaintiff had done nothing wrong. Brickman was involved at every step (from making the report to telling the police that corporate wanted to press charges), Miller's claim that he was blissfully unaware of any issues was refuted by both district managers (Ellison and Brown), and the jury was free to disbelieve Duncan's similar protestations that he had heard nothing and knew nothing. See *Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("The fact that testimony is not contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.") The effort by Defendants to circumvent their own policies and ignore Plaintiff's accusations is additional fodder upon which the jury could easily dismiss Defendants' narrative.

Defendants repeat the myth that Plaintiff confessed to removal of the product. (Motion at 8; *id.* n. 3). Removal of the product was not the issue – whether it was authorized was the issue. Likewise, whether Plaintiff admitted to only donating *some* of the items was a disputed issue the jury had to resolve. The jury clearly accepted Plaintiff's assertions that Defendants knew that *all* the products were donated. The jury also apparently accepted Officer Glenn's testimony that Plaintiff did maintain that *all* the items were donated (*see supra* note 2), notwithstanding Defendants' testimony that she told Officer Glenn that it was only *some* of the items.[5]

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[5] Defendants never investigated Plaintiff's assertions to Duncan that the items were donations because Defendants already knew. Brickman lied to Chief Burdette about the items in front of Duncan, who again did nothing to investigate. The jury also was able to consider that the "removal" was done during busy hours, in front of employees, and at the most heavily filmed part of the store. The jury heard competing arguments about the importance of various frames in the videos and the members were able to make their own

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Defendants also refuse to accept that they are charged with the knowledge of all their agents, including Brickman. Throughout the trial, Defendants defended the actions of Brickman as a store manager who merely reported suspicious conduct that he saw as he was supposed to do. Brickman testified that his role was to report anything he saw to loss prevention. Defendants' own defense was that Brickman was acting as a prudent store manager within the scope and course of his duties for Defendants. Where a manager is acting within the scope of his employment, his knowledge is imputed to the employer, and the law treats the employer as knowing what the manager knows. *Bankers Trust Co. v. Bruce*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Ct. App. 1984).

> Under fundamental principles of South Carolina law, a master is liable for and is charged with knowledge of the acts and conducts of his servants operating within the scope of their employment. *Bradley v. Hullander*, 272 S.C. 6, 249 S.E. (2d) 486 (1978). An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business. *Lane v. Modern Music*, 244 S.C. 299, 136 S.E. (2d) 713 (1964).

Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 227, 317 S.E.2d 748, 753 (Ct. App. 1984).

Plaintiff's theory of the case, however, was never premised solely on Brickman's knowledge (although that is one theory). Brickman did not act alone. This was a setup all along, others were involved, and after being presented with this argument and having been able to observe and hear from Miller, Duncan, and Brickman, the jury found for Plaintiff.[6]

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determination. All of this relates directly to the validity of Defendants' argument that they had probable cause for the detention.

[6] Defendant's reliance on *Faulkenberry* is misplaced. Faulkenberry did not involve an interrogation with repeated requests to leave. After two independent eyewitness reports that the plaintiff was in the process of stealing property, the plaintiff was briefly

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2. Evidence of damages

a. Actual damages

Defendants did not object to the Court's charge on actual damages, and the Court properly summarized the law. "In a suit for false imprisonment, the basic injury is the depreciation of the Plaintiff's liberty. Such things as humiliation, indignity, and mental suffering are general damages that naturally and proximately result from false imprisonment." *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 683 (D.S.C. 2010) (citing *Jones by Robinson v. Winn Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995); *Caldwell v. K-Mart*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991); *Westbrook v. Hutchison*, 195 S.C. 101, 10 S.E.2d 145, 150 (1940)). As the foregoing authorities recognize, mental suffering a/k/a mental anguish a/k/a emotional distress[7] is a recognized form of actual damages. *Shuler v. Heitley*, 209 S.C. 198, 202, 39 S.E.2d 360, 361 (1946). "[D]amages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." *Boan v. Blackwell*, 343 S.C. 498, 502, 541 S.E.2d 242, 244 (2001) (citations omitted).

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detained when "the information indicated [that the theft] was then in progress." *Faulkenberry v. Springs Mills, Inc.*, 271 S.C. 377, 380, 247 S.E.2d 445, 447 (1978). There was no evidence that it was a setup. There was no conflicting testimony amongst those who detained her, or between those who detained her and other managers. There was no issue about any refusal to allow her to leave upon request. All we know is that the plaintiff refused to open her purse, but she was still allowed to leave. That case bears no resemblance to what happened here where, among other things, there was no theft in progress.

[7] For cases equating the terms, *see, e.g.*, *State v. Brandenburg*, 419 S.C. 346, 354, 797 S.E.2d 416, 420 (Ct. App. 2017); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981).

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If there is *any* evidence of emotional distress/mental anguish, the existence of damages is a pure jury issue. *Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 432, 412 S.E.2d 425, 431 (Ct. App. 1991). Plaintiff testified that, during the detention, she became distraught and unstable to the point of not being able to fully comprehend what was going on and to the point where she went into "fight or flight" mode, acceding to demands that she write statements that are demonstrably untrue. After the detention, she threw up on the way home. Plaintiff experienced loss of sleep and appetite. The ordeal aggravated Plaintiff's MRSA condition, causing stress-related outbreaks. There were severe emotional and physical manifestations of the upset and humiliation she endured.

Defendants, however, speculate that Plaintiff's distress stems from the fact that she was "stealing merchandi[s]e." (Motion at 9). Indeed, Defendants made this argument to the jury during closing argument, stating that she had the reaction of a guilty person. And it was for the jury, and only the jury, to make any causation determination. *See, e.g., Madison v. Babcock Ctr., Inc.*, 371 S.C. 123, 147, 638 S.E.2d 650, 662 (2006) ("We hold that the issue of whether Appellant's injuries were proximately caused by the alleged negligence of Respondents is an issue of fact for the jury."); *see Westbrook*, 195 S.C. at 117, 10 S.E.2d at 151.

b. Punitive damages

Defendants also assert that "Plaintiff did not present any evidence at trial upon which the jury could have based its . . . punitive award of $10,000" (Motion at 9),[8] and

[8] Defendants did not properly move for a directed verdict at the close of the evidence on this issue. Rather, it decided to make an issue after the jury had already been charged as to liability and actual damages.

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that "the trial record is devoid of any evidence that Defendants acted in willful, wanton or reckless disregard of Plaintiff's rights" (*id.* at 10).

As with actual damages awards, post trial motions as to punitive damages cannot involve the weighing of evidence, and Defendants certainly cannot prevail by ignoring what Plaintiff presented to the jury. *Parker v. Nat'l Honorary Beta Club*, 423 S.C. 590, 593, 815 S.E.2d 769, 770 (Ct. App. 2018). Yet, Defendants seek to have this Court commit the same error that caused two recent reversals of judgement as a matter of law as to punitive damages. *See Garrison v. Target Corp.*, 838 S.E.2d 18, 29 (S.C. Ct. App. 2020) (JNOV) and *Ralph v. McLaughlin*, 428 S.C. 320, 346, 834 S.E.2d 213, 227 (Ct. App. 2019) (directed verdict).

In *Garrison*, the circuit court granted a JNOV as to punitive damages. The Court of Appeals exhaustively set forth the standard for JNOV as it pertains to awards of punitive damages:[9]

> "In order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). "A tort is characterized as reckless, willful or wanton if it was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been conscious of it as an invasion of the plaintiff's rights." Id. "A conscious failure to exercise due care constitutes willfulness." *Id.*
>
> Here, the circuit court set aside the punitive damages award by way of a JNOV. The nature of a JNOV, which is "merely a renewal of [a] directed verdict motion," requires the circuit court to determine the existence of evidence to support the award and not its weight. *Curcio v. Caterpillar*, *Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003); *cf. Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 101, 727 S.E.2d 407, 413 (2012) (holding the circuit court erred in granting a directed verdict on the issue of punitive damages and stating, "It is not the duty of a trial court to weigh the evidence. Viewing the evidence and its reasonable inferences in the light most favorable to

[9] The *Ralph* Court set forth the law in the same manner as to the grant of a directed verdict on the issue of punitive damages. *Ralph*, 428 S.C. at 344-45, 834 S.E.2d at 226.

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> [the nonmoving party], as both the trial court and this [c]ourt are required to do, we hold there is evidence to create a jury question as to whether or not [the defendant] acted with recklessness, thus requiring submission of the issue of punitive damages to the jury"). "When considering a JNOV, 'neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.'" *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (alteration in original) (quoting *Reiland v. Southland Equip. Serv., 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998)*). "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." Id.
>
> Further, . . . the circuit court . . . [is] "required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to" the Garrisons, the nonmoving parties. *Williams Carpet*, 400 S.C. at 325, 734 S.E.2d at 180; *cf. Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 393-94, 714 S.E.2d 904, 909-10 (Ct. App. 2011) ("When ruling on a directed verdict motion as to punitive damages, 'the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. "If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt," the verdict should be upheld. *Williams Carpet*, 400 S.C. at 325, 734 S.E.2d at 180 (quoting *Chaney*, 246 S.C. at 266, 143 S.E.2d at 523); *cf. Hollis*, 394 S.C. at 394, 714 S.E.2d at 910 ("The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton." (quoting *Mishoe*, 366 S.C. at 201, 621 S.E.2d at 366).

Garrison, 838 S.E.2d at 28-29.

Defendants' conscious disregard of their own of their own policy shows their disregard of Plaintiff's rights. (*See supra* § II). Defendants' policy is drawn to avoid the very kind of improper detention at issue here. Duncan, who has been in loss prevention for decades, was well acquainted with the loss prevention policy and its safeguards. His testimony that somebody at some point (he can remember who or when) told him not to follow the policy was one that a jury could well take with a grain of salt. That said, Plaintiff does not need to prove actual knowledge of a violation of rights. *Fairchild v. S.C. Dep't of Transp.*, 385 S.C. 344, 353-54, 683 S.E.2d 818, 823 (Ct. App. 2009) ("A jury may award punitive damages even 'when the wrongdoer does not actually realize that he is invading

the rights of another, provided the act is committed in such a manner that a person of ordinary prudence would say that it was a reckless disregard of another's rights.") (quoting *Camp v. Components, Inc.*, 285 S.C. 443, 444, 330 S.E.2d 315, 316 (Ct. App. 1985)).

In the context of false imprisonment cases, detentions based on false pretenses mandate submission of the issue of punitive damages to the jury. *See, e.g.*, *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007) ($250,000 punitive damage award affirmed where store manager falsely stated that customer concealed product after being confronted, which could be construed as "wantonly, willfully, and maliciously fabricated and distort[ing] the facts"), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009).

Conduct need not be outrageous to warrant punitive damages for false imprisonment. *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991) (fifteen-minute detention with no touching or searching supported punitive damage verdict worth $192,000 in 2020 dollars[10]); Whitmire v. Publix Theatre Corp., 164 S.C. 487, 492, 162 S.E. 753, 755 (1932) (detention of a woman, suspected of being a man, warranted punitive damages for false imprisonment as it would have been more reasonable to ask for her name).[11]

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[10] https://www.dollartimes.com/inflation/inflation.php?amount=100000&year=1991

[11] Even nominal damages may support a punitive damage claim for false imprisonment. *Peters v. K-Mart Corp.*, 318 S.C. 164, 167, 456 S.E.2d 425, 427 (Ct. App. 1995) (loss of liberty alone entitles plaintiff to nominal damages to allow punitive damages), *rev'd on other grounds*, 322 S.C. 404, 472 S.E.2d 248 (1996).

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Under *Garrison*, it was for the jury to determine whether punitive damages should be awarded. Defendants' contention that the evidence should only be viewed in their favor ignores both reality and controlling law.

Defendants conclude with arguments as to the application of *Gamble v. Stevenson*. (Motion at 10-11). This will be addressed below in Section III(F) as it is not a JNOV issue.

C. New Trial

1. Defendants' arguments regarding closing arguments

Buried in Defendants' arguments about Chief Burdette's testimony is an assertion that Plaintiff's closing argument was "prejudicial" because the Undersigned said "Thank God for Chief Burdette," and that, at the punitive damage phase, the Undersigned refenced the other 1200 people whose complaints were "investigated" by corporate when Plaintiff is the only one to have challenged Defendants. (Motion at 13). Defendants never made any contemporaneous objection about either comment. These arguments are therefore waived.[12] *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion."); *State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.*, 2015 S.C. LEXIS 249, **26-27, 2015 WL 4112411 (S.C. July 8, 2015) (citations omitted); *Webb v. CSX Transp., Inc.*, 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005) (rejecting argument regarding improper closing argument: "Since there was no contemporaneous objection, this issue is not preserved for appellate review."); *Moore v. Florence School Dist. No. 1*, 314 S.C. 335, 339, 444 S.E.2dd 498, 500 (1994) ("[T]he record indicates no

[12] Defendants only objection during closing argument was off the record and on an entirely different issue. No exception was placed on the record after the colloquy.

objection to counsel's argument to the jury regarding consent and this issue is not preserved for review"); *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 131 (Ct. App. 2005) ("Failure to object to comments made during [closing] argument precludes appellate review of the issue.").

2. Defendants' arguments do not specify evidence at issue and are therefore unpreserved.

"The admission of evidence is within the trial court's discretion." *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 312, 628 S.E.2d 496, 514 (Ct. App. 2006) (citations omitted). Defendants' arguments about evidentiary rulings once again ignore the governing standard, lack specificity, and complain about issues that are not preserved.

Defendants spend about three pages on disconnected ramblings about "evidence." Defendants list five purported categories of evidence, without identifying the specific evidence at issue, how they objected, or how it matters. (Id. at 12). Instead, they move on to complain about other things. (Id. at 12-14). None of this permits a considered response or a basis upon which the Court could order a new trial. Nor do such scattershot and general objections preserve anything for appeal.

Defendants first list "prejudicial and irrelevant evidence relating to Plaintiff's unasserted hostile work environment and retaliation claims and termination of her employment." (*Id.* at 12 ¶ a). Defendants' fixation on talking about Title VII and unasserted claims was a major distraction throughout trial. Yet, they continue the bogus argument that, if evidence could be relevant to an unasserted claim, it must somehow be inadmissible to any other type of claim. That has never been the law obviously, and Defendants continue to refuse to cite any authority for the assertion.

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Defendants also ignore the fact that, over the Undersigned's repeated objections, the Court disallowed any testimony regarding the content of the complaints. One cannot tell what specific evidence is at issue because Defendants do not say. Later, however, Defendants make one of many of their assertions as to what the jury was thinking about. Defendants baldly claim that "this jury thought this case was about on-the-job harassment and alleged retaliation." (*Id.* at 13). Granting a new trial based on speculation as to jury deliberations is reversible error. *Youmans v. S.C. DOT*, 380 S.C. 263, 280, 670 S.E.2d 1, 9 (Ct. App. 2008) (reversing new trial order where "the quiddity and hypostasis of the order is the court's concernment and advertence to "the quality and length of the jury's deliberations.")

Defendants continue by arguing, "[t]hat entire line of testimony should have never been admitted." (Motion at 13) What line of testimony? If this is a reference to the testimony of Chief Burdette, that had nothing to do with "on-the-job harassment and alleged retaliation." (*Id.*)[13] Moreover, when the issue of Officer Glenn's narrative became an issue, Defendants argued at trial that they had *not* sought to preclude all testimony from Chief Burdette. Defendants point to no evidence regarding harassment that was admitted, evidence to which they objected, or any specific ruling by the Court that constitutes an abuse of discretion.

Defendants argue that "the only relevant consideration regarding probable cause for false imprisonment is what the person knew at the time of the detention." (*Id.* at 13).

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[13] Chief Burdette's testimony related to the voluntariness of the confinement, the falsity of the reasons for the confinement, Miller and Brickman's knowledge of Plaintiff's complaints, and the veracity of Brickman's denials. Other aspects related directly also to the malicious prosecution claim that was still in the case at the time. Defendants preserved no objection to any of this testimony.

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Defendants once again cite no authority for guidance. But it wouldn't matter if they had. Defendants' knowledge as to the pretextual nature of the detention was central to this case and is undeniably relevant.

At Defendants' request, the Court charged the jury (without objection), that a probable cause determination is based on what Defendants knew and believed. "Probable cause is defined as a **good faith belief** that a person is guilty of a crime . . . **under the circumstances** . . . . ." *Gathers v. Harris Teeter Supermarket, Inc.*, 282 S.C. 220, 228, 317 S.E.2d 748, 754 (Ct. App. 1984); *see also Faulkenberry v. Springs Mills*, Inc., 271 S.C. 377, 379, 247 S.E.2d 445, 447 (1978).

As terms such as "good faith," "belief," and "under the circumstances" suggest, probable cause is an issue solely within the purview of the jury[14] because it often turns on an assessment of motive. *E.g.* *Zimbelman v. Savage*, 745 F. Supp. 2d 664, 679 (D.S.C. 2010) (determining that motive for the false imprisonment "started as retaliation"); *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007) ($250,000 punitive damage award affirmed where store manager had customer detained on false pretenses), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009); *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 372, 377 S.E.2d 127, 130 (Ct. App. 1989) (motive for placing handicapped passenger in particular area was determinative as to the third element of the tort); *Clemmons v. Nicholson*, 180 S.C. 54, 55, 185 S.E. 34, 34 (1936) (stating in context of malicious prosecution claim that, "where a person institutes a prosecution against another without probable cause, it is difficult to conceive of any other motive but a malicious one for bringing the prosecution. Want of probable cause is

[14] *See Caldwell v. K-Mart Corp.*, 306 S.C. 27, 31, 410 S.E.2d 21, 23 (Ct. App. 1991); *Mains v. K Mart Corp.*, 297 S.C. 142, 150, 375 S.E.2d 311, 315 (Ct. App. 1988).

evidence of malice for the consideration of the jury."); *Horton v. City of Columbia*, 408 S.C. 27, 36, 757 S.E.2d 537, 541 (Ct. App. 2014) (setting forth, in the context of a lack of probable cause argument, the standard for "[i]nferring bad motives").

Further, evidence of motive – why Defendants engaged in this charade – was directly relevant to the issues of punitive damages, specifically the motives for the wrongdoing and reprehensibility of Defendants' conduct. (*See infra* Section III(F)(1)(a)).

Defendants' entire recitation of facts is imbued with the notion that it acted with the purest of motives as any reasonable business would do. That also is what they argued to the jury. Accordingly, even if (notwithstanding decades of case law) motive is somehow not relevant to Plaintiff's claims, Defendants made the issue of their motive relevant by arguing that everything they did was based solely on a pure motive.

Put differently, it was for the jury to determine whether: (a) Defendants reasonably believed that Plaintiff was stealing as Defendants contended; or (b) Defendants knew that Plaintiff was collecting items for donation at the direction of Brickman as Plaintiff contended.

Defendants' third stated category is that Chief Burdette testified as to the credibility of witnesses. (Motion at 12 ¶ c). In a footnote, however, Defendants acknowledge that the Court barred any testimony regarding credibility. (*Id.* n. 4). Defendants nonetheless state that Chief Burdette should not have testified that Brickman was nervous when questioned. Demeanor is not credibility, and Defendants present no argument that evidence of demeanor is inadmissible. Putting aside the fact that Defendants did not preserve any objection, they fail to say how this is prejudicial error. There is no citation to any Rule of Evidence, citation to case law, or other argument in Defendants' footnote to substantiate any assertion that Chief Burdette's testimony about demeanor constitutes

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reversible error. Once again, Defendants have failed to properly present a ground for reversible error from either a factual or legal standpoint.

Defendants' fourth category relates to evidence of "Plaintiff's complaints that her store manager harassed or discriminated against her and other female employees." (Motion at 12 ¶ d). The Undersigned cannot recall a single witness using any derivation of the words "harass" or "retaliate," although retaliatory motive is Plaintiff's theory as to why there was not probable cause. Defendants again do not specify the evidence at issue, and they once again ignore that the Court barred mentions of discrimination or gender.

Defendants' fifth category faults the Court for not giving a jury instruction that Defendants never requested. Defendants complain that the Court did not tell the jury to disregard evidence that related to two claims ultimately not submitted to it. (Motion at 12 ¶ e).[15] "[T]he failure to timely request a specific charge . . .will constitute a waiver of any right to complain on appeal of any asserted errors in the charge." Jean Hoefer Toal, Amelia Waring Walker & Margaret E. Baker, *Appellate Practice in South Carolina* 203 (3d ed. 2016) (citations omitted).

Rule 51 is clear: "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection." Rule 51, SCRCP. Rule 51 precludes a trial court from granting a new trial where, as here, there was no contemporaneous request or objection as to the charge. *Winters v. Fiddie*, 394

[15] Defendants later reference a "requested curative instruction" that the Undersigned also believes is nowhere in the record. (*Id.* at 13). In a footnote, Defendants merely state that they requested that the jury not be instructed as to punitive damages. (Id. at 14 n. 5). Again, it is unclear what is even at issue here.

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S.C. 629, 641-42, 716 S.E.2d 316, 323 (Ct. App. 2011); *see, e.g. Small v. Springs Indus., Inc.*, 300 S.C. 481, 488, 388 S.E.2d 808, 813 (1990) ("*Small II*") ("[A]t the close of the trial judge's charge, he asked [Defendant] whether it had any exceptions to the charge or further requests to charge. Springs replied in the negative and has, therefore, waived any objection it might properly have raised on this issue.").

Even if parties could make up error after the trial is over, evidence of motive relates to the false imprisonment claim. Probable cause, or the lack thereof, is all about motive, and Defendants cannot complain now about Plaintiff presenting evidence of motive after Defendants repeatedly asserted that their motives were pure. (*See supra* Section III(C)(2) at pp. 20-21).

After telling the jury that Defendants accepted their verdict, Defendants accuse the jury of "disregard[ing] both the law and the record evidence." (Motion at 14). The jury deliberated for approximately 3 ½ hours and was so focused on the instructions provided by the Court that they requested written copies of the nine elements of fraud. To claim, without any basis, that the jury disregarded either evidence or the law is another invitation by Defendants for this Court to commit reversible error. *Youmans v. S.C. DOT*, 380 S.C. 263, 280, 670 S.E.2d 1, 9 (Ct. App. 2008).

D. Thirteenth Juror Doctrine

The thirteenth juror doctrine permits a court to essentially hang the jury "solely 'upon the facts.'" *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)).[16] It is

[16] *See also Youmans v. S.C. DOT*, 380 S.C. 263, 287, 670 S.E.2d 1, 13 (Ct. App. 2008) ("The thirteenth juror doctrine entitles a trial court to act as a thirteenth juror when it finds the evidence does not justify the verdict and it may then grant a new trial based solely on the facts."); *Howard v. Roberson*, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct.

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not a means to reverse a jury's determination when facts exist to support it. *Youmans*, 380 S.C. at 288, 670 S.E.2d at 13 (reversing grant of new trial on basis of Thirteenth juror doctrine where contrary to evidence and decision also was based on speculation as to jury deliberation).

Defendants devote one cursory paragraph to this Motion. (Motion at 15). There is no analysis as to how Plaintiff's evidence should be weighed because, once again, Defendants refuse to acknowledge that there was any evidence favorable to Plaintiff. Such a cursory and unspecific argument preserves nothing, and it certainly provides nothing by which Plaintiff can effectively respond or this Court should upset the verdict rendered by the jury. *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory.")

For example, Defendants state that "[t]here was no evidence that Defendants' conduct amounted to a restraint of Plaintiff." (*Id.*) No evidence? Plaintiff testified that: (a) she asked to leave, but was told she could not leave; (b) that Defendants told Plaintiff that, if she went outside the room, she had to be escorted; (c) that Plaintiff could not leave the premises as her keys and purse were locked in the other office; and (d) that Miller escorted her and, while outside, stayed within a few feet of her. Defendants' video confirmed that, when Plaintiff exited the room, Miller was right behind her and, when she re-entered, he was close behind and Plaintiff never left his sight. That's evidence.

App. 2007) ("The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case.") (citing *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984)).

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Defendants again assert that it "was completely reasonable and there was probable cause" for doing what Defendants did. (*Id.*) While Defendants repeat their jury arguments and focus only on the evidence they believe favors them, they again fail to address Plaintiff's evidence.

Defendants suspend reality with their argument that their version of the facts was "corroborated by [Plaintiff's] admission at trial that she, in fact, did what she was accused of doing." (*Id.*) Plaintiff was accused of stealing. From day one, she vehemently denied stealing. That is what the jury was to decide, and it did. There is no basis for the Court to reject the jury's resolution of the competing narratives.

E. New Trial – Damages

Defendants move for both a new trial absolute and a new trial nisi remittitur. Although they cursorily recite the standards, *see Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015), Defendants do not specify the manner in which each applies to the evidence in the case. Again, Defendants make boilerplate recitations followed by subjective opinion. This is not a basis by which Plaintiff can respond fully or by which this Court should disturb the jury's considered decision.

"The amount of damages suffered in a personal injury action is a question for the fact-finder." *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 148, 719 S.E.2d 703, 708 (Ct. App. 2011) (citations omitted). "[T]he jury's determination of damages is entitled to substantial deference." *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). "Compelling reasons . . . must be given to justify invading the jury's province in this manner." *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995), quoted in *RRR, Inc. v. Toggas*, 378 S.C. 174, 183, 662 S.E.2d 438, 442-43 (Ct. App. 2008).

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Defendants provide no basis to question the jury's verdict, and certainly nothing that is even arguably "compelling." Viewed objectively, the verdict is unremarkable. In fact, compared to other false imprisonment cases in which actual damages were challenged, Plaintiff's $100,000 recovery is far less than what has been upheld in less egregious circumstances:

- *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 32, 410 S.E.2d 21, 24 (Ct. App. 1991) (actual damages of $144,043.72 in 2020 dollars[17] for fifteen-minute detention was not excessive); and
- *Wright v. Gilbert*, 227 S.C. 334, 338, 88 S.E.2d 72, 75 (1955) (actual damage verdict of $230,987.87 in 2020 dollars was not excessive).

See also Kennedy v. Richland Cty. Sch. Dist. Two, 428 S.C. 98, 119, 833 S.E.2d 414, 425-26 (Ct. App. 2019) ($100,000 in actual damages for internal email defamation upheld).[18]

Defendants cite nothing for the proposition that $100,000 is objectively excessive, much less "unduly liberal." Defendants simply interpose such whoppers as: "There was no evidence that Defendants['] 'restraint' of Plaintiff cause her any damage whatsoever." (Motion at 17). No damage whatsoever? Plaintiff testified, in detail, about the emotional and physical toll Defendants' confinement had on her. (*See supra* Section III(B)(2)(a)).

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[17] *See supra* note 10.

[18] Plaintiff did recover more than another plaintiff in a reported case, although there is no testimony reported that begins to approach Plaintiff's testimony as to the distress she suffered as a result of Defendants' conduct. *Westbrook v. Hutchison*, 195 S.C. 101, 117, 10 S.E.2d 145, 152 (1940) (actual damage verdict of $55,065.86 in 2020 dollars for 1 ½ hour detention).

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Rather than confront this evidence, Defendants frivolously speculate that "[t]he jury was improperly influenced by the '#metoo' movement." (*Id.*) There was no mention of "metoo," or of sexual harassment, [19] and Plaintiff never even sought to claim she (or anyone else) was sexually harassed (then or now). Yet Defendants argue that "there was substantial testimony permitted to suggest such claims." (*Id.*) There was no such testimony whatsoever.

Defendants then argue summarily that the jury "was similarly improperly influenced by the testimony of the highest local law enforcement official who testified, essentially as an expert, that there was no probable cause to charge the Plaintiff without a crime." (*Id.*) Chief Burdette never testified whether there was or was not probable cause. In fact, the Court barred him from doing so. Defendants are not being accurate as to what evidence was before the jury.

Defendants close with boilerplate recitations about "ignit[ing] the passion and prejudices" and "grossly excessive compensatory and punitive damages" without carefully setting forth what they are talking about and how the Court should reach this conclusion under the law. Again, they cite no case law, and they fail to specify any rulings at issue or how they constitute reversible error.

[19] "The Me Too (or #MeToo) movement, with variations of related local or international names, is a movement against sexual harassment and sexual assault of women." https://en.wikipedia.org/wiki/Me_Too_movement

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F. *Gamble* review

If there was ever a frivolous request for a review of punitive damages, this is it. Plaintiff received a mere $10,000, or 1/10th of her actual damages, probably because Defendants pledged (falsely) to the jury that Defendants would accept the jury's actual damage verdict. But Defendants leave no argument unargued.

Gamble is no longer the basis for any post-trial review. *Gamble* was supplanted by *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009), which set forth new factors to synthesize *Gamble* with *Gore v. BMW*. *Id.* at 587, 686 SE2d at 185. Subsequently, the General Assembly set forth the factors the court is to use to review punitive damage awards, which are the same factors the court charged the jury as to considerations for awarding punitive damages. S.C. Code Ann. § 15-32-520(F) ("If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice.")

Defendants do not offer any argument as to the *Fortis* analysis, the eleven factors set forth in Section 15-32-520(E), or the other "relevant evidence" the General Assembly states may be considered. *Id.* § 15-32-520(F). Accordingly, Defendants' motion fails to present (or preserve) a proper basis upon which the Court can set aside the amount awarded.

Even as to the *Gamble* factors, Defendants do nothing more than recite that they acted entirely reasonably, and that Plaintiff confessed. (Motion at 10). Such conclusory arguments, which do not discuss the evidence at all, preserve nothing.

In a total head shaker, Defendants argue that "there is no reason to believe that an award of punitive damages will deter Defendants or others from questioning

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employees accused of wrongdoing." (Motion at 10-11). Nobody suggested they should refrain from doing so. Defendants decry the resulting inability to "giv[e] employees like Plaintiff an opportunity to explain their action . . . ." (*Id.* at 11). But that is precisely what Plaintiff tried to do when Defendants questioned her. For Defendants, who dismissively told Plaintiff that it was her word against Brickman's, to claim that employers should give employees an opportunity to explain themselves is ironic at best and disingenuous at worst. Either way, this is not a basis to second guess the jury.

In a last desperate gasp, Defendants characterize Brickman as a "low level manager" whose actions cannot be attributed to them. (Motion at 11). Putting aside that Brickman was the *top* manager in this store, this case is not just about the actions of Brickman. Defendants' newfound desire to throw Brickman under the bus resolves nothing. Nor do Defendants cite a single case for the proposition that the actions of a store manager cannot result in punitive damages even if this case was limited solely to the actions of Brickman.

As with actual damages, the amount of punitive damages "remains largely within the discretion of the jury, as reviewed by the trial court." *Gamble*, 305 S.C. at 112, 406 S.E.2d at 355. Although Plaintiff contends that Defendants have waived any review as to the applicable factors,[20] she nonetheless sets forth the following out of an abundance of caution.

[20] "The trial court is not required to make a finding of fact for each *Gamble* factor to uphold a punitive damages award." *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 195, 638 S.E.2d 667, 671 (2006) (citing *McGee v. Bruce Hosp. Sys.*,321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)).

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1. Statutory factors

Significantly, the General Assembly did not set forth finite factors, but determined that the Court should look at "all relevant evidence." Section 15-32-520(E), *incorporated by id.* -520(F). This includ[es] but [is] not limited to" the following relevant factors here:

a. The defendant's degree of culpability

This case did not involve the rogue actions of a single bad actor. Every live defense witness, other than Ellison, was thoroughly impeached and did little more than contradict the others. Defendants violated their own policy in every material respect, and they did so to prevent evidence of their shakedown.

- Duncan and Miller not only failed to give the required assurances, they instructed Plaintiff she could not leave contrary to terms of the policy;
- Duncan did not provide Plaintiff with the consent form, which was drafted to advise individuals that, among other things, participation was voluntary;
- Duncan and Miller refused to record the interview and Duncan lied about why;
- Duncan and Miller either willfully violated the repeated requirements to take detailed notes, or they lied about taking notes as Miller (who was required to take them) claimed that Duncan took notes and Duncan claimed that Miller was the witness who was to take notes.

Miller and Duncan's denials as to any knowledge that Brickman had a motive to go after Plaintiff were absurd. Both district managers testified that Miller knew about Plaintiff's complaints, notwithstanding his denials. Moreover, when Plaintiff raised the retaliation issue, Duncan reflexively responded that it was "her word against [Brickman's]," which could easily lead a jury to believe that he knew full well what was

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going on. Duncan never excused himself or questioned Brickman before saying what Brickman's "word" was. He didn't need to.

b. The severity of the harm caused by the defendant

Defendants knew Plaintiff all too well, and correctly predicted what would happen to her when whipsawed. Plaintiff became unable to make decisions, and she suffered extreme distress that manifested not only in emotional pain, but in physiological ways also, including vomiting, loss of sleep, loss of appetite, withdrawal, stress related MRSA outbreaks. Plaintiff testified that the duration of the harm was lasting and severe.

c. the extent to which the plaintiff's own conduct contributed to the harm

There is no evidence that Plaintiff's conduct contributed to her harm. She repeatedly requested to leave, and Defendants repeatedly refused to allow her to avoid the harm.

d. the duration of the conduct, the defendant's awareness, and any concealment by the defendant

The confinement here began at 12:16 pm and lasted until 1:29 pm. To put Plaintiff's $10,000 recovery of punitive damages into perspective, the Court of Appeals affirmed a $250,000 punitive damage award for false imprisonment on less egregious facts. *Lynch v. Toys "R" Us-Delaware*, 375 S.C. 604, 625-26, 654 S.E.2d 541, 552-53 (Ct. App. 2007), *vacated on other grounds*, 384 S.C. 511, 682 S.E.2d 824 (2009). Likewise, in *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991), a mere fifteen-minute detention with no touching or searching supported a $100,000 punitive

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damage verdict, which in today's dollars would be $192,000.[21] Plaintiff's recovery is 1/25th of what was affirmed in *Lynch*, and 1/10th of what was affirmed in *Caldwell*.

e. the existence of similar past conduct

Defendants' conduct as to the false imprisonment was a mere continuation of its effort to cover up and discourage the complaints Plaintiffs and others made about Brickman. The matter was referred to the corporate headquarters and, specifically, to a woman who conducts an average of four hundred "investigations" annually by never leaving her desk. Even when Plaintiff contacted corporate again, letting it know that other employees were inquiring, Defendants never provided any feedback or assurance. Instead, they fed the information to Brickman and stood by while he and the other managers had at Plaintiff.

f. the defendant's ability to pay

There can be no question about Defendants' ability to pay. (*See* Pl. Exh. 26).

2. Fortis factors

Plaintiff submits that Defendants should be precluded from arguing for any review under *Fortis* because they make no motion addressing the *Fortis* factors. Even a cursory review of those factors, however, show that the mere $10,000 award of punitive damages cannot be assailed by this corporation under these facts.

a. Reprehensibility

See supra Section III(F)(1)(a).

[21] https://www.dollartimes.com/inflation/inflation.php?amount=100000&year=1991

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b. Ratio

A $\frac{1}{10}$:1 ratio of punitive damages to actual damages is so unusual, there does not appear to be any precedent for a *Fortis*/*Gore* review below the single digit ratio range. "In reviewing more recent punitive damages awards, South Carolina courts have most often upheld verdicts on the low end of the single-digit spectrum, but have frequently deviated from this norm in cases involving particularly egregious conduct." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 593, 686 S.E.2d 176, 188 (2009).[22] Plaintiff's $\frac{1}{10}$:1 award does not even approach the single digit spectrum. To put it mildly, calling such a ratio "excessive" is like calling Defendants' arguments "uncontroverted" (*supra* § III(B)(1)(b)), or saying that Plaintiff's testimony "corroborated" Defendants' arguments at trial (*supra* § III(D)). It strains credulity to the say the least.

c. Comparative rulings

The jury's award compares very *unfavorably* to the six figure punitive damage awards upheld by our Court of Appeals. *See supra* Section III(F)(1)(d). There is no authority by which a $10,000 award can be challenged on any Constitutional basis by these two large corporations.

G. This Court should not permit Defendants to raise issues in reply.

As noted above, there are numerous points where Defendants fail to specify a ruling at issue, the evidence at issue, or to provide other information that would permit Plaintiff or this Court to assess and respond to asserted error. One can presume Defendants will use their reply to attempt to put meat on the bone and to improperly assert

[22] The lowest available statutory cap kicks in at a 3:1 ratio. S.C. Code Ann. § 15-32-530(A).

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substance that was required in the Motion itself. Rule 7(b)(1), SCRCP (mandating that grounds for a motion be stated "with particularity" in the motion itself).

Any new assertions of error or arguments not previously raised should be deemed abandoned. *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691-92 (Ct. App. 2001) (citing *Jackson v. Bi-Lo Stores*, 313 S.C. 272, 277, 437 S.E.2d 168, 171 (Ct. App. 1993)).

IV. Conclusion

For the foregoing reasons, Defendants' Motions should be denied.

Respectfully submitted this 13th day of April 2020.

For the Plaintiff:

s/ Brian P. Murphy
Brian P. Murphy, Bar No. 6770

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STATE OF SOUTH CAROLINA **COUNTY OF ANDERSON**	)	**IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT** **Civil Action No.: 2018-CP-04-01127**
Lisa Styles, **Plaintiff,**	)	**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND (RECONSIDERATION) AND FOR NEW TRIAL AS TO MALICIOUS PROSECUTION CLAIM**
v.	)	
Southeastern Grocers, LLC and BI-LO, LLC **Defendants.**	)	

Defendants, Southeastern Grocers, LLC and Bi-Lo, LLC ("Defendants"), by and through its undersigned attorneys, respond in opposition to Plaintiff's Motion to Alter or Amend (Reconsideration) and for New Trial as to Malicious Prosecution Claim (the "Motion") filed by Plaintiff, Lisa Styles, and state as follows:

INTRODUCTION

Plaintiff is a former employee of Defendants who worked as a customer service manager at its store in Pendleton, SC. On May 23, 2018, Defendants' Asset Protection Specialist and a Human Resources representative interviewed Plaintiff (while on-duty) about store security video showing Plaintiff removing goods from Defendants' store without paying for the items. During the interview, Plaintiff admitted to stealing items from the store and signed a written statement acknowledging her actions. After Plaintiff's admission and while she was still in the store, Defendants called the Pendleton Police Department and Officer Carl Glenn arrived at the store to investigate the matter. Officer Glenn interviewed Plaintiff and prepared an incident report. It is

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undisputed that Officer Glenn neither arrested Plaintiff nor charged her with any crime. When the matter was reported to Defendants' corporate management, Plaintiff's employment was terminated. However, no arrest warrant was ever issued, and Plaintiff was never subjected to any judicial proceedings as a result of the incident.

On June 8, 2018, Plaintiff filed the Complaint in this action seeking compensatory and punitive damages from Defendants for abuse of process, malicious prosecution, false imprisonment and fraud. With respect to her claim for malicious prosecution, Plaintiff alleged that Defendants' complaint to the police constituted malicious prosecution. The jury trial of this matter began on March 9, 2020. Upon conclusion of the Plaintiff's case, Defendants moved for directed verdict on all counts. The Court denied the motion as it related to Plaintiff's claim for false imprisonment, but deferred ruling on the remaining claims. After all evidence in the matter had been submitted, Defendants renewed their motions for directed verdict as to all counts. The Court directed a verdict for Defendants on Plaintiff's malicious prosecution count.

In her Motion, Plaintiff requests this Court reconsider and reverse its directed verdict on the malicious prosecution count or, in the alternative, grant Plaintiff a new trial on this claim. Neither the evidence presented at trial nor the applicable law, however, justify such a result.

ARGUMENT

I. Plaintiff's Motion Should be Denied For Failure to Comply with SC Rules.

Plaintiff's Motion should be denied in its entirety for failure to provide a copy of the Motion to the trial judge within 10 days of filing. As the Court explained in *Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017),

> The trial court properly denied [the] motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing. Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct.

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> App. 2002) implies a trial court may deny the motion solely on the basis of the rule. See 353 S.C. at 63, 577 S.E.2d at 219 ("Because the [trial] court found it appropriate to hear the matter, we find no error in the [trial] court's decision to decide the motion despite [the appellant's] failure to comply with Rule 59(g), SCRCP." (emphasis added)). Accordingly, the trial court properly denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge. Because the trial court did not err in denying Smith's motion for reconsideration, the arguments presented in that motion are unpreserved. *Id.* at 126.

Accordingly, Plaintiff's failure to comply with the Rule in this case requires denial of her Motion in its entirety.

II. Plaintiff's Motion to Reconsider/Alter or Amend this Court's directed verdict should be denied because Plaintiff failed to present any evidence at trial to sufficiently establish her claim for malicious prosecution.

In deciding whether to grant or deny a directed verdict motion, the trial court is only concerned with the existence or non-existence of evidence. *Sims v. Giles,* 343 S.C. 708, 714, 541 S.E.2d 857, 861 (Ct. App. 2001). While the court must review the evidence and all reasonable inferences in the light most favorable to the non-moving party, if the evidence as a whole is susceptible to only one reasonable inference, no jury issue is created and a directed verdict motion is properly granted. *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001); *see also Lucas v. Rawl Family Ltd. Partnership,* 359 S.C. 505, 512, 598 S.E.2d 712, 715 (2004). A court's decision will only be reversed if there is no evidence to support the ruling. *Jinks v. Richland County,* 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); *Hinkle v. National Cas. Ins. Co.,* 354 S.C. 92, 579 S.E.2d 616, 618 (2003). Here, the Court properly granted a directed verdict in favor of Defendants because, even viewing the evidence in the light most favorable to Plaintiff, there was simply no evidence to support a legal claim for malicious prosecution.

Under South Carolina law, a plaintiff in a malicious prosecution action must show (1) institution or continuation of original proceedings, either civil or criminal; (2) by, or at the insistence of, the defendant; (3) termination of such proceeding in plaintiff's favor; (4) malice in

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instituting such proceedings; (5) want of probable cause; and (6) resulting injury or damage. *Guider v. Churpeyes, Inc.*, 370 S.C. 424, 430, 635 S.E.2d 562, 565 (Ct. App. 2006) (citing *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965)). An appellate court will affirm a directed verdict where there is no evidence on any one element of the alleged cause of action. *Guffey v. Columbia/Colleton Regional Hosp., Inc.*, 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). In this case, the directed verdict was proper because Plaintiff failed to present evidence on several of the requisite elements.

First (and most critically), the record indisputably shows that Plaintiff was not arrested, an arrest warrant was not issued, and Plaintiff was not otherwise subject to any judicial proceeding as a result of Defendants' actions. Plaintiff's Motion attempts to circumvent these facts by arguing that a sufficient "process" was initiated when Defendants called the police because Defendants' decision to make that phone call "was all that was necessary" to establish malicious prosecution. This argument is not only incorrect, it is directly contradicted by the authorities Plaintiff cites in alleged support of this position. For example, Plaintiff cites a treatise for this proposition, but she takes the quote from the treatise out of context. F. Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts*, 496 (4th ed. 2011). The treatise explains that a shopkeeper may be liable for malicious prosecution for calling the police but does not say that there is liability *without* an arrest. *Id.* In fact, the case the treatise cites for the proposition makes clear the opposite is true:

> **In order to sustain an action for malicious prosecution, one must first be charged with the commission of a crime** and exonerated, Segusky v. Williams, 89 S.C. 414, 71 S.E. 971, 36 L.R.A.,N.S., 230; Aiken v. Lancaster Cotton Mills, 85 S.C. 180, 67 S.E. 166; Whaley v. Lawton, 57 S.C. 256, 35 S.E. 558; Frierson v. Hewitt, 2 Hill 499; Keels v. City of Sumter, 95 S.C. 203, 78 S.E. 893; see also, Annotations, 36 A.L.R.2d 786.

Elletson v. Dixie Home Stores, 231 S.C. 565, 570–71, 99 S.E.2d 384, 386–87 (1957) (emphasis added). Plaintiff relies on the *Elleston* case as well but misrepresents the decision. *Elletson*

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explained that the shopkeeper's actions in **procuring the arrest** were enough to hold the shopkeeper liable – but not without an arrest as Plaintiff contends:

> The unlawful arrest of respondent was the proximate result of its manager's instigation and conduct and it is liable therefor even though he did not make or sign the affidavit or warrant, Wingate v. Postal Tel. & Cable Co., 204 S.C. 520, 30 S.E.2d 307; see also, 54 C.J.S. Malicious Prosecution §§ 13-14, p. 966.

Elletson, 231 S.C. at 575. The plaintiff in *Elletson* was, in fact, arrested after the shopkeeper called police and demanded that the plaintiff be taken away by police. Id.

Similarly, the court in *Huggins v. Winn Dixie Greenville, Inc.,* 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967), did not hold that malicious prosecution "merely requires 'employment of legal process' or 'judicial process' as Plaintiff contends. To the contrary, the *Huggins* court was highlighting the differences between a claim for malicious prosecution and a claim for abuse of process when it stated that "malicious prosecution consists of maliciously causing process to be issued." *Id.* (emphasis added) (internal citations omitted). The "employment of legal process" language cited by Plaintiff was actually used by the *Huggins* court in distinguishing abuse of process as "the employment of legal process for some purpose other than that which it was intended by the law to effect." *Id.* (internal citations omitted). *Huggins* did not hold that a malicious prosecution claim may proceed when there is no arrest; i.e., no prosecution. In short, there is no authority supporting Plaintiff's proposition that a plaintiff can sue for malicious prosecution without being arrested.

The undisputed record evidence in this case clearly shows that Defendants' act of calling the police did not cause Plaintiff to be arrested, a warrant to be issued, or otherwise cause Plaintiff to be subjected to any judicial proceeding or legal process. If this Court were to adopt Plaintiff's reasoning, then any person who calls in a complaint to the police which does not result in an arrest, the issuance of a warrant or the institution of a judicial proceeding would be subject to potential

civil liability for malicious prosecution. This is clearly not a result the law permits. In addition, Plaintiff's tenuous argument that the investigatory "process" the police followed here satisfies the requirement of a judicial proceeding needed to support a malicious prosecution claim is simply unsupported in law or fact. Plaintiff's inability to establish this very first element of her malicious prosecution claim (the existence of which all of the subsequent elements rely upon) supports this Court's directed verdict.

Second, even if Plaintiff could somehow establish that Defendants' call to the police initiated a judicial proceeding (which it undeniably did not), this Court's directed verdict would still have been proper because, even when viewed in the light most favorable to Plaintiff, the record evidence established that Defendants had probable cause to contact the police. *Guider v. Churpeyes, Inc*., 370 S.C. 424, 430, 635 S.E.2d 562, 566 (Ct. App. 2006) ("An essential element of malicious prosecution is the institution of judicial proceedings without probable cause against the plaintiff.") (quoting *Kinton v. Mobile Home Indus., Inc*., 274 S.C. 179, 181, 262 S.E.2d 727, 728 (1980)). "Probable cause in this context does not turn upon the plaintiff's guilt or innocence, but rather upon whether the facts within the prosecutor's knowledge would lead a reasonable person to believe the plaintiff was guilty of the crimes charged." *Id*. When determining if probable cause exists, the court must consider the facts from the point of view of the party prosecuting. *Guider*, 370 S.C. 424, 430 (citing *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 478, 289 S.E.2d 414, 416 (1982)). "[T]he question is not what the actual facts were, but what [the prosecuting party] honestly believed them to be." *Id*.

In *Guider* the appellate court reversed the denial of Church's motion for directed verdict on the plaintiff's malicious prosecution claim because the plaintiff did not meet her burden of proving that Church's did not honestly believe she had committed a breach of trust. *Guider*, 370

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S.C. at 428. Church's had withheld money from the plaintiff's paycheck to cover money stolen in a robbery. In turn, plaintiff took back the money from a bank deposit of Church's with which she was entrusted. However, the plaintiff then called the district manager, admitted what she did, and offered to meet him to return the money. The manager ignored her for six days and instead asked the police to issue an arrest warrant on breach of trust charges. The arrest warrant affidavit he provided alleged that the plaintiff admittedly withheld the money she was entrusted to deposit for Church's and retained the money "for her own personal use." Two days later, the plaintiff returned the money by depositing it into Church's bank account. Nonetheless, a judge signed the warrant a few days later and she was arrested. *Id*. The appellate court held that, even viewing the evidence in the light most favorable to the plaintiff, a reasonable party could only conclude Church's had probable cause to believe Guider guilty of breach of trust since she had held the money for eight days even though she offered to return it:

> Looking at the facts from Church's point of view for the determination of probable cause, Church's filed the breach of trust charges knowing Guider had admittedly retained $800 in company funds with which she had been entrusted on June 5, 2003. Moreover, Guider retained possession of the $800 for a total of eight days before she returned the money to Church's. Church's filed the charges after Guider told Bailey, "I got my money back," "I did something that was wrong," and "I took money out of that $1,004 deposit." Guider had not returned the funds when the charges were filed.

Id. at 430–31.

Similarly, here Defendants had video evidence of Plaintiff removing items from the store weeks prior without scanning or paying for them. The trial testimony established that when confronted with this information, Plaintiff admitted to taking the property and estimated that she had taken $450 worth of items. It was further established that in her interview with Defendants' representatives, Plaintiff said she took Easter products to donate to charity even though the store manager had denied her request to do so, and that she took other products for herself. Plaintiff

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provided Defendants with a written statement admitting to the theft and, though she recanted the statement the following day, on the day in question Plaintiff admitted the theft to the police officer responding to the call which reaffirmed Defendant's beliefs.

As such, even if Plaintiff had been criminally prosecuted – which she was not – looking at the facts of this case elicited at trial from Defendants' point of view, the Court's directed verdict was proper because, as a matter of law, Plaintiff could not succeed on her malicious prosecution claim as Defendants honestly believed Plaintiff had committed a crime when Defendants called the police to report her conduct. Accordingly, this Court should deny Plaintiff's motion to alter or amend its directed verdict on Plaintiff's malicious prosecution claim.

III. Plaintiff's Motion For New Trial should be denied because this Court properly excluded evidence of the substance of complaints made by Plaintiff and others about Defendants' store manager.

Plaintiff also seeks a new trial based on the argument that the Court erred in barring evidence of the substance of complaints submitted by Plaintiff and others. To the contrary, the Court properly exercised its discretion in excluding this irrelevant and highly prejudicial evidence. *See generally Burke v. Republic Parking Sys., Inc*., 421 S.C. 553, 558, 808 S.E.2d 626, 628 (Ct. App. 2017) ("The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a 'manifest abuse of discretion accompanied by probable prejudice.'") (quoting *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011)); *see also Kennedy v. Richland Cty. Sch. Dist. Two*, 428 S.C. 98, 833 S.E.2d 414 (Ct. App. 2019). Even if the Court had erred, though, the Plaintiff could not show any prejudicial error to warrant a new trial or reversal. "Determining whether prejudice exists 'depends on the circumstances [,]' and 'the materiality and prejudicial character of the error must be determined from its relationship to the entire case.'" *Id*.

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(quoting *State v. Taylor*, 333 S.C. 159, 172, 508 S.E.2d 870, 876 (1998)). Prejudice in this context means "there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence.'" *Id.* (quoting *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005)).

Although Plaintiff had previously filed a Charge of Discrimination with the EEOC mirroring the substantive allegations in her Complaint and alleging that her termination was in retaliation for her prior complaints to management about her supervisor engaging in gender discrimination,[1] no such claims were asserted in this case. As such, to the extent these complaints related to retaliation or gender discrimination, the Court properly excluded them as irrelevant and inadmissible. S.C.R.E. 401 ("Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); *see generally Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 484, 609 S.E.2d 286, 300 (2005) (trial judge erred by admitting evidence that some CSX locomotive cabs had fans or air conditioners which was not relevant to Whaley's claim that the locomotives in which he was injured were not properly ventilated).

Notwithstanding the fact that Plaintiff did not assert claims for gender discrimination or retaliation in this case, Plaintiff contends that these complaints were relevant to show Defendants' "motive" for her malicious prosecution claim. However, Plaintiff ignores the undisputed fact that the one person who would have had any motive to retaliate because of the complaints, i.e., the Store Manager she and others complained about whom Plaintiff portrayed as the bad actor throughout the trial, did not even know Plaintiff had complained. Moreover, the Store Manager was not involved in the decision to report Plaintiff to the police. As such, the substance of the

[1] After filing her initial charge with the EEOC, Plaintiff did not pursue the EEOC matter further.

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complaints were entirely irrelevant to the supposed motive behind Plaintiff's malicious prosecution claim. *Id.* Put otherwise, here was no evidence of any connection between the complaints and the prosecution Plaintiff complained about but never actually happened, making the substance of the complaints irrelevant since they could not possibly have motivated the "prosecution."

Even if this Court agreed that the complaints were relevant for this purpose, however, the exclusion of this evidence was still proper because any probative value it arguably had was far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. SCRE 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *see generally Jamison v. Ford Motor Co*., 373 S.C. 248, 269, 644 S.E.2d 755, 766 (Ct. App. 2007) ("[t]he dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.") (*quoting Watson ex rel. Watson v. Chapman*, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000)).

Plaintiff's strategy throughout this trial was to portray Plaintiff's store manager as a "bad actor" and encourage the jury to punish Defendants for the manager's alleged improper behavior—even though the manager did not commit any of the acts forming the basis for Plaintiff' claims in this case. Plaintiff sought to introduce this evidence to sensationalize her claims, improperly influence the jury and appeal to their emotions. Even though this Court allowed Plaintiff to introduce (over Defendants' objections) a substantial amount of other highly prejudicial evidence,

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the Court's exclusion of the substance of these complaints was proper and required under the evidentiary rules.

Because the substance of these complaints was not relevant to the determination of any cause of action asserted herein and any probative value it arguably had was far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury, the Court's exclusion of this evidence was proper and, accordingly, Plaintiff's request for a new trial should be denied.

CONCLUSION

WHEREFORE, based on the foregoing, Defendants hereby respectfully request that the Court deny Plaintiff's Motion to Alter or Amend (Reconsideration) and for New Trial as to Malicious Prosecution Claim, and for such other relief this Court deems proper and just.

DATED: April 13, 2020

SLOTCHIVER & SLOTCHIVER, L.L.P.

/s/ *Andrew J. McCumber, Esquire*
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ATTORNEYS FOR DEFENDANTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-1127
App. Case No.: Not yet assigned.

RECEIVED
May 22 2020
SC Court of Appeals

Southeastern Grocers, LLC and Bi-Lo, LLC .....*Appellants*

v.

Lisa Styles .....*Respondent.*

NOTICE OF APPEAL

Southeastern Grocers, LLC and Bi-Lo, LLC, the Defendants in the above-referenced civil action hereby notices all Counsel of Record of their intent to Appeal the orders and/or judgments in this matter, including specifically, the Order Denying Defendants' Motion for Summary Judgment entered on March 9, 2020, the Form 4/Order/Verdict entered March 13, 2020, and the Order Denying Defendants Motions for New Trial and JNOV, entered April 23, 2020. Written notice of entry of this order was mailed to Defendants on or about April 23, 2020. (A copy of the Orders of Judgment are attached hereto.)

Respectfully submitted this **13th** day of **May, 2020**.

By: _____

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****Admitted pro hac vice*

COUNSEL FOR THE APPELLANTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2018-CP-04-1127
App. Case No.: Not yet assigned.

RECEIVED
May 22 2020
SC Court of Appeals

Southeastern Grocers, LLC and Bi-Lo, LLC .....*Appellants*

v.

Lisa Styles .....*Respondent.*

PROOF OF SERVICE

I certify that I have served the **Notice of Appeal** on the **Respondent Lisa Styles**, by depositing a copy of same in the United States Mail, on **May 13, 2020**, addressed to their counsel of record, **Brian P. Murphy, Esquire**, of the firm **Stephenson & Murphy, LLC** at their offices located at **207 Whitsett St, Greenville, SC 29601**.

Respectfully submitted this **13th** day of **May, 2020**.

By: _____

Andrew J. McCumber, Esquire
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May 22, 2020

RECEIVED
May 22 2020
SC Court of Appeals

VIA REGULAR MAIL 3 E-FILING
THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

RE: **Lisa Styles v. Michael C. Brickman, Southeastern Grocers, LLC, Bi-Lo, LLC, Ken Miller and Ronnie Duncan**
Civil Action No.: 2018-CP-04-01127
Our File No.: 2020-AP-004

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Proof of service of the notice of appeal on the respondent.

(2) A copy of the Order which is to be challenged on appeal.

(3) A filing fee of $250.

If you should have any questions, or need anything further from me, please do not hesitate to contact me. I thank you in advance for your time and attention to this matter.

Sincerely,

Andrew J. McCumber

AJM/scm

Enclosure(s) as stated.

cc: Brian P. Murphy, Esq., Attorney for Respondents

SLOTCHIVER & SLOTCHIVER, L.L.P.
ATTORNEYS AT LAW
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IRVIN J. SLOTCHIVER
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May 22, 2020

VIA REGULAR MAIL & E-FILING

THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

RECEIVED
MAY 26 2020
SC Court of Appeals

RE: **Lisa Styles v. Michael C. Brickman, Southeastern Grocers, LLC, Bi-Lo, LLC, Ken Miller and Ronnie Duncan**
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Sincerely,

Andrew J. McCumber

AJM/scm

Enclosure(s) as stated.

cc: Brian P. Murphy, Esq., Attorney for Respondents

ELECTRONICALLY FILED - 2020 Mar 09 10:55 AM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT *Civil Action No. 2018-CP-04-01127*
Lisa Styles, *Plaintiff,* *vs.* Southeastern Grocers, Inc. and BI-LO, LLC *Defendants.*	**ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

RECEIVED
MAY 26 2020
SC Court of Appeals

THIS MATTER comes before the Court by way of Defendants' Motion for Summary Judgment with respect to Plaintiff's claims for False Imprisonment, Fraud, Abuse of Process, and Malicious Prosecution. A hearing was held in connection with same on March 6, 2019 at which time all parties appeared by and through their respective counsel of record.

After hearing the arguments presented by counsel during the same, and upon review of the memoranda and applicable case law submitted by Counsel, this Court respectfully denies the Defendants' Motion for Summary Judgment as to each of Plaintiffs claims.

IT IS SO ORDERED!

The Hon. J. Cordell Maddox, Jr.
Circuit Judge, Tenth Judicial Circuit

March 8, 2020

Anderson, South Carolina

ELECTRONICALLY FILED - 2020 Mar 09 10:55 AM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127



Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-04-01127

Lisa Styles
PLAINTIFF(S)

Southeastern Grocers, LLC and BI-LO, LLC
DEFENDANT(S)

Submitted by: Judge Sprouse	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), 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: See statement of judgment below.

RECEIVED
MAY 26 2020
SC Court of Appeals

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 judgment should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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

2753
Judge Code

04/22/2020
Date

ELECTRONICALLY FILED - 2020 Apr 23 9:53 AM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

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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.

This matter is before the Court pursuant to post trial motions filed by the parties. This case was tried by jury during the week of March 9, 2020 in Anderson County, resulting in a verdict for the Plaintiff in the amount of $100,000 in actual damages and $10,000 in punitive damages. The Court gave the parties ten (10) days in which to make post trial motions and make arguments regarding the Court's review of the punitive damages award in light of the applicable statutory law and case law.

After careful consideration of the materials filed along with the evidence and arguments presented during the trial, the Court denies the Plaintiff's Motions to Alter or Amend and/or New Trial regarding the malicious prosecution cause of action. The Court granted the Defendants' Motion for a Directed Verdict as to that cause of action after the conclusion of the evidence. The Court further considered the Defendants' motions. The Defendants moved for a Judgment Notwithstanding the Verdict (JNOV), a New Trial Absolute based on the Defendants' allegation that improper evidence was admitted, for the verdict to be set aside under the Thirteenth Juror Doctrine, and a New Trial Absolute or Nisi Remittitur based on the Defendant's allegation that the verdict was excessive.

The Court finds that there was not sufficient evidence presented to support a cause of action for malicious prosecution. Accordingly, the Plaintiff's Motion to Alter or Amend and/or New Trial on that cause of action is denied.

The Court finds that, in viewing the evidence regarding the cause of actions submitted to the jury in a light most favorable to the Plaintiff, there was evidence to support the Plaintiff's other causes of actions. Accordingly, the Defendants' motion for JNOV is denied. The Court finds that there is evidence that could justify the verdict. Accordingly, the Defendants' Motion for a New Trial under the Thirteenth Juror Doctrine is denied. In considering the Defendant's

Motion for New Trial-Nisi Remittitur and the Motion for New Trial Absolute, the Court finds that the amount of actual damages awarded by the jury in this case is not the result of passion, caprice or prejudice. Accordingly, the Defendants' motions are denied.

In reviewing the punitive damages awarded in this case, the Court is required to review the factors of the statutory law (SC Code § 15-32-520) and the Fortis factors along with the Gamble factors. First, the court looks to subsections (E) and (F). Subsection (E) sets forth eleven factors: (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm;(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

Subsection (F) reads: "If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice."

The Court then looks to the Fortis and Gamble factors. Under *Gamble*, the court must consider (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991)

As to *Fortis*, three added factors are included: (1) Reprehensibility: a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. (2) Ratio: the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. (3) Comparative Penalty Awards: the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587–89, 686 S.E.2d 176, 185–86 (2009)

In applying these factors, the Court does not find the award of punitive damages unreasonable. The Court notes that, while a strict ratio has not been set under South Carolina law, the award in this case is one-tenth of the amount of the actual damages. The Court denies the Defense motion to set aside the award of punitive damages.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

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4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

ELECTRONICALLY FILED - 2019 Dec 02 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

STATE OF SOUTH CAROLINA **COUNTY OF ANDERSON** LISA STYLES, *PLAINTIFF,* VS. MICHAEL CRAIG BRINKMAN, SOUTHEASTER GROCERS, LLC, BI-LO, KEN MILLER, AND RONNIE DUNCAN., *DEFENDANTS.*	**IN THE COURT OF COMMON PLEAS** **FOR THE TENTH JUDICIAL CIRCUIT** CASE NO.: 2018-CP-04-01127 **ORDER FOR ADMISSION OF DAVID SHANKMAN, ESQ. *PRO HAC VICE***

This cause having come on this day upon the *ex parte* motion of Andrew J. McCumber to admit David S. Shankman, Esquire, *pro hac vice*, and the Court having considered the motion and attachments thereto submitted, finds that David S. Shankman, Esquire meets the qualifications for *pro hac vice* admission; and, therefore,

IT IS HEREBY ORDERED, that David S. Shankman, Esquire be and hereby is admitted *pro hac vice* to be associated with Slotchiver & Slotchiver, LLP in the above-entitled matter.

AND IT SO ORDERED, this ____ day of November, 2019.

THE HONORABLE R. SCOTT SPROUSE
PRESIDING JUDGE, COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

ELECTRONICALLY FILED - 2019 Dec 02 3:17 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Pro Hac Vice

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)
) Case No.: 2018-CP-04-01127

Lisa Styles,

Plaintiff

v.

Southeastern Grocers, LLC, Bi-Lo, LLC,

Defendant.

VERDICT

RECEIVED
MAY 26 2020
SC Court of Appeals

Punitive Damages

√ We the jury, unanimously find that the Plaintiff is entitled to punitive damages in the amount of $10,000.00 Dollars.

-- OR –

____ We the jury, unanimously find that the plaintiff is not entitled to punitive damages.

Maria Morales

Maria Morales, Foreperson
March 13, 2020

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON)
) Case No.: 2018-CP-04-01127

Lisa Styles,

Plaintiff

v.

Southeastern Grocers, LLC, Bi-Lo, LLC,

Defendant.

VERDICT

RECEIVED
MAY 26 2020
SC Court of Appeals

Fraud

____ We, the jury, by unanimous consent find for the Plaintiff and award damages in the amount of _____ Dollars.

-- OR –

√ We, the jury, by unanimous consent find for the Defendants.

Maria Morales
Maria Morales, Foreperson
March 13, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Case No.: 2018-CP-04-01127
Lisa Styles,	)	VERDICT
Plaintiff	)	
v.	)	
Southeastern Grocers, LLC, Bi-Lo, LLC,	)	
Defendant.	)	

RECEIVED
MAY 26 2020
SC Court of Appeals

False Imprisonment

√ We, the jury, by unanimous consent find for the Plaintiff and award damages in the amount of $100,000 Dollars.

– OR –

___ We, the jury, by unanimous consent find for the Defendants.

Maria Morales
Maria Morales, Foreperson
March 13, 2020

ELECTRONICALLY FILED - 2020 May 22 12:15 PM - ANDERSON - COMMON PLEAS - CASE#2018CP0401127

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Judge

Case No. 2018-CP-04-01127

RECEIVED
May 26 2020
SC Court of Appeals

Lisa Styles,

Respondent / Cross-Appellant,

v.

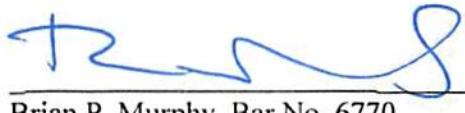
Southeastern Grocers, LLC,
BI-LO, LLC,

Appellant/ Cross-Respondent.

NOTICE OF CROSS APPEAL

Lisa Styles appeals the order of the Honorable Scott R. Sprouse, dated October 26, 2012 to the extent it denied Plaintiff's Motion to Alter or Amend (Reconsideration) and for New Trial as to Malicious Prosecution Claim. (Copy attached). Respondent received written notice of entry of this Order on April 23, 2020. Respondent received a copy of Appellant's Notice of Appeal on May 15, 2020.

May 19, 2020.



Brian P. Murphy, Bar No. 6770

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)
brian@stephensonmurphy.com

Other Counsel of Record:
Andrew J. McCumber
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd, Suite 100
Mount Pleasant, SC 29464
(843) 577-6531

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Judge

Case No. 2018-CP-04-01127

RECEIVED
May 26 2020
SC Court of Appeals

Lisa Styles,

Respondent / Cross-Appellant,

v.

Southeastern Grocers, LLC,
BI-LO, LLC,

Appellant/ Cross-Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Cross Appeal on the Appellant/Cross-Respondent, by depositing a copy of same in the United States Mail, on May 19, 2020, addressed to their counsel of record, Andrew J. McCumber, Esquire, of Slotchiver & Slotchiver, LLP at their offices located at 751 Johnnie Dodds Blvd., Suite 100, Mount Pleasant, SC 29464, and David Shankman, Esquire, of Shankman Leone, P.A., located at 707 N. Franklin Street, 5th Floor, Tampa, FL 33602.

Respectfully submitted this 19th day of May, 2020.



Brian P. Murphy, Bar No. 6770
Counsel for Respondent/Cross-Appellant

Stephenson & Murphy, LLC
207 Whitsett Street
Greenville, SC 29601
(864) 370-9400
(864) 240-9292 (fax)
brian@stephensonmurphy.com

STEPHENSON + MURPHY
ATTORNEYS AT LAW LLC

RECEIVED
May 26 2020
SC Court of Appeals

May 26, 2020

Jenny Abbot Kitchings
Clerk of Court
Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Lisa Styles v. Michael Craig Brickman, et al*
Case No.: 2018-CP-04-01127

Dear Ms. Kitchings:

Attached for filing with the Court, please find an original Plaintiff's Notice of Cross Appeal and Proof of Service, in the above-referenced matter. The filing fee of $250, will be sent under separate cover in accordance with the AIS instructions.

Please call with any questions.

Respectfully,

Lisa M. Thweatt
Legal Assistant

Attachment

207 WHITSETT STREET | GREENVILLE | SC 29601
PHONE: (864) 370-9400 | FAX: (864) 240-9292 | WWW.STEPHENSONMURPHY.COM

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-04-01127

Lisa Styles
PLAINTIFF(S)

Southeastern Grocers, LLC and BI-LO, LLC
DEFENDANT(S)

Submitted by: Judge Sprouse	**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), 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: See statement of judgment below.

RECEIVED
May 26 2020
SC Court of Appeals

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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	2752 Judge Code	04/22/2020 Date

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ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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After careful consideration of the materials filed along with the evidence and arguments presented during the trial, the Court denies the Plaintiff's Motions to Alter or Amend and/or New Trial regarding the malicious prosecution cause of action. The Court granted the Defendants' Motion for a Directed Verdict as to that cause of action after the conclusion of the evidence. The Court further considered the Defendants' motions. The Defendants moved for a Judgment Notwithstanding the Verdict (JNOV), a New Trial Absolute based on the Defendants' allegation that improper evidence was admitted, for the verdict to be set aside under the Thirteenth Juror Doctrine, and a New Trial Absolute or Nisi Remittitur based on the Defendant's allegation that the verdict was excessive.

The Court finds that there was not sufficient evidence presented to support a cause of action for malicious prosecution. Accordingly, the Plaintiff's Motion to Alter or Amend and/or New Trial on that cause of action is denied.

The Court finds that, in viewing the evidence regarding the cause of actions submitted to the jury in a light most favorable to the Plaintiff, there was evidence to support the Plaintiff's other causes of actions. Accordingly, the Defendants' motion for JNOV is denied. The Court finds that there is evidence that could justify the verdict. Accordingly, the Defendants' Motion for a New Trial under the Thirteenth Juror Doctrine is denied. In considering the Defendant's

Motion for New Trial-Nisi Remittitur and the Motion for New Trial Absolute, the Court finds that the amount of actual damages awarded by the jury in this case is not the result of passion, caprice or prejudice. Accordingly, the Defendants' motions are denied.

In reviewing the punitive damages awarded in this case, the Court is required to review the factors of the statutory law (SC Code § 15-32-520) and the Fortis factors along with the Gamble factors. First, the court looks to subsections (E) and (F). Subsection (E) sets forth eleven factors: (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm;(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

Subsection (F) reads: "If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice."

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11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-04-01127

RECEIVED
MAY 28 2020
SC Court of Appeals

Lisa Styles
PLAINTIFF(S)

Southeastern Grocers, LLC and BI-LO, LLC
DEFENDANT(S)

Submitted by: Judge Sprouse	**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), 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: See statement of judgment below.

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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	2752 **Judge Code**	04/22/2020 **Date**

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For Clerk of Court Office Use Only

RECEIVED
MAY 28 2020
SC Court of Appeals

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.

This matter is before the Court pursuant to post trial motions filed by the parties. This case was tried by jury during the week of March 9, 2020 in Anderson County, resulting in a verdict for the Plaintiff in the amount of $100,000 in actual damages and $10,000 in punitive damages. The Court gave the parties ten (10) days in which to make post trial motions and make arguments regarding the Court's review of the punitive damages award in light of the applicable statutory law and case law.

After careful consideration of the materials filed along with the evidence and arguments presented during the trial, the Court denies the Plaintiff's Motions to Alter or Amend and/or New Trial regarding the malicious prosecution cause of action. The Court granted the Defendants' Motion for a Directed Verdict as to that cause of action after the conclusion of the evidence. The Court further considered the Defendants' motions. The Defendants moved for a Judgment Notwithstanding the Verdict (JNOV), a New Trial Absolute based on the Defendants' allegation that improper evidence was admitted, for the verdict to be set aside under the Thirteenth Juror Doctrine, and a New Trial Absolute or Nisi Remittitur based on the Defendant's allegation that the verdict was excessive.

The Court finds that there was not sufficient evidence presented to support a cause of action for malicious prosecution. Accordingly, the Plaintiff's Motion to Alter or Amend and/or New Trial on that cause of action is denied.

The Court finds that, in viewing the evidence regarding the cause of actions submitted to the jury in a light most favorable to the Plaintiff, there was evidence to support the Plaintiff's other causes of actions. Accordingly, the Defendants' motion for JNOV is denied. The Court finds that there is evidence that could justify the verdict. Accordingly, the Defendants' Motion for a New Trial under the Thirteenth Juror Doctrine is denied. In considering the Defendant's

Motion for New Trial-Nisi Remittitur and the Motion for New Trial Absolute, the Court finds that the amount of actual damages awarded by the jury in this case is not the result of passion, caprice or prejudice. Accordingly, the Defendants' motions are denied.

In reviewing the punitive damages awarded in this case, the Court is required to review the factors of the statutory law (SC Code § 15-32-520) and the Fortis factors along with the Gamble factors. First, the court looks to subsections (E) and (F). Subsection (E) sets forth eleven factors: (1) the defendant's degree of culpability; (2) the severity of the harm caused by the defendant; (3) the extent to which the plaintiff's own conduct contributed to the harm;(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant; (5) the existence of similar past conduct; (6) the profitability of the conduct to the defendant; (7) the defendant's ability to pay; (8) the likelihood the award will deter the defendant or others from like conduct; (9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff; (10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and (11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

Subsection (F) reads: "If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice."

The Court then looks to the Fortis and Gamble factors. Under *Gamble,* the court must consider (1) the defendant's degree of culpability; (2) the duration of the conduct; (3) the defendant's awareness or concealment; (4) the existence of similar past conduct; (5) the likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factors deemed appropriate. *Gamble v. Stevenson,* 305 S.C. 104, 406 S.E.2d 350 (1991)

As to *Fortis*, three added factors are included: (1) Reprehensibility: a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident. (2) Ratio: the court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. (3) Comparative Penalty Awards: the court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587–89, 686 S.E.2d 176, 185–86 (2009)

In applying these factors, the Court does not find the award of punitive damages unreasonable. The Court notes that, while a strict ratio has not been set under South Carolina law, the award in this case is one-tenth of the amount of the actual damages. The Court denies the Defense motion to set aside the award of punitive damages.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

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Anderson Common Pleas

Case Caption: Lisa Styles VS Michael Craig Brickman , defendant, et al

Case Number: 2018CP0401127

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

private lives, but to ensure that both plaintiff and defendants receive a fair and impartial jury to hear the facts of this case.

If you need to respond to a question, you will use the same procedures you used before. You'll stand and state your juror number first.

Now, let me remind you, you're still under oath. The clerk put you under oath earlier, so it's essential that we have accurate information to these questions.

The first order of business will be for the attorneys to introduce themselves and their clients and any person that may be seated at the table and assisting in the prosecution or the defense of the case. So plaintiff.

MR. MURPHY: Thank you, Your Honor.

Good morning, ladies and gentlemen. My name is Brian Murphy. I practice in Greenville. To my far right is Lisa Thweatt. She's my assistant. And my client, Lisa Styles.

THE COURT: Okay. Defense.

MR. SHANKMAN: Good morning, ladies and gentlemen. Thank you, Your Honor.

My name is David Shankman. I represent Southeast Grocers and BI-LO Foods. Mr. McCumber is

this gentlemen. Mr. Duncan is with Southeast Grocers and BI-LO as well.

MR. MCCUMBER: As he mentioned, my name is David McCumber. I'm originally from Anderson. I now currently live in Charleston, but practice across the state on behalf of the defense.

MR. SHANKMAN: My apologies. I'm from Tampa, Florida.

THE COURT: Ladies and gentlemen, has anyone been represented by one of these attorneys, a law firm that they may have been involved in, or your immediate family been represented by one of these firms or respective law firms? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Has any member of the jury pool ever had one of these attorneys or their law firms represent someone against you in court? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Is any member of the jury pool related by blood or marriage to one of the attorneys or a party to the case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Now, ladies and gentlemen, the following is a list of witnesses that has been

provided. I'm going to read the potential witnesses of the case. Listen very carefully to these names.

The plaintiff, Lisa Styles of Anderson; Michael Brickman of Anderson; Kenneth Miller of Simpsonville; Olin Ronnie Duncan of Easley; Randy Ellison of Easley; Tommy Brown of Seneca; Marla Cobb of Anderson; Chief Doyle Burnette -- Burdette of the Pendleton Police Department; Carl Glenn, formerly of the Pendleton Police Department; Allison Furnas of Jacksonville, Florida; Stacy Brink of Jacksonville, Florida.

Is any member of the jury panel related by blood or marriage or has a close, personal, or social relationship with any of those potential witnesses? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none.

Has any member of the jury panel or member of your immediate family ever worked in management for Southeastern Grocers, BI-LO, or Winn-Dixie? If so, please stand.

PROSPECTIVE JURORS: (Standing.)

THE COURT: Yes, sir. Your number?

PROSPECTIVE JUROR: 23.

THE COURT: Cabaniss?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And which one did you work for?

PROSPECTIVE JUROR: For Winn-Dixie in 19 -- from 1985 to '88.

THE COURT: And with that knowledge, do you feel you could be fair and impartial if called to serve as a juror?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. Thank you, sir. You can be seated.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Yes, sir. Your number?

PROSPECTIVE JUROR: 43.

THE COURT: All right. Mr. Driggers?

PROSPECTIVE JUROR: Yeah.

THE COURT: Which one did you work for?

PROSPECTIVE JUROR: Well, my brother worked for Winn-Dixie for 35 years.

THE COURT: Okay. With that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Not really.

THE COURT: All right. Mr. Driggers, I'm going to have you take your seat. Thank you, sir.

PROSPECTIVE JUROR: (Complying.)

THE COURT: All right. Has any member of the jury panel or a member of your immediate family ever been accused of misconduct against one or more employees at work? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Has any member of the jury panel or a member of your immediate family ever terminated the employment or fired someone that led to litigation? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none.

Is any member of the jury panel the owner or a member of your immediate family ever owned a business that has been sued by a former employee? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none.

Has any member of the jury panel ever -- or a member of your immediate family ever been a party to a lawsuit? If so, please stand.

PROSPECTIVE JURORS: (Standing.)

THE COURT: And I'll -- I'll have you come forward.

All right. Mr. Driggers, you've already indicated. You can keep your seat.

(Jurors approached.)

THE COURT: Yes, sir. What's your juror number?

PROSPECTIVE JUROR: 109, Mike Najjar.

THE COURT: Yes, sir, Mr. Najjar.

PROSPECTIVE JUROR: During my employment with the State Department of Corrections, I was sued.

THE COURT: Was that by an inmate?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. How many years ago was that?

PROSPECTIVE JUROR: Ten, 15.

THE COURT: And with that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Thank you, sir. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Number 39.

THE COURT: Mr. Daley?

PROSPECTIVE JUROR: Yes, sir. I had a personal-injury lawsuit, a car accident, and a workers' comp.

THE COURT: You were -- you were the plaintiff?

PROSPECTIVE JUROR: Yes.

THE COURT: And with that knowledge, do you feel you can be fair and impartial if called to serve?

PROSPECTIVE JUROR: Absolutely.

THE COURT: Thank you, sir. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Okay. I'm just -- I'm going to stand right here for the next -- next couple of questions.

Has there any -- is there any member of the jury panel who has ever been fired or terminated from a job? If so ---

PROSPECTIVE JURORS: (Standing.)

THE COURT: Come forward, please.

PROSPECTIVE JURORS: (Complying.)

THE COURT: What's your number?

PROSPECTIVE JUROR: 119.

THE COURT: Number 119. Mr. Peare?

PROSPECTIVE JUROR: Yeah.

THE COURT: And what were you terminated from?

PROSPECTIVE JUROR: I -- about a year ago, I was -- I was fired from a job that I had at a factory because I had an accident and used too many

sick days.

THE COURT: And with -- with that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: All right. Thank you, sir. Step -- step down and take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Your number?

PROSPECTIVE JUROR: 153.

THE COURT: Okay. Allen Thompson?

PROSPECTIVE JUROR: Yes. It's been in the '80s. I was let go from a finance company. It just didn't work out.

THE COURT: With that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Absolutely.

THE COURT: Thank you, sir. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Your number?

PROSPECTIVE JUROR: Juror 104.

THE COURT: Okay. Step a little closer so we can hear you.

PROSPECTIVE JUROR: I'm sorry. About three

years -- four years ago, I was terminated from medical transcription. That's what I did because I wasn't meeting production.

THE COURT: With that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, ma'am. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Beverly Moore is who that was.

PROSPECTIVE JUROR: Number 39.

THE COURT: Mr. Daley?

PROSPECTIVE JUROR: Workers' comp lawsuit.

THE COURT: That was the same you mentioned before?

PROSPECTIVE JUROR: Correct.

THE COURT: And I'm going to ask you again, can you be fair and impartial?

PROSPECTIVE JUROR: Absolutely.

THE COURT: Thank you, sir. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Yes, sir.

PROSPECTIVE JUROR: In 1993, I worked for a company and we had major reorganization and

downsizing. I worked in the purchasing department. As part of that, I was part of a large layoff. I was terminated, not for any type of action or anything. It just kind of worked for reduction.

THE COURT: Now, you are?

PROSPECTIVE JUROR: I'm 149.

THE COURT: So you're the ---

PROSPECTIVE JUROR: I'm a minister.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: While I'm standing here, I'm an associate pastor of a very large church. I don't know everybody in my church. If anybody is a member of Rock Spring. We have 7,000 members, so I don't know if I have a relationship. Some of these Easley witnesses could, but I don't know them by -- recognize their names.

THE COURT: You don't recognize their names?

PROSPECTIVE JUROR: No, sir. Not without looking at them.

THE COURT: Because you are a pastor, I want to ask you this question: Do you feel comfortable sitting in judgment of your fellow man?

PROSPECTIVE JUROR: I would -- I would -- I would serve on the jury. I think I can render ---

THE COURT: Do you think you could be fair and

impartial if you were called to serve?

PROSPECTIVE JUROR: I would be.

THE COURT: All right. Thank you, sir.

PROSPECTIVE JUROR: But there could be a relationship that I'm not aware of.

THE COURT: But you're not aware of one?

PROSPECTIVE JUROR: I'm not aware.

THE COURT: All right. You can take your seat.

PROSPECTIVE JUROR: Yes, sir. (Complying.)

THE COURT: Thank you, sir.

THE BAILIFF: One more, Judge.

THE COURT: Oh, we've got one more?

PROSPECTIVE JUROR: (Approaching.)

THE COURT: Yes, sir. What's your number?

PROSPECTIVE JUROR: Ben Howard, 73.

THE COURT: Mr. Howard.

PROSPECTIVE JUROR: I worked part-time at Pep Boys in Greenville, South Carolina. I got melanoma cancer and they let me go.

THE COURT: And how long ago was that?

PROSPECTIVE JUROR: It was about 2003.

THE COURT: And with that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Sure.

THE COURT: Are you sure?

PROSPECTIVE JUROR: Uh-huh. Yes, sir.

THE COURT: All right. Thank you, sir. You can take your seat.

PROSPECTIVE JUROR: (Complying.)

THE COURT: All right. Any further on that question?

PROSPECTIVE JURORS: (No responses.)

THE COURT: Has any member of the jury panel or a member of their -- I've already asked that one. Has any member of the jury panel or a member of their immediate family worked for a law enforcement agency?

PROSPECTIVE JURORS: (Indicating.)

THE COURT: Mr. Driggers, you've already... Yes, sir. Ask you to come forward.

PROSPECTIVE JUROR: 111. I'm retired.

THE COURT: I'll ask you the same question. Can you be fair and impartial?

PROSPECTIVE JUROR: Sure.

THE COURT: Thank you, sir. And, yes, ma'am.

PROSPECTIVE JUROR: 174.

THE COURT: 174. Ms. Yates?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Who did you work for?

PROSPECTIVE: No. I have a member of the family.

THE COURT: Oh, who works for law enforcement?

PROSPECTIVE JUROR: I have two cousins and an uncle that did.

THE COURT: With that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, ma'am. You can be seated.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Your number?

PROSPECTIVE JUROR: 72.

THE COURT: 72; Ms. Holt.

PROSPECTIVE JUROR: My uncle was -- he's a retired police officer.

Also, the last question. I did quit a job because I was accused of stealing, and they had no evidence for it.

THE COURT: Okay. With that knowledge, do you feel you could be fair and impartial if called to serve?

PROSPECTIVE JUROR: Yes.

THE COURT: Thank you, ma'am. You can be seated.

PROSPECTIVE JUROR: (Complying.)

PROSPECTIVE JUROR: I'm Juror 25. I just want to let you know that I assist a lieutenant in the active gun shootings. I'm not employed by law enforcement, but that's what I do. I just wanted to get that out there. I don't know if it matters, but I work with Lieutenant Karen.

THE COURT: And that's with the Sheriff's Office?

PROSPECTIVE JUROR: Yeah, Anderson County.

THE COURT: And with that knowledge, do you feel you could be fair and impartial?

PROSPECTIVE JUROR: Absolutely.

THE COURT: All right. Thank you, ma'am. You can be seated.

PROSPECTIVE JUROR: (Complying.)

PROSPECTIVE JUROR: 109. I work for Anderson City in the Department of Corrections.

THE COURT: Ask you the same question: Can you been fair and impartial?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Thank you, sir. That's Number 109. Thank you, sir.

PROSPECTIVE JUROR: (Sitting.)

THE COURT: All right. Does any member of the

jury panel have any philosophical belief regarding lawsuits that would make it impossible for you to be fair and impartial if called to serve as a juror in this case?

PROSPECTIVE JUROR: 79.

THE COURT: All right. Come forward, please.

PROSPECTIVE JUROR: (Complying.)

THE COURT: Yes, sir.

PROSPECTIVE JUROR: Yes.

THE COURT: All right. What's -- what's the nature?

PROSPECTIVE JUROR: I just don't believe the court can adjudicate fairly. I don't have any faith in the court system. And I was in here, I talked to one of the administrators in the Clerk of Court and told her that two weeks ago. So I don't feel there's any possibility that ---

THE COURT: Okay. Are you a member of some group?

PROSPECTIVE JUROR: Law enforcement is a problem. I've contacted them and they're a problem.

THE COURT: All right. Mr. Kester, thank you for calling that to my attention. I want you to go ahead and retake your seat.

PROSPECTIVE JUROR: Okay. (Complying.)

THE COURT: Any -- any further?

PROSPECTIVE JURORS: (No responses.)

THE COURT: Okay. Thank you. Ladies and gentlemen, this case is alleged to have occurred in 2018 in Anderson County. Does any member of the jury panel have any prior knowledge from any source about the facts of this case? If so, please stand.

PROSPECTIVE JURORS: (No responses.)

THE COURT: Does any member of the jury panel know of any other reason why he or she could not be fair and impartial if called to serve as a juror in this case?

PROSPECTIVE JURORS: (No responses.)

THE COURT: Does any member of the jury panel not believe that -- that he or she could follow my instructions on the law and render a fair and impartial verdict in accordance with the law?

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none. Is there any member of the jury panel who would believe the word of a police officer simply because that person is a police officer?

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none. All right. Any further submissions from the plaintiff?

THE PLAINTIFF: (Response.)

THE COURT: Counsel approach.

(Sidebar discussion.)

THE COURT: Ladies and gentlemen, I left two witnesses off the list: Jordan Evans and Michelle Lanceley. Am I pronouncing the name right?

MR. SHANKMAN: You are, Judge. Judge, may I?

THE COURT: Yes, sir.

(Sidebar discussion.)

THE COURT: Ladies and gentlemen, the attorneys have called my attention. Michelle Lanceley was a director ---

MR. SHANKMAN: Judge, I'm sorry. Mr. Evans, Jordan Evans.

THE COURT: Jordan Evans was the Director of Anderson Interfaith Ministry commonly known as AIM. So does anyone have a close, personal relationship or is related by blood or marriage with Mr. Evans or Ms. Lanceley?

PROSPECTIVE JURORS: (No responses.)

THE COURT: There are none. All right. Any other submissions?

(No responses.)

THE COURT: All right. Ladies and gentlemen, the next step in the process is, we will strike a

jury so we're going to take just a minute for the clerk to generate a random list.

(From 10:20 to 10:25 a.m., recess.)

THE CLERK: Ladies and gentlemen, what we have done is generated a list of 26 of you. And you're now -- the attorneys are going to be striking and using the numbers 1 through 26. So if you're Juror 1 through 26, it's not you. So don't get offended if you hear your number called because we're not using your number at the moment. We'll go back to the numbers you do know after we do our strikes.

And we -- we ask that the attorneys strike through -- 1 through 20 for our jurors. Then we will use 21, 22, and 23 for the first alternate and 24, 25, and 26 for the second alternate. So we'd ask that you do use the numbers on the left-hand column, please.

And we will start with the plaintiff. What say you?

MR. MURPHY: Plaintiff strikes Number 13.

THE CLERK: Thirteen. Defense?

MR. MCCUMBER: Defense strikes Number 3.

THE CLERK: Three. Plaintiff?

MR. MURPHY: Plaintiff strikes Number 18.

THE CLERK: Eighteen. Defense?
MR. MCCUMBER: Defense strikes Number 17.
THE CLERK: Seventeen. Plaintiff?
MR. MURPHY: Plaintiff strikes Number 4.
THE CLERK: Four. Defense?
MR. MCCUMBER: Defense strikes Number 15.
THE CLERK: Fifteen. And plaintiff?
MR. MURPHY: Plaintiff strikes Number 14.
THE CLERK: Fourteen. And defense?
MR. MCCUMBER: Defense strikes Number 20.
THE CLERK: Now, we'll reach our first alternate, and plaintiff can strike 21, 22, or 23.
MR. MURPHY: Plaintiff strikes 22.
THE CLERK: Twenty-two. And defense can strike 21 or 23.
MR. MCCUMBER: Defense will take 23.
THE CLERK: And now we'll move to our second alternate. And we have Number 24, 25, and 26. Plaintiff, what say you?
MR. MURPHY: Plaintiff strikes Number 26.
THE CLERK: And defense will strike 24 or 25.
MR. MCCUMBER: Defense strikes 25.
THE CLERK: All right. Let's review. I have that the plaintiff struck Number 4, 13, 14, 18, alternate 22, and then alternate 26.

MR. MURPHY: Correct. Thank you.

THE CLERK: And I have that the defense struck Number 3, 15, 17, 20, alternate 23, and alternate 25.

MR. MCCUMBER: That's correct.

THE CLERK: Your Honor.

THE COURT: Proceed.

THE CLERK: All right. Now, we will go back to the numbers that you do know. And if I call your name, please come through the turnstile here and bring any items that you have with you because you're not going back that way, and Mr. Dunn will put you in the jury box.

Our first juror is Number 24, Jacqueline S. Calhoun. Next is Number 39, Ian S. Daley. Next is Number 60, Charlie J. Gomez. Next is Number 157, John A. Tripp, Jr. Next is Number 151, Frandricha A. Snyder. Next is Number 106, Maria R. Morales. Next is Number 104, Beverly Y. Moore. Juror No. 5, Phillip D. Ashe. Juror 93, Angela D. McCauley. Juror 169, Samantha A. Wentzky. Juror 25, Linda A. Cameron. And Juror 155, Rickey D. Thompson. Our first alternate is 103, Robert L. Mihelic, Jr., and our second alternate is Number 78, Shawn C. Kennard.

THE COURT: Are there any motions or exceptions

to the selection of the jury from the plaintiff?

MR. MURPHY: Nothing from the plaintiff, Your Honor.

THE COURT: Are there any motions or exceptions to the selection of the jury from the defense?

MR. SHANKMAN: Nothing from the defense, Your Honor.

THE COURT: Mr. Clerk, would you swear our jury?

THE CLERK: Ladies and gentlemen, if I could have you stand and raise your right hands, please.

THE JURORS: (Complying.)

THE CLERK: Do you and each of you solemnly swear or affirm that you shall well and truly try the issues joined in the case of *Lisa Styles v. Southeastern Grocers, LLC, and BI-LO, LLC*, and a true verdict render according to the law and the evidence. If you will, say "I do."

THE JURORS: (Collectively:) "I do."

THE CLERK: Have a seat.

THE JURORS: (Complying.)

THE COURT: Ladies and gentlemen and the remainder of the pool, that will conclude your service. Thank you for coming this morning. If you have any questions or need letters for employment or

anything of that nature, you can see the Clerk's Office downstairs. Thank you for coming. You are dismissed.

(At 10:45 a.m., jurors not selected were dismissed.)

THE COURT: Okay. Ladies and gentlemen, before we start, let me explain our roles in this trial. You are the judges of the facts; I am the judge of the law. You will apply the law as I give it to you to the facts of the case. And as the judges of the facts, you have the duty to evaluate the evidence that is presented during the trial. You and you alone determine the credibility of witnesses and how much weight to give their testimony.

What is evidence? Evidence is the sworn testimony from the witness stand and any exhibits that are entered into evidence. The attorneys will have the opportunity to talk to you in opening statements and again in closing arguments, but keep in mind that what the attorneys say is not evidence. It's merely a tool that they use to help you interpret the evidence.

Now, ladies and gentlemen, this is a civil case. That means the plaintiff has the burden of proof in the case. The plaintiff must prove her

case by a preponderance of the evidence. The best way to describe a preponderance of the evidence is to imagine a set of scales. If it tips one way or the other ever so slightly, that is the preponderance of the evidence, meaning more likely true than not true. Again, the plaintiff has the burden of proof and you will determine in your deliberations at the end whether or not the plaintiff has met her burden.

Now, a few more things. This is not an endurance contest. It's not going to be a quick trial. As you heard the list of witnesses, we have a number of witnesses that could potentially be called in the case. We're going to take the amount of time necessary for you to thoroughly evaluate this case and the attorneys will call their witnesses as -- as we go along.

But if you need a break, I -- we will take breaks as we go along. We'll take a break every hour to hour and a half or so. I try to structure the trial to where you get to stretch your legs and you don't have to sit for long periods of time. Courts are very aware. I get people to tell me regularly that they have back problems and other health issues that require them to get up and move.

So we're aware of that and we're going to try to -- to take breaks on a regular basis. If you get in distress, let the bailiff know and we'll do our best to accommodate you.

Now, while you are serving as a juror, there are three things that you are specifically prohibited from doing. The first is independent investigation. In this era of smart phones and internet access, it's easy for someone to try to research either the law or the facts of the case. You are strictly prohibited from doing that.

Now, I also get the question about note taking. Some judges allow the taking of notes, others do not. I take the traditional view. I do not allow the taking of notes during the trial. The reason for that is, some folks are good note takers and others are not. And your deliberations at the end should not be a contest between those who take good notes and those who do not.

And, also, you evaluate witnesses and sometimes the demeanor or the appearance of a witness is an important thing for you to consider. And if your head's buried in a notepad, you may miss something during the trial. So that -- that's my rationale for why I take the traditional view.

Second thing you are prohibited from doing is talking to third parties about this case. Now, I've already alluded to that. Again, these attorneys are going to -- they're not going to have anything to do with you if they run into you outside. They're going to go the other way. They're not trying to be rude to you. They just know they can't talk to you. But if someone comes up to you, some third party attempting to talk about this case, you let the bailiffs know, they'll let me know, and I'll -- I'll tend to that, but you cannot talk to third parties about the case.

The last thing you are prohibited from doing is deliberating amongst yourselves. When we go onto a break and send you to the jury room or when you go to lunch or whenever you're outside of this courtroom, you may not talk amongst yourselves about this case. You can talk about anything you want to except this case. That means when we take a break and you just heard a witness, you can't go back to the room and talk about the witness that you just heard.

And, ladies and gentlemen, I will tell you when you may begin your deliberations at the end. And you should not deliberate until that time. And the

reason for that is, you should not decide this case until all of the evidence is in, that each side has a full opportunity to present all of the evidence that -- that they intend to present. And it's not fair to the parties if you make your decision prematurely. So that's -- that's the reason for that rule. And, again, deliberation means any conversation at all amongst you as jurors about this case.

Now, along that line, there are a couple of other things that I want to point out before I send you for your first order of business. There may be objections during -- during the course of the trial. One attorney may object to a question or a piece of evidence that -- that is being presented. I'm going to have to make a ruling on that objection. That should not be interpreted to mean that I favor one side or the other. My job is to ensure that both the plaintiff and the defendants receive a fair and impartial trial in accordance with the law. And, again, that should not be interpreted to mean that the Court's taking sides.

Likewise, there may be times that we -- we send you out to the jury room to take up a matter of law outside of your presence. That's not to hide things

from you, but, again, to ensure that each side receives a fair trial in accordance with the law.

Now, I'm going to send you to the jury room now. You have one order of business before I send you to lunch, and that is you are to elect a foreperson. This will be the presiding juror over your deliberations at the end. This will also be the juror that communicates with the Court should there be any problems that -- that I need to know about. Any communication between the jurors and the Court should be in the form of a written note signed by the foreperson.

So, Mr. Bailiff, would you take our jury to the jury room. When they have elected a foreperson, write out -- you're to write that person's name and juror number on a sheet of paper, knock on the door, and let the bailiff know.

(At 11:53 a.m., jury left the courtroom.)

THE COURT: Okay. Is there anything from either party before we take a short recess while they elect a foreperson?

MR. MURPHY: Not at this time, Your Honor.

MR. SHANKMAN: No, Your Honor.

THE COURT: Okay. We'll -- we'll be in recess. And as soon as they elect a foreperson, I'm going to

send them to lunch and then we'll do pretrial motions as we discussed in chambers. So we'll be in recess.

(From 11:54 to 12:02 p.m., recess.)

(At 12:02 a.m., jury entered the courtroom.)

THE COURT: All right. Ladies and gentlemen of the jury, madam forelady, you will always sit where you're seated right now.

My two alternates, y'all always will sit up on the side.

Now, I received -- just received a question. Is there a juror fee? Jury compensation, the Clerk of Court can provide you information. That's set by State law so they can provide you information with that. And, again, if you need excuses for work or documentation about your service, the Clerk's Office can provide that to you.

So I am going to send you to lunch now. This case is going to start at two o'clock, so be in the jury room shortly before 2:00. So wear your juror buttons that they've -- they've handed out so that they're visible. Again, this is very important so that way everyone knows you're serving on the jury. And do not talk to third parties. Remember, no independent investigation and no deliberation.

So I hope everyone has a good lunch and we will see you at two o'clock.

(At 12:04 p.m., jurors were excused for lunch.)

THE COURT: Okay. Anything further before we take a recess?

MR. SHANKMAN: No, Your Honor.

THE COURT: All right. Like I said, I'll be back at 1:15 and we can take up -- take up matters then.

MR. SHANKMAN: Thank you, Judge.

THE COURT: All right. We'll be in recess.

(From 12:05 to 1:17 p.m., lunch recess.)

THE COURT: All right. Let's go on the record. Have any of the pretrial motions been resolved?

MR. MURPHY: No, sir.

MR. SHANKMAN: No, sir.

THE COURT: Okay. Well, let's -- let's start then.

The first order of business, the defendants have requested a bifurcation which -- whatever period you sought that's in the -- the Court inquires at the beginning of the trial. So they're entitled to that by the statute, so bifurcate the issue of punitive damages.

The pretrial motions, why don't we do this. It

looks like there are approximately five and I'm just counting.

MR. SHANKMAN: That's correct, Judge.

THE COURT: All right. So let's start and just go down -- just go down each motion. We'll have an argument on each motion individually, and then the plaintiff can respond and then we'll do each one individually.

MR. SHANKMAN: Sure. Thank you, Judge.

I'm going to start with defendant's motion to exclude the chief of police ---

THE COURT: Well, let's do it standing.

MR. SHANKMAN: Oh, I'm sorry.

The defense's motion to exclude the chief of police's testimony and report. I learned yesterday -- excuse me. That's a different issue.

The chief of police, the facts of the case, and I don't think they're disputed in this respect. The plaintiff, her last day at work was May 23rd of 2018. It was a police officer, Officer -- Officer Glenn that was on site. He spoke with the -- he spoke with the witness. There's an element in the police -- there's a narrative in the police report of his communication with Ms. Styles on that day.

Following that day, the police department chief

of police did an investigation and his investigation has a detailed report of all the people he spoke to. It includes not only statements made from the individuals, but also his impression of those statements. He makes credibility determinations as well.

So what we're asking the Court based on the facts of this case, which is malicious prosecution, false imprisonment, abuse of process, and fraud. Let's break it down real quick.

On malicious prosecution and abuse of process issue, which the only concern is whether or not there was an outcome favorable to the plaintiff on the criminal -- outcome in the criminal sense.

On the probable cause case, and this is the most important part, Your Honor. The determination of whether there was probable cause to detain the plaintiff as it relates to the false imprisonment count, is what the individuals knew at the time they made the alleged unlawful detention.

Obviously, whatever Mr. -- whatever Chief Burdette discovered or spoke about with any of these witnesses, except I assume in the context of impeachment on some level, but on the merits of the report, all of that is related to the post

determination probable cause whether or not it was favorable. It's got nothing to do with the allegation of false imprisonment as it relates to the plaintiff in this case because whatever occurred subsequently obviously could not have been known by the individuals at -- at the time.

So you have to look at the individual's knowledge who detained Ms. Styles in order to determine whether a reasonable person would have difficult -- would have taken that action under the circumstances.

On top of that, the report, frankly, is just pure hearsay. Chief Burdette has no personal knowledge of any fact at issue in the case, and we cite to the Court to *State v. King* where -- where they make it very clear that an out-of-court statement made to a police officer, it's judged by the same rules of evidence that govern any out-of-court statement by any out-of-court declarant. And I won't read everything. I'm sure the Court is -- is well aware of those rules.

So the only point of calling Chief Burdette would be to supplant the -- from -- from -- what would be deemed an expert, would be to supplant the jury's function to determine whether the BI-LO

management team who detained -- and that's Mr. Duncan and there's another witness as well, Mr. Miller, who were in the room -- whether those two individuals had probable cause to believe that Ms. Styles engaged in improper conduct, whether they had a reasonable basis for it.

Chief Burdette cannot address that issue. His goal was to determine whether the charges -- or whether an arrest warrant should be issued. He determined that it shouldn't or he presented the evidence to -- to the judge and the judge determined that it shouldn't, Judge Whitman, and that -- that element of -- of the case is over.

There's otherwise nothing to go to the facts of the case. And, you know, to add insult to injury, if it were, it would be so incredibly prejudicial to the plaintiff because he would effectively have -- I'm sorry -- prejudicial to the defense because you would have an expert telling the jury that there was no probable cause in this case. So you want to -- I assume you want to address each motion one at a time.

THE COURT: Let Mr. Murphy respond.

MR. SHANKMAN: Thank you, Your Honor.

MR. MURPHY: Thank you, Your Honor.

Preliminarily, let me say, I have to object to these motions. I do not believe that they're excluded from Rule 6(A). These -- this testimony and this evidence was known throughout from the very beginning of the case. In fact, they're the ones who produced a report in discovery.

I get an e-mail at nine o'clock this morning, and I got the motions with case citations about an hour ago and I've not had a chance to review. My concern about this is exactly what happened to me on Friday. When opposing counsel started talking about a case, he handed up the case. I didn't even get a copy of it. And he rep -- makes representations about the case, and I don't get a chance to respond. Well, fortunately, no harm no foul at the end of the day because Judge Maddox ruled for me, but I do have to object. I think there's a ten-day rule that applies to this. This is not some exhibit I brought up at the last minute and they have an objection. That happens all the time in trial work, but to -- to hit five motions with me an hour ago with multiple citations and a lot of issues, I just need to put that on the record.

Your Honor, it's a -- a statement counsel made is absolutely worth exploring. He said with

malicious prosecution and abuse of process, the only issue is whether the procedures were terminated in her favor. That's never been his only issue. That wasn't the issue on the summary judgment. That's not the only issue with the defense's. It's not been the issues in the case for the claims. That's not the only issue.

He wants to stipulate that he's not going to move for directed verdict or post-trial motions on anything other than that issue. We can have another conversation, but that's not -- that's not the situation.

Here's what happened with Chief Burdette. The testimony will be, and you may have already seen it. It's in there. They brought Ms. Styles in on May 23rd and got a confession from her, a written confession. They call the police. Officer Glenn responds.

Officer Glenn has testified he comes in. She's all upset. They give him the confession. They give him a bunch of documentation. He tells her he's going to go get a warrant, and then she can go turn herself in.

She goes back. Nobody from -- from BI-LO tells them what is going on and what led up to this. She

goes to the next day, collects herself, decides she's going to that police office station. She's going to offer a polygraph. She's going to do what -- whatever it takes. She's going to tell her story and make sure the chief hears it.

So the chief started looking at some things. One of the things he looked at when she starts talking about what was going on is this issue with the charity. Now, she's accused of stealing items. Now, she's telling the police chief the next day, "I know what I said in that written statement, but I didn't steal them. Those were donations to charity that Brickman knew about."

The chief was interested in that, so he did an investigation. The chief also did another interesting thing that BI-LO didn't need to know, they already knew this. He wanted to know did Michael Brickman know that she had been complaining, along with other females at the store, when he made these allegations of theft against her? And he spoke to Ken Miller, and Ken Miller told him yes. Brickman knew about what she had been doing when he turned her in.

Brickman [sic] then interviewed her, and he interviewed Mr. Brickman. He testified she offered

to take a polygraph. He went to visit Mr. Brickman. Mr. Brickman wasn't as forthcoming and he was nervous and he was evasive and he said he didn't know anything about this charity.

So he makes her put up. She provides the documentation proving these items were donated to charity. So you've got one witness who testified saying absolutely nothing happened with the charity, and the other person can prove it. So he made a determination, and that is what led to her not being arrested, and that's one of the issues in the case.

I know they'd love to present a case where we call the police, but then, you know, we didn't do anything after that. That's not true. In fact, Mr. Duncan, after he found out that she wasn't being charged, Mr. Duncan went back to the police department and pled his case again with Chief Burdette and continued to persist in trying to have this woman prosecuted.

And of course they don't want anything that happened after she left that room that one day, but it's -- it's central to the case. You can't understand the gravity of their efforts to put this woman in jail if you just want to shut off the facts at that time.

Now, what about these statements of Mr. Duncan? What about these statements of Mr. Brickman? What about these statements of Mr. Miller? Your Honor, 801, these aren't hearsay. These are -- these are statements by a party. Not only a party in their -- state -- stating in their agent capacity, but they're statements against interest. So there's no hearsay issue here.

You know, the issue -- issues in this case, Your Honor, why wasn't -- was there probable cause and -- at the time? Well, BI-LO knew all of these facts. One -- one technique you're going to see, we saw this Friday, is Mr. Shankman's going to say, "Focus on the individuals." Now, he's only going to talk to you about one individual and that's Mr. Duncan. Think about just what he knew at that time. That's not the way the law works in South Carolina.

We sued Southeastern Grocers and BI-LO. They're imputed with the knowledge of everybody working on it. Even Mr. Duncan was somehow -- I don't think he was -- somehow an innocent dupe in the whole situation.

One name you're going to hear coming from him is Ken Miller. Ken Miller was not. Ken Miller knew

exactly what was going on. He knew about the complaints. He knew everything that was going on. He was in that room when they coerced that confession from her. And the chief investigated that, spoke to Mr. Miller, and got that key admission from Mr. Miller. So I understand why he's keeping it out, but it isn't for the reasons he's telling you.

So, Your Honor, and I think it is important that we need to do this because we're going to be doing in opening statements. I don't want to make a promise to the jury that I can't back up, but I think we can take the testimony as it comes with Chief Burdette, you know, one issue at a time, and they can object as to certain statements whether they're hearsay or not. You'll just have to rule on them as they come up.

THE COURT: Is there a -- is there a dispute as to what was said to the chief? Are the -- are the parties -- I understand Mr. Shankman's motion, but as to what the chief has in his report, is there a dispute that that was actually said to the chief?

MR. SHANKMAN: I don't think that's been addressed with -- with each individual witness. I'm confident there are some. I can't rattle it off at

this point, but the problem with it -- and I'm going to stay away from disparaging counsel. I deny anything that he said disparaging about me, but I'm going to stay away from it.

The problem becomes, number one, it's not 801. These are not -- these are not managing agents. These are -- these are midlevel managers engaged in a company with 60,000 employees. To suggest that they are -- they are -- they become and they could never work outside the course and scope of their employment is just an overstatement of -- of the rule. This is -- this is just rank hearsay, and on some level it's double hearsay when we get into the comments about the judge and -- and -- and the other motion that we had.

But -- but to your point, Your Honor, it doesn't matter what they said except for purposes of impeachment to those -- to -- to the police officer because, again, it's -- it'll swallow the rule. If the -- if the unfounded -- the analysis of the unfounded or ultimate non-prosecution after the fact it becomes a factor that the jury hears, then it will absolutely swallow whether or not the company had -- had a reasonable belief or the individuals had a reasonable belief in order to detain the

individual in the first place, whether they had probable cause.

Hundreds of South Carolina cases -- that's an exaggeration. Many South Carolina cases all say the same thing. You look at what the individuals knew at the time.

THE COURT: So -- and I've -- I've looked at this file, and, Mr. Murphy, you speak up if I'm misstating the facts. This complaint -- the complaint was made. The chief and the police department investigated the complaint. He talked with various individuals, presented it to a magistrate or a summary court judge, and then charges were not filed. Is that -- that an accurate statement of the facts?

MR. MURPHY: Yes, sir.

MR. SHANKMAN: Almost, Judge. I think one fact that you need to hear and it's in the police report itself or it says in Burdette's report is, in part, the charges were deemed unfounded because Ms. Styles paid the $450 back. So it gets a little more convoluted and it gets a little more confusing.

So what Judge Whitman apparently determined at least relevant in part enough to put it in the report or Chief Burdette did, is that because she

paid the money back to the company, there was no personal gain and, therefore, there was no breach of trust. No need to get into whether or not that's -- that's an appropriate analysis, but -- but the point is that in addition to accepting Chief Burdette's assessment of the credibility of witnesses and the stuff about the polygraph and whether -- and counsel correctly identifies that Chief Burdette class -- or characterized Mr. Brickman as nervous in his response on the polygraph.

If those issues start coming in, and now we have someone who is a spokesperson for no probable cause, even though he wasn't aware and wasn't -- and doesn't -- has no personal knowledge of the events that occurred that led to the detention to begin with.

Now, and our problem with this, Judge, is -- and you're going to hear me say it and I apologize in advance if I say it repeatedly. It's not meant to try and -- and influence the Court improperly. I know I can. The problem with this case is that it screams of retaliation and discrimination or retaliation based on the plaintiff's discrimination, and yet we don't have those claims in the lawsuit.

And while counsel makes a reference to that

they're all one company. If you look at the original complaint and you start to read the caption about Mike -- including Michael Brickman, there was a count in there against Michael Brickman for interference with the employment relationship, obviously suggesting that he was working outside the course and scope of his employment in making these false statements.

Because all of this, if you look back at the record, counsel's already said, and it came out of motion papers. The concept here is that Mr. Brickman had his own agenda. Made this small statement to Mr. Duncan. Mr. Duncan investigated it. That was all in the detention. And the falseness by the way is not that she didn't take items without paying for it. She admits that. The falseness is that she was proven to take items without paying for it, and that -- the concept is that Mr. Brickman just sat in the corner, rubbed his hands together, and watched all the chips fall. And somehow that becomes -- somehow that becomes the corporate defense obligating.

But going back to this particular point, Your Honor, it is -- it -- it is hearsay. And -- and -- and even if it weren't, I don't know how it's not,

but even if it weren't, it's all after the fact and that has nothing to do with what the individuals knew at the time.

MR. MURPHY: If I can address one point, Your Honor.

THE COURT: Yes, sir.

MR. MURPHY: The stuff with Mr. Brickman has nothing to do with Chief Burdette's testimony, except in that he investigated what BI-LO, Southeastern Grocers knew at the time. It's not stuff that came up after the fact. The chief was investigating what they knew at the time, not something he subsequently learned.

The other big issue that we ran into Friday, which frankly got more attention than I expected it to, is defendants have argued that there was no process in this case because she wasn't actually arrested. They're making an issue out of whether what they did was enough to invoke the process for purposes of abuse of process and malicious prosecution.

A perfectly legitimate point to raise, but the chief's testimony is very critical on explaining to the jury what the process is because, you know, your process here in Circuit Court is obviously very

different from what they're doing in Pendleton and maybe what a magistrate even does in Greenville.

So we need a full record on what happened here, especially if there's going to be an appellate issue as to whether the elements of abuse of process and malicious prosecution were met because we have to understand piecing together logic from a case that applies to a different process for ultimately for this Court and for the Appellate Court to determine whether or not this preceded far enough for those -- for those torts to be at issue.

THE COURT: Has everyone that made a statement to the chief listed as a witness in the list that I read out to the jury earlier?

MR. MURPHY: I'm going to say I believe so.

THE COURT: Okay.

MR. MURPHY: I'm going to say I believe so, but not in my case and that's the other preliminary issue we have is I've got to put my case on. I've got to meet the elements of my claim before I -- before I turn it over. So even though ultimately they may testify in their case, when he stands up at the end of my case and says I want a directed verdict, I can't sit here and say, "Well, I didn't offer all this evidence because, you know, somebody

later was going to testify."

So I'm willing to do a deal like that and I said that before on my -- on my readings because I want to move this trial along, is that I'll just go ahead and cross everybody who I've listed as if I'm reading for if they agree to hold off DV's until the end of the trial and that may address even somewhat this issue too. But it's incumbent on me not to -- not to bank on them calling somebody. I've got to put my case on. I've got to ---

THE COURT: Well, that's -- and this is -- this is what I'm going to rule after reading this. The chief would be entitled to testify as to what he was investigating, why he was investigating it, testify whom he interviewed, anything that he has for which he has firsthand knowledge, the appearance of the witnesses. But the individual statements, if they are listed as witnesses, you'll need to call the witness and then -- then the chief can certainly impeach that witness if it -- if it appears an inconsistent statement is being made.

MR. MURPHY: Well, the difficulty, Your Honor, I made no arrangements to do that. I don't even know how to get ahold of, say, Mr. Brickman, put him on there and ask him one question, and then call the

chief back who's very busy as I'm sure you're aware, call him back later in the week and ---

THE COURT: Is he under subpoena?

MR. MURPHY: The chief is, but I -- I ---

THE COURT: Is Brickman under subpoena?

MR. MURPHY: I'm sorry?

THE COURT: Is Mr. Brickman under subpoena?

MR. MURPHY: I haven't put him under subpoena.

THE COURT: Is he under subpoena, Mr. Shankman?

MR. SHANKMAN: Yes.

THE COURT: All right. Can you -- can you get him here?

MR. SHANKMAN: Absolutely. I could -- I could -- could I get with Mr. Murphy and -- and -- or I could get him here. He doesn't work for us anymore is my point, Judge.

THE COURT: He's listed as a witness, but he is under subpoena?

MR. SHANKMAN: But he is under subpoena from my office.

THE COURT: Let me see ---

MR. MURPHY: He was the store manager at BI-LO. He was testifying about a matter that he reported to the police as the store manager of BI-LO. If that's not 801, then I don't know what 80 -- there's no

requirement in 801 to be a top corporate executive. Is just says an agent acting in ---

THE COURT: What are you alleging Mr. Brickman -- I understand ---

MR. MURPHY: I'm sorry. I really should've been addressing -- well, one, with Brickman, his responses to any investigation. If I just put Brickman up and talk to him about what the chief -- my -- my point with the chief is, the chief's going to say, "I observed this witness. I observed this witness. This is why ultimately she was not charged despite their efforts to charge her."

I'm not going to get Brickman to say that, but also when Mr. Miller, Ken Miller, there was an admission from Ken Miller that Mr. Brickman knew about the sexual discrimination investigation when he brought this issue up.

Again, how do I get -- that was important to the chief's testimony, but Mr. Miller can't testify why the chief did something, but Mr. Miller is speaking in his capacity as the HR representative who was involved in these things. And that's why it's clearly 801. It doesn't have to be a corporate executive.

THE COURT: Mr. Shankman, any response?

MR. SHANKMAN: Yeah. Your Honor, I'm sorry about the tennis match here, but a couple of things.

Mr. Miller testified that Mr. Brickman knew about Ms. Styles had complained about him before Ms. Styles was brought in on May 23rd for the interview.

The testimony will be, however, and there's documents to this effect, that Mr. Brickman did not know anything about a complaint from Ms. Styles when he sent information about her theft to Mr. Duncan, which happened on April the 11th. The testimony will also show unequivocally that Ms. Styles didn't complain to corporate HR about gender discrimination until April 18th or 19th. So -- and -- and -- so that's one issue. I just want to get the time references right for the Court.

The other issue that concerned me is that Mr. Brickman was deposed as Mr. Brickman. He happened to be a store manager at some point. I don't think he was the store manager at the time. I think he had already -- in fact, I'm certain he had already moved on. So, again, I want to just frame the issue for the Court regarding the hearsay arguments and the Court can make its ruling.

This all -- the other issue that counsel

brought up -- I was staying away from it, but since he brought it up, I'll respond to it -- is this issue about process. The Court -- is the Court aware of the hearing on Friday and what -- that was in front of Judge Maddox?

THE COURT: That was a summary judgment.

MR. SHANKMAN: Yeah, it was a summary judgment on -- on the issue of process. And I don't want to relitigate it, but you didn't have the benefit of being in the courtroom at -- at the time. I don't believe -- in fact, I'm quite certain that whether or not process occurred is a question for the Court. It's -- it's not a question for the jury. So whatever that -- and there's no issue here. I mean, she was arrested or she wasn't arrested, and in one case we referenced to the Court that was referenced in the material we filed.

In the Barber case -- I'm sorry -- Barber was not cited, but Barber is the exception to the Nickel's case, which is the 1935-case that's still good law that says you have to have an arrest. Barber said you don't have an arrest, but there's a warrant for your arrest, then that's enough because you're constructively arrested at that point. It's just a matter of time before the warrant is

exercised.

In this case, we be neither. We have no warrant. We have no -- we have no actual arrest, right? Officer Glenn left the store. Counsel is pretty close in what the evidence shows in terms of what was told to Ms. Styles. She was told, you know, "I'm going to take this back. We'll do a report, a warrant will be issued for your arrest and, and -- and that'll be it." And then, of course, the events unfolded contrary.

So, yeah, and I'm not asking the Court to reconsider the issue of whether process occurred, but I do believe it's an issue for the Court. And, you know, one concern I have throughout this case, and particularly as it's come closer to trial, is this notion that -- that all of this evidence comes in. And if there's no process, then we have a fundamental element of the case missing.

So I would ask the Court because it -- because it's a -- it's a -- it's a clear resolution of these issues. If the Court finds that an arrest or a warrant for an arrest is necessary, then that, for lack of a better term, ipso facto concludes the argument on -- on the motive issues and on -- and on these extraneous evidentiary issues because absent

process, abuse of process and malicious prosecution go away.

THE COURT: Well, the Court can't decide that until the evidence is presented in the case. Summary judgment's already been argued, and that's already been denied.

So let me -- let me ask you this question, Mr. Murphy, you're seeking -- and I want to make sure that -- that I understand exactly what you need from the chief regarding Mr. Brickman. I'm going to allow the chief to testify about what he was investigating and -- and whom he interviewed and anything he has firsthand knowledge of. And, certainly, testimony that there were no charges issued, whom -- and whom he presented it to.

Is there a specific statement by Mr. Brickman regarding the discrimination complaint that you're alleging or that the chief alleges he made to him?

MR. MURPHY: Not about the complaint for Mr. Brickman. The statement about the complaints my client made came from Mr. Miller, but Mr. Brickman -- his testimony about Mr. Brickman related to his observation of Mr. Brickman, his demeanor and Brickman's ---

THE COURT: And I'm going to let him testify to

that. Anything -- anything the chief saw a witness exhibiting, that's -- that's something in his ---

MR. MURPHY: Okay.

THE COURT: --- in his knowledge and the issue about what he saw.

MR. SHANKMAN: You're talking about when Brick -- I'm sorry, Your Honor. He can testify?

THE COURT: He can testify to what he saw. Now, we're getting in -- now, the question is, can he testify about what he heard, and that's your objection to hearsay which that -- that's what I'm trying to figure out what the statement was that you --- that you ---

MR. MURPHY: Oh, Mr. Brickman denied knowledge of any donations. He -- he -- he -- you know, so we had proof from Ms. Styles, and you'll hear it from -- from Ms. Cobb. We have proof of these donations, and defendants have -- have -- have contended throughout, including Mr. Duncan, they don't know anything about any donations. And that's the crux of this case, but what any of them ask that they said to -- and any statement they made is not hearsay because ---

THE COURT: Well, I understand your argument.

MR. MURPHY: Okay.

THE COURT: I understand your argument.

MR. MURPHY: The -- the other thing I want to mention is, first of all, these representations about the facts, it's not the case I'm prepared to present about as to when she complained and what she complained about, so that's not accurate.

The -- but I think he may be the best argument for me on -- on why the chief has to testify and has to explain to the jury what the process for being charged by his department is because, you know, we started off this argument saying there's only one issue and that is whether procedures were terminated in her favor.

Now we're back to there's an issue about whether there's process. That's going to need a fully developed record because I'm guessing that this isn't going to be the last day that I'm arguing about that.

THE COURT: How many different officers investigated?

MR. MURPHY: Officer Glenn responded that day, and then his involvement ends on May 23rd. He was -- he was -- he had a day off on the 24th.

THE COURT: Then Chief Burdette -- Chief Burdette was the investigating officer?

MR. MURPHY: Right. And he was in the office the next morning when -- or the next day when Lisa came in, and then she -- Officer Glenn had no involvement after that.

THE COURT: Okay.

MR. SHANKMAN: Your Honor, what I'm struggling with is what Chief Burdette's -- I'm asking the Court to just tell me what is Chief Burdette's testimony relevant to in this case other than it was an unfounded claim? If the chief gets into the investigation of who he spoke with and what these individuals said -- and by the way, they're all telephone calls, with the exception I think of Ms. -- of Ms. Styles.

THE COURT: Well, I didn't say he did it with consent, but it's central to the case. It's central to the case. This is a malicious prosecution case and the chief law enforcement officer investigating the case, the plaintiff would be allowed to call. I don't know what he's going to say. I don't know what weight that evidence would have.

MR. SHANKMAN: Well, I mean, here's what he's going say. It's in the report. And he speaks to each of these different individuals and he makes a determination that -- that it's unfounded, but what

I'm trying to convey to the Court, maybe I'm not doing a good job of it, maybe the Court disagrees. It -- it's not central to the case. What is central to the case is that it was determined to be unfounded. How he got there is not central to the case. What's central to the case is what everybody knew at the time that they engaged in the alleged unlawful activity. And -- and what's going to happen ---

THE COURT: Well, let's -- let's do this: Mr. Murphy, if you would limit the question to was -- after the conclusion of the investigation, was a warrant issued? I think your problem with the word "unfounded" giving an opinion as to the -- to the allegations.

MR. SHANKMAN: No, Judge. Well, I'm not sure I'm understanding the Court and I'm trying to. If the chief can testify that, "I spoke to Mr. Brickman and this is what Mr. Brickman told me and I spoke to Mr. Miller and this is what," if he can get into all that and then conclude with, "I determined there was no probable cause," I think that's a problem because then his judgment is being supplanted -- or the jury's judgment is being supplanted by an expert who investigates criminal activity.

So if we allow him to testify to that, again there's no case where a post-terminate or a post-investigation ---

THE COURT: I thought it presented -- I thought he presented it to the summary court judge.

MR. SHANKMAN: I'm sorry, Judge?

THE COURT: I thought -- I thought the evidence was presented to the summary court judge, and then the summary court judge declined to issue a warrant.

MR. SHANKMAN: Yes. Yes. That's correct, but all of this was after the fact of when the alleged unlawful detention even occurred. It's just -- it's just not an element of -- of the claim of malicious prosecution and to the extent we have abuse of process and -- and, no, I'm sorry. It's not an element of false imprisonment. Malicious prosecution is also based on probable cause and abuse of process goes into motive, you know, and -- and in the context of whether there was an ulterior motive to (inaudible) justice, et cetera.

So getting into how he concluded there was no probable cause and came to a different conclusion than what -- than what the defendants did at the time, there's no way the jury can reconcile those two. There's just no way.

THE COURT: Is he going to testify that he concluded that there was no probable cause, or is he going to say, "I presented it to the magistrate and no warrant was issued"?

MR. SHANKMAN: I believe he said he concluded it was unfounded. The magistrate ultimately is more important that a magistrate concluded that -- that it was unfounded.

MR. MURPHY: Your Honor, if I can pass up. If you look at page 20 of Chief Burdette's deposition, and I'm happy to give you a copy of the whole thing if you want to study it, but counsel just told you this was all done over the phone. He didn't speak. It says quite clearly there on page 20, he went to the store and met with Mr. Brickman. That was in person, and that's why his observations and he then goes onto to talk about Brickman was nervous and it was based on those observations that he concluded that what we contend in this case, BI-LO's not telling the truth. And he investigated things that BI-LO used to look at and I would say because BI-LO already knew the answers.

MR. SHANKMAN: I'm trying to look at this. I'm sorry. The phone call was -- was with Mr. Miller, but it -- it doesn't really matter. It really

doesn't. He comes in and says -- and says, "I spoke with him and this is what he told me. He was nervous and he got nervous when I asked him about a polygraph." And in his report he talks about how he's never seen a victim or he's never seen an alleged -- I'm sorry -- person charged with a crime. He's never seen that in an individual -- an individual like Ms. Styles come in and offer to take a polygraph. And then at the end he -- he makes the conclusion about ---

THE COURT: Let me ask, Mr. Murphy, what -- what argument do you make regarding the admissibility of the polygraph? You would acknowledge a polygraph test is inadmissible?

MR. MURPHY: There was no polygraph test.

THE COURT: It's just a statement that she was willing to take a polygraph and then ---

MR. MURPHY: She -- she walked in and -- and said, "I want to take a polygraph." She comes in and she's -- she was planning on testifying about what led her to go in there the next day and fight for herself because this is the only thing that forestalled her being arrested was what she did the day after. And it was part of that that led to the decision to unfound the case.

MR. SHANKMAN: Judge, in the report ---

MR. MURPHY: And, again, he's only speaking of things he heard, things he saw, and things he observed from the witnesses.

MR. SHANKMAN: In -- in the report, Chief Burdette says, "I then told him," referring to Mr. Brickman, "I then told him that since this was developing into a case of a he said/she said, would he be willing to submit to a polygraph examination?

"He hesitantly stated he would and then amended that by stating he would have to check with corporate, but he would if it was okay with them." So, and, Your Honor, it didn't happen.

THE COURT: All right. I'm going to go back. We're not going to talk about a polygraph. Okay. And we'll not -- neither side will talk about a polygraph. I will let the chief testify, again, what he was investigating, who he spoke with, any personal knowledge he has about their appearance. Stay away from statements made by witnesses in his report. And continue -- you can keep -- if he's under subpoena, then you can recall him as a -- as an impeachment witness if there's any ---

MR. MCCUMBER: Your Honor, could I get one clarification? I apologize. I believe in his

deposition he offered opinion testimony as to whether or not Brickman was telling the truth.

THE COURT: There'd be -- there'd be no bolstering testimony as to the veracity of any witness.

MR. MCCUMBER: Thank you, Your Honor.

MR. MURPHY: But he can -- could he testify -- he could testify as to the process and ---

THE COURT: What he did.

MR. MURPHY: --- the fact she was not charged?

THE COURT: What he did and he submitted it to the magistrate. Is it a magistrate or a municipal judge?

MR. SHANKMAN: Magistrate.

THE COURT: So he submitted it to the magistrate and -- and -- and no charges were issued, but he doesn't need to give any opinion testimony, again, regarding the veracity of either side's statements.

MR. SHANKMAN: And, Your Honor, obviously, you'll note our continuing objection on that issue?

THE COURT: Yes, sir.

MR. SHANKMAN: Thank you, Your Honor.

THE COURT: And I anticipated -- I've looked at your next one, the motion regarding the voicemail.

And this appears to be an objection regarding him informing the plaintiff that the judge told her that she needed to get a lawyer or something to that effect? Is that ---

MR. SHANKMAN: That's certainly part of it. I mean, the entire voicemail should -- should not be permitted, nor should any substantive testimony about it be -- be permitted. Counsel's listed it. He gave it to me this morning as an exhibit. He's got the voicemail and the transcript.

MR. MURPHY: Exhibit 14, Your Honor.

THE COURT: Exhibit 14. Mr. Murphy, what's the purpose of Exhibit 14?

MR. MURPHY: Your Honor, I'm going to withhold offering that without prior notice to the Court. The only thing I would note is, if I'm going to be precluded from using it or asking the chief about it or choose not to do that, then he shouldn't bring it up when cross-examining the chief.

THE COURT: If he opens the door for it by bring it up, then you'll be allowed to use it. You certainly -- the chief can certainly testify that he was the one that notified the plaintiff that no charges would be issued, but, again, I'm going to ---

MR. MURPHY: Can he testify he notified her?

THE COURT: I'm not going to let -- if you're not offering the voicemail, then don't get into anything said.

MR. MURPHY: Yeah, I would give the Court a head -- a heads up if I intended to do that, so he'd have a fair chance to argue so it's out there. That's how I typically handle things, but I'm not sure if I'm going to enter it or not. If I offer it, I'll give you a heads up.

Would it -- would it be -- and I'm wondering. I haven't talked to the chief in quite some time. I don't know -- I don't know that I have a phone number for him, but if we could have some time in the morning to review this or if you want to give him instructions. I intend to have him here at ten o'clock. If you would just review it with him so he doesn't -- I don't want him to inadvertently ---

THE COURT: Okay.

MR. MURPHY: --- you know. You know, most police officers go up with a file and they start going. And so I don't want there to be any concern that we just turned him on and try to get a narrative to just do whatever we want with your ruling. And so maybe we could -- you could have a

chat with him on the record tomorrow morning before he testifies out -- outside the presence of the jury, and then we'll all have a better understanding of where to start and stop.

THE COURT: Yes, sir.

MR. MURPHY: Thank you.

MR. SHANKMAN: Your Honor, just on that point. Most police officers, frankly, don't have a good recollection of what occurred because of all the myriad things that they're dealing with all the time. So they look at the file and that's -- that's the substance of their -- of their testimony.

So my -- my concern is, if he looks at that file, should we go through the exercise? I did it in a related motion on the issue of credibility of witnesses, which is one of the motions that we provided.

And in that motion, we attached a proposed redaction, which I'd like to take another shot at for purposes of the Court's review on the issue of what he can testify to because my concern is he's not going to remember this. It was two years ago and he's going to look at that report. How's he going to balance that as a practical measure in front -- in front of the jury?

THE COURT: Well, the report's not going to be in evidence. And -- and what -- I'm assuming what you're talking about, Mr. Murphy, is letting him see the report necessary to refresh his recollection, but he's not -- I'm going to instruct him not to state what a witness told him in -- in line with this ruling. Again, the door may be opened for that as -- as we go along in the case, but, certainly, the officer can look at his file before he ---

MR. SHANKMAN: No, I understand that.

THE COURT: --- before he testifies.

MR. SHANKMAN: Right. But my concern is that similar to what Mr. Murphy's saying, they usually don't remember. If he looks at it and we don't redact certain portions of it, it's -- it's just logical it's going to -- it's going to influence him and he'll blurt something out unintentionally. Under the Court's instruction, it'll be unintentional, but the proverbial bell will have rung.

THE COURT: Like I said, if the two of you in the morning want to look at his report and note things that need to be redacted, then I can look at that in the morning and we can take care of that before he testifies.

MR. SHANKMAN: Fair enough. Thank you.

THE COURT: Do y'all have a copy -- y'all have the report I assume?

MR. MURPHY: It's actually listed as an exhibit, Your Honor. You have it in your notebook. He's referring to the documents at Tab 16. My -- my only ---

THE COURT: Okay. I see it. I see it. Okay.

MR. MURPHY: My point of that is, I don't know what we'd be showing him to refresh his recollection, so I don't know how we could redact something and not know what's going to come up.

MR. SHANKMAN: Well, I think you can just instruct him.

THE COURT: But y'all -- y'all look at it. I see ---

MR. SHANKMAN: And one of the motions, Your Honor, on the one that ends with credibility of witnesses, we attached the police report and we highlighted some sections. And, again, this -- this is an alternative to the exclusion completely to redact that.

And I understand the Court's ruling, so I'd like to take another shot at this based on the Court's comments and see what we can -- and I'll

send it over to counsel. I'll get it done tonight and I'll e-mail it over to him, and then you can decide if any of it works for you.

THE COURT: Okay.

MR. SHANKMAN: Your Honor, can I proceed to the next one?

THE COURT: Go -- go to the next one.

MR. SHANKMAN: Motion to exclude any evidence regarding plaintiff's termination from employment and alleged damage related thereto. These are, as I indicated, that would happen. This is an employment case masked in a tort claim. And if you look through the motion, there's an Exhibit A attached. And Exhibit A is the EEOC charge, which no surprise sounds a lot like plaintiff's complaint and the -- the testimony the Court's going to hear.

The issue in this motion in limine, Your Honor, is that none of the tort claims involve her -- or none of the claim asserted in the lawsuit involve her termination, that she was ultimately fired, and that -- that their theory in the case, you'll hear, and it's been said, you know, the law from the case standpoint, it's been said in the pleadings already, that Brickman engineered this thing to get back at her for -- for complaining of gender discrimination.

exercised.

In this case, we be neither. We have no warrant. We have no -- we have no actual arrest, right? Officer Glenn left the store. Counsel is pretty close in what the evidence shows in terms of what was told to Ms. Styles. She was told, you know, "I'm going to take this back. We'll do a report, a warrant will be issued for your arrest and, and -- and that'll be it." And then, of course, the events unfolded contrary.

So, yeah, and I'm not asking the Court to reconsider the issue of whether process occurred, but I do believe it's an issue for the Court. And, you know, one concern I have throughout this case, and particularly as it's come closer to trial, is this notion that -- that all of this evidence comes in. And if there's no process, then we have a fundamental element of the case missing.

So I would ask the Court because it -- because it's a -- it's a -- it's a clear resolution of these issues. If the Court finds that an arrest or a warrant for an arrest is necessary, then that, for lack of a better term, ipso facto concludes the argument on -- on the motive issues and on -- and on these extraneous evidentiary issues because absent

process, abuse of process and malicious prosecution go away.

THE COURT: Well, the Court can't decide that until the evidence is presented in the case. Summary judgment's already been argued, and that's already been denied.

So let me -- let me ask you this question, Mr. Murphy, you're seeking -- and I want to make sure that -- that I understand exactly what you need from the chief regarding Mr. Brickman. I'm going to allow the chief to testify about what he was investigating and -- and whom he interviewed and anything he has firsthand knowledge of. And, certainly, testimony that there were no charges issued, whom -- and whom he presented it to.

Is there a specific statement by Mr. Brickman regarding the discrimination complaint that you're alleging or that the chief alleges he made to him?

MR. MURPHY: Not about the complaint for Mr. Brickman. The statement about the complaints my client made came from Mr. Miller, but Mr. Brickman -- his testimony about Mr. Brickman related to his observation of Mr. Brickman, his demeanor and Brickman's ---

THE COURT: And I'm going to let him testify to

common sense as you hear the evidence and come to a ruling that's fair, just, and impartial. Thank you very much.

THE COURT: Mr. Murphy, call your first witness.

MR. MURPHY: Your Honor, the plaintiff calls Marla Cobb.

THE CLERK: Would you please come forward and raise your right hand?

THE WITNESS: (Complying.)

THE CLERK: Do you solemnly swear or affirm the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE CLERK: Thank you. And if you would, please come around and take a seat there at the witness stand.

THE WITNESS: (Complying.)

MARLA COBB,

having been produced and first duly sworn as a witness on behalf of the Plaintiff, then testified as follows:

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Please state your name for the record.

A. Marla Cobb.
Q. And, Ms. Cobb, where do you live?
A. 1085 Manse Jolly Road in Anderson.
Q. And by whom are you currently employed?
A. Tri-County Technical College.
Q. And what do you do for them?
A. I'm the coordinator of student support for dual enrollment.
Q. Prior to Tri-County Tech, where did you work?
A. Anderson Interfaith Ministries or AIM.
Q. Okay. And, please, just tell the jury what is AIM? What's its mission? What does it do? And then get to your specific programs.
A. It is a nonprofit agency located here in Anderson that assists families in need. It could be work skills. They have a food -- a food bank, employment services.

The intention of the agency holist and they have a program called Women and Children Succeeding. Holistically, the mission of the agency is to assist families. Their motto is "Give a hand up and not a hand out," to -- to help families come off public assistance.

Q. And what was your position there?
A. I was the director of the Woman and Children

Succeeding Program. The mission of that particular program is to assist single moms getting college degrees by providing childcare and other supportive services and educational programming while the moms get a college degree.

Q. And how long were you in the position?

A. Three years.

Q. And when did you leave it?

A. October of 2018.

Q. So you'd been doing that for several years before 2018, this year in question?

A. Yes, sir.

Q. Okay. And over those years, have you dealt with BI-LO in terms of obtaining donations for AIM?

A. Yes.

Q. How many occasions prior to this early 2018 did you deal with BI-LO?

A. Honestly, I can't give a specific number, but I do know prior to 2018, they had assisted with Easter baskets for the Women and Children Succeeding Program.

Q. Let me just ask you, were you ever told that any of these donations or times that BI-LO ever helped you were ever limited to $50?

A. No.

Q. So let's -- let's go to 2018, this time frame. In early 2018, did you have any communication with anybody at the Pendleton BI-LO about donations?
A. Yes.
Q. With whom did you have them?
A. Ms. Styles.
Q. Okay. Lisa up here?
A. Lisa. Yes.
Q. Okay. And just tell the jury how that came about and just tell them what happened.
A. It's -- BI-LO had assisted us previously the year before with some Easter basket donations. The children in the program typically went over to the Legacy. They were invited, so we like to give them Easter baskets to take, and they had assisted.

I was in that BI-LO. It's local to me and had asked if they would be willing to make a donation again for the children in the program. And she said that she would check and see. And they reached back around and said, yes, they could assist with that.
Q. Okay. Which you said, "She said she would check to see." To whom are you referring?
A. Lisa.
Q. And did she get back to you?
A. She did.

Q. Okay. I want to ask you if you can identify a document we marked as Plaintiff's Exhibit No. 1.
A. Yes.
Q. Okay. And what is this document?
A. It is a thank you to Lisa that they were going to assist with the Easter baskets again. And it's a Google -- it is a download of a Google form that we sent out to participants in the program to fill out basic information on the children of their age, if they had an allergy. Just a few little things so that they could decide on the Easter baskets. And it's just a form that was generated to send back to BI-LO to assist them with making the Easter baskets.
MR. MURPHY: Your Honor, request to publish it?
THE COURT: You want to admit it?
MR. MURPHY: Do you want to admit it first or can I publish it first?
THE COURT: Is there any objection?
MR. SHANKMAN: No objection.
THE COURT: All right. Plaintiff's Exhibit No. 1 is admitted without objection. You may publish it.
MR. MURPHY: Thank you, Your Honor.
(Plaintiff's Exhibit No. 1 was received into evidence.)

BY MR. MURPHY:

Q. Okay. So the first page of this then is, that's an e-mail from you to Ms. Styles?

A. It is.

Q. Okay. And then it shows right there that there is an Easter basket info doc. The pages two onto the end of this, is that -- is that the attachment to that e-mail?

A. It is indeed. Yes.

Q. And -- and who are these names and what is this about?

A. The participants in the program, one of the stipulations is that -- that you're a mom. And these are the children in the program by their first name, their gender, and then if they have any type of allergies, because I guess they wanted to customize those with peanut allergies or any of the candy they provided for the Easter baskets.

Q. I'm going to hand you a document we've marked as Plaintiff's Exhibit No. 2. I'm going to ask if you can identify that. Are you familiar with that document?

A. Yes.

Q. What is that document?

A. It is another correspondence between myself and

Lisa about the time that she could deliver the Easter baskets to the cottage. We called our office a cottage. It was an older home. That she could deliver those, so if they have those prior to the Easter egg hunt. It was the Saturday before Easter, and we were getting the baskets there delivered. She brought them down.

MR. MURPHY: Okay. Your Honor, if we could admit Exhibit Number 2?

THE COURT: Any objection?

MR. SHANKMAN: No objection.

THE COURT: Plaintiff's Exhibit No. 2 will be admitted without objection.

(Plaintiff's Exhibit No. 2 was received into evidence.)

MR. MURPHY: Permission to publish?

THE COURT: Yes, sir.

BY MR. MURPHY:

Q. Okay. So this is March 28th. And this is an e-mail then from you to Ms. Styles?

A. Yes.

Q. Okay. And what was Ms. Styles' response when you told her that you'll be there till five o'clock?

A. She said, "Sounds great. I will be -- I'll be back about 4:30. I'll see you soon."

Q. And did Ms. Styles then show up at AIM?
A. She did and she came with the baskets and delivered those so that we could get those out to the children at the Legacy on Saturday.
Q. And we talked about baskets. Was -- is there anything else she delivered in that load?
A. Not in that particular load, no.
Q. What was in the baskets?
A. There was candy. And I'll be honest, I can't specifically -- I'm not going to list every item, but they were nice children's Easter baskets that you would make for a child at Easter. It was Easter eggs, candy, maybe a chocolate bunny, things like that that you would supply in a children's basket.
Q. That's what I'm trying to get at. Those -- all those items ---
A. Were already in those baskets catered to each child based on the information that was provided on the children.
Q. They were all in baskets delivered by Ms. Styles?
A. They were indeed.
Q. Now, do you recall having -- well, let me -- let me just talk about that. Were -- were the Easter baskets and their contents used by AIM?

A. They were. I put them in the back of my car. I drove them over to the Legacy, and the children met me there. I handed them out. They went on their Easter egg hunt. And, yes, they all received their baskets.

Q. I'm going to hand you three photographs. I'm going to ask if you can -- are you familiar with those photographs?

A. I am.

Q. Okay. Who took them?

A. I did.

Q. When did you take them?

A. I took them the day of the Easter egg hunt.

Q. Okay. And do you remember when you first provided them to -- to the lawyers?

A. I did. It was when I was at the deposition.

MR. MURPHY: Okay. Your Honor, move to admit Plaintiff's 3.

MR. SHANKMAN: With the same objection.

THE COURT: Overruled. Plaintiff's Exhibit 3.

(Plaintiff's Exhibit No. 3 was received into evidence.)

MR. MURPHY: Request to publish?

THE COURT: Yes, sir.

BY MR. MURPHY:

Q. Let's just look at the first page here of this exhibit. And I see some Easter eggs and I see a little boy there. What's -- what's this a picture of?
A. It's just the Easter egg hunt and the baskets and the things that were supplied for them.
Q. So -- so these -- when we see baskets and we see the Easter eggs, these are the baskets and that's -- that's one of the baskets and these are the Easter eggs that Lisa brought you?
A. They are.
Q. And what is on page 2 there?
A. That's one of the children with his basket as well.
Q. Okay. And what is the picture of that we see?
A. These are some of our participants; some are not ours. Some of the grandchildren of the -- of the residents of Legacy, but some of these are our children and their moms out at the Easter egg hunt.
Q. And these -- these baskets here that I see with eggs and stuff in them, are these ---
A. Yes.
Q. --- part of the donation that Lisa brought you?
A. They are. All the children that were at that egg hunt received a basket provided by BI-LO.

Q. Now, when Lisa brought the Easter baskets and the contents, all this candy, the other contents of the basket, did you meet with her?

A. I did. It was pretty common practice when I had someone at the facility that called, that we'd show them around and show them what we did. And one of the services that we provided there, our -- most of the women that were in our program are on SNAP, which is -- it used to be called Food Stamps, but it's SNAP benefits.

And SNAP does not provide cleaning supplies, paper products, cleaning products, feminine hygiene products. And one of the services that we provide women in our program through donations, was we had a supply closet. So when the women were running low, they could come and get diapers, wipes, cleaning supplies, toiletries, whatever they needed. That was a service that we provided to our participants as well.

And I showed her around the computer area, upstairs, because I built a small library because it was important to me. So I just took her on a small tour and showed her around.

Q. Okay. Did you show her the pantry?

A. I did.

Q. And did you have a discussion with her about the pantry?
A. I did.
Q. Tell the jury what you told her about the pantry.
A. We -- we just talked about -- I don't think a lot of people realize that SNAP doesn't cover those kind of necessities. It's food only. So I showed her that and I showed her how we utilize the donations that were given to us to help the participants with their basic needs.
Q. Did you have any discussion with her about any more donations?
A. She -- yes. She was very touched by that and she said that she would like to, you know, help supply our closet with more donations.
Q. And did you and she discuss the types of products and things you would need?
A. I mean, not in depth. It was just a general conversation that we took, like I said, feminine hygiene products, any type of cleaning supplies, anything that, you know, was specific to what the women may need that wasn't covered by their SNAP benefits.
Q. Sand did you receive such products from -- from

BI-LO?

A. We did.

Q. After your meeting with Ms. Styles?

A. We did.

Q. I'm going to show you another document we marked as Exhibit No. 4. I'm going to ask if you recognize ---

MR. SHANKMAN: Your Honor, may we approach?

THE COURT: Yes, sir.

(Sidebar discussion.)

BY MR. MURPHY:

Q. Ms. Cobb, let's start with the first two pages of Exhibit No. 4. What are the first two pages of Exhibit No. 4?

A. I'm going to have to ask you to clarify from the back forward or from the ---

Q. From -- from the -- from where the sticker is that says "Plaintiff 4" and then it says "Styles 15" below -- below that.

A. Thank you.

Q. I'm asking about the Bates Nos. Styles 15 and 16.

A. Okay. It was just an e-mail to her stating that I would be happy to list out the shampoo, Easter basket items, and things that had been

donated.
Q. What is the third document that is Bates stamped Styles 17?
A. It -- it was just a letter from AIM with -- with the letterhead that stated that I was appreciative of the donations. The Easter baskets were beautiful, well-thought out, specific to the children's ages and needs, and the personal hygiene products were timely and greatly appreciated. And it stated that we were appreciative of BI-LO and of our community for assisting our women in need.
Q. So is that a reference to both the Easter basket donation and the subsequent donation?
A. It was. Yes.
MR. SHANKMAN: Objection. Leading.
THE COURT: Rephrase your question.
BY MR. MURPHY:
Q. How many donations were you referring to in that letter?
A. There are two donations referred to: The Easter baskets that were delivered before Easter and the subsequent donation of personal hygiene products after.
MR. MURPHY: Your Honor, move to admit four.
MR. SHANKMAN: Same objection as before.

THE COURT: Overruled. Number 4 will be admitted.

(Plaintiff's Exhibit No. 4 was received into evidence.)

BY MR. MURPHY:

Q. So you're asking her -- this is in June now ---

A. Yes.

Q. --- of 2018. Ask -- you're asking her if you need to redo the list and list out the shampoo and Easter basket items. Do you see that?

A. I do.

Q. Okay. And that is a reference to this -- this letter on this -- the last page?

A. Yes.

Q. Okay. What was your understanding as to why you were writing this letter in June?

A. It was my understanding there had been some question about the donations, and that if I would clarify that those items were received. So I went to the then vice president of operations and asked if I could send the letter on letterhead from AIM. And it was agreed upon that I could send the letter. It was typed up and sent.

Q. Okay. Did you get permission to send the letter?

A. I did.
Q. And you got that from who?
A. At the time, it was Dana Grant who was -- she was over all programs, vice president of programs for that agency.
Q. And is -- are the statements in this letter about what AIM received true?
A. Yes.
Q. So AIM received feminine hygiene products?
A. Shampoo products, personal hygiene products, and Easter basket products.
Q. Call your attention to your e-mail of June 8th at 10:38 a.m., and that's on the bottom of Styles 15 which I believe is the first page there.
A. Yes.
Q. Could you read that last sentence or that last paragraph for me, please?
A. "We are so appreciative of all the donations that BI-LO has provided the past two years and what a great ambassador you are for them."
Q. And -- and, again, so this was not the first time you've done this with BI-LO?
A. No. The year before they had provided Easter basket items as well.
Q. Now, you said you knew a question had been

raised about these -- these donations. Let me ask you, did anybody from BI-LO corporate office in Jacksonville ever call you to investigate whether, in fact, AIM had received donations as Ms. Styles claimed?

A. No. I was never contacted.

Q. The gentleman at the end of the table there, Ronnie Duncan, have you ever met him before?

A. I have not.

Q. Did Mr. Duncan ever call you to investigate whether or not AIM had received the products that you've testified Ms. Styles brought to AIM?

A. He did not.

MR. MURPHY: I don't have anything further at this time, Your Honor.

THE COURT: Mr. Shankman, your witness.

MR. SHANKMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SHANKMAN:

Q. Hello, Ms. Cobb.

A. Hi.

Q. We met at your deposition. Do you recall?

A. We have in deed.

Q. Excellent. I don't -- I don't think I'll be long. Just a couple of quick questions. Mr. Murphy

Q. And, Lisa, where are you from?
A. Anderson, South Carolina.
Q. Okay. Have you lived anywhere else in your life?
A. No, sir.
Q. Okay. And are you married?
A. I am.
Q. To who?
A. Brad Styles.
Q. And is he here with us today?
A. He is.
Q. Do you want to point him out for the jury? Is he in the front row?
A. The tall gentleman in the front row.
Q. And what does he do?
A. I'm sorry. Can you repeat that?
Q. I'm sorry. What does he do?
A. He's a nurse at St. Francis Hospital.
Q. And do you have any other family here with us today?
A. My mother's here.
Q. Okay. And where is she sitting?
A. (Indicating.)
Q. Next to him?
A. Yes, sir.

A. We attend New Spring.
Q. And where is that?
A. In Anderson.
Q. You grew up here. Where did you graduate from?
A. T.L. Hanna.
Q. And when did you graduate from T.L. Hanna?
A. '98.
Q. After you graduated from T.L. Hanna in 1998, did you -- what did you do?
A. I worked for BI-LO.
Q. Okay.
A. A different BI-LO. Not the one we're here about today. I actually worked for the one in -- on South Main in Anderson.
Q. Is that the one on 24?
A. Huh-uh.
Q. No, it's not?
A. It's the Homeland Park area. I worked at that one.
Q. Okay. All right. And how long did you work at that BI-LO?
A. I can't be exact because it just so long ago, but about a year and a half, two years I was there.
Q. What did you do next?
A. Then I left there and actually went to work for

AnMed Healthcare in Anderson.
Q. And what did you do for AnMed?
A. My official job title was called "emergency business office." So I worked in the ER and I took the patients' information and entered it into the computer and their insurance, emergency contact, and placed a bracelet on them.
Q. And what years did you work at AnMed?
A. Oh, wow. I'd say roughly 2011, 2012, until two or -- two or three years later.
Q. 2011 to 2012?
A. No. Sorry.
Q. Maybe I'll do this: Why did you leave AnMed?
A. I left AnMed because I actually had met my husband, and we weren't allowed, of course, to date in the same department.
Q. So when did you and Brad -- you and Brad got married then?
A. Shortly after, we did.
Q. Okay. Do you remember that year?
A. 2005.
Q. All right. So when did you work at AnMed?
A. 2001. I'm so sorry.
Q. That's alright.
A. 2001 till, I'd say, 2003, 2004, early 2004.

Q. What did you do after AnMed?
A. My sister owned a boutique, a little jewelry, pocketbook place, Kendall's Boutique, and I went to work for her.
Q. And how long did you work at that little boutique?
A. Until I went back to BI-LO.
Q. Why did you go back to BI-LO.
A. I had had my oldest daughter, Remy. And the economy was kind of bad, so I just needed more stability for my child. So I decided -- I enjoyed my employment with BI-LO prior, so I felt like it would be a good fit.
Q. When you rejoined BI-LO, which BI-LO did you work at?
A. The one on Highway 24 in Anderson.
Q. Got it right that time. Okay. So you were at Highway 24. When you got back to BI-LO at Highway 24, what was your first job there?
A. I was a part-time cashier.
Q. And how much were you making as a part-time cashier?
A. Roughly, 7.50 an hour.
Q. What was your next job at BI-LO?
A. I got promoted to what BI-LO calls a PIC, so

person in charge, like an hourly supervisor that assisted the manager.

Q. Okay. And what store was that?

A. Highway 24.

Q. What was your next job?

A. And then I was approached about becoming a salary manager with BI-LO.

Q. Okay. And where were you a salary manager?

A. At Highway 24.

Q. And what -- the manager of what?

A. Customer service.

Q. Okay. And -- and so that was your last position also? Was that your last title with BI-LO?

A. Yes, sir.

Q. Okay. So you were a customer service manager at Highway 24. Did you move stores then at some point?

A. I did. I had went out on maternity leave when I had my youngest daughter. And upon my arrival back into the system, my DM asked if you would like to take a new position over at the Pendleton BI-LO.

Q. And so when was -- when was Brendon born?

A. Brennan.

Q. Okay. When was Brennan born?

A. She was born in 2011, so it was January of

2012.

Q. So you moved to Pendleton in January of 2012?

A. Yes, sir.

Q. You used a phrase "DM." What is DM?

A. District manager.

Q. All right. So how long were you customer service manager at the Pendleton store for BI-LO?

A. Until May 23rd of 2018.

Q. And so you started at 7.50 an hour, hourly is that?

A. Yes, sir.

Q. And what did you work yourself up to?

A. I made 40 -- $49,500 a year.

Q. Now, prior to the issue that got you in this lawsuit that brings us here today, did you enjoy working for BI-LO?

A. I loved working for BI-LO.

Q. You were a customer service manager. Did you like customer service?

A. I love people. Customer service was probably just my calling in any aspect. I love forming relationships and growing those over time, not just with the staff, but with the customers too.

Q. All right. Let me show you a document that's marked as Exhibit 5 and ask you if you can identify

that.
A. Yes, sir.
Q. Okay. What is this?
A. It's an annual review.
Q. Okay. What was the date of it?
A. Well, there's several dates. Do you want me to read them?
Q. What -- what was the performance period?
A. The performance period was January the 1st of 2016 to 12/31 of 2016.
Q. Did you ever receive a performance review after this one?
A. So far back, I don't recall, sir.
Q. And what was the overall score that you received on this performance review?
A. Above expectations.
MR. MURPHY: And on the specific criteria -- well, let me first, so I can publish it. We move to admit, Your Honor.
THE COURT: Any objection?
MR. SHANKMAN: No objection.
THE COURT: Plaintiff's Exhibit No. 5 will be admitted without objection.
(Plaintiff's Exhibit No. 5 was received into evidence.)

BY MR. MURPHY:

Q. So let's just see -- and this is a review. Do you remember which -- who was your boss? Who gave you this review? If you look at the first page.

A. Michelle Lanceley.

Q. And under the first criteria "effectively customer needs," what rating did she give you?

A. Always.

Q. Is there any rating higher than always?

A. No, sir.

Q. On "builds productive and professional relationships with customers," what did she give you?

A. Always.

Q. And "takes personal responsibility for customer satisfaction and loyalty," what did she give you?

A. Always.

Q. Under "considers and responds appropriately to the needs, feelings, and capabilities of others," what did she give you?

A. Always.

Q. On "a just approach to suit different people in situations," what did you get?

A. Always.

Q. "Strives to understand others background,

skills, and abilities," what did you get?
A. Always.
Q. "Takes actions to achieve goals beyond what is required," what did you get?
A. Always.
Q. "Is proactive and committed to staying positive when facing change," what did you get?
A. Always.
Q. "Looks for innovative and useful ways to deal with work problems and opportunities," what did you do get?
A. Always.
Q. "Accomplishes tasks by considering all areas involved no matter how small," what did you get?
A. Always.
Q. "Actively participates as an equal member of the team to achieve a goal," what did you get?
A. Always.
Q. So did you receive any individual score less than the highest score available?
A. No, sir. It doesn't look like it.
Q. When Ms. Lanceley was your boss, did you enjoy working for her?
A. Yes, sir, I did.
Q. And at some point in time, did she leave the

store?
A. Yes, sir, she did.
Q. And did things change for you after she left?
A. Yes, sir, they did.
Q. Tell the jury what changed. First of all, who -- who came on board after Ms. Lanceley left as the store manager?
A. Michael Brickman.
Q. Tell the jury in your own words how things changed after Ms. Lanceley left and Mr. Brickman became the store manager.
MR. SHANKMAN: Objection, Your Honor. May we approach?
THE COURT: Yes, sir.
(Sidebar discussion.)
THE COURT: Mr. Bailiff, would you take our jury to the jury room, please?
THE BAILIFF: (Complying.)
MR. MURPHY: Should the witness be in here?
THE COURT: I thought you were going to call her?
MR. MURPHY: Well, I wanted to address the issue on the record.
THE COURT: Well, she sat at the table.
MR. MURPHY: Your Honor, and I'd like this to

store?
A. Yes, sir, she did.
Q. And did things change for you after she left?
A. Yes, sir, they did.
Q. Tell the jury what changed. First of all, who -- who came on board after Ms. Lanceley left as the store manager?
A. Michael Brickman.
Q. Tell the jury in your own words how things changed after Ms. Lanceley left and Mr. Brickman became the store manager.
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THE COURT: Mr. Bailiff, would you take our jury to the jury room, please?
THE BAILIFF: (Complying.)
MR. MURPHY: Should the witness be in here?
THE COURT: I thought you were going to call her?
MR. MURPHY: Well, I wanted to address the issue on the record.
THE COURT: Well, she sat at the table.
MR. MURPHY: Your Honor, and I'd like this to

be played back if there's any question about this. This is exactly where this is going because I wrote down what he said. He said in the opening, "The complaints do not rise to the level where there would be a giant scheme to terminate her employment."

That's what he said in the record the evidence is going to show, and that's what he's trying to do. He's trying to keep you from -- to have you keep me from getting any content of -- of the complaints in so he can stand up in closing and say, "See I told you that there wouldn't be anything about complaints that ever rose to the level where there'd be a giant scheme to terminate her employment."

Now, he raised that in his opening, so I think I had strong arguments before. But now that he's put that in the jury's head, I think it would be incredibly prejudicial if the plaintiff couldn't testify as to what the complaints were about because he's going to stand up and do the same thing in closing.

THE COURT: Why don't -- why don't you proffer the testimony, and then I will -- I'll hear from both of you.

MR. SHANKMAN: Okay.

MR. MURPHY: Now, the proffer, Your Honor, would come in -- Your Honor, would come in several phases. It would come in this part, then we were going to have testimony about Randy Ellison and that's first DM who was in place during this time period.

And, Your Honor, I actually have designated, and despite opposing counsel's representations, Mr. Ellison has confirmed that there were these complaints. He -- Mr. Ellison has testified they occurred on three occasions. My client remembers two of them, but two of them while he was district manager. And he confirmed that they were complaints about the treatment of women.

So this leads to that, and then I'm going to address that testimony with Randy Ellison's own words from his deposition. When Mr. Ellison left, Your Honor, Mr. Brickman made the comment to my client, "Well, now that Randy's gone, I can talk to you guys any way I want."

And Tommy Brown comes on and they complain again. And -- and I think what you'll hear Mr. Ellison then talk about, he came in and did what he called a "DM day" where he comes in when the store manager isn't there. He brings employees in.

He got the same complaints, but then he tells them, "Well, Tommy's the boss now and you got to take it to Tommy."

So they go to Tommy Brown and they -- they complain again, and Mr. Brown then referred to corporate. Mr. Brown tells her to gather the statements, and you have those in Exhibit 6. And then you have in Exhibit, I believe it's 8, where at the corporation's own request, she transmits those exhibits to corporate headquarters to Ms. Furnas who purportedly, or what we contend did nothing of any substance -- purportedly was to investigate it.

But I -- I think we've got a major, major issue in this case, Your Honor, because I would ask you if you have any doubt about what I'm saying what was said in opening statements, he lit that candle. And he said part of his theory in the case, that none of these complaints rose to the level where there'd be any scheme to terminate her employment.

Now, if he gets to set that as a theme in his case, I can't put in whether these complaints would rise to the level that would motivate somebody to terminate her? Well, what's the jury to think? So I think, if anything, Your Honor, he opened the door to what the witness would testify to is that she had

problems with Mr. Brickman.

THE COURT: Do you have the specific questions that you're going to ask her? That's what I'm asking.

MR. MURPHY: That would be quite -- I can, but it would be quite lengthy, but I can do that. I just want to let the Court know that it would be quite lengthy because there were -- there were -- you will see it in Exhibit No. 6, Your Honor. Her statement, for example, to corp -- corp -- corporation. She talks about little comments and looks and glares he would make at women. There are comments she heard on a regular basis and problems she had with him.

And then we were going to go into what she complained to each of these district managers and what she complained to corporate about in that regard. So a proffer would be basically, Your Honor, most of my -- well, not most -- a good chunk of the direct. But -- but I -- I just would urge the Court to consider that, you know, you basically know what's coming and it's going to be allegations.

Now, she can only -- she can't testify directly as to things she didn't see or she didn't hear and we weren't seeking to do that, but it is absolutely

our intent to introduce evidence and the substance as to these.

And I think based on that open -- statement made in the opening, this -- I'm in the -- I can't recover from that if I can't put in the content of the complaints to show that they would, in fact, contrary to Mr. Shankman's argument to the jury, rise to the level where they would terminate employment.

THE COURT: Okay. So ---

MR. SHANKMAN: Your Honor ---

THE COURT: Yes, sir.

MR. SHANKMAN: --- may I? The problem is that the word "complaint" is a very generic term. There were complaints about -- about how Mr. Brickman has behaved that are gender related, and then there are complaints about how he treated people.

What Mr. Ellison testified to is that he conducted his investigation. He determined Mr. Brickman needed to work on how he communicated with people, but that was not gender related. And -- and I disagree completely that I opened any door, but it does -- it ignores the point.

The point is and as this Court's already ruled, if we go down a rabbit hole of this investigation,

and that's what counsel's clearly looking to do. He wants to talk about looks and glares to women and on comments about women. Now this has become a gender discrimination case without a -- without a gender discrimination complaint. And while I appreciate that some motive is a factor as the Court has ruled. We're litigating a gender discrimination case here, which is what -- which this Court has already ruled on.

So I -- I -- I can't impress upon the Court enough that -- that you ruled previously. She can testify that she complained, but we're going to stay out of the substance of -- of the complaint. She can testify she complained multiple times about it, but if we start going down that rabbit hole, now we're -- now we're litigating a case that doesn't exist.

MR. MURPHY: Can I -- can I show you some deposition testimony?

MR. SHANKMAN: Judge, no disrespect to this Court. It doesn't matter what the deposition testimony is.

MR. MURPHY: It matters when -- it matters when he tells you what the witness says, and that's not what the witness says.

MR. SHANKMAN: Can you tell me what you're showing the judge?

MR. MURPHY: Let me see if I've got the wrong page here, Your Honor.

MR. SHANKMAN: Brian, can you tell me what you're looking at? Whose deposition?

MR. MURPHY: Ellison's.

MR. SHANKMAN: Ellison.

MR. MURPHY: Your Honor, I'm handing up page 3 to 4 of Mr. Ellison's deposition, and I'd like you to look at lines 7 -- 17 to 24.

MR. SHANKMAN: What is it, line 17 to 24?

MR. MURPHY: Now, you remember, Your Honor, that it was represented to you before, opposing counsel told you that she never complained about gender until April 18th.

MR. SHANKMAN: No.

MR. MURPHY: That's exactly what he told you.

MR. SHANKMAN: I'm sorry.

MR. MURPHY: And the -- these complaints to the prior district manager and to the district manager, they're the heart of the case because this district manager, Randy Ellison, after getting these complaints, we just -- I just showed you the testimony on page 34. He says both of them were

about gender discrimination.

He went and did what they call a DM day. He went in and talked to the employees and he wrote up Mr. Brickman, and that made Mr. Brickman mad. They documented it. That made him mad. He didn't even listen to them he was so mad. That's in the documents. I'll show that to you too if you want to see it.

But, in fact, why not take a look at it? If you look at Exhibit 19, Your Honor, and you look at Bates No. 261. You look at the second to last bullet point and you look at the last sentence.

Now, what this is, this is an interview between Ms. Furnas and Mr. Brickman. On page 261, the second to the last bullet point, it says, "SM," that's Mr. Brickman, the store manager, "got his first ever write-up and it was not -- for not following-up on notes. He said some other things were addressed, but he was so nervous and mad that he wasn't -- really wasn't listening."

And that's Mr. Brickman's response to complaints. And that was his response to the first wave of sex discrimination and treatment. And it's not just the sex discrimination. It's abusive treatment of employees generally. And, yes, it

often was directed at women and that's been the testimony, but there's other problematic behavior on his part that isn't necessarily gender related, but that is the substance of that.

And when they get up and say that Mr. Brickman wouldn't be mad by these complaints, there in their own documentation is the first wave of complaints that got him so mad he wasn't even listening to them.

MR. SHANKMAN: Your Honor, may I?

THE COURT: Yes, sir.

MR. SHANKMAN: Judge, the -- first of all, Mr. Ellison was nowhere involved in the claims at issue in this case, the false imprisonment and events that led up to it. He just wasn't involved. He wasn't even the DM at the time.

Second, my comment to the Court about when gender discrimination came about was in reference to Mr. Brickman. Mr. Brickman will testify, he didn't know anything about gender discrimination or anything like that until this investigation occurred, and I believe the date was April 24th. I just want to clarify the record there.

In terms of the references to complaints, if anything, the comments that were just identified by

Mr. Murphy, again, rely on contention. According to him, the company does nothing. The company doesn't say anything. The company just blows off the complaints.

And then what we have here is a document showing that apparently, I think the language was, he tore me up. So, clearly, that's not the signal that Mr. Ellison was sending to Mr. -- to Mr. Brickman during this investigation.

And most importantly what counsel hasn't shared is that Mr. Brickman and Mr. Brown both said the same thing in terms of what was communicated to Mr. Brickman. Both of them specifically reject the notion that they conveyed that Ms. Styles had complained about Mr. Brickman.

They walk in, and according to Mr. Ellison's testimony -- if I take a few minutes I could find it. Mr. Ellison's testimony is that -- that, "I did not share who the complainant was." He did his DM day. He did his investigation. He determined that Mr. Brickman could treat people better, but he specifically concluded that -- that there was no gender discrimination.

And by the way just again, "complaint" is a very broad term and it's being used pretty

haphazardly. The -- the -- the suggestion -- well, actually, you know what? It doesn't matter.

The point is, we're back to addressing the exact same issue, which is that now we're litigating all of these gender discrimination issues when counsel could've brought that claim. And I've said it so many times, but I'll stop because the Court is probably tired of hearing it.

MR. MURPHY: Your Honor, the fact that they want to get up and testify to something means that's for the jury to determine. Let them tell their story. Let Mr. Brickman get up there and say, "I didn't know anything about this." Let the jury hear that these women were complaining about sex discrimination, but nobody told Mr. Brickman and let them decide. It's for them to decide credibility of a witness. It's not an issue of admissibility.

All his arguments were just about "here's my side of the story." That's not about admissibility. That's about weight of the evidence and that's about the credibility, but he has planted the seed with this jury that there were no complaints that would rise to the level that would make Mr. Brickman mad enough.

THE COURT: So Exhibit 19, the notes, you're --

you're wanting the notation about him being mad and angry. That said mad ---

MR. MURPHY: Right.

THE COURT: --- that he really wasn't listening. And you're wanting that he was -- he incurred some discipline as a result of the investigation?

MR. MURPHY: That's phase one. That was the earlier, and that's -- that's the complaint she was getting ready to testify about.

THE COURT: And it looks like the conclusion was that he needed coaching and training and more effective ways to communicate.

These bullet points on this exhibit, are they in line with or do they mirror the bullets points on your client's April 18th statement as a part of Exhibit 6?

MR. MURPHY: Well ---

THE COURT: Are they ---

MR. MURPHY: --- my client knew nothing about the -- the discussion on page 260, 261. That was a discussion between Ms. Furnas and Mr. Brickman. That's Mr. Brickman telling management that the complaints made him mad.

MR. SHANKMAN: No. Your Honor, let's be clear.

This document you're looking at with those bullet points is the investigation document. That is the document as a result that Ms. Furnas prepared based on various entities with different people, result -- to address the Court's question -- resulting from the April 19th complaint of gender discrimination.

THE COURT: So that was my question. Does this encompass all of the complaints, not just your client's?

MR. MURPHY: It would encompass others because there were other women who also ---

THE COURT: Okay.

MR. MURPHY: --- complained in that first phase because Mr. Ellison, when the complaints happened, he called others in and he will testify that others had complaints similar to the plaintiff's.

And then what they've documented here is Mr. Brickman telling management that those complaints and the fallout from that made him mad. And counsel just stood up and told the jury none of this would rise to the level where somebody would get mad enough. So you have to understand the content of what they're complaining about to understand why Mr. Brickman would get so upset.

THE COURT: And it looks like in this exhibit

there's an extensive discussion about the relationship between your client and Mr. Brickman ---

MR. MURPHY: Correct.

THE COURT: --- that ---

MR. MURPHY: Basically, what Mr. Brickman did when these -- in these -- in these interviews is, he trashed every one of these women who complained about him. He went after Tasha. He went after Angela. He went after Lisa. He's very, very critical of them. He said some very disparaging things about them because he knew who was -- who was complaining about him. And that -- if that doesn't show his motive and his anger, that's exactly what this is all about.

THE COURT: Let me look at Exhibit 6 very briefly and then we'll have to move on.

MR. SHANKMAN: Your Honor, could I put one thing in context?

THE COURT: Yes, sir.

MR. SHANKMAN: The report you're reading is, I think, dated April 25 or something like that. It's an interview that occurred on April 24th based on a 2/23 text message that the ---

MR. MURPHY: What's the exhibit number?

MR. SHANKMAN: It doesn't have an exhibit number. It's Bates number -- I'm going to get you a list tonight, but it's Bates No. 223.

Judge, Mr. Duncan, we can throw him up here if you want -- if you want him to testify about it. He's going to testify that he received this message on April 11th. This message is the first communication from Mr. Brickman to Mr. Duncan reporting the improper conduct, the -- the -- the -- from defense position, the -- the stealing. Okay. This report happened after the fact.

This witness can't testify or -- or reference any -- I mean, counsel just acknowledged that. She didn't know about the report until this discovery. There's nothing in here. So I don't think the Court necessarily has to rule on that particular issue, but she can't go down that rabbit hole at least without establishing that Mr. Brickman was aware that she had -- he had made -- or that she had made complaints about him.

And every piece of evidence is going to support that he didn't know that until that conversation two weeks after this report was made to Mr. Duncan, the report of the theft.

MR. MURPHY: That's not going to be my

evidence, Your Honor.

THE COURT: It says that a report that he said initially he claimed she told him that she hated him and that they -- they got -- got along better later.

MR. SHANKMAN: Yeah, and -- no. Judge, and like I said, I don't have a problem on the issue that they didn't -- clearly, they didn't get along, but -- but my concern about the nature of the comment or the nature of the question which started all this, was that it opened the door to a narrative that I anticipated was headed down the role -- the rabbit hole that we thought and that what counsel's now confirmed.

THE COURT: All right. This is what I'll do, I will allow you to ask her about her personal interaction with Mr. Brickman; however, as I previously ruled, I'm not allowing the allegations in these attached statements. And there's also some things in her statement regarding what other people did that it would be limited solely to her involvement with Mr. Brickman and then the complaints on that.

And you can ask her about the number of complaints that were filed, what her understanding of the result of that was. You can ask her about

the work environment, but we're not going to get into whether they were found to be valid or invalid. You can develop that with other witnesses, unless -- unless she has some personal knowledge.

MR. MURPHY: She has personal knowledge that nobody ever followed-up with her. Nobody ever assured her. No one's -- they -- they took her statement and nobody called her back, and that's part of our point. And ---

THE COURT: You can ask the question of when she talked to everybody. Again, unless she has personal knowledge about these other things, you need to steer clear of that.

MR. MURPHY: What about, Your Honor, the -- I mean, she has personal knowledge that Tommy Brown asked her to collect the statements. She has personal knowledge that she collected the statements. She has personal knowledge she sent the statements to corporate at their request. Those are things she can testify to?

THE COURT: She can testify, but she's not going to -- she can't testify as to the contents of those statements. Those are other witness statements, other witness's complaints.

So I'm not -- I'm not going to -- again, that's

part of Exhibit 6. We're not even going to get ---

MR. MURPHY: If I can address it? Mr. Brickman was informed of the content of those, and that's what got him so mad. And so it's like saying, "I've accused you of something terrible, but I can't let the jury hear what that terrible thing is."

But he stood up and said, "But it wasn't anything that would've gotten him mad," and that's the problem, Your Honor. Even -- even -- I understand the discussion we had previously, but he has told this jury, there's nothing in the content of any of those complaints that would get him mad. And now I'm ---

THE COURT: If she was aware that he was angry, she has personal knowledge of that, I'll allow you to ask that question ---

MR. MURPHY: Okay.

THE COURT: --- "What was his statement? What did he indicate to you?" But, again, we're not going to litigate these other women's claims in this case.

MR. MURPHY: And I understand we don't have to, but what I don't -- what I'm not quite grasping is, how do we respond to his statement that there's nothing in the content of these complaints that

would motivate somebody to want to terminate her employment when I can't talk about the content of those complaints?

THE COURT: I'm -- I'm allowing you to ask her about her complaints against this individual. She's outlined some things in her statement that involve her personally, which I'm going to allow you to ask her about, but I'm not going to allow you to get into the meat of the other witnesses and what the other women's complaints against him. They're not witnesses. These are statements I have no way of knowing if they're true, not true.

The -- the report from the company is very vague with that what I -- what I've read, and that's not the focus of this case. Those -- those women are not parties to this case, but any -- any involvement that -- that your client has with this individual, the complaint she has when she filed them, certainly that's rel -- I'm ruling that's relevant and you can ask her about that.

MR. MURPHY: Well, what she filed was those other complaints.

THE COURT: It's -- and -- and she can testify that she filed other complaints, but we're not getting into the specifics of those other

complaints.

MR. SHANKMAN: Wait, Judge, so he's going to be allowed to ---

THE COURT: We're not putting the complaints in.

MR. SHANKMAN: I understand that, but she's going to be allowed to testify that other people gave -- gave her statements or other people gave complaints? I mean, it's ---

THE COURT: I see what you're ---

MR. SHANKMAN: Yeah.

THE COURT: Yeah.

MR. SHANKMAN: I mean, and -- and -- and I -- and I -- I know the Court's thinking. Let me just -- because I'm a little confused as to what you're -- what you're allowing.

Are you allowing her to testify that I complained of -- that he looked at women when they walked by and that he made crude comments or, you know, whatever her testimony is? Because now -- now it looks like she complained about -- about gender discrimination. If the jury doesn't hear anything about our response, we're forced to open the door that -- that we looked into it. I mean, if we're not ---

THE COURT: Her complaints appear to be she's -- she's talking about being denied lunch, the way he talks to her, unfair statements being made.

MR. SHANKMAN: But that's not what she's going to testify to, Judge. She -- she -- she's going to testify that he stared at other women, you know, while being in their conversation, that -- that he was -- he -- they're going to be gender specific comments, unless counsel tells me I'm wrong. If that's the case and it's, you know, he was rude to me, he's -- he's -- you know, it's not gender based. It's not a gender-based complaint, then -- then I'll be quiet, but I don't think that's where we are.

MR. MURPHY: Your Honor?

THE COURT: Yes, sir.

MR. MURPHY: In Exhibit No. 6, if you look at the documents marked "Styles 68 and 69."

THE COURT: That's what I'm looking at, her statement.

MR. MURPHY: Okay. Those -- those are her -- those are the complaints she transmitted to the corporate office. Those are different than specifically what she complained to Mr. Ellison. It's not specifically what she complained to Mr. Brown.

But on April 18th, which is much later than all those other statements, this is specifically what she submitted. And it does include things like on several occasions he would sit there and, you know, stop and watch a young lady and make noises when she walked by and all that. That's what she has observed. That's what she saw. That's what she complained about. And that's the level of complaints that -- and -- and -- but ---

THE COURT: So you're saying there's other -- there's other complaints that are not included in this -- this letter?

MR. MURPHY: Oh, yeah. I mean, she -- that -- that's the thing, Your Honor.

THE COURT: That's what I've been looking at is this -- is this letter.

MR. MURPHY: She started -- that's what I'm getting at. She started complaining in 2017. She complained in 2017. She complained in early 2018. That's what I was telling you, the narrative that she didn't complain about anything like this until April 18th just isn't ---

THE COURT: All right. This -- this -- this is what I want you to do. I -- I want you to proffer the questions that you're going to ask because I

can't -- I can't rule specifically because I don't -- you're telling me there's other stuff that's not in this -- this document that -- and I can tell you there's some things in this document that I'm not going to allow right off the bat, that she's complaining about what the witness -- something happened to the deli manager, and then there's something about an associate getting married. These are complaints by other people.

I want you to proffer the testimony. I'm going to -- I understand that's going to be lengthy, so I'm going to go ahead and send the jury home and then we will ---

MR. MURPHY: And if I just can address that, Your Honor. When you look at the investigation, if you're examining, you'll see the deli manager's name is Angela Dutton. They interview Mike Brickman about her. He accuses her of being on meth. Accuses her of all -- all sorts of terrible things.

I'm sure they're going to want to get that part and the investigation record in, then you have to see Angela Dutton's statement. Now, all those statements were made part of their file. They're part of their investigation file.

So, you know, if you're going to sit -- sit

there and say Mike Brickman called Angela Dutton a meth head, you've got to find out what Angela Dutton said that set him off. And -- and they put it all together in one file.

THE COURT: Okay. Let's -- we're going to -- I want you to proffer what you intend to -- to offer so that I can rule with specificity as to what we're arguing about here ---

MR. MURPHY: Thank you.

THE COURT: --- because I'm kind of unclear based on what's been submitted.

Mr. Bailiff, would you get our jury?

THE BAILIFF: (Complying.)

THE COURT: And I'm going to go ahead and send the jury home, and then we'll just let you continue with this witness.

(At 4:28 p.m., jury entered the courtroom.)

THE COURT: Counsel, approach very briefly.

(Sidebar discussion.)

THE COURT: Ladies and gentlemen, we are at a point in the trial where we have several more issues of law that we're taking up. And this is going to be a fairly lengthy process that if I send you back to the jury room and then we resume, it's going to put you after five o'clock. And I know people have

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THE JUROR: All right. No problem.

(At 4:34 p.m., Juror No. 157 was excused from further service.)

THE COURT: All right. Mr. Murphy, would you proffer the questions that you intend to ask regarding this issue?

MR. MURPHY: Can I just explain to her what we're doing? Can I explain to the witness?

THE COURT: Yes, sir. Well, I will.

Ma'am, you're under oath. Your attorney is questioning you about certain aspects of the case. There's been an objection by the other side about this line of questioning. And for the Court to be able to make a ruling on the admissibility of the questions, I need to hear the questions and your answers first. So your attorney is going to ask some questions, and you would just answer under -- under oath like you would any other question.

THE WITNESS: Yes, sir.

THE COURT: Okay. So, Mr. Murphy, proceed.

PROFFER EXAMINATION

BY MR. MURPHY:

Q. I believe where we -- we were, Lisa, where you had stated Mr. Brickman then became the store manager?

A. Yes, sir.
Q. Did things change after Mr. Brickman became the store manager?
A. Yes, sir, they did.
Q. Tell -- tell the Court how things changed after he became the store manager.
A. It wasn't right at first, but shortly into his time there, I was quickly told that my opinion was of no importance. I was not treated as a member of the salary management. I would bring issues to Mr. Brickman, and he wouldn't do anything about them or help me fix them.

There was a time that we all worked different shifts, so we weren't there all at the same time, but Mr. Brickman had opened the store that day. So he had come in at 6:00 or 7:00 a.m. I had come in at 9:00 and Barry had come in at 1:00 to close the building down for the night.

After two, three o'clock in the afternoon, I was hungry. Barry and Mike had already eaten together, so I had asked if I -- let Mike know that I was going to back to the break room and heat me up a microwave meal. I couldn't even get my meal out of the microwave before they were paging me back to the front.

When I got up to the front, I was like, "Did y'all need me for something?"

And he said, "Yes. I need you to run this front end."

And I said, "Well, I'm -- remember I told you I was going to heat my meal up and I'll come right back up here."

And he said, "No. Me and Barry are never to touch this front end. You are the only one that is to touch it."

I was like, "So I don't even get to eat my food?"

"No. You do not."

Q. Now, you were -- you were in a management position, correct?

A. Yes, sir, I was.

Q. In your management position, did you have any employees coming to you with issues about Mr. Brickman?

A. Yes, sir, I did.

Q. And what kind of issues were they coming to you about Mr. Brickman?

A. The treatment that they were receiving.

Q. Now, let's go back. At the time that Mr. Brickman became store manager, who was the

district manager?
A. Randy Ellison was.
Q. And did you ever speak to Mr. Ellison about any concerns you had of Mr. Brickman?
A. Yes, sir. On several occasions, I did.
Q. When -- when was the first occasion you spoke to Mr. Ellison?
A. To the best of my recollection, fall of 2017.
Q. Okay. And what did you complain to Mr. Ellison about?
A. The way I was being spoke to, the treatment that I was receiving, things I had witnessed Mr. Brickman say or do to other staff members, things that I've witnessed him do to cus -- to customers.
Q. Specifically, what are you talking about? Can you give the judge some examples?
A. Yes, sir. On more than one occasion, I would be in the middle of a conversation with Mr. Brickman about a display or a policy or whatever we needed to discuss.

If I was -- if he -- we were standing like this to each other and I was talking to him, he would -- and a -- an attractive lady would walk by, he would immediately go, "Oh, yeah," and would just totally

stop the conversation that was taking place between me and him.

Q. Is this the kind of thing that you explained to Mr. Ellison?

A. Yes, sir, I did.

Q. When was the next time you conveyed concerns to Mr. Ellison? Do you recall?

A. I want to say it was -- like I said, this was years ago, but December of 2017, January 2018. It was -- he was still my DM.

Q. And what was -- what was the substance of the complaints you made to Mr. Ellison on that occasion?

A. Pretty much the same because nothing had changed. It had only gotten worse.

Q. Did you ever -- did you explain to Mr. Ellison what had gotten worse?

A. Yes, sir. I explained to him that I almost just couldn't tolerate watching the way he would talk to some of the staff members in the building.

Q. And specific, what kind of staff members?

A. Our DSD receiver; several deli associates; several of my bookkeepers. And I hate to even say this, but the common denominator is we were all females.

Q. Do have any reason to believe Mr. Brickman knew

you made this complaint to Mr. Ellison?
A. Yes, sir. Randy told me he spoke to -- to -- to Mike about them.
Q. Did Mr. Ellison continue to be the DM throughout 2018?
A. No, sir. He did not.
Q. What -- what happened?
A. (No response.)
Q. Well, who -- who came after Mr. Ellison?
A. Tommy Brown came after. Well, there was a short period of time where it was -- I want to say nobody that was our DM. It was a gentleman, I can't even remember his name, for like three or four weeks that moved up from Florida and took the RVP spot, but they let us know that he wasn't going to be the permanent DM, that we would receive a permanent DM. And that DM ended up being Tommy Brown.
Q. Okay. When Mr. Ellison left the position of district manager, did Mr. Brickman make any comment to you about that?
A. The day we found out that Randy was not going to be the DM anymore for our district, Mike looked at me and said, "Good. Now I can talk to y'all any way I want."
Q. After Mr. Brown became your DM, did you convey

any concerns to him?
A. Yes, sir, I did.
Q. Do you recall when you first did that?
A. The very first time he walked in the store as our DM, I asked for a transfer.
Q. Had you ever asked for a transfer before?
A. I asked for two transfers prior with Randy Ellison.
Q. Okay. And what did you complain to Mr. Brown about?
A. The same things that I had been complaining about for months to Mr. Ellison, just the treatment of the staff and me.
Q. Okay.
A. And that I felt like it just wasn't a healthy environment at all.
Q. Did anyone in management tell you that Mr. Brickman knew about this complaint?
A. Yes, sir.
Q. Who told you that?
A. Barry Parks.
Q. Did Mr. Brown ask you to do anything after you conveyed to him that there were problems?
A. Yes, sir. He asked me to get with the associates that had been complaining to me and ask

them to please write a statement so he could get them to corporate.

Q. So that's something Mr. Brown asked you to do?

A. Yes, sir.

Q. I'm going to ask you to take a look at what we've marked as Exhibit No. 6. And I'm going to ask you to tell the Court -- first of all, do you recognize this set of documents?

A. Yes, sir, I do.

Q. What is this set of documents?

A. These are the statements I was asked to collect by Tommy Brown.

Q. Okay. And the first page, which is also Bates Stamp Styles 65, who is that?

A. That's the customer service manager of store 5566, which was the Pendleton store.

Q. I'm sorry, but who -- whose statement is this on the first page?

A. This would be the DSD receiver at the time, Katie Bramlett.

Q. Okay. Is Ms. Brennen [sic] an hourly employee or management?

A. She's hourly.

Q. The next two pages which are 66 and 67, whose statement is this?

A. Leslie Fortner.
Q. And who was Leslie Fortner?
A. She was our cake decorator.
Q. Again, is she an hourly employee or is she management employee?
A. An hourly.
Q. And the next two pages are page 68 and 69. What are these?
A. This is my statement.
Q. The next three pages are Styles 70, 71, and 72. Whose statement is this?
A. Angela Dutton's.
Q. Who is Angela Dutton?
A. She was the deli-bakery manager.
Q. Then the last three pages, Styles 73, 74, and 75. Whose statement is this?
A. Tasha Olsen.
Q. And who is Tasha Olsen?
A. She was a deli associate.
Q. And, again, is she an hourly employee or management employee?
A. Hourly.
Q. Let me show you Exhibit 19, which I don't know if you can identify in full, but it's a document I think it's listed as defendants in this case. Let

me ask you, if you start on page 244 of that and we go to page 255 of that portion of this document, are those the same statements that we just introduced as Exhibit No. 6 or offered as Exhibit No. 6 or identified as Exhibit No. 6?

MR. SHANKMAN: I'm sorry. Can you repeat that?

BY MR. MURPHY:

Q. The pages beginning on, it's really, 245 through 255 from the company record here, are these the same statements we just went over in Exhibit 6?

A. Yes, sir.

Q. Let me show you a document -- let me call your attention then to some interview notes that begin on page 260, 261 of that exhibit. And if you look at page 260, you see it says, "SM Mike, Tuesday, April 24, 2018"?

A. Yes, sir.

Q. Okay. If you look at the one, two, three, four, fifth bullet point down, it says, "Mike then began talking about Katie, the DSD receiver." Do you see that?

A. Yes, sir, I do.

Q. Is that Ms. Brennen [sic]?

A. Yes, sir.

Q. If you look at the one, two, three, four, five,

six, seven, eight bullet point where it says, "SM said Lisa's team is a mixed bag." Do you see that bullet point?

A. Yes, sir, I do.

Q. And do you see on the second sentence there, it says, "Lisa thrives on controversy"? Do you see that?

A. Yes, sir.

Q. Who do you understand that to be a reference to?

A. I'm taking it is that he's calling me a pot stirrer.

Q. Let's go down a couple more where it says, "SM then shifted gears and talk -- began talking about Tasha in the deli." Do you see that?

A. Yes, sir.

Q. Is that Tasha Olsen?

A. Yes, sir.

Q. Let's go to the next page, the first bullet point, page 261. It says, "We then began to discuss Angela." And it says things about Angela's health problems -- meth, bipolar, pain meds, and diabetes. Do you see all that?

A. Yes, sir.

Q. Who is that in reference to?

A. Angela Dutton, the deli and bakery manager I'm assuming.

Q. So this is -- these bullet points we're reviewing, these are you and the other ladies whose complaints you submitted in response to Mr. Brown's request?

A. Yes, sir.

Q. Now, let me hand you exhibit -- we marked Plaintiff's No. -- Plaintiff's No. 7. Can you identify for his Honor what Exhibit No. 7 is?

First of all, let's just take it page by page. Styles 88, the first page, what is that?

A. This is the HR lady in Jacksonville asking for me to send over the statements.

Q. Now, she's saying send over the statements. Do you know how she knew there were statements?

A. I'm assuming maybe Tommy Brown had told her that he had asked me to collect them.

Q. Did Ms. Furnas call you?

A. She did call and we spoke briefly for about five minutes.

Q. Okay. And was this e-mail after that call?

A. I can't be 100 percent positive ---

Q. Okay.

A. --- but, I mean, I told her that I was

collecting them for her per Tommy's request.
Q. And then let's go to the next page. And 9/21, you write an e-mail to Ms. Furnas, right?
A. Yes, sir.
Q. Okay. And what do you say to Ms. Furnas?
A. "Good morning, Allison. Thank you for taking your time to read these and for calling me today. Please let me know if you need anything else."
Q. And what did she respond?
A. "Got them. Thanks so much, Allison."
Q. Let me -- let me show you what is -- we marked as Exhibit No. 8. Can you identify for the Court what Exhibit No. 8 is?
A. The front page is the e-mails between me and Allison.
Q. What are all the subsequent pages?
A. They're the statements.
Q. Okay. Are these the same statements we saw in both Exhibit 6 and Exhibit 19?
A. Yes, sir, they are.
Q. And what was the date you sent those to Ms. Furnas?
A. April 20th of 2018.
Q. Okay. Going back to Exhibit No. 19 on page 260, 261, where Mr. Brickman is being interviewed,

what's the date of his interview?
A. What page number?
Q. I'm sorry. Page 260. Look at Exhibit 19, page 260.
A. Thank you.
Q. What's the date at the top there?
A. April 24th.
Q. That's four days after you sent the statements in from these four ladies, these bullets point we're talking about, Mr. Brickman's statement about these women?
A. Yes, sir.
Q. Now, backing up a little bit. After you spoke to Mr. Ellison and Mr. Brown about your concerns and the concerns of others, did you observe anything that Mr. Brickman was doing that was unusual?
A. Yes, sir, I did.
Q. And what was he doing that you observed that was unusual?
A. He was holding himself up in the office with the door locked watching videos for hours.
Q. And did anybody in management tell you what he was doing?
A. Yes, sir.
Q. Who in management told you about it?

A. Barry Parks.
Q. And what did Mr. Parks tell you?
A. Barry said, "I don't know what he's up to in there, but he's watching video on you."
Q. Of what?
A. On you.
Q. On you. Let's go to -- ask you to identify what we marked as Exhibit No. 9. Tell the Court what Exhibit No. 9 is.
A. This is a text message.
Q. From who to who?
A. From my phone to Mr. Brickman.
Q. And do you see the text, "Hey, Mike. I hate to bother you on vacation"?
A. Yes, sir, I do.
Q. Okay. Go ahead and read that to the judge.
A. "Hey, Mike. I hate to bother you on vacation, but several comments have gotten back to me. Do I need to know something? Several people have told me you have been watching me on camera. I'm fine with you watching me on camera. I'm not aware I'm doing something wrong. If I am, I would appreciate you telling me."
Q. Just to be clear, was this before or after you started complaining to the district managers about

Mike Brickman?

A. This is way after.

Q. Let me show you a document marked as Exhibit No. 11.

MR. SHANKMAN: It was exhibit? I'm sorry. What exhibit?

MR. MURPHY: Eleven.

MR. SHANKMAN: Thank you.

BY MR. MURPHY:

Q. And this may, in fact, be two different documents. Let me ask you about the first page of exhibit marked as Styles 92. Lisa, are you familiar with this document?

A. Yes. I'm familiar with these.

Q. Okay. The first one is dated what date?

A. 4/14.

Q. And what is the second one dated? It's the second page.

A. 4/24.

Q. And how are you familiar with these documents? First of all, just tell the judge what they are.

A. So I'm sure you've seen like a survey at the bottom of a receipt and you give feedback. And if the feedback is negative, it's generated back to that store to reach out to you in a certain time

frame that's timely.

And then we have to let them know -- let corporate know what the resolution was or that the customer didn't answer the phone or left a message, waiting on them to return a call. But this is how corporate -- once the complaint went to corporate, they would funnel it back down to the store level at whatever store the occurrence happened at.

Q. So as the customer service manager, is this something you would receive?

A. Well, actually, every salary manager in the store would receive the same e-mail.

Q. Every salary manager?

A. Yes, sir. You see how it says, "To all manager - 5566" at the top?

MR. MURPHY: Your Honor, I have few more -- on the issue of admissibility, I have a few more areas of things I'd like to offer -- put in as part of the proffer to explain this, but I don't have any further questions of her at this time.

THE COURT: Okay.

MR. MURPHY: But part of the proffer, I would proffer her testimony and the reference to the exhibits, with the exception of Exhibit 19 which she's not obviously able to authenticate or explain.

You know, it's their investigation file.

But as to the other exhibits, I'd like to proffer them and her testimony, but I'd like to introduce some other testimony because you've heard competing narratives about what the testimony will show. I don't know -- I could get you copies of these, but we have designated -- in our deposition designation, we have designated the testimony of Randy Ellison, the district manager about the -- you just heard, is the first district manager.

In our designation no. 3, Your Honor, which references page 26 and 27, he confirms that Lisa Styles complained two times. The first time was about Mr. Brickman's communication. And the first time on our -- by our fifth designation, pages 32 and 33, he said the first time he didn't do anything about it.

He goes on to say the second time she complained, he told Mr. Miller about it.

On the sixth designation, which is on page 34 of his deposition testimony, he said that her second complaint was like the first. It was about disrespect for females.

Our seventh designation is page 35 to 37. He goes over the other names she gave and they're

employees who were involved in making complaints, and you know who those are now. And Mr. Ellison testified that he would get with Ken Miller, that's the HR person who you will hear about.

He testifies on -- towards the end of that designation, he did, in fact, tell Mr. Miller about the complaints from the women. And that's why he did not call the corporate office because he turned it over to Mr. Miller.

Mr. Miller, of course, as you heard me say, is one of the people who brought her in. He's the one who fired her in what seemed to be the -- where she signed a confession.

Mr. Ellison testifies in our eight designation, he came in and did interviews. And on page 50 of his deposition, our designation -- it's exhibit number -- deposition -- designation no. 9, Mr. Ellison says he told Mr. Miller that women had complained. So this goes to Mr. Millers' knowledge, which I believe counsel earlier denying. And then Mr. Ellison says on page 53 that he probably put documentation in the file.

Now, we have Exhibit 19 there, Your Honor. If you look at Exhibit 19 on page 236, Mr. Ellison does, in fact, confirm on the day before

Mr. Brickman's interview that there was documentation put in his file, but he was having a hard time finding it. And the testimony being he made no effort to go get it, but that's on page 236. It's an e-mail from Randy Ellison.

Tommy Brown obviously told Allison Furnas about it. She e-mails Tommy and says, "I want to see what the prior coaching feedback was."

He says, "I'll ask Randy. Have it sent to you."

And that, Your Honor, is the coaching and feedback that Mr. Brickman told Ms. Furnas made him mad. This is all the stuff that followed from these complaints about which the plaintiff has just testified.

Mr. Ellison goes on to testify in our twelfth designation that Lisa actually complained a third time, and he referred this to Mr. Brown.

The Furnas testimony, Your Honor, is going to -- the central part of that to our case is that Ms. Furnas got these allegations, and what you'll see both in the investigation file and through testimony, is that when these women made these very serious allegations, you can read some of them in -- in the -- in their own statements, Mr. Brickman

would simply deny it or disparage the women.

And every single time that all four women, she took those denials at face value, didn't seek any witnesses, didn't ask who else she could talk to, didn't do anything about it. She just found them all unsubstantiated and said, "Well counsel can begin," even though she knew he didn't listen the first time.

But going back to that point, we know from her own documentation what Mr. Brickman's reaction to is when people complain about him. And that's why I think, Your Honor, it is central to our theory in the case. And, again, especially in light of their opening statement saying that there's nothing to the content of these complaints that makes it absolutely essential the jury hear the substance of what was being complained about.

And I do recognize the line being drawn about not trying those cases and that was never my intent, but I do need to respond to that point, and I do need to show that these are exactly a level and serious types of concerns that would make a manager such as Mr. Brickman go into full defense mode.

And that's what the company did. They went into full defense mode. Did nothing for any of

these four women. Never reassured them. Never protected them. Never followed-up one bit to see if everything was okay. They just fired Lisa. They stopped the complaints.

So the jury isn't going to understand this case if they can't understand what the complaints were about, and he gets to stand up at the end and say, "See, there's nothing to these complaints. They're minor. They're miniscule."

The other point about that is, Your Honor, everything she did, she did at their direction. And I think it's odd that they would direct her to do something and then say it's completely irrelevant that she was doing it. This -- this case is about their reaction and their response and why she was framed and why she was set up because it's a very serious thing to accuse someone of.

I mean, it's not something anybody would just do, and that's why I said that in my opening. It's likely workers are hard to find these days. You don't just throw somebody under the bus for supporting the purposes. There has to be something pretty serious to do something to a level of what we're alleging in this lawsuit. And that's why they've got to hear what it is. And I understand

it's unpleasant to them, but they could've done something about that at the time.

THE COURT: All right. Mr. Shankman.

MR. MCCUMBER: I just want to get, just as a technical matter, clarification from you because I was trying to advise Mr. Shankman about the objections.

I think the original objection gave rise this is all frivolous, the narrative that she was asked about, and then also addressing the issues or not of a motion in limine. During the course of that proffer, there were a number of hearsay. There were a number of objectionable issues brought up. Do you want us to make those objections now as it relates to that testimony as well, or do you just want to ---

THE COURT: Make -- make your full argument now, and then I'll review.

MR. SHANKMAN: Your Honor, starting with the -- with the last comments from counsel, "This case is about their reaction and their response, their reaction to the complaints from Ms. Styles and presumably the others and the company's response to them."

This is a spectacular prima facia gender

discrimination retaliation case. It just is. I mean, we got multiple people complaining about gender specific issues. We have a case that doesn't have those complaints, and that is -- that is the mess that is before you unfortunately because they made the strategic decision not to pursue those claims. All of the -- all prior arguments are the same.

First of all, a couple of points to make before we get further. Barry Parks has since passed. He is not available. So, you know, counsel or the witness's statement about Mr. Parks, what Mr. Parks told him is just blatant hearsay and problematic obviously.

Then -- then counsel made a point in his questioning about -- about district managers knowing that there were complaints to -- or about Mr. Brickman from Ms. Styles of a -- of a sexual nature. I think counsel is over reading Mr. Ellison's statement that -- that he pointed to because both Mr. Brickman and both Mr. Brown specifically said that they did not share with Mr. Brickman that Ms. Styles had complained, which takes us still back to that April 11 text message that I should the Court, followed by the April 24th

complaint by -- by Ms. Styles.

In other words, the April 11th text message was the communication to Mr. Duncan about what Mr. Brickman had observed on -- on the video camera. And he didn't know that Ms. Styles had made a complaint about him, certainly not gender specific until April 24th. And I -- I don't think there's any contrary to his -- to -- to that point.

But we still find ourselves back in the same spot. They want to -- under the guise of -- of motive, they want to try a gender discrimination retaliation case. And -- and I think when the Court hears more testimony and has an opportunity to hear Mr. Brickman and has an opportunity to hear Mr. Ellison if -- if counsel calls him or if we call him -- well, we would call him in response -- the Court's going to understand that neither one of those individuals conveyed the information to Mr. Brickman.

So he didn't have the motive that counsel's trying to attribute to him. And that's not an issue for the jury. It is in the general sense, but because of the nature of the testimony they're trying put on under inapplicable claims, it's going to require us to go back and do a deep dive on the

investigation and why Ms. Furnas didn't contact them.

I'll tell the Court, what she testified to is, "I didn't reach out to this woman because I already had her statements. I already had all that -- I had all her information." She called the managers to find out whether or not there was validity to the -- to those particular statements, and she concluded that she did.

Counsel has not been shy about critiquing that. There's no common law duty to investigate. That's statutory and that's statutory under Title 7 of the Civil Rights Act. That's statutory under the EEOC charge that she filed and chose not to pursue.

So the implication is becoming that you had this obligation to -- and I'm going to say it this way and I apologize. I don't mean to offend anybody. You had this obligation to protect women, to prevent discrimination, and to -- and to investigate. Those are all true under Title 7, no question about it.

And -- and, candidly, BI-LO did just that. There would be a valid debate about that whether or not if that claim was presented to a Court, but we don't have that. And counsel, like I said, under

the guise of motive which is so far beyond what the motive is that you have to look at for purposes of these issues. For example, counsel referenced the -- I forgot the case, but it was the comment earlier where he made the comment about -- about motive is a factor.

In that case, the principal of the school was directly involved with the individual doing the interrogation and was feeding that interrogator information during the process. So the interrogator and the -- and the director knew what was going on.

Now he's going to jump up and say Ken Miller knew that the complaint was made. That -- that was all Ken Miller knew. And there's -- there's hundreds of cases that say just because an employee complains a protected activity, which is what those complaints would be and is certainly to HR, just because somebody complains, doesn't immunize them from discipline separately.

If she stole, nobody would say that -- that the termination was improper, which, frankly, is why I think we're not in federal court and we're not dealing with that claim. But that issue aside, at the end of the day, we're still talking about a rabbit hole. We're still talking about incredible

prejudicial testimony that would require this to become a gender discrimination retaliation case under the auspices of the claimant's actions.

THE COURT: Okay. I have -- I've heard all this. I want to -- I want to take a little while to look at it. Like I said, I've got a jury coming at 9:15. I'll be here early and we'll go on the record about nine o'clock, and I'll -- I'll inform you of what I decide. So I want to look through my notes and look at the exhibits again. Both of you have given me a lot to think about.

MR. SHANKMAN: And, Your Honor, I appreciate under the rules what I'm about to say may not be appropriate and I apologize in advance if it's inappropriate. I would ask the Court to relook at the process issue because there is no dispute that this woman was not arrested and there's no dispute that no warrant was ever issued.

And while I see the -- I see the judges -- I see you shaking your head, but I apologized upfront and I'll be quiet. It just -- it resolves this issue completely because it takes motive out of the case. And -- and -- and that's my concern with -- with any subsequent review of the statement.

THE COURT: That's not before the Court at this

stage of the proceeding. Certainly, if you want to make a motion at the directed verdict stage, and I'm certain Mr. Murphy is going to put what he believes is necessary into the record to meet the elements of what he's pled. So that's -- that's an issue we can take up later in the case, but on the issue before the Court right now, I want to take some more time to think about it.

MR. SHANKMAN: Understood, Your Honor. Thank you, sir.

THE COURT: Now, Mr. Murphy, you said there's one other matter you wanted to put on the record before we leave?

MR. MURPHY: Your Honor, we actually picked up on a lot of that. There's a -- there's a second element. I think I've talked to you about my feelings about what he has said in opening and how that makes it even more essential.

THE COURT: Yes, sir.

MR. MURPHY: Actually, two other things I'd like to do. One's a housekeeping.

In the opening statement, counsel also said Brickman did not know that she was complaining about him. That's the issue that Chief Burdette honed in on. That was actually the first issue he -- he

wanted to know about. And so that's when he talked to Ken Miller and Ken Miller made that admission. So when we're talking about Chief Burdette, I need to have that evidence that, yes, the company has, in fact, admitted that Brickman knew about these complaints at the time he turned her in because that's exactly what Miller told the chief.

And so -- so what he's done again is, he's baited the jury and said there's no evidence of this and turned to you and said keep the evidence out. So I raise that when we get to the -- to the issue of -- and I think you also said you were going to take that under advisement and Chief Burdette we were just going to walk carefully.

THE COURT: We will walk carefully. Again ---

MR. MURPHY: The only other issue, could you -- I want to make sure we don't leave any exhibits laying around ---

THE COURT: Right.

MR. MURPHY: --- that was actually admitted. What was the last one we admitted?

THE COURT: The last exhibit that I have being admitted was Number 5.

MR. MURPHY: Okay. So I'll take anything six and above out.

THE COURT: Okay. Now, Ms. Styles?

THE WITNESS: Yes, sir.

THE COURT: This is sort of an unusual situation. This doesn't happen very often where a witness begins their testimony, and then we take a break and go home and then you come back the next day. It happens sometimes. In fact, the attorneys today, we were intending on getting your direct examination done and then cross-examination, but you're still in direct examination. So you're under oath. You can't talk to anyone about your testimony outside of the courtroom.

THE WITNESS: Yes, sir.

THE COURT: Okay. So that's just -- it's very important because you're under oath. You're still -- still on the witness stand. Your lawyer hasn't finished questioning you, and Mr. Shankman gets an opportunity to cross-examine you. So you can't talk about your testimony with anybody.

THE WITNESS: Yes, sir.

THE COURT: Okay.

MR. SHANKMAN: Your Honor, just one last remark about counsel's comment on -- about Chief Burdette.

Chief Burdette spoke to Ken Miller. Ken Miller asked whether or not -- Ken Miller was asked whether

or not he had -- he -- that Brickman knew that she had complained about him. Again, nobody's denying that Ken Miller knew. The question is when he knew. I just want to make that for the Court.

THE COURT: I understand.

MR. SHANKMAN: I'm sorry. Not Miller, Brickman. Thank you, Judge.

THE COURT: All right. We'll go into recess. And like I said, we'll reconvene at nine o'clock, and I've got the jury coming at 9:15.

MR. MURPHY: So we're back here at 9:00?

THE COURT: Yes, sir.

MR. MURPHY: Thank you, Judge.

THE COURT: Yes, sir. All right. Everyone have a good evening.

(At 5:21 p.m., proceedings adjourned for the day.)

March 10, 2020

THE COURT: Okay. We will -- we'll go on the record.

I have confirmed with counsel in chambers after proffer testimony yesterday afternoon and have gone over what the Court is going to allow. Proffer testimony will be allowed with the exception of the statement about ogling or eyeing female customers in

the store.

Plaintiff's Exhibit 7 will be admitted. Plaintiff's Exhibit 6 and 8, the defense objection will be sustained to those exhibits.

Testimony regarding the complaints -- statements collected from four other employees will be -- they were collect -- allowed, but they were collected and provided to courtroom counsel. And I've gone over the other proffer testimony. The rest of it will be allowed.

So give each side an opportunity to note any objections for the record beginning with the plaintiff. Do you have anything for the record regarding my rulings?

MR. MURPHY: Thank you, Your Honor, for the opportunity. There was one other exhibit, and I apologize for not raising this in chambers, but we -- we proffered Exhibit No. 11 yesterday, which were the customer complaints that came in to all managers. And I apologize for not raising this earlier, but just -- I just remembered it and I didn't want there to be any misunderstandings today.

THE COURT: Okay. All right. With that, I remember that. She testified to that. I will allow Plaintiff's Exhibit No. 11.

All right. Mr. Shankman, are you ready for cross?

MR. MURPHY: I -- I ---

THE COURT: Are you finished?

MR. MURPHY: I just had an objection, Your Honor.

THE COURT: All right. Go ahead.

MR. MURPHY: I just want -- there was an administrative point I wanted to raise, so we didn't have any misunderstandings.

The plaintiff, of course, appreciates the amount of time and study the Court gave to this matter, but we have to respectfully -- except to the rulings I understand, which will keep from the jury the contents of the -- a complaint that's made by the other women and some of the statements that were made by Ms. Styles, especially -- well, in particular, you -- you raised one about the -- her observation towards the other women because those were reported to management.

As counsel stated, and we've said throughout this case and we've alleged in the very beginning, you can only understand the motive of the defendant and its agents by understanding the seriousness of what was going on. Otherwise, both reliability and

for punitive damage purposes, the defendant will take the position of, well, maybe we were right or we were wrong, but whatever.

Opposing counsel stood up in -- in opening and specifically built his defense around the contents of the complaints. And, again, I read it in the record yesterday when he specifically told the jury there's nothing in those complaints that would rise to the level where there would be a reason by Mr. Brickman to go after Ms. Styles.

The Exhibit 6 and 8 and what these women complained about, which was conveyed to Mr. Brickman, is -- is -- goes right to that matter and goes not only to the heart of my case in chief, but based on what the jury's heard and what they'll hear in closing when he gets up and says, "See, she just complained, but you didn't hear anything serious. You didn't hear anything that was that big of a deal. None of this would've motived him to do anything."

That's -- that's going to be central to their defense. And to my most serious exception, Your Honor, is that we're excluding the evidence that goes not only to the claim, but right to the -- to the center of the defense. And I think it's -- I'm

pretty sure it's going to come up.

Also, one can't understand the perfunctory nature of that so-called investigation by Ms. Furnas where she gets complaints from hourly employees and salary employees and doesn't call any of them, doesn't call anybody like them. She picks out managers who work for -- directly for Mr. Brickman and basically says how are things going? Okay. Nothing substantiated.

But the jury will get none of that if we can't match up names of who complained and what they complained about. And then Mr. Brickman's reaction during the investigation with Ms. Furnas when he takes those very names and starts disparaging them, starts saying terrible things about them. And I pointed that out yesterday in the proffer. If you match up the complaints and terrible statements he makes in his response to corporate, the names all match up. So you can't understand the investigation if you don't understand what the complaints were that were being investigated.

So part of our case has been that these were serious complaints. He was informed of them. He knew they were serious. They just -- they did no investigation of anybody who actually knew anything,

sealed it up, and then went after her. And that's been our case from day one. If we can't tell that story, Your Honor, I'm just very seriously concerned that -- that the jury's never going get this and they'll never fully have it out. So what I'd like to do is give the clerk Exhibit 6 and 8 if I could just to have them in the record.

THE COURT: Yes, sir. Yes, sir.

MR. MURPHY: Also, within that, I didn't understand the Court to have excluded any of the proffered testimony yesterday for Mr. Ellison or anything, so we don't have any issue with that.

My only other request would be ---

THE COURT: Well -- well, the statement -- the hearsay statement from Mr. Parks would be excluded.

MR. MURPHY: I don't think he testified as to statements of Mr. Parks. I think ---

THE COURT: There was a statement by your client.

MR. MURPHY: Oh, yeah. Yeah, I understand. That was a separate -- and you may want to put that on the record. That was a separate ruling I think.

THE COURT: Yes, sir.

MR. MURPHY: And I -- and I did ask in chambers to give specific instructions since obviously I

can't talk to the witness, but if we could get specific direction on that.

THE COURT: Yes, sir. Yes, sir.

MR. MURPHY: But from what I understand the ruling you just made, that would be the basis of my exception. And I would like to tender those for the record, and if you could just make sure because I -- I don't want any mishaps in the trial.

THE COURT: Yes, sir.

MR. MURPHY: But if your ruling stands, if those could be put to the side or something to make sure that they don't go back to the jury. I don't want there to be any problems later on, and we'll let the process play itself out.

THE COURT: Thank you, Mr. Murphy.

MR. MURPHY: Thank you.

THE COURT: The objection -- the exception is noted for the record.

All right. Mr. Shankman?

MR. SHANKMAN: Yes, Your Honor. Thank you. A couple of things regarding reverse order.

On -- Mr. Ellison, on the proffered testimony counsel just referenced, we didn't talk about the substance of the proffered testimony from the various individuals that Mr. -- Mr. Murphy wants to

read in.

My understanding was and the reason why I didn't make an issue of it in chambers is, the Court advised that they would take a break after Ms. Styles' testimony. And I thought that would be the opportunity rather than burden the Court in chambers just now. So I'd like the opportunity for us to go through that proffered testimony from Ms. Styles if that's okay.

THE COURT: We can look at that.

MR. SHANKMAN: Okay. Thank you.

On the issue of Barry Parks, I believe the Court based on the notification that Mr. Parks had passed, I -- I believe the Court's direct instruction was that there's not going to be any mention of statements by Mr. Parks; is that correct?

THE COURT: That's correct.

MR. SHANKMAN: Okay. Then on the Exhibit 7, which the Court has advised its allowed -- it will allow. Our objection to that, Your Honor, is that it's going to confuse the jury because the Court's made a point of saying you're not going to allow information or communications about the other individuals or what other individuals told Ms. Styles about as it related to their complaints

of discrimination or related to their -- you know, their -- their complaints of treatment of women.

The Court's -- I think the Court's statement was, "We're not going to get into gender discrimination." And what I'm asking the Court is, if we reference statements in that document, then it's going to cause the jury to wonder why they're not seeing additional statements. It's also -- that's also going to implicitly reference that other women had complained, and the jury's going to wonder why they're not seeing that. It's going to confuse the jury. And the purpose of the document is to identify the date of the communication, not the substance of the document itself.

So what we would ask the Court is that the word "statements" be replaced with "documents" or just redact it so that there's no suggestion to the jury that they're being prevented from hearing what other women, what some might deem, you know, things that are important for them to understand. So I would ask that that word "statements" be either redacted or replaced with the word "documents" in brackets.

THE COURT: Mr. Shankman, I'm going to allow it as is, but your objection is noted for the record.

MR. SHANKMAN: Thank you, sir.

And then with regards to the witness complaints, Your Honor, it -- frankly, for the same reason that the Court's not allowing the statements from the employees, we've got the same issue here. What we got -- now we have out-of-court statements being offered for the truth of the matter that's in there that Mr. Brickman is engaging in disparaging con -- conduct towards women, which was -- as I understood it, the precise reason why the Court made the comment that we're not going to allow -- we're not going to get into ---

THE COURT: What -- what exhibit are you talking about right now? I only have 6 and 8 into evidence.

MR. SHANKMAN: Right. No. I think you -- I think you just agreed that 11 was allowed in.

THE COURT: Well, that -- that's -- these are general. These are not from before. It was my understanding these are just -- these are just comments posted on a -- on a website that all employees had access to or all of management had access to.

MR. SHANKMAN: Okay. But, Your Honor, the -- but the comment says, "The last time -- this last time" -- on Exhibit 11, page 1, "This last time

broke my heart. He spoke to another female manager as she was dirt. The young lady just stood there and took it with tears in her eyes. Again, this was not my only time seeing treatment like this. A month back, it was directed at a young lady in the deli area."

Judge, we don't know who these people are who -- who are submitting these statements. And it was impossible for anyone to be able to -- even in the course of litigation, even -- even if this was a gender discrimination retaliation case, we could never identify who this is. I mean, this is equivalent to an anonymous complaint.

For all we know, it was written by Ms. Styles. I'm not suggesting it was, but for all we know it was written by somebody and it's being offered for the truth of the matter that this is the way Mr. Brickman referred to people and -- and treated women in -- in particular. It's no different than the statements of the employees. And that's the same for 11, and the same for page 2 of -- of 11.

And in addition, Your Honor, there is -- you know, I imagine the witness is going to establish some foundation that this is on the website and that meets -- that that establishes the sufficient

foundation.

The reality is, we have no record of it. We have no way -- we had -- we have no basis to know who said it. There was no basis to challenge this. It is -- it is rank hearsay by an unidentified person going to the truth of the matter, which is what counsel's theory of the case is that Mr. Brickman engaged in gender discrimination, which this Court, I believe, told us we're going to stay away from.

So we strongly believe that under 403, Judge, I know 401 is not relevant because that's hearsay and that regardless of either one of those rulings, it's so prejudicial because it can't go answered. It's impossible, so...

THE COURT: I note your objection, Mr. Shankman.

MR. SHANKMAN: Thank you, Your Honor.

And then -- so if -- if I could just ask the Court for some clarification. Is the Court's direction the same for counsel to stay away and Ms. Styles to say away from gender discrimination? Is that -- is that the Court's ruling?

THE COURT: That's -- it's not a -- not a gender discrimination case.

MR. SHANKMAN: I agree, Your Honor.

THE COURT: So, again, the proffered testimony will be allowed with the exceptions that I -- that I noted earlier.

MR. SHANKMAN: Okay.

THE COURT: And that's -- they're limited to what was proffered.

MR. SHANKMAN: And by gender discrimination, we're talking about the -- the -- the treatment of women?

THE COURT: Well, the complaints that were submitted were all from -- from women, but -- let me see. What exhibit was that?

MR. SHANKMAN: Well, and as -- and as we noted in chambers I think, Your Honor, the -- the reference during the proffer was -- and I -- and I think it was, is her getting away from the reference of who complained. If -- if Ms. Styles stands up and says, "Well, this person and this person and this person and this person," each of them have female names, that's fine. But drawing the conclusion that they're all females and based on -- well, actually I take that back. She's not going to -- she can't testify ---

THE COURT: They were all employees.

MR. SHANKMAN: They're all employees, but, I mean, this witness, Ms. Styles, can't testify about the conduct that other people told her. She can only testify about conduct she witnessed; is that correct?

THE COURT: That's correct.

MR. SHANKMAN: Okay.

THE COURT: That's -- that's consistent with -- with what I've already ruled, that she can -- as she does in her proffer testify that she submitted four separate complaints from separate employees with various complaints that these employees allege, but we're not litigating the actual complaint that each one of these employees made. So we're just ---

MR. SHANKMAN: Okay. But ---

THE COURT: --- we're going to stay away from any of that.

MR. SHANKMAN: Okay. But is she permitted to say that she submitted four complaints from four ---

THE COURT: Yes, sir. And that's in the proffer. Yes, sir. And that's -- that's -- she testified that she collected statements from four employees complaining about Mr. Brickman, and that's consistent with Exhibit 7 and she is allowed to testify to that.

However, the actual statements from those witnesses are not going to be admitted, nor will the specifics of what those -- those four employees stated. So that's -- I -- I don't know how I can be any clearer on that.

MR. SHANKMAN: No, Judge, I hear you. But my -- my concern about it -- and I understand that you want to get the jury in here so I'll be quick. My concern about it is, the implication that will travel with that is that their complaints mirror hers and -- and -- and that -- and that's going to be -- that's going to be the confusion, which -- which is going to provoke just a number of other issues that we're going to have to deal with.

THE COURT: The Court's ruled and ---

MR. SHANKMAN: I understand.

THE COURT: --- your objection is noted for the record.

MR. SHANKMAN: Thank you, Judge.

MR. MURPHY: Your Honor, just so I understand the scope. On Barry Parks, are you -- are you ruling that she cannot testify that Mr. Parks told her that he was watching video -- Mr. Brickman was watching video of her?

THE COURT: That's -- that hearsay statement

will not be allowed.

MR. MURPHY: Okay. So can I ---

THE COURT: But she can --- now -- now, what I heard in the proffer was that she observed him locking ---

MR. MURPHY: Right.

THE COURT: --- locking himself in ---

MR. MURPHY: --- right.

THE COURT: --- the office. And then she sent him a text, which ---

MR. MURPHY: Right.

THE COURT: --- I've allowed to be admitted on that. So she can testify of her personal knowledge.

MR. MURPHY: Okay. Well, if I could just note a respectful objection.

THE COURT: Yes, sir. It's noted for the record.

MR. MURPHY: And then on -- I -- I didn't understand the scope. We talked yesterday and I did not offer it through her yesterday, but is the -- the issue of the investigation file itself, the corporation, Exhibit 19, exhibit, is the Court's ruling this morning intended to cover that or do we take that up?

THE COURT: Like I said, you'll have to take

that up.

MR. MURPHY: Okay. And I'm not -- and I'm not going to offer any of that through her. I did that for the purpose of the proffer yesterday for your benefit, but I'm not seeking to admit that through her. I told -- per your instructions, I told Chief Burdette, 11:00, 11:15, but I don't know whether he's still out there or not.

THE COURT: All right.

MR. MURPHY: The other thing I asked him ---

THE COURT: And, Ms. Styles, your attorney, like I discussed with you yesterday, since you were under oath and we broke up your testimony, your attorney couldn't talk to you about -- about any of this, so I told counsel in chambers this morning that I would instruct you.

We've gone over a number of issues. And as -- as you've heard, there are some things that are going to come into evidence and some things that are not. Listen very carefully to the question that -- that the attorney asks you and answer only that question. Okay. Don't -- don't volunteer other information that the attorneys have not asked you. And if you don't understand one of their questions, just stop them and have them ask the question again.

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. Any -- anything further?

MR. MCCUMBER: Just a quick housekeeping matter, Judge.

The objections that were just lodged on the record, we can consider those continuous objections throughout the whole trial?

THE COURT: Yes, sir.

MR. MCCUMBER: Okay. I just wanted to make sure for the record.

THE COURT: Your record is protected.

MR. MCCUMBER: Thank you, sir.

THE COURT: All right. Let's -- let's get our jury.

THE BAILIFF: (Complying.)

(At 9:47 a.m., jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen. We're ready to proceed. Mr. Murphy.

DIRECT EXAMINATION RESUMED

BY MR. MURPHY:

Q. Lisa, when we left off yesterday, we were talking about the change in the district manager. And at what point in time did Mr. Brickman then become the district -- the store manager? I'm

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. Any -- anything further?

MR. MCCUMBER: Just a quick housekeeping matter, Judge.

The objections that were just lodged on the record, we can consider those continuous objections throughout the whole trial?

THE COURT: Yes, sir.

MR. MCCUMBER: Okay. I just wanted to make sure for the record.

THE COURT: Your record is protected.

MR. MCCUMBER: Thank you, sir.

THE COURT: All right. Let's -- let's get our jury.

THE BAILIFF: (Complying.)

(At 9:47 a.m., jury entered the courtroom.)

THE COURT: Good morning, ladies and gentlemen. We're ready to proceed. Mr. Murphy.

DIRECT EXAMINATION RESUMED

BY MR. MURPHY:

Q. Lisa, when we left off yesterday, we were talking about the change in the district manager. And at what point in time did Mr. Brickman then become the district -- the store manager? I'm

sorry. Change in store manager. At what point in time did Mr. Brickman become the store manager of the Pendleton store?

A. If I recall correctly, it was early fall of 2017.

Q. Early part of when?

A. Fall of 2017.

Q. Fall of 2017. And did things change when Mr. Brickman became the store manager?

A. Yes, sir, they did.

Q. Did you have difficulties with Mr. Brickman?

A. Yes, sir, I did.

Q. How often were you having problems and difficulties with Mr. Brickman?

A. Almost on a daily basis.

Q. And did you consider these problems to be serious?

MR. SHANKMAN: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Yes, sir, I did.

BY MR. MURPHY:

Q. Who in the fall of 2017 was Mr. Brickman's boss?

A. A gentleman named Randy Ellison.

Q. And I think we mentioned that yesterday, but

what was his position?
A. He was our district manager.
Q. And did you take your concerns to Mr. Ellison?
A. Yes, sir, I did.
Q. What was the first time you spoke to Mr. Ellison about your concerns?
A. Fall of 2017.
Q. And what did you tell Mr. Ellison were your concerns?
A. My concerns were the treatment of myself.
Q. Let's -- let's keep it to yourself.
A. Yes, sir.
Q. Let's -- let's ---
A. The treatment of my -- that I received from Mr. Brickman.
Q. Okay. Did you give Mr. Ellison specific examples?
A. Yes, sir, I did.
Q. What specific examples did you give Mr. Ellison? Just pause for a minute for the judge. What specific examples did you give Mr. Ellison in your complaint to him during the first time you complained?
A. Communication was key to run the daily operation of the store amongst management staff. I

would ask Mr. Brickman a question via verbally in person or a text message or an e-mail, and I would receive nothing 90 percent of the time.

A great deal of the time when I would even ask a question in person, he would just walk off from me. He wouldn't even answer me, as if I wasn't standing there.

Q. Anything else you can recall?

A. Yes, sir. The way salary management worked, is we were required to work 50 hours a week. In the nature of the business, it could be 70, it could be 65. I mean, it just all depends.

There was a time that I had left 15 minutes early and I was wrote up for that, yet other staff members were allowed to come and go as they pleased, early, late, and nothing was ever said.

Q. And just listen to this question carefully. Did you explain to Mr. Ellison what the differences were between you and those other staff people?

A. Yes, sir, I did.

MR. SHANKMAN: Approach, Your Honor? May we approach?

THE COURT: Yes, sir.

(Sidebar discussion.)

BY MR. MURPHY:

Q. Was that the only time you raised your concerns to Mr. Ellison?
A. No, sir. It was not.
Q. When -- let me go back to the first time. When you raised your concern to Mr. Ellison, did you ask for anything?
A. No, sir. I asked for a transfer.
Q. Okay. And what do you mean by transfer?
A. So the district manager was over several stores. It was usually between 10 to 15 stores. So our area would've been like all of Anderson; there's a Georgia -- there was Georgia store; all of Seneca; Clemson; Greenwood. I asked for a transfer to any of those stores, and he had the capability of approving a transfer within his district.
Q. Do you recall when the next time was that you complained to Mr. Ellison?
A. If I recall correctly, it was the winter of 2017.
Q. What do you -- what -- what does that encompass to you?
A. I would say late November, December.
Q. Okay. And did you again convey concerns to Mr. Ellison?
A. Yes, sir. I explained to him that ---

Q. Well, let -- let me just ---
A. Sorry.
Q. --- let's take it step by step. Okay. Did you convey concerns about your -- were these concerns about Mr. Brickman?
A. Yes, sir.
Q. Okay. Did you convey to Mr. Ellison concerns about Mr. Brickman's treatment of you?
A. Yes, sir.
Q. Okay. Just pause for a minute on this one. Okay. Tell the jury what you told Mr. Ellison just about the concerns you had about Mr. Brickman's treatment of you?
A. I explained things were not getting any better. They had actually gotten worse. That I loved my job. I didn't want to leave the company, but I just couldn't continue like this anymore and I would really like a transfer.
Q. Do you have any reason to believe that Mr. Brickman knew about your complaints to Mr. Ellison?
A. Yes, sir, I do.
Q. What led you to believe that?
A. Mr. Ellison told me he spoke with Mr. Brickman.
MR. SHANKMAN: Objection. Hearsay.

THE COURT: All right. Let's stay away from -- stay away from hearsay.

MR. MURPHY: It's Mr. Ellison, Your Honor.

THE COURT: Okay. Move -- move on.

MR. MURPHY: Okay.

BY MR. MURPHY:

Q. Did Mr. Ellison continue to be the district manager?

A. No, sir. He did not.

Q. When did that -- when did he cease becoming your district manager?

A. I want to say the first few weeks in January.

Q. Who was the next district manager that you had?

A. I don't want -- I don't want to leave this part out because I don't want it to come back. Okay. There was a time for like a few weeks that during the process we had a gentleman, and I can't even remember his name, but he had come from the Jacksonville, Florida, office up to Mauldin office. And he was our acting DM for a few weeks until they could figure -- they could re-aline the district. So they combined stores due to some stores. The next district manager after that gentleman was Tommy Brown.

Q. Okay. Did Mr. Brickman make any statements to

you about the fact that Mr. Ellison was no longer district manager?

A. Yes, sir. The day we found out.

Q. What did Mr. Brickman say?

MR. SHANKMAN: Objection. 801.

THE COURT: Counsel approach.

(Sidebar discussion.)

THE COURT: Your objection is overruled.

MR. MURPHY: Thank you, Your Honor.

BY MR. MURPHY:

Q. What did Mr. Brickman say to you after Mr. Ellison was no longer the district manager?

A. He said, "Good. Now I can talk to y'all any way that I want."

Q. Now, when Mr. Brown became your district manager, did you complain to him about Mr. Brickman?

A. Yes, sir.

Q. When did you complain to Mr. Brown about Mr. Brickman?

A. So the DMs would do like a store walk frequently to check store conditions, that kind of thing, make sure we were following signage protocol. The very first time that Mr. Brown walked the store in Pendleton, I asked for a transfer.

Q. Did you discuss with Mr. Brown concerns you

were having?
A. Yes, sir, I did.
Q. Did Mr. Brown ask you to do anything?
A. Yes, sir, he did.
Q. What did Mr. Brown ask you to do?
A. He asked me to write a statement and collect the statements of other employees.
MR. SHANKMAN: Objection. I'll withdraw it. I'm sorry.
BY MR. MURPHY:
Q. Did you gather the statements of the other employees pursuant to Mr. Brown's instructions?
A. Yes, sir, I did.
Q. I'm going to ask you to look at what we've marked as Exhibit No. 7. And can you identify that document for us?
A. Yes, sir. It's an e-mail between me and, I don't know, Furnas. I don't know if it's how you pronounce her last name.
Q. Who is -- do you know who Allison Furnas is?
A. She's the HR representative from the Jacksonville corporate office.
Q. And let's go to the second page of this.
A. (Complying.)
Q. Is -- let me do it very quickly. Just tell us

what the second page is. Don't get into the content. Just tell us what it is.

A. It's communication verifying that the statements were received.

Q. Communication from whom to whom?

A. Me and Ms. Furnas.

Q. And what's this first -- what's the first page?

A. It's her requesting the statements.

Q. Okay. But it's -- is it an e-mail?

A. Yes, sir. It's an e-mail.

Q. From who to who?

A. From her to me.

MR. MURPHY: Move to admit 7, Your Honor.

MR. SHANKMAN: Same objection as discussed.

THE COURT: Defense objection noted ---

MR. SHANKMAN: Thank you.

THE COURT: --- and the exhibit will be admitted.

(Plaintiff's Exhibit No. 7 was received into evidence.)

BY MR. MURPHY:

Q. Okay. So let's go to the second page then and look at this e-mail. Who is CSM-5566?

A. That was my working number.

Q. So that's you?

A. Yes.
Q. Okay. And you state in here, "Thank you for taking your time to read these and for calling me today." Had you had a conversation with Ms. Furnas from the corporate office on that day?
A. A brief conversation. Yes, sir.
Q. Okay. And then you asked, "Please let me know if you need anything else." Do you see that?
A. Yes, sir.
Q. Okay. And then what's her response to them?
A. "I got them. Thanks so much, Allison."
Q. And I think I may have gotten this out of order, but if go to the first page, is this the first e-mail in the chain?
A. Yes, sir.
Q. And what is Ms. Furnas asking you to do there?
A. "Hey, Lisa. If you could just send me over the statements, please. Thanks."
Q. And is that a reference to the statements Mr. Brown asked you to gather?
A. Yes, sir.
Q. We haven't talked a whole lot about this, but you mentioned corporate office. What is Southeastern Grocers?
A. Southeastern Grocers is the banner that Winn

Dixie ---

Q. Oh, I'm sorry. I -- I'm sorry. I did not -- I forgot to put that on the screen for the -- for the jury. I apologize. So the e-mail is just a review, and I apologize to the jury for that.

The first e-mail then in the chain was this first page, "Hey, Lisa. If you could send these over, please?" That's at what time?

A. 8:51 a.m.

Q. Okay. And going to the second page, your next e-mail is at what time?

A. 9:21.

Q. And that's the e-mail where you attached those statements Mr. Brown asked you to gather?

A. Yes, sir.

Q. And then that is Ms. Furnas' response there at the top of that second page?

A. Yes, sir.

Q. I apologize for forgetting to hit the button for the jury.

I want to back up even before the time that you sent these statements to Ms. Furnas. After you spoke to Randy Ellison and Tommy Brown and discussed with them your complaints, did you personally observe Mr. Brickman do anything unusual after you

made your complaints to Mr. Ellison and Mr. Brown?
A. Yes, sir, I did.
Q. Tell the Court just what you personally observed.
(Brief interruption.)
THE COURT: Go ahead, Mr. Murphy.
BY MR. MURPHY:
Q. Backing up. After you complained to Mr. Ellison and Mr. Brown, tell the jury what you personally observed Mr. Brickman was doing.
A. Mr. Brickman would hole up in the office with the door locked and shut watching video for hours.
Q. Okay. When you say "watching video," on YouTube or ---
A. Oh, no, sir. So each BI-LO had what we would call CCTV, just all the cameras systems within the store, and he would watch them for hours.
Q. And was that unusual?
A. Yes, sir. Very.
Q. I'm going to ask you to look at a document and tell me if you can identify that for us.
A. Yes, sir, I can.
MR. SHANKMAN: Brian, what document?
BY MR. MURPHY:
Q. Nine. Oh, I'm sorry. It doesn't say it.

Thank you. The document marked Plaintiff's 9, can you identify that document for us?

A. Yes, sir.

Q. And what is that document?

A. This is a text message from me to Mike.

Q. Okay. And does it relate to your observations?

A. Yes, sir, it does.

MR. MURPHY: Move to admit nine, Your Honor.

MR. SHANKMAN: Your Honor, may we approach?

THE COURT: Yes, sir.

(Sidebar discussion.)

MR. MURPHY: On the floor is a motion to admit.

THE COURT: And the defense objects?

MR. SHANKMAN: Yes -- Yes, sir.

THE COURT: And that's -- it's noted for the record.

MR. SHANKMAN: Thank you.

MR. MURPHY: It's okay, sir?

THE COURT: Yes, sir.

MR. MURPHY: Thank you.

THE COURT: It's been admitted.

(Plaintiff's Exhibit No. 9 was received into evidence.)

BY MR. MURPHY:

Q. If you would, read -- read your text message to

the jury.

A. "Hey, Mike. I hate to bother you on vacation, but several comments have gotten back to me. Do I need to know something? Several people have told me that you're watching me on camera. I'm fine with you watching me on camera. I'm not aware I'm doing anything wrong -- something wrong. If I am, I would appreciate you telling me."

Q. Now, what is the date of that text message?

A. April the 14th.

Q. And was April the 14th before or after you raised complaints to Mr. Ellison and Mr. Brown?

A. A good bit after.

Q. In fact, you were here yesterday when Ms. Cobb testified about these donations to AIM. Do you recall that testimony?

A. Yes, sir, I do.

Q. Was April 14th before or after those donations to AIM?

A. After.

Q. So let's talk about those AIM donations. During the time that you worked at Pendleton, did BI-LO do charitable donations?

A. Very frequently. Yes, sir.

Q. And were you personally involved in those?

A. Yes, sir.
Q. And how -- tell the jury what kind of involvement you had in the past working with charitable donations on behalf of BI-LO?
A. I would usually collect whatever items needed to be collected. Sometimes we actually went out and supported the event physically.

Some of the events are: We would hold a BI-LO Charity Golf Classic Tournament; the Emerson Rose Foundation. We would support them at their golf tournament; Trunk or Treat for the Anderson Cancer Association here in Anderson; AIM. There were several that we would support.

Q. So AIM had worked with BI-LO before?
A. Yes, sir.
Q. With regard to the AIM donations about which Ms. Cobb testified yesterday, did you have any discussion with Mr. Brickman about those donations?
A. Yes, sir, I did.
Q. And did you have discussions with him about those donations before they were made?
A. Yes, sir, I did.
Q. Tell the jury what your interactions were with Mr. Brickman regarding those donations prior to the donations being made to AIM?

A. The store manager always had to sign off on the donations, whether we could do them or not. So I had -- we had spoken about doing them. And early January, BI-LO runs a contest every year to see who wins the most gift -- who sells the most gift cards over last year at each store. That store receives an incentive bonus of Visa gift cards. So our store had won, so they -- we had them.

The management staff at the time had decided that we would use those for donation purposes if the need arose. And me and Mr. Brickman agreed -- well, Brickman told me that's what we would use for donations to AIM.

Q. Would you quickly just clarify the name of it? There -- there's a -- there's a contest or award by who?

A. By corporate BI-LO.

Q. By corporate. Okay. And they were awarding what to the store?

A. Visa gift cards.

Q. Okay. And Mr. Brickman conveyed to you what those Visa gift cards would be used for?

A. We decided as a team, the management team. Because, technically, they could've went to us personally, and some stores do that, but we decided

not to do that.
Q. Okay. So this is something outside -- a little bit outside the normal gift policy?
A. Yes, sir.
Q. Okay. But with -- with regard to the -- let's start with the Easter basket and contents donation. Did you specifically speak to Mr. Brickman about the gathering of -- Ms. Cobb talking about Easter baskets, candy, and the eggs? What else? Was there grass in there?
A. Yes, sir. There was several things in the baskets.
Q. Okay. Did you specifically discuss that with Mr. Brickman before you made the donations?
A. Yes, sir, I did.
Q. And with Ms. Cobb's statement yesterday about the second donation of the personal care feminine hygiene products, that type of thing, did you discuss that donation with Mr. Brickman before it was made?
A. Yes, sir, I did.
Q. How did you know when -- with regard to the Easter basket donation or the personal hygiene care products, how did you know how much to put together?
A. Each -- each Visa gift card that was awarded

had $500 on it.
Q. And did you discuss that with Mr. Brickman?
A. Yes, sir.
Q. So, again, this is something different than the typical gift policy at BI-LO?
MR. SHANKMAN: Objection.
THE WITNESS: I don't even remember.
THE COURT: Hold on.
MR. SHANKMAN: Objection. Leading, Your Honor.
THE COURT: Rephrase your question.
BY MR. MURPHY:
Q. Do you know whether the BI-LO written policies on gift donations covers this $500 gift card situation that you're talking about?
A. To be honest, I didn't know that we had a policy on donations.
Q. Okay.
A. I've never seen one.
Q. Who gave you the limit of what to put together?
A. Mr. Brickman.
Q. And did you give Mr. Brickman anything in writing to show him what the donations consisted of?
A. Yes, sir. I wrote on a legal pad, like a piece of notebook paper, I wrote down all the details for the donation.

Q. What did you do with that document?
A. I gave it to Mr. Brickman.
Q. How did you give it to Mr. Brickman?
A. There were -- I gave it to him in person one time. I left one on his desk before.
Q. Okay. Now, I know hindsight is 20/20, but did you make copies for yourself?
A. No. But I sure wish I would have.
MR. MURPHY: Let's go back to what we saw yesterday. And, Your Honor, I'm only going to put up what was previously admitted as Number 1. May I publish?
THE COURT: Yes, sir.
BY MR. MURPHY:
Q. Do you recall this e-mail that was admitted yesterday?
A. Yes, sir, I do.
Q. And, again, what were these different names and things like food allergies? What was your understanding of the purpose of all that?
A. Those were the names of the children that we received the Easter baskets for the Easter egg hunt from AIM, their age, and if they had any food allergies so we didn't include those in the baskets.
Q. Okay. So how -- how would -- how did you use

that information when you gathered up product for the donation?

A. I would make it specific to that individual child by age and allergies.

Q. And to be clear -- I asked you about these lists, but to be clear, did you give Mr. Brickman either in person or setting on his desk, however you did it these different times, did you provide these lists before the donations were made?

A. Yes, sir.

Q. And what information did you put on the list that you gave to Mr. Brickman?

A. So the way the -- in a grocery store, like it's broke up into GM, general merchandise, grocery, if it was an edible product, that type of thing. So I would write out, for instance, and this is just an example, but if it was grass, I would say, "GM, ten times $1.29."

MR. MURPHY: Your Honor, could I approach about a question I wanted to ask?

(Sidebar discussion.)

BY MR. MURPHY:

Q. Was anyone else in the office when you gave the list to Mr. Brickman?

A. I recall Barry Parks being in there one of the

times. Yes, sir.
Q. And just so the record's clear and just answer this specific question: What is Mr. Park's position?
A. He was the third salary manager in the building. He was over grocery.
Q. Now, you testified earlier you've been involved in prior donations for BI-LO?
A. Yes, sir.
Q. The process that you've outlined for us where you gathered items and you make out this list, had you used that -- is that consistent with the process you used before?
A. Yes, sir.
Q. Did anybody ever tell you that you needed to provide different information other than the information you told the jury you put on that legal pad?
A. No, sir.
Q. And just so the record is clear, what were the types of items generally that you gathered up for the Easter basket donation?
A. There was grass; candy.
Q. So the record's clear, I think we all know all that, but what's the grass you're referring to?

A. The plastic grass that you put in the Easter baskets; plastic Easter eggs that you stuff with candy; candy; some lip glosses for the girls. Just general -- like just general Easter basket things.

Q. What does the term "general merchandise" mean in your -- in your world?

A. Anything not edible is general merchandise.

Q. So were there general merchandise items put in these Easter baskets?

A. Yes, sir.

Q. And how did you get these items together?

A. Over a period of time. A long time.

Q. Well, let me ask you, why was it over a period of time?

A. So my store was a little chaotic. I don't want to sound like a complainer, but extremely short staffed. Like a lot of times I was on a register or I was the bookkeeper or I might be unloading a truck or relieving a deli person for a break. It just depended on the situation or the day.

And then I'm sure y'all are familiar like when a coupon doesn't scan or your check doesn't go through the machine and the machine eats it. I mean, just all types of things.

And, you know, the cashier will call the code?

Well, they're calling for what I did. They were calling for me to come fix the problem, flip a key, whatever.

There were bigger problems. I would help address those and tell them where to put their product, where they couldn't put their product due to our guidelines.

So if -- just, you know, if I had five minutes here, that's five minutes. Then if I had 20 minutes later, I would. So it all just depended on what was going on that day.

Q. So you didn't go out and do this on one occasion?

A. No, sir.

Q. Okay. So just walk the jury through what you would do. You'd go and you'd do that and do what next? Just walk through what -- what you did to gather those items.

A. So like -- it would be like, oh, the Easter stuff was near the floral. So I might be, oh, let me grab this. I'm going to start grabbing grass. And I might get five in my hand, and then all of a sudden "code 15." Then I would fix that. And I might not go back to that at that time. I'd go do something else.

Then it would dawn on me I got to get that stuff together. Then I would go grab another. I'd grab a few more things. I'd sit them under -- the layout of that particular store was six registers, a floral department, and then the exit door. So if I'm right there, I might would throw them in floral. I might would throw them on the end of register six, because that was a register that hadn't been up and running forever so it was just dead space so I would usually throw stuff there too. Then I would go back to bagging it up if I had a chance to. It just depends.

Q. Okay. You mentioned the floral department. When you -- what exactly -- what role did the floral department area play in your gathering of items?

A. It was just an area close to where I was at the time that wasn't used by customers. It wasn't in the customers way.

Q. Well, when you -- when you gathered up the items, where did you put them?

A. Either on the floral department or just on the counter space because our floral department wasn't really an active floral department per se.

We usually only had like three arrangements. We had like a little part-time florist that worked a

few days a week. That's all she worked. So it wasn't like a daily operation or run a chance of being put back, and then I'd have to go re-collect again.

Q. Now, as customer service manager -- well, before we get to that. Again, for the jury, tell them where is the floral department in relation to the cash register?

A. Beside it.

Q. Okay. And that is at what part of the store?

A. The front end.

Q. The front end. Let me ask you, what part of the store has the most number of employees in it?

A. The front end.

Q. Okay. And what part of the store is closest to where the managers, including Mr. Brickman, are?

A. The front end.

Q. And are you familiar with the camera system that's in the store?

A. Very familiar.

Q. What part of the store has the most cameras in it?

A. The front end.

Q. And had you reviewed video footage from the different cameras in the store before?

A. Yes, sir.
Q. For what purpose?
A. For two purposes: If we caught a shoplifter, like there was -- well, we didn't catch them anymore. We just let them go. But if I needed to record the video and send it to loss prevention, we would record the video and then upload it.

Also, there was a time where part of the opening operations of the store was the printer from that camera system would print off anything that had dinged during the night. So like if we open the back door at some point, I would have to view that and say, "Grocery -- grocery truck arrived," and write that on a sheet of paper and file it. "Milk truck arrived." If it dinged near the customer service desk and, you know, made an error on the printer, I would have to watch that specific time frame and say, "Watched. Didn't see anything." So I was very familiar with operating that system.
Q. Did you know what the cameras saw or could see in the store?
A. Yes, sir.
Q. What was your understanding of what the cameras could see in terms of your activities at the floral area and every aisle on the store?

A. They could see me.
Q. And are the cameras ever off?
A. No, sir, unless there's a power outage.
Q. Does the system record what's on the video -- what's on those cameras?
A. Yes, sir.
Q. And does that recording system ever turn off?
A. The only time is if there's a power outage.
Q. So what was your understanding as to whether the cameras could see you on various occasions going and gathering items and putting them in the floral department?
A. It could see me.
Q. And did you remove those items from the store?
A. Yes, sir, I did.
Q. And when you removed them from the store, how did you get them from the floral out of the store?
A. In a buggy.
Q. Okay. But what part of the store did you take them out of?
A. The front end.
Q. And, again, what was your understanding as to whether the cameras could see you walking out with these items?
A. It saw me.

Q. Let me show you a document we marked as Exhibit 22, and I think you've seen this picture once before. If you could tell us what is that picture of? Well, let me just -- don't get in the contents of it yet. Without going in the contents of it, what -- what is your understanding of what that document is?

A. This is a still shot of me leaving the store.

Q. Okay. A still shot from what?

A. I'm sorry?

Q. A still shot from what? What -- what took this? What took the still shot?

A. The CCTV. The camera ---

Q. What?

A. --- the camera system.

MR. MURPHY: Okay. Your Honor, I move to admit Exhibit 23.

MR. SHANKMAN: No objection.

THE COURT: Is that 22?

MR. MURPHY: Twenty-two. I'm sorry.

THE COURT: Plaintiff's Exhibit No. 22 would be admitted without objection.

(Plaintiff's Exhibit No. 22 was received into evidence.)

BY MR. MURPHY:

Q. All right. I want to go through a couple of things. First, is this what you refer to as the front end of the store?
A. Yes, sir.
Q. Okay. Let me start back in this area here where these windows are and the store here. What is that area?
A. The area that you've got your cursor over right now, that's what we would call the bookkeeper office, the service center.
Q. Okay. And what are these? I know it may sound a little silly, but these different aisles here, what are these?
MR. SHANKMAN: Can I stand over here, Your Honor? I can't see what he's pointing to.
THE COURT: Okay. Stand -- stand where you can see.
BY MR. MURPHY:
Q. What are these different aisles here?
A. They're the registers.
Q. Okay. And then this area here with balloons, what is this area?
A. That's the entrance of the floral department.
Q. Okay. And so on this occasion, what's in your buggy?

A. I don't know.
Q. It's on 3/17, right, from the state ---
A. It may be a mix. I'm not positive because sometimes I did buy groceries for myself -- my home when I was leaving, but it could be a mix of things I was gathering for the Easter baskets. It looks like my purse is in there.
Q. Okay. Who's this lady you're walking out with?
A. That would be one of the bookkeepers.
Q. Okay. And so did you know there was a camera right here?
A. Yes, sir.
Q. Are there, in fact, a number of cameras along there?
A. There's actually a -- let's see. There's a camera that would sit here that would capture register six and five. Another camera right there that would capture the next two registers. Another camera that would capture the next two registers. There's another camera here that would capture the front of this department. And then there is a camera that faces straight onto the bookkeeper, the service center.
Q. And this bookkeeper, did she question you at all about why you're walking out of the store with

these items?
A. No, sir.
Q. Did you conceal from the bookkeeper in any way what you were walking out with?
A. No, sir.
Q. When -- when you took these items out of the store, where did you first take them?
A. I first took everything to my house and collected them.
Q. Before you got to your house, where did you take them?
A. To my car.
Q. To your car. And what time -- when -- when would you typically take the items from the store to your car?
A. Usually in the evening because it was the slowest time.
Q. So you took the items to your car and then you said you took them home?
A. Yes, sir.
Q. And this is the Easter basket donations you took?
A. Yes, sir, it is.
Q. Why would you take the Easter basket items home?

A. So my two daughters and I stuff each of the eggs with the candy. We broke it up, almost like a goodie -- if you fill a goodie basket -- goodie basket -- goodie-basket style like in the floor. So I would open up a bag of one product; open up a bag of another product; open up a bag of another product.

And each of my daughters would stuff their egg, pass it to the next daughter. She would stuff what she wanted in there. And then we would close the eggs and form the baskets to look full.

Q. And where did you and your daughters do this?

A. We did it in our living room floor.

Q. After you and your daughters put the Easter baskets together, what would you do with them?

A. I loaded them back up in my car.

Q. Let me go back to a document that was previously admitted, Your Honor, as Exhibit No. 2. Do you recall this e-mail exchange between yourself and Ms. Cobb?

A. Yes, sir, I do.

Q. And what is the date of that?

A. 3/28.

Q. Okay. And is that where -- is that when you took the baskets over to AIM?

A. Yes, sir.
Q. And when you got to AIM, with whom did you meet?
A. When I got to -- when I got to AIM, I sat in the parking lot for a minute because my mom had to meet me there to give me something. Then I met Marla Cobb.
Q. And did you give the Easter basket donations and the contents and things that you and your daughters compiled, did you give them to Ms. Cobb?
A. Yes, sir, I did.
Q. Did you take any of these items for your own personal use?
A. No, sir, I did not.
Q. Let's talk about the second donations. She testified yesterday that she showed you around and showed you the panty. There was a discussion between the two of you. Do you recall that?
A. I do recall that. Yes, sir.
Q. And, again, did you discuss that second donation with Mr. Brickman before it was made?
A. Yes, sir, I did. I asked permission.
Q. And did he give it?
A. Yes, sir. He did.
Q. Did Mr. Brickman give you any -- give you any

instructions on what you could gather up?
A. Just the general merchandise items -- shampoo, body wash, soaps, feminine -- feminine hygiene products, anything like that.
Q. And you testified earlier about making a list. Did you again make a list?
A. Yes, sir, I did.
Q. Did you provide that to Mr. Brickman?
A. Yes, sir.
Q. Did you make that list in the same manner using the same method as you did the list in the past?
A. Yes, sir, I did.
Q. And, again, did anybody ask you for any more information or any specific information, other than what you put on that list?
A. No, sir.
Q. Did you take those items home?
A. No, sir, I did not.
Q. What did you do with those items that you gathered for the second donation?
A. I took them straight to AIM.
MR. MURPHY: And, again, Your Honor, Exhibit No. 4 was already admitted into evidence. I would like to put that up.
BY MR. MURPHY:

Q. Yesterday we saw this, and then the second line of this letter is referring to Easter baskets being beautiful, but well-thought-out, and specific to our children's ages and needs. Is that a reference to the first donation?

A. Yes, sir.

Q. And then read the next sentence.

A. "In addition, the personal hygiene products were timely and greatly appreciated."

Q. And what is that in reference to?

A. The second donation.

Q. Now, with regard to the second donation, did you take any of the donation that was for AIM and take it for your own personal use?

A. No, sir, I did not.

Q. Now, the removal by you of items to take to charity, is this the first time that ever happened?

A. No, sir.

Q. Tell the jury other times that you did the same type of thing?

A. So for the BI-LO charity golf tournament, like we would -- for instance, we would say -- the district manager would say, "Okay. All cold food is going to come out of store 5277. And, Lisa -- I'm just going make up some names. Joe and Tim are

going to go collect those items and take them to the golf tournament. Then all the dry items are going to come out of store 5709. And these people are going to load up and meet there and load their car up with the items and take them to the golf tournament."

Then for the Trunk or Treat for the Anderson Cancer Association, we would load up product in our car to take to the event.

Relay for Life, we'd load up our car and take it to the event.

Q. And did you have to go through any special process or do anything different in those situations that you did in this situation?

A. No, sir, I did not.

Q. Now, I want to turn back to the time when you provided statements to Ms. Furnas, and we can go right back to Exhibit No. 7. Looking at -- looking on April 20th to put it in time frame. That's when Ms. Furnas wrote, "Got them. Thanks so much." Do you see that?

A. Yes, sir, I do.

Q. Okay. After -- and you said you spoke to Ms. Furnas, correct?

A. For a brief.

Q. Is one of the statements you provided to Ms. Furnas your statement?
A. Yes, sir, it was.
Q. After you provided your statement and the other statements to Ms. Furnas, did anybody from corporate headquarters get back to you?
A. No, sir. They did not.
Q. Were you -- did anybody come out to the store and investigate any of the matters?
A. No, sir. They did not.
Q. Eventually, did you reach back out to Ms. Furnas?
A. Yes, sir, I did.
Q. Again, don't talk about the contents, but I'm just going to ask you if you can identify what we marked as Exhibit No. 10.
A. Yes, sir.
Q. Okay. And what is -- don't -- don't read it yet. What is Exhibit No. 10?
A. It's an e-mail from me to Ms. Furnas.
MR. MURPHY: Move to admit ten?
THE COURT: Mr. Shankman?
MR. SHANKMAN: I'm sorry, Your Honor. No -- no objection.
THE COURT: No objection. Plaintiff's Exhibit

No. 10 is admitted without objection.

(Plaintiff's Exhibit No. 10 was received into evidence.)

BY MR. MURPHY:

Q. Go ahead and read what you said to Ms. Furnas. And first of all, what is the date of these e-mails?

A. May the 9th, 2018.

Q. Okay. So that's about 20 days after you provided the statements?

A. Yes, sir.

Q. And go ahead and read for the jury what you said to Ms. Furnas?

A. "Good afternoon, Allison. I hope this e-mail finds you doing well. I'm reaching out to you because a few of the associates have asked me what is the status. I explained to them things take time. However, they did ask me to reach out and check with you. Two of the associates are currently looking for employment elsewhere, which disheartens me because they are good associates. I look forward to hearing from you soon. Thank you in advance for your help in this sensitive matter. Lisa Styles."

Q. Well, let's get the last word right. Sensitive what?

A. Subject. I'm so sorry.

Q. No. That's okay. I just want to make sure we read it correctly. And what was Ms. Furnas' response when you told her that?

A. "Hello, Lisa. I'm sorry -- sorry for the delayed response. I thought I had responded and just realized I did not. I have looked into the situation and shared my feelings with the appropriate parties. As far as an outcome or any next steps that would take us, that information is confidential. The hope and expectation anymore would be that you begin to see improvement in the communication and work environment. Thank you, Allison."

Q. And did that -- did you have any communications with corporate headquarters after you submitted your statement and the statement of others, other than this e-mail that you received from Ms. Furnas?

A. No, sir, I did not.

Q. Did anybody from the company on any level of the company ever get back to you to see if you were still having problems or not?

A. No, sir. They did not.

Q. Are you aware of anybody from any level of the company getting back to any of the employees that you're referring to in Exhibit No. 10 and seeing if

they had problems?

A. Not that I'm aware of, sir.

Q. Did anyone from the company ever tell you that you would not be retaliated against for making the statements that you made to corporate?

MR. SHANKMAN: Approach, Your Honor?

THE COURT: Yes, sir.

(Sidebar discussion.)

THE COURT: All right. We're going -- we're going to take a short break, ladies and gentlemen.

Mr. Bailiff, would you take the jury to the jury room?

(At 10:50 a.m., jury left the courtroom.)

THE COURT: Ms. Styles, you can step down. Just don't talk about your testimony.

THE WITNESS: Yes, sir.

(From 10:50 to 11:09 a.m., recess.)

THE COURT: Okay. Mr. Bailiff, would you get our jury, please.

THE BAILIFF: (Complying.)

(At 11:11 a.m., jury entered the courtroom.)

THE COURT: All right. Mr. Murphy.

MR. MURPHY: Thank you, Your Honor.

BY MR. MURPHY:

Q. Lisa, when we left off, we were talking about

this May 9th communication and whether or not someone had -- corporate headquarters or any organization had checked back with you. I'm sorry. Again, I apologize. Did anyone at any level in the organization, including corporate headquarters to whom you spoke, ever assure you that you would be protected from retaliation for making your complaints?

MR. SHANKMAN: Objection.

THE COURT: Noted for the record. Overruled.

THE WITNESS: No, sir. They did not.

BY MR. MURPHY:

Q. Now, Lisa, I'm going to start talking about what happened on May 23rd. What time did your shift start that day?

A. 12:00 p.m.

Q. 12:00 p.m., so that's noon?

A. Yes, sir.

Q. Okay. Did that day start any differently than any other day?

A. Before I got to work?

Q. Yeah.

A. No, sir.

Q. Prior to May 23rd before you got to work, had anybody at the company accused you of any kind of

theft or told you you're in any kind of trouble?
A. No, sir.
Q. What happened when you got to work?
A. When I got towards the service desk, I -- they said that corporate was in the office. The bookkeeper said that corporate was in the office. So I didn't know what they were doing. I didn't want to bother them, so I walked to the service desk and put my purse in -- there's like a little area, the back area. We called it the POS room. It was where we changed prices in the computer and upload them. I put my purse there.
Q. Let me -- let me just -- let me just stop you for a minute. I'm going to put up Exhibit 22. Maybe that's all we have in the record right now. If you would kind of tell the jury what part of the store you're talking about.
A. It's hard to tell in this picture, but the doorway is blacked out right there. Next to it is like a half door that you use a key to turn into, so I went through that half door through the back of the service desk into another door behind it to put my purse.
Q. Okay. And then what happened?
A. I'm sorry. Can you repeat that?

Q. And then what happened?
A. Then I was called to the office.
Q. Who called you to the office?
A. Ron Duncan.
Q. Okay. And is the office visible on Exhibit 22?
A. Yes, sir.
Q. Okay. Tell the jury what -- where the office is on Exhibit 22.
A. The best way to describe it, y'all see at the top where it says "BL556611," the door right up underneath that 11 is the doorway to the manager's office.
Q. Is my cursor circling that area?
A. Yes, sir, it is.
Q. Now, what kind of -- is that a solid door?
A. It has a window.
Q. Okay. And is the window visible? You can see right into the office from the outside?
A. Yes, sir.
Q. Did you go into the office?
A. Yes, sir, I did.
Q. And how big is that office?
A. It's a little bit bigger than the section the jurors are sitting in. Not much bigger. It's like 8 by 11.

Q. What all is that room?
A. Three desks; a bookshelf; a file cabinet; a foldout table this camera system is sitting on.
Q. Okay. Who was in the room when you went into that room?
A. Ken Miller and Ronnie Duncan.
Q. Okay. And for the record, who is Mr. Duncan?
A. It's the gentleman on the far of the table.
Q. Okay.
A. And he's loss prevention with BI-LO.
Q. And what is loss prevention?
A. They investigate shoplifting; employee theft; slips and falls.
Q. And who is Mr. Miller?
A. The HR representative for our area.
Q. What did they tell you when you went into the room?
A. Well, first they said, "Hey, Lisa," and then they told me they were there investigating me taking product.
Q. Had you ever heard that there was any investigation of you taking product prior to them telling you that?
A. No, sir.
Q. And so in the room is yourself and these two

men?
A. Yes, sir.
Q. And the door was closed?
A. Yes, sir.
Q. With regard to the product, did you tell these two men what had happened?
A. Yes, sir, I did.
Q. And did you tell them about the AIM donations?
A. Yes, sir, I did.
Q. Did you tell them whether or not Mr. Brickman was involved in those donations?
A. Yes, sir. I told them Mr. Brickman had approved those donations.
Q. Did you tell them anything about those lists that you testified about?
A. Yes, sir, I did.
Q. At what point in the meeting did you tell Mr. Duncan and Mr. Miller that there were donations and lists and Mr. Brickman was involved?
A. The very beginning of the meeting.
Q. Okay. Did Mr. Duncan respond to your statement that Mr. Brickman was involved and that there were lists?
A. Yes, sir, he did.
Q. What did Mr. Duncan say?

A. That it was his word against mine.
Q. Whose word against yours?
A. Mr. Brickman's.
Q. Well, did Mr. Duncan ask you for copies of any of these lists or whether you had any proof?
A. No, sir, he didn't.
Q. Now, so you're brought in the room. You're told they're investigating theft. You told them about the donations. You told about Mr. Brickman. You told them about the list. Between the time that you told them about Mr. Brickman and the list and the time that Mr. Duncan said, "Well, it's your word against Brickman's," did Mr. Duncan leave the room at all? Did he call Mr. Brickman at all?
A. No, sir.
Q. After you said Brickman is involved and there's lists, was there any way Mr. Duncan could've communicated with Mr. Brickman before he said, "It's your word against Brickman's"?
MR. SHANKMAN: Objection. Foundation. He's asking.
THE COURT: Counsel approach.
(Sidebar discussion.)
BY MR. MURPHY:
Q. Let me back up and ask another question. After

you made the statement, "Mr. Brickman is involved and there's a list," did you see Mr. Duncan texting or getting on any kind of electronic device to communicate in any way with anybody?

A. No, sir, I did not.

Q. So was there any way from the time you said Mr. Brickman knew and was involved and that you had provided a list and the time Mr. Duncan said in that room, "It's your word against Brickman's," is there any possible way Mr. Duncan could've communicated with Mr. Brickman?

A. He could've got up, I'm assuming.

Q. Did he?

A. No, sir.

Q. So did -- Mr. Duncan didn't leave that room, did he?

A. No, sir.

Q. And he didn't get on any kind of electronic device?

A. No, sir.

Q. So is there any way from the time you made the statement to Mr. Duncan when he made the statement, "It's your word against Brickman's," is there any way he could've communicated with Mr. Brickman?

A. He could've -- he didn't, but he could've

gotten up. Mr. Brickman was in the store.
Q. Did you tell Mr. Miller and Mr. Duncan why you thought you were being confronted about theft?
A. Yes, sir, I did.
Q. What did you say to them?
A. I said I felt like all this was stemming from the complaint that I had brought to corporate.
Q. So you're in this room with these two men and the door was closed?
A. Yes, sir.
Q. Did they allow you to get a witness or have anybody present on your behalf?
A. No, sir.
Q. Did you make any statements to Mr. Duncan and Mr. Miller as to whether you wanted to be in the room or didn't want to be in the room?
A. I asked to leave that room several times.
Q. Who did you ask?
A. Mr. Duncan.
Q. Did either Mr. Duncan or Mr. Miller make any statements about whether you were permitted to leave?
A. I wasn't permitted to leave until I wrote a statement.
Q. Who said that?

A. Mr. Duncan.
Q. And, again, what position is Mr. Duncan?
A. Loss prevention.
Q. Did you think Mr. -- did you have an opinion as to whether Mr. Duncan had the authority to make you stay there?
A. At the time I was under the assumption that he did.
Q. Okay. At some point in time -- at some point in time, did you have a discussion about whether or not you could take a break?
A. Yes, sir.
Q. What was said to you about whether you were able to leave that room to take a break?
A. I was able to go outside and smoke a cigarette, but Mr. Miller accompanied me.
Q. Okay. And don't discuss the contents yet. This is Exhibit 23, Your Honor.

Without telling us what it is, can you tell us -- let me put it this way: Without saying what it shows, can you tell us what this is?
A. This is a still shot of the front end from that day.
Q. Okay. And is that from the same camera or set of cameras?

A. Yes, sir.
Q. Okay. And it's what day?
A. 5/23.
MR. MURPHY: All right. 5/23. Your Honor, move to admit Plaintiff's Exhibit No. 23.
THE COURT: Any objection?
MR. SHANKMAN: No objection.
THE COURT: So Plaintiff's Exhibit No. 23 would be admitted without objection.
(Plaintiff's Exhibit No. 23 was received into evidence.)
BY MR. MURPHY:
Q. All right. Let me first back up and -- you saw where that door was before and it is blacker. In here, we can see some light into it. What -- so what is this area right here?
A. That's the manager's office.
Q. Okay. And so is the door open at this point?
A. It appears to be. Yes, sir.
Q. Okay. And what is this a picture of?
A. This is me and Mr. Miller.
Q. Okay. But is -- is this during the time that you were being questioned?
A. Yes, sir.
Q. So what happened? Tell -- tell the jury what

this -- the story behind this picture.
A. I asked to go smoke a cigarette. I was told I couldn't be alone. This is Mr. Miller accompanying me outside to smoke a cigarette.
Q. And did you go outside to smoke a cigarette?
A. Yes, sir, I did.
Q. Did Mr. Miller go with you?
A. Yes, sir, he did.
Q. How close did he stick with you?
A. Within 3 to 4 feet.
Q. Did you ask Mr. Miller to go out with you?
A. No, sir, I did not.
Q. That's something they told you had to happen?
A. Yes, sir.
Q. And you wrote a statement that day, didn't you?
A. Yes, sir, I did.
Q. Did you make any statements to Mr. Duncan or Mr. Miller as to whether you wanted to make a statement?
A. I did not want to write a statement.
Q. Okay. But I didn't ask you whether you wanted to or not. I asked you whether you made any statements to them about whether you wanted to.
A. I told them I did not want to write a statement. I had nothing to say.

Q. Okay. And after you told him you didn't want to write a statement, did one of them respond?
A. Yes, sir. Mr. Duncan.
Q. What did Mr. Duncan say?
A. I had to write a statement or I was not going to be allowed to leave.
Q. Before we get into that statement, I don't want to skip over one thing. Sorry. I forgot this, Your Honor.

Could you identify for us what we marked as Plaintiff's Exhibit No. 11?
A. Yes, sir.
Q. And what is Plaintiff's Exhibit No. 11?
A. It's where, you know, the numbers they put on the bottom of your receipt when you checkout somewhere and you can call and give your feedback or whatever. This is -- once you do that with BI-LO, if it's a negative, it's generated and sent back out to the store level for us to make contact and try to make whatever your complaint is right.
Q. And who receives these messages from the customers?
A. All the salary managers within that store.
Q. So this is something you received while you were employed there?

A. Yes, sir, it is.
Q. And the other managers at the store would've received it too?
A. Yes, sir. They did.
MR. MURPHY: Move to admit 11, Your Honor?
MR. SHANKMAN: Renew my objection, Your Honor.
THE COURT: Objection noted and overruled.
MR. SHANKMAN: Thank you.
(Plaintiff's Exhibit No. 11 was received into evidence.)
BY MR. MURPHY:
Q. And how many different comments do we have in this exhibit, customer comments?
A. It looks like two.
Q. Let's go to the first page and go ahead and read to the jury what the comment that you and the other managers received at the Pendleton store.
A. "I shop this store at least three to four times a week; however, I will -- I will not return to any BI-LO after my experiences at the Pendleton BI-LO. In the last few months, I have witnessed a manager speak down to his staff more than I care to see. This last time broke my heart. He spoke to another female manager as if she was dirt, not even worth his time. The young -- young lady just stood there

and took it with tears in her eyes. Again, this was not my only time seeing treatment like this. A month back, it was directed at a young lady in the deli area. On several occasions, we have gone to check out, and he will walk by as if he doesn't see us. I will take my business to an establishment that treats its workers and customers with more respect. Pendleton is a small town, and after speaking with several friends, they agree the atmosphere has changed in the store. None of the workers seem happy anymore, and a lady said she had witnessed the manager's temper herself. I will not support -- I will not support the treatment as I witnessed. I truly hope for the sake of the workers that someone looks into this."

Q. And that was sent when?

A. 4/14.

Q. Did you send this in?

A. No, sir.

Q. Let's go to the next complaint on the next page. Again, is this any complaint that you had anything to do with in terms of submitting it or trying to get somebody to make it?

A. No, sir.

Q. Read it to the jury, please.

A. "I am writing to make a comment about a recent shopping trip to your BI-LO located in Pendleton, South Carolina. I enjoyed my first visit to the store up until I went to check out. The store was very busy. And as I was waiting in the line, a girl called the store manager to help. And I was appalled at what happened next. A white male that manages your store stepped out of his office and walked to -- and wanted to know why he was called to the front. And they told him it was busy and needed his help. Your store manager's response was that, "It's not my problem. That is her problem," and then he pointed to this lady that was checking me out. He then turned around and went back to his office. This took place in front of me and other customers. I feel sorry for the lady that was checking me out. I could not believe how she was treated. Your store manager is a jerk. I don't think I will be returning to your store. I guess he doesn't understand that customers are who keeps the store making money. And it was very obvious to everyone that day he doesn't care, and shame on BI-LO for letting someone like him manage your stores."

Q. After the company received these e-mails, did

anybody check in with you to investigate them?
A. No, sir. Because as long as we close them out within 24 hours, they don't escalate.
Q. Let me take you to a document. I'm going to go back now. Sorry. I forgot to do that part. I want to go back now to the situation on May 23rd where you're in that room with Mr. Duncan and Mr. Miller. I'm going to go back to the testimony about the statement. I'm going to ask you to identify what we've marked as Plaintiff's Exhibit No. 12. Can you identify that document?
A. Yes, sir, I can.
Q. And without going into the contents again, what is that document?
A. This is my statement from that day.
Q. Is that your handwriting?
A. Yes, sir, it is.
MR. MURPHY: Move to admit 12, Your Honor?
THE COURT: Any objection?
MR. SHANKMAN: No, Your Honor.
THE COURT: Plaintiff's Exhibit No. 12 will be admitted without objection.
(Plaintiff's Exhibit No. 12 was received into evidence.)
BY MR. MURPHY:

Q. Okay. Just -- go ahead and read to the jury your statement in your own handwriting.

A. "I, Lisa Styles, 1011 Shennandoah Drive, Anderson, South Carolina, 29625, spoke with Ronnie Duncan on 5/23/2018 concerning incidents at the BI-LO 5566. Over the last few months, recently I have begun to take items from the store. By doing this, I was leaving them in floral and retrieving it at a later time that day. This occurred on several occasions. Some of what I took was donated to a local charity; however, it was still wrong. I would estimate the loss to be around $450. I do not have a reason this occurred, other than the store became a free-for-all under new leadership. Lottery went missing. Store manager did not care. Donations are given to unauthorized charity. Cash over shortage is awful and no concern from a store manager. I truly apologize for my wrong and I'm willing to pay this back today on 5/23/2018."

Q. Now, Lisa, in that statement, you said, "Some of what I took was donated to a local charity," right?

A. Yes, sir.

Q. You didn't say on May 23rd that all you took was donated to a charity, did you?

A. No, sir, I didn't.
Q. Why?
A. I was told what to put in here.
Q. Who told you what to put in here?
A. Mr. Duncan.
Q. Prior to him telling you that, did you tell him that it was all donated to charity, or did you tell him you took some of the stuff?
A. I told him everything was donated to charity.
Q. Did you take one feminine hygiene product out of the -- out of the lot for yourself?
A. No, sir, I did not.
Q. Any product? Bottle of shampoo or anything?
A. No, sir, I did not.
Q. And you also stated that, "I truly apologize for my wrong." Do you see that?
A. I do.
Q. Why did you write that?
A. I was told to.
Q. And you're saying, "I'm willing to pay this back today." Do you see that?
A. I do.
Q. Why did you agree to pay money if all of this product went to AIM as both yourself and Marla Cobb has testified?

A. They told me if I paid it back it would keep me out of jail.
Q. Lisa, explain to the jury why in your own handwriting on May 23rd you're saying things that you're now trying to tell this jury are not true.
A. I would have wrote anything to get out of that room.
MR. MURPHY: Just take a second. Can I approach her, Your Honor?
THE COURT: Yes, sir.
BY MR. MURPHY:
Q. Hang with me, Lisa, but I need to get the jury to understand this. Okay.
A. Yes, sir.
Q. Best you can, I want you to again explain to the jury what's going through your mind. You testified that they talked about, I don't know, arrest or jail or something. And you're being -- this was after you were told you weren't allowed to leave?
A. Yes, sir.
Q. Okay. Tell the jury what's going through your mind as they're making these statements to you about not being able to leave and getting arrested, things like that. Just explain to them.

A. Well, of course, my kids. Anderson is such a small town.

Q. Okay. Slow down. Try to ---

A. How is my husband going to explain to my kids that their mama was in jail? They told me that if -- that if I wrote the statement and I paid the $450 that I wouldn't go to jail. I would have done whatever I needed to do to save my name, save my kids and my mom, my husband.

In that room, it was almost like fight or flight. Like an alarm just kept going off. You got to get out of this room. You got to get out of this room. So whatever I needed to do or agree to, yeah, it was wrong. Yeah, I lied, but I just wanted out. I wanted to get out of that store. I wanted to get out of that room. Customers are walking by seeing me in there. My staff is seeing me in there. I just wanted to get out.

Q. Your statement that you would agree to pay the money, you wanted to pay the money, that -- that was made before you finished your written statement?

A. That was the earlier agreement before I ever started the statement.

Q. And after you made your written statement, did they let you go home?

A. No, sir, they didn't.
Q. What happened next?
A. The police arrived.
Q. And do you recall who from the police arrived? First of all, which police are we talking about?
A. The Pendleton Police Department.
Q. And do you know which officer responded?
A. Officer Glenn.
Q. You're familiar with Officer Glenn?
A. Yes, sir.
Q. And did Officer Glenn come into that room?
A. Yes, sir, he did.
Q. So now in that room is Ken Miller, Mr. Duncan, Officer Glenn, and you in that little room?
A. Yes, sir.
Q. What did Officer Glenn say to you when he came in that room?
A. "Shame, shame, shame. You've been a bad little girl."
Q. What did Officer Glenn do next?
A. Read me my Miranda rights.
Q. Did Officer Glenn then say anything to you about what would happen in terms of the process and what would happen to you next?
A. Yes, sir.

Q. What did he tell you?
A. That he would go to the judge and the judge would issue a warrant for my arrest, and I would be notified to turn myself in.
Q. So you weren't arrested on the spot?
A. No, sir, I was not.
Q. But you understood that that was going to happen?
A. Yes, sir.
Q. So you've gone through this and now you've given a statement. Did they give that statement to the police?
A. Yes, sir. I feel like they did.
Q. Now, the police have this statement of you saying you did something wrong, and he's talking to you about being arrested. Tell the jury what that did to you.
A. My anxiety was so high that day. I was totally caught off guard with the entire situation. I tried to explain my side of the story, and it didn't seem that anybody was listening. I'm not saying I'm a perfect person, but I didn't do this. And, again, it was hard to even process what was happening because I've never been in a situation like that before. I was physically sick.

Q. Okay. Let me ask you, is it clear in your mind when this stuff is going on, did you know when the police officers arrived during all of this process, is all of that clear to you?

A. No, sir.

Q. Okay. But you agreed in your written statement to pay money, right?

A. I did.

Q. Okay. Let's -- at some point in time, did you do that?

A. Yes, sir, I did.

Q. Okay. I want to show you what we marked as Exhibit No. 13 and ask if you can identify that document?

A. Yes, sir, I can.

Q. What is this document?

A. This is the receipt for the money order I purchased.

MR. MURPHY: Move to admit, Your Honor.

THE COURT: Any objection?

MR. SHANKMAN: No objection.

THE COURT: Plaintiff's Exhibit No. 13 would be admitted without objection.

(Plaintiff's Exhibit No. 13 was received into evidence.)

BY MR. MURPHY:

Q. So this is a receipt?

A. Yes, sir.

Q. Dated what day?

A. 5/23.

Q. Okay. And if that timing is right, where -- when is that in relation to when you gave your written statement then?

A. The time is right. This is at 1:29, and I gave my statement at 12:42.

Q. Okay. And so how much -- how did you pay BI-LO?

A. How did I purchase this money order?

Q. Well, that's what I'm asking.

A. With a debit card.

Q. Okay. Was that your debit card?

A. To my account with my husband, yes.

Q. Okay. So you and your husband's money got paid over to BI-LO?

A. Yes, sir.

Q. How much of you and your husband's money got paid to BI-LO for all this?

A. $450.99.

Q. Has anybody from BI-LO ever offered to pay you that back, that money?

A. No, sir.
Q. On May 23rd when all of this concluded, were you told anything about your employment?
A. That I was terminated.
Q. Who told you that?
A. Mr. Miller.
Q. After Mr. Miller terminated you, did you then leave the store?
A. They asked if I had any personal belongings I wanted.
Q. And then did you leave the store?
A. Yes, sir.
Q. Okay. And tell the jury what happened when you left the store. Where were you intending to go?
A. To my house.
Q. Okay. Tell the jury what happened.
A. On my way out to the car, of course a few customers had saw me in there stopped. I got to my car. Took me a minute to get going, but I did. I wanted to just go home and get with my mom and my husband, tell them what's happened. I had to stop and pull over before I could even get home because I was literally just throwing up. I was just sick. I know it was my nerves.
Q. But did you eventually get home?

A. I did.
Q. And what -- what did you do that night?
A. I sat down with my mom and my husband Brad and explained what had happened, and I made a decision that I was going to go back to the police department the next morning.
Q. Did you go back to the police department the next morning?
A. Yes, sir, I did.
Q. Okay. Now, had they told you you're going to report to the police department the next morning to be processed and arrested?
A. No, sir.
Q. So you went on your own?
A. Yes, sir.
Q. And who did you ask for at the police department?
A. The chief.
Q. Now, at -- at this point, you'd already been given a Miranda warning, right?
A. Yes, sir.
Q. And what did you understand the Miranda warning -- what rights did you have?
A. To keep silent.
Q. And you fully understood that Miranda warning?

A. Yes, sir.
Q. But you still wanted to go speak to the chief of police?
A. Yes, sir, I did.
MR. MURPHY: Your Honor, may I approach for clarification with a question?
THE COURT: Yes, sir.
(Sidebar discussion.)
THE COURT: Mr. Bailiff, would you take our jury to the jury room, please?
THE BAILIFF: (Complying.)
(At 11:52 a.m., jury left the courtroom.)
MR. MURPHY: Thank you, Your Honor.
THE COURT: Yes, sir. Mr. Shankman, do you have an objection?
MR. SHANKMAN: Your Honor, thank you for the -- for -- for taking the time to do this now.
We're opening the door now for counsel to get into what I -- I would assume -- looking for the Court's guidance here. I would assume the witness is going down the road of what she told the chief of police, and I think just what she told the chief -- what she told the chief of police. I have no problem with her telling -- her reporting what she told the -- the chief of police.

the break?

THE COURT: There's a couple of conference rooms. I know there's a big conference room. If either side needs a conference room, there's plenty of them.

(At 12:01 p.m., jury entered the courtroom.)

THE COURT: Mr. Murphy, proceed.

MR. MURPHY: Thank you, Your Honor.

BY MR. MURPHY:

Q. Lisa, when you went and spoke to the chief the next day, May 24th; is that right?

A. Yes, sir.

Q. Did you talk to the chief about your written statement in which you said, "What I did was wrong and it was some but not all"? Did you talk to him about that?

A. Yes, sir, I did.

Q. Did you tell the chief anything about the statement made to you about paying $450?

A. Yes, sir, I did.

Q. And did you talk to the chief about the donations?

A. Yes, sir, I did.

Q. What did you tell the chief about that stuff? What did you tell the chief about those subjects?

A. I told the chief that I donated the products to AIM. I told the chief that they told me that if I paid the $450, it would keep me out of jail and the statement.

Q. Did you provide the chief with any proof that there had been donations?

A. Yes, sir. He asked me if I had proof.

Q. Just one question at a time so we don't get ahead of ourselves.

I'm going to ask if you can identify what we marked as Exhibit No. 15.

A. Yes, sir, I can.

Q. Without going into the content yet, the top of this first page, what is this?

A. It's an e-mail to Mr. Burdette.

Q. Okay. Who is Mr. Burdette?

A. Chief Burdette.

Q. So that's the chief you went to see?

A. Yes, sir.

MR. MURPHY: Your Honor, move to admit 15.

THE COURT: Any objection?

MR. SHANKMAN: Same objection.

THE COURT: So noted. This was admitted as -- well, now it appears that this is part of Plaintiff's Exhibit 1.

Q. Well, I'll talk to the chief, but the -- after you provided your proof -- you spoke to the chief on the 24th. And after you provided them this proof on the 29th, were you then arrested?

A. No, sir, I was not.

Q. Now, you're going to hate me for this, but I'm going to go back to May 23rd again in that -- in the office. Okay.

A. Yes, sir.

Q. And I want -- you talked to the jury about how you're upset. I don't -- I don't want to try to go over that, but I do need you to talk about physically what effect that confinement and that questioning and those statements you testified about, what physical effects did that have on you?

A. That day actually in my opinion, it changed my personality for a long time. I was a very trusting person before. Pretty outgoing. I didn't want to -- I didn't want to go out for a while in town. I didn't sleep for a long time. I didn't eat for a long time.

I had a hard time when I became employed again. I needed to make decisions because that's what my job called for, and I struggled with making a decision because what if I get fired again? What if

they come -- I mean, it was a whole new company. I didn't know all their ins and outs, just like apparently I didn't know all of BI-LO's. I mean, I was -- it took me a long time to become me again.

Q. Did you have any underlying medical conditions?

A. So I was diagnosed with MRSA after the birth of our first child, Remy. And I had battled it pretty hard for the first year after I had gotten diagnosed. And it lays dormant or it becomes active. It's one of those types of illnesses, but stress is an inducer to make you have a flair up. They're pretty painful. I could still work, but they're painful to work through.

And then, of course, I have to be extra careful at home because of my kids because I don't want them to get it. So I have to basically sanitize the entire house. Like they can't come in the bathroom that I've been in. They can't -- there's several things that we have to do to protect them.

And after the stress of the whole ordeal, my flair ups had come back pretty hard and I couldn't get them under control for a while.

Q. Now, these events of May 23rd where you're brought in this room and the police show up to BI-LO, did other people in the community know about

(Sidebar discussion.)

BY MR. MURPHY:

Q. And without getting into what anybody else said to you, tell the jury what effect those events had on your relationship with other people in the community.

A. I felt like I was close to several of them and a lot of it was through my job. You know, seeing them on a daily basis, talking about the kids and life and...

But inside of me just knowing that they even knew anything, not knowing what they knew, but just anything about what had happened that day mortified me. I withdrew just because I didn't want to keep having to explain this over and over and over again to people, but there was no way not to if I continued having contact with all of these people because I would -- I would want them to know the truth, so instead I just backed away.

Q. Lisa, let me just ask you, in your whole life have you ever been arrested for anything?

A. No, sir, I have not.

Q. Have you ever been charged with a crime?

A. No, sir.

Q. Prior to May 23, 2018, have you ever been fired

from a job?
A. No, sir.
Q. Had you ever been accused of stealing before this?
A. No, sir.
Q. Just talk about what you understood. You testified earlier you understood that from Officer Glenn you were going to be arrested. What -- what do you understand to be the fallout? What was your thinking as what that meant, what was going to happen if you were arrested?
A. That I was going to go to jail. In the world of social media, most people have a Facebook page. You've seen the Upstate Crime Beat. You know they post all -- put all your mugshots, all of that, little papers in the gas station, and this whole town would've known about it. And I've worked hard to be a good person, to be a good wife, daughter, to represent my family well for my kids. I want them to have a mom they can be proud of.
Q. That leads me to my last question, Lisa. Why does this matter appear legally to be over almost two years ago? Why are you pursuing this lawsuit and making public and telling these jurors what happened two years ago? Why are you doing this?

THE COURT: It has to be a flash drive.

UNKNOWN SPEAKER: I'll go purchase one.

MR. SHANKMAN: Okay. So we'll -- we'll purchase one. Can we just -- can we admit them tomorrow then, Judge?

THE COURT: Certainly.

MR. SHANKMAN: Because I don't know how we're going to get ---

THE COURT: Your case doesn't start until tomorrow.

MR. SHANKMAN: Exactly. Exactly.

THE COURT: You can put that in.

MR. SHANKMAN: Great. Thank you, Your Honor. Sorry for the confusion.

THE COURT: Okay. Are we ready?

MR. SHANKMAN: Yes, sir.

THE COURT: All right. Get our jury.

THE BAILIFF: (Complying.)

(At 1:57 p.m., jurors entered the courtroom.)

MR. SHANKMAN: May it please the Court?

THE COURT: Yes, sir.

MR. SHANKMAN: Thank you, Judge.

CROSS-EXAMINATION

BY MR. SHANKMAN:

Q. Ms. Styles, towards the end of your testimony

this morning, you talked about the -- some physical effects of your -- your -- following your departure from BI-LO on May 23rd. I think you said you -- you threw up on the -- you pulled over and you had to throw up in your car or something like that or outside?

A. Outside of my car.

Q. Okay. And were there other physical effects that you suffered?

A. Just not sleeping and eating.

Q. But it's true that you're not seeking compensation in this lawsuit for any physical injury; is that correct?

MR. MURPHY: Objection, Your Honor. She is ---

THE COURT: Counsel approach.

(Sidebar discussion.)

BY MR. SHANKMAN:

Q. Ms. Styles, I think you spoke earlier about -- withdraw the last question, Your Honor. I think earlier you spoke about, was it, MRSA?

A. Yes, sir.

Q. Your MRSA became aggravated due to your anxiety or due to stress?

A. Yes, sir.

Q. And can you tell -- when MRSA becomes -- is it

inflammatory? Is it exacerbated? What's the right word?

A. I've always said it's a flair up.

Q. Okay. That's fair. When -- when MRSA flairs up, does that have a physical effect on you?

A. It makes my body feel like I have the flu and then there's sores.

Q. Okay. And the sores, they're internal sores?

A. No.

Q. External?

A. I have had internal sores, but, no, those were external.

Q. Okay. And did you seek medical attention for that?

A. Since I've had MRSA, I actually have prescription antibiotic cream at home that I put on the sores.

Q. Okay. But so -- let's back up. It's true, isn't it, that you never sought medical attention for anything resulting from your experience at BI-LO that we're here today about?

A. No, sir, I did not.

Q. And back to my earlier question. Would you -- that these physical manifestations that you're talking about, the sores and I think you said

throwing up outside the car, are you seeking compensation for those circumstances, for those physical effects?

MR. MURPHY: Your Honor, objection on the grounds of competence. A lay witness can testify to that.

THE COURT: Overruled.

BY MR. SHANKMAN:

Q. You can answer that.

A. I can't really answer that because I don't understand all the legal. I don't understand all those.

Q. Well, you're asking the jury to compensate you for ---

A. How they see fit.

Q. I'm sorry?

A. How they see fit.

Q. How they see fit. Did you suffer any physical injury as a result of your experience at BI-LO?

A. As in like a fall?

Q. As in any phys -- any injury to your body at all?

A. Just the sores and the not eating and sleeping.

Q. So it's true, isn't it, that you're not seeking compensation in this case for the sores?

withdraw that. It's a multi-page document, correct?
A. Yes, sir.
Q. And this is a document. It's dated 1/25. Isn't it true that these documents come frequently during the course of a week?
A. Maybe. I can't be positive. It's just been so long ago.
Q. Understood. Okay. And you'll see at the top is says 1/25 and the bottom says 2018. Do you see that?
A. Yes, sir.
Q. Okay. So whether it happens more than once a week or once a week, these are communications that you receive at the store; is that correct?
A. Yes, sir.
MR. SHANKMAN: Move for the admission of Defendant's Exhibit 4.
THE COURT: Any objection?
MR. MURPHY: Yeah. I'm not sure if he's established she's received it or saw it, this particular one.
THE COURT: Ask -- ask some more foundational questions.
BY MR. SHANKMAN:
Q. Okay. If you would turn your attention --

Q. So one o'clock will be 1300, as opposed to one o'clock p.m.?
A. Yes, sir.
Q. So this is the date, May 23, 2018. Do you see that?
A. I do.
Q. And it says 12:16 and 49 seconds. Do you see that?
A. I see that.
Q. Okay. Do you -- as we sit here today, do you agree that that reflects the accurate time you were walking into the POS or the service area walking to the manager's office?
A. I can't verify that. No, sir.
Q. Well, I think you said earlier that once you got into the manager's office, you stayed there until you and Ken Miller walked out, correct?
A. If I recall, right. Yes, sir.
Q. Okay. And Ken Miller -- Plaintiff's Exhibit 23, that says you and Mr. Miller were walking out at 12:56. Do you see that?
A. Yes, sir.
Q. Okay. So when you look at Exhibit 7 which -- so this picture, Exhibit 7 shows you walking in the sales office at 12:16 on May 23rd. And then the

next -- and the other picture shows that you didn't walk out until 12:56. Would that refresh your recollection that you walked in around 12:16 and walked out at 12:56?

A. Of the building?

Q. No, ma'am. In and out of the manager's office?

A. I mean, I can't be positive ---

Q. I'm not asking ---

A. --- of the time that day.

Q. I'm not asking you to be positive, ma'am. I'm asking you to look at the evidence and tell me if you disagree with it.

A. Well, the time on the camera system is not always correct.

Q. Okay.

A. But if it's correct that day, then, yes.

Q. Okay. Now, you talked earlier about the manager's office and you described it. I'm showing you Exhibit 8. Now, this is a drawing and I know you didn't draw it, but is that drawing a fair depiction of the manager's office?

A. Not from that day. No, sir.

Q. I'm sorry?

A. Not from that day.

Q. Not from that day?

A. The layout isn't the same.
Q. Okay. Do you know who drew this?
A. No, sir, I don't.
Q. Okay. Were you sitting in -- thank you. Were you sitting in the manager's office with Mr. Miller and Mr. Duncan?
A. Yes, sir, I was.
Q. And when you were in the manager's office, isn't it true that you were sitting closest to the door?
A. Yes, sir, I was.
Q. Okay. And the door, you testified several times to your counsel, made several comments about the door being closed, right?
A. Yes, sir.
Q. Was the door locked?
A. The door automatically locks.
Q. From the outside coming in, right?
A. Yes. Nobody from the outside can come in.
Q. Right. But people from the inside can open it up and walk out; is that correct?
A. That is correct.
Q. And then Mr. Miller and Mr. Duncan, who else was sitting -- who was closest to you from the back of the office to the door? If you were sitting

close to the door, who was sitting closest to you?
A. Mr. Duncan.
Q. Okay. And was he on the other side of the table?
A. A desk.
Q. A desk. Okay. And where's the desk positioned?
A. In front of me.
Q. Okay. So you were sitting closest to the door. There was a desk in front of you. Mr. Duncan was behind that; is that correct?
A. Say that again.
Q. You were sitting closest to the door, right?
A. Yes, sir.
Q. Then there was a desk ---
A. Yes, sir.
Q. --- in front of you, then Mr. Duncan behind the desk?
A. Yes, sir.
Q. And where was Mr. Miller?
A. Beside Mr. Duncan.
Q. Okay. At any point in time, ma'am, did Mr. Miller or Mr. Duncan touch you during the course of that meeting?
A. No, sir.

Q. At any point in time did they threaten you during that meeting, threaten you physically?
A. No, sir.
Q. Okay. At any point in time did they threaten you with loss of your employment if you left the room?
A. They threatened that I'd go to jail.
Q. I didn't ask you that, ma'am. I asked you if they ever threatened you with loss of your job?
A. No, sir.
Q. At any point in time did they threaten your family or friends or anything like that?
A. No, sir.
Q. Now, earlier you spoke about -- you spoke about your statement, which is Plaintiff's Exhibit 12, and I want to go through that with you. Now, you said earlier this is your handwriting, correct?
A. Yes, sir.
Q. And you said they told you what to write, what you had to put on the statement, right?
A. Yes, sir.
Q. Isn't it true, if you look about halfway down the statement, when you wrote it right here is what I'm talking about, right up to this point, everything forward. Isn't it true that you wrote

that part of the statement and you gave it to Mr. Duncan?

A. Can you repeat that?

Q. Sure. When you were preparing this statement, isn't it true that you wrote on this -- you wrote the statement and you stopped here at first, which is -- there's two I's -- for the record, two I's in the middle of the page on the left-hand side. You stopped on the row on the first I, completed it, and the statement when you first gave it to Mr. Duncan ended at the words "to be around $450"; isn't that true?

A. I don't recall, sir. I'm sorry.

Q. No need to apologize. Okay. Do you recall then, maybe you don't, do you recall then that Mr. Duncan said to you, "Lisa, explain why you did what you did"?

A. No, sir. I don't recall that.

Q. You deny that he said that?

A. I'm not saying he didn't say that. I'm telling you I don't recall what happened.

Q. Okay. Fair enough. You said that they told you what to say in the statement, and you said at the bottom, you said, "I truly apologize for my wrong." Is it your testimony that they told you to

say that?
A. They told me to say I was wrong, yes.
Q. Okay. Whose idea was it to apologize?
A. Again, sir, I wrote this. I admit this.
Q. Ma'am -- ma'am, I'm sorry. I don't mean to be rude. Please don't take it that way. I just want you to answer my question.
MR. MURPHY: Your Honor, he can't interrupt the answer. He doesn't know what she's going to say.
THE COURT: Let him finish his question and let her finish her answer.
MR. SHANKMAN: Understood, Your Honor. My -- my apologies.
THE COURT: You may finish your answer.
THE WITNESS: I wrote this. I'm not denying I wrote this, but, again, like I said previously, I would've wrote and apologized and said whatever I needed to say to get out of that room that day.
BY MR. SHANKMAN:
Q. Isn't it true that they did not -- isn't it true that you can't testify as we sit here today that they told you to apologize?
A. No, sir. Did they specifically say to say "I'm sorry," they did not.
Q. I'm asking if they specifically told you to put

the word "apologize" in there.
A. Sir, I don't recall that part. I'm sorry.
Q. Now, you see the -- the "X" on the bottom of the page?
A. I do.
Q. And see those little four dots ---
A. I do.
Q. --- that I just pointed out? Isn't it true Mr. Duncan asked you to initial each of those dots?
A. I don't recall that, sir.
Q. Okay. At the bottom of your signature, it has 12:42 p.m. Do you see that?
A. I do.
Q. Okay. And that -- that time is correct, isn't it?
A. That was the time that was given to me. I don't know.
Q. Okay. Well, isn't it true that you felt it was correct when -- when you were given the time?
A. Again, I would've wrote whatever.
Q. I'm sorry?
A. I would've wrote whatever. They told me it was 12:42, that's what I was going to write.
Q. Do you remember your deposition being taken?
A. Yes, sir.

THE COURT: Is this the original deposition?
MR. SHANKMAN: I'm sorry, Your Honor?
THE COURT: Are you going to open the original?
MR. SHANKMAN: Yes. This is the original.
THE COURT: All right. Do you have a copy of it?
MR. MURPHY: I have a copy. What page?
THE COURT: Let the record reflect defense counsel is opening the original.
MR. MURPHY: I'm sorry. I couldn't hear, Your Honor.
THE COURT: I said let the record reflect defense counsel is opening the original.
MR. MCCUMBER: Would you like it marked as a Court's exhibit?
THE COURT: Yes.
BY MR. SHANKMAN:
Q. So I'm handing you Court's Exhibit No. 4. I've opened the page up to page 99. If you would look at line 5.
A. (Complying.)
Q. Ma'am, are you at line 5?
A. Do you want me to read it?
Q. No. I'll do part and you can answer back. On page 99, do you remember the following question

being asked: "Is the time accurate on there 12:42 p.m.?" What did you answer?

A. "I feel like it is. Yes, sir."

MR. MURPHY: Your Honor, could I ask that lines 7 through 9 be read too?

THE COURT: You'll have an opportunity to redirect.

MR. MURPHY: I can do it on cross? Very good.

BY MR. SHANKMAN:

Q. Now, you walked out for a cigarette break at 12:56 based on those pictures; is that correct?

A. Yes, sir.

Q. Okay. And is it your testimony that Ken Miller said that he has to go with you?

A. Somebody had to escort me.

Q. Okay. Escort you where?

A. Out of the building.

Q. Okay. And did you -- when you were out of the building, did you say I want to leave?

A. I had already asked to leave several times and been told no.

Q. When you were out of the building and just standing and smoking a cigarette, did you ask to leave?

A. Considering all I had was a cigarette and

lighter, my purse was in there. My car keys was in there.

Q. Did you say to Mr. Miller, "I already gave the statement which was the condition for me to be in the room." That's what you said earlier, right? Withdraw that.

Isn't it true you said earlier today to this judge and this jury that you had to give a statement before you could leave the room, right?

A. Yes, sir. And pay the money.

Q. Okay. I -- you're saying that you were told both of those things, that you had to give the statement and pay the money in order to leave the manager's office?

A. Not to get arrested, and that was my goal.

Q. Okay. I understand that, but you sued for false imprisonment so I'm going to ask you about the room.

A. Okay.

Q. When you were in the room, the only thing that they told you according to your testimony is that you had to give a statement; isn't that correct?

A. Yes, sir.

Q. And how many minutes was it before -- once you got in the room at about 12:16, how many minutes was

it before you realized that you had a problem?
A. Within the first few minutes.
Q. What's a few to you, three? a couple?
A. Three to four.
Q. Okay.
A. Five to six -- three to six minutes I knew.
Q. Three to six minutes. So at some point in three to six minutes, you realized that you've had a problem. And you've already testified of your version of what was said, and at 12:42 you gave the statement, correct?
A. Yes, sir.
Q. Okay. Am I correct then that when you walked out of the office at 12:56 with Mr. Miller and went outside and stood and smoked, you never said to Mr. Miller, "I want to leave"?
A. No, sir, I did not.
Q. And you never said to Mr. Miller at any point in time, other than when you were in the room originally, that you wanted to go home? In other words, once you walked out the door, you never said it again, did you?
A. Not that I recall.
Q. Okay. And, in fact, the police were there shortly after one o'clock; isn't that true?

A. I don't know what time the police arrived.
Q. Okay. If I can help.
A. Thank you.
Q. Yes, ma'am. Handing you Defendant's Exhibit 11. Is that you in Defendant's Exhibit 11?
A. Yes, sir, it is.
Q. And that's you standing in the front end of the store, correct?
A. Yes, sir.
MR. SHANKMAN: Okay. May I publish, Your -- move for the admission of 11, please.
THE COURT: Any objection?
MR. MURPHY: No objection.
THE COURT: Defense Exhibit No. 11 will be admitted without objection.
(Defendant's Exhibit No. 11 was received into evidence.)
BY MR. SHANKMAN:
Q. So now this is a picture of you with your back to the camera; is that correct?
A. Yes, sir.
Q. Okay. And based on the time stamp, this is 1300 and 35 seconds. Do you see that?
A. I do.
Q. All right. And this is occurring on May the

23rd. Do you see that?
A. Yes, sir.
Q. Okay. Now, Mr. Miller is not in this shot, is he, I mean, as far as you can see? Sorry. Move that down a little bit. Do you see -- do you see Mr. Miller anywhere?
A. I don't, but he's a few feet back.
Q. I'm sorry?
A. He's -- he's coming. He's right behind me.
Q. Okay. I -- I -- I just asked if you saw him in the picture.
A. No, sir. I do not.
Q. Okay. So at 1300 or one o'clock, you walk back into the store. Did you go get your purse?
A. I don't recall.
Q. Do you recall that Officer Glenn arrived at 1:06 p.m.?
A. Again, I don't recall the time that the police arrived.
Q. No?
A. No, sir. I can't be exact.
Q. When you were in the office after you returned at one o'clock, isn't it true that Officer Glenn was -- that Officer Glenn had come into the office; isn't that true?

A. I don't recall, sir.
Q. You don't recall Officer Glenn coming into the office?
A. I recall him being there, but I don't recall the time frame.
Q. Okay. Isn't it true that you admitted to Officer Glenn that you had -- that you had taken the items without paying for them; isn't that true?
A. I remember telling him that they were donations. Yes, sir, I did.
Q. You think you took the items and they were donations. You think you told that to Officer Glenn?
A. I recall saying that. Yes, sir.
Q. Okay. Isn't it true that you told Officer -- sorry. Excuse me.
A. Can I say something?
Q. I'm sorry, ma'am. There's no pending question.
A. It was to that. I'm sorry.
Q. All right. Do you want to respond to the question I just asked you?
A. I don't recall the conversation with Mr. Glenn hardly at all. If he asked me a question, I may have answered it. I may have shook my head. Again, my anxiety was through the roof. I cannot recall

everything about the time frames and what exactly he said to me. I do remember my Miranda rights being read.

Q. Is it correct to say -- that's why I started looking at my notes, because is it correct to say that your testimony is you don't recall him ever asking you anything about admitting to taking the items from the store, that you were only focused on getting the warrant that -- that he told you that he would go to the judge, get a warrant, and they would call you and you would turn yourself in; isn't that true?

A. Can you ask that again? I'm sorry. That was a lot.

Q. Well, let's -- let's break it down. Isn't it true that you don't recall Officer Glenn ever asking you anything?

A. After Officer Glenn came in the office and the first thing out his mouth was, "Shame, shame, shame," I was checked out of the whole entire thing. I needed to go.

Q. Okay. Did you tell Officer Glenn that they were keeping you here against your will?

A. No, sir.

Q. Did you tell Officer Glenn that -- that -- that

those items without paying for them?
A. Sir ---
Q. Yes.
A. --- I'm not denying anything. I -- I don't recall anything that was really about that, other than they were going to get a warrant. He said, "Shame, shame, shame." I was ready to leave.
Q. Okay. Now, let's talk about this $450. At the bottom -- I'm sorry -- halfway through the statement right up here, you say, "I would estimate the loss to be around $450," right?
A. Yes, sir.
Q. Okay. And that's because the company, Mr. Duncan in particular, asked you to estimate how much you -- you -- how much -- the value of the donations were and the items that you took?
A. Yes, sir.
Q. Okay. And you wrote it on a piece of paper, right? You said 450 to 500, didn't you?
A. I can't recall to be positive, sir. I'm sorry.
Q. And it's your testimony, and I think you just reiterated this. It's your testimony that to get out of the room, you had to give a statement. And that to avoid going to jail, you had to pay $450, right?

that causes confusion, ma'am. Do you have any reason not to think this is you paying the money order?

A. No, sir, I don't.

Q. Okay. And then turn to the next page, 1329. See that?

A. I do.

Q. That's 1:29 you're having this interaction. Is that a coworker at the company?

A. A bookkeeper. Yes, sir.

Q. A bookkeeper. Do you remember his name?

A. Dylan Tussy.

Q. Okay. And does this -- does this -- does this refresh your recollection that at 1:29 is when you were getting the money order to pay the $450?

A. Yes, sir.

Q. And I think this is just another picture in the transaction. Do you see that?

A. I do. Yes, sir.

Q. Do you remember all this happening?

A. I do.

Q. And then -- we've already covered that. And then -- and then you had the receipts for your -- for the transaction that I believe it was 1:31 or something like that. Sound about right?

A. (No response.)
Q. So I'll go back to this document. This shows the payment was cashed in or the money order, excuse me, was generated at 1:29 p.m. Do you see that?
A. Yes, sir, I do.
Q. Okay. And did you, after making that payment, collect your purse and leave the store?
A. I had to have had my purse or I wouldn't have -- I mean, I had just gotten the debit card out of it to pay for the money order.
Q. Fair enough. When -- when you turned the -- the money order in, did you stay and chat with Mr. Duncan and Mr. Miller or what happened?
A. I remember Mr. Miller telling me to log onto the computer at some point and print my last paycheck stub. I was terminated after this.
Q. Okay.
A. So there had to have been a little bit more conversation.
Q. Okay. And -- and that's a good point, ma'am. This whole -- the whole time that you were brought into the meeting, you were -- you were on the clock, right? In other words, you were being paid by the company for that day; isn't that true?
A. Yes.

Q. Did you ever have meetings in that office before either with -- either with Mr. Brickman or Mr. Miller or Mr. Brown or any employees?
A. Sure I did.
Q. And when you had meetings like that, you closed the door, right?
A. (No response.)
Q. Ma'am?
A. The situation was totally different.
Q. With all due respect, I didn't ask that. I just asked if you had a meeting and closed the door.
A. Yes. With several individuals, not two males.
Q. I'm sorry?
A. Yes. The doors were closed in meetings, but not to the context of May 23rd. I had never been enclosed like that before.
Q. Was -- was there -- was there something blocking the door?
A. I've never been in a closed-door meeting where I was told I could not leave until May 23rd.
Q. Ma'am, I can appreciate why you've never been in a room before with a closed door where you were -- you were confronted with allegations of stealing. I understand that completely. My question to you is, was there something in front of

the door that prevented you from leaving?
A. No, sir. There was not.
Q. So that door was closed in the same fashion as any other meeting that you had on the clock as the customer service manager that you had with other employees or other supervisors or other coworkers at the time; is that true?
A. Yes, sir.
Q. Handing you what's marked as Exhibit 17. Exhibit 17, ma'am, is -- is that you in the photo?
A. Yes, sir, it is.
Q. At the front end of the store?
A. Yes, sir.
MR. SHANKMAN: Okay. Move for the admission of 17.
THE COURT: Any objection?
MR. MURPHY: No objection.
THE COURT: Defendant's Exhibit No. 17 would be admitted without objection.
MR. SHANKMAN: Thank you, Judge.
(Defendant's Exhibit No. 17 was received into evidence.)
BY MR. SHANKMAN:
Q. I'm showing you Exhibit 17. Now, that's -- that's you in the picture with the same white blouse

and the gray sweater?
A. Yes, sir.
Q. And is that -- this picture has you with your purse, right?
A. Yes, sir.
Q. Okay. And the time on this picture, do you see that says 1335 and 19 seconds?
A. Yes, sir.
Q. Okay. And that's also on May 23. Do you see that?
A. Yes, sir, I do.
Q. Okay. Was that -- was that your last time walking out the store as an employee of the company?
A. Yes, sir, it was.
Q. Now, regarding -- we never finished that other issue. We were talking about the $450. And $450 that -- that's in your statement, and you said that they told you that you had to write down, "I truly apologize -- I'm sorry. You weren't sure about apologize. "I truly," whatever, "for my wrong and I'm willing to pay this back today on 5/23/2018," right?
A. Yes, sir.
Q. And it's your testimony that you stuck around. Even though you had given the statement at 12:42,

you stuck around in the store because they were going to -- because you had promised to pay the money back, right?

A. I did tell them I would pay the money back. Yes, sir.

Q. Right. But according to your statement and your testimony, you didn't mean it because they forced you to pay the money back, right?

A. (No response.)

Q. Yes or no?

A. Can you -- can you repeat that?

Q. When you said I wrote this saying that I -- I'm -- I'm going to pay it back, you -- you didn't mean that because they forced you to write this according to your testimony; isn't this true?

A. I agreed to do so, and so I was going to do it. So, yes, I paid it back.

Q. Well, when you say, "I agreed to do it," that's something you agreed to willfully, right ---

A. Yes.

Q. Ma'am. Ma'am. I'm sorry. Can I finish?

All right. --- that you -- you agreed to pay something, but is it your testimony that although you agreed to do it, you didn't agree to do it because they told you to write it down? I just need

you to explain that to me, to the jury, to the Court. How is it that they forced you to write something that you didn't agree to because you said you never took that, and yet you're sticking around after 12:42 so that you could pay something that you don't think you should have to pay?

MR. MURPHY: Excuse me, Your Honor. I'm not sure what the question is.

THE COURT: Rephrase that. I'm confused.

MR. SHANKMAN: My apologies. It got a little lost.

BY MR. SHANKMAN:

Q. Did you steal $450 worth of merchandise from the company?

A. No, sir.

Q. Okay. Why'd you pay them $450?

A. You want my answer?

Q. I just asked the question.

A. Okay. In that room, I had two men from corporate of authority telling me what I can and I cannot do, what I can and cannot say. When I tell them my side of the story, they're telling me no. They're not even investigating what I'm trying to get help with and tell them my side. I -- I was bullied in that room. I mean, there's just no other

way to describe it. And I hate to even use that word, but that's what happened.

Q. And you were bullied into writing that statement, right?

A. (No response.)

Q. Right?

A. Yes, sir.

Q. So you were bullied into agreeing to pay $450, right?

A. Yes, sir.

Q. And yet police, law enforcement from Pendleton, were in the store at the same time that you were being bullied to pay $450; isn't that true?

A. The same officer that the first words out of his mouth were, "Shame, shame, shame," you want me to confide and trust in that individual at that moment after everything that had just took place prior? So you're asking me to trust somebody that's already basically made up his mind as soon as he comes in and says, "Shame, shame, shame," and hasn't even asked me a single question?

Q. You don't know the answer to the question because you said you don't remember ---

A. Those were the first words when he walked in the office door, "Shame, shame, shame."

Q. So it's your testimony that you didn't agree to pay $450. You were bullied into paying -- to writing the statement and, therefore, you were bullied into paying the $450, correct?
A. Yes, sir.
Q. And even though you were bullied and even the law enforcement were standing in the hallway where you were, because he said, "Shame, shame, shame," you didn't go to him and say, "I didn't take this money. I didn't do anything wrong. I don't want to pay it. I want to go home," or words to that effect, did you?
A. No, sir, I didn't. My mind was not thinking clearly that day.
Q. I'm sorry?
A. My mind was not thinking clearly that day. No.
Q. Okay. Now, you spoke about the -- about the donations to AIM, and you said that you and Mr. Brickman discussed giving charitable donations to the AIM charity, right?
A. Yes, sir.
Q. Okay. Isn't it true that your testimony is that Mr. Brickman approached you and told you that "we're going to support the charity," or words to that effect, right?

A. I recall having a conversation with Mr. Brickman about this charity and what we were going to provide, yes, sir, because he asked me what we had done in prior years.

I don't know if the conversation was between me and Marla first, and then I went to Mr. Brickman. I may have been wrong in saying it the opposite way. Again, it was two years ago.

Q. Isn't it true that you previously said that -- isn't it true that you had previously said that Mike Brickman told you the items that AIM needed for the donation?

A. Yes. We discussed what AIM needed. That is true.

Q. Okay. In fact, isn't it true that you previously said that Mike Brickman was the initial contact?

A. Sir, if I said that, I cannot recall if the conversation was with Marla first, Mr. Brickman first. Again, it was two years ago. If I spoke and I was wrong on that, because I can't even recall now who it was first. It could've been Marla first and then I reached out to Mr. Brickman. I cannot remember to be positive. And if I spoke and said otherwise, I apologize. That is my mistake.

THE COURT: It's been asked and answered. Move on.

MR. MURPHY: Thank you.

BY MR. SHANKMAN:

Q. Let me show you -- during your examination, ma'am, you testified -- you testified or you heard Ms. Cobb testify, I don't remember which one it was, that you dropped off the Easter basket items on the 28th. Do you remember that?

A. I remember dropping them off. Yes, sir.

Q. Do you remember dropping them off on the 28th?

A. I remember dropping them off at whatever time frame that e-mail says.

Q. Okay. I mean, but that e-mail said, "I'll be by today." Is that consistent with what actually occurred?

A. Yes, sir.

Q. And then I think you heard Ms. Cobb testify that you did a tour of the Cottage, right?

A. Yes, sir.

Q. And then while you were at the Cottage, according to Ms. Cobb, you had seen that there was a need for shampoos and feminine hygiene products. Do you remember that?

A. Yes, sir.

Q. And the Easter baskets were your first donation, correct? Isn't that what you said?
A. To AIM. Yes, sir.
Q. To AIM. Let me show you ---
(Attempting to play videotape.)
THE COURT: All right. Mr. Bailiff, why don't you take our jury to the jury room. Let's take a short break while we have technical issues and try to get it resolved.
THE BAILIFF: (Complying.)
(At 3:14 p.m., jury left the courtroom.)
(From 3:14 to 3:27, recess.)
MR. SHANKMAN: Judge, we're ready when you are.
THE COURT: We're ready? All right. Let's get our jury.
MR. BAILIFF: (Complying.)
(At 3:28 p.m., jury entered the courtroom.)
THE COURT: All right. Ladies and gentlemen, I think our technical issues have resolved and we're ready to proceed.
MR. SHANKMAN: Thank you, Your Honor.
(Playing videotape.)
BY MR. SHANKMAN:
Q. Ma'am, you recognize the front of the store, correct?

bit. I'm trying to finish up, ma'am. Just to be clear, you -- you were never arrested by the Pendleton Police Department or anybody else for that matter, correct?

A. No, sir, I was not.

Q. And no warrant was ever issued for your arrest, correct?

A. No, sir.

Q. You also talked about what -- that you were terminated from your job and that you were making $49,000. Do you remember saying that?

A. Yes, sir.

Q. Is it correct to say that you've since got another job effective July 31st; is that true?

A. That was my first start date.

Q. Okay. And your salary at the new job was $45,800?

A. Yes, sir.

Q. Are you making more money now, now that you've been at the job some time?

A. I had an evaluation, but I've not received the raise.

Q. Now -- and its your testimony that Mr. Brickman agreed that you would support the -- or you would provide $500 worth of items for -- or up to a limit

ever come to you and ask you about the personnel policies of the company? Did that ever happen?

A. Like breaks?

Q. Any policies.

A. Very rarely. I can't recall an employee asking me. I don't. Anything that I didn't already know the answer to is like your break's 30 minutes. Clock out. Clock back in.

Q. You were a CSM for -- for six to seven years?

A. Yes, sir.

Q. Did you ever wonder as a manager why the company doesn't have a handbook?

A. I was under the assumption that BI-LO, when we were just BI-LO, had a handbook. And we had copies in the office that I would pass out to each employee. SE Grocers, we weren't under the SE Grocer banner the entire time I was a customer service manager.

Q. Ma'am, I'm not suggesting you were.

A. But you're saying ---

Q. No. Stop. Ma'am.

THE COURT: Ask the question.

MR. SHANKMAN: I'm trying. Thank you.

BY MR. SHANKMAN:

Q. Ma'am, when you called Jacksonville and you

made a complaint about Mr. Brickman, how'd you know who to call?

A. I didn't call Jacksonville. They called me. After I complained to Tommy Brown and Tommy Brown called them, then they called me.

Q. So Jacksonville's corporate office did reach out to you, right?

A. Hold on. Can I have one second, please?

Q. Sure.

A. Yes. After seven months of complaining, they did.

Q. Just a minute and I'll wrap up; is that okay?

A. (No response.)

Q. Ma'am, you just made a really good point. You said it's been six -- after six or seven months of complaints, Jacksonville called you, right?

A. Yes, sir.

Q. And during that six or seven months, you had all these problems with Mr. Brickman, right?

A. Yes, sir.

Q. He was engaging in conduct you felt the -- made the work environment uncomfortable?

A. Yes, sir.

Q. And in all those six or seven months, the only complaints from customers that were provided are in

Exhibit 11, right? Yes or no?

A. Can I answer that?

Q. Well, how about answer my question first. And then based on the judge's -- I know he's going to tell me, and then you can follow-up.

A. Okay. Repeat your question.

Q. The only complaints that you provided in the course of this litigation are these two complaints, that's Plaintiff's Exhibit 11, who happened to have been filed on April 17th?

THE COURT: Hold on. Is there an objection?

MR. MURPHY: You may want to hear me at the bench.

(Sidebar discussion.)

BY MR. SHANKMAN:

Q. It was a good catch. Let me rephrase the question.

You had six to seven months of problems with -- with Mr. Brickman. And the only two customer complaints that you produced in this litigation are one dated April 17th and one dated April 24th, which happens to surround within a day or two your communication with Jacksonville; isn't that true?

A. It's true the only one I printed from my e-mail was the ones that I still had saved. Yes. Are

those the only ones that came in? No, sir.
Q. Okay. And you said you didn't write these?
A. No, sir. I didn't write them.
Q. Do you know who wrote them?
A. I know a customer whose name was Nettie.
Q. Ma'am ---
MR. MURPHY: Your Honor, let her answer the question.
MR. SHANKMAN: No. Because she's -- I asked if she knew who wrote them, Judge.
THE COURT: Just answer that question and then ask another one.
BY MR. SHANKMAN:
Q. Do you know who wrote the complaints?
A. No, sir, but I do.
Q. That's it.
A. Okay. Sorry.
MR. SHANKMAN: I have nothing further. Thank you.
THE COURT: Redirect?
MR. MURPHY: Yes, sir. Thank you.

REDIRECT EXAMINATION

BY MR. MURPHY:
Q. Since you were asked about customer complaints, and I only want to stick to just the customer

complaints. We're not going to get into the employee complaints, but you were just starting to talk about Nettie. Who's Nettie?

A. It was a customer we had in the store. She shopped pretty much every Sunday. I know she filed a complaint.

MR. SHANKMAN: Objection, Your Honor. It's -- it's 801.

THE COURT: Okay. Overruled.

BY MR. MURPHY:

Q. Go on.

A. I know she filed a complaint when I read it. It came in the same way. Two, she actually spoke to me in the store and several of the other associates about what she experienced in the store the week prior.

Q. Okay. Now, you were testifying about being in the room when Officer Glenn entered, right?

A. Yes, sir.

Q. And if you're in that back office, you don't know who Officer Glenn spoke to before he got to the office and said, "Shame, shame," do you?

MR. SHANKMAN: Objection. Leading.

THE COURT: Rephrase your question.

MR. MURPHY: I'll rephrase it happily.

BY MR. MURPHY:

Q. Do you know who Officer Glenn spoke to before he got to the room and said, "Shame, shame"?

A. No. Because my back was to that side.

Q. Well, let's look at this Defendant's Exhibit No. 22 if we could. Do you remember these -- these pictures that you were shown when Mr. Shankman was questioning you?

A. Yes, sir.

Q. Okay. Let me take you to page 5 of that exhibit.

A. Yes, sir.

Q. Okay. And who is that officer?

A. Looks like the back of Officer Glenn.

Q. Okay. And this is at what time?

A. It looks like 1306.

Q. Okay. And you understand it's military time?

A. I'm sorry. 1:06.

Q. 1:06. Who is Officer Glenn with?

A. That's Mr. Brickman.

Q. Let's go to -- do you see another officer standing there?

A. I see a back of an officer. Yes, sir.

Q. Okay. And this is at what time?

A. 1:24.

Q. And who is that officer talking to?
A. It looks like Officer Davis.
Q. No. Who is officer -- the officer talking to?
A. Mr. Brickman.
Q. And here we are on page 8, and what time is this?
A. It's fuzzy, but looks like 1:28.
Q. And who are these two gentlemen in the dark outfits?
A. It looks like Officer Glenn and Officer Davis.
Q. Who are they talking to?
A. Mr. Brickman.
Q. Now, you were also asked about Exhibit No. 11. If you could give that to her, please.
A. (Complying.)
Q. Okay. And let me see if I can put that up because the jury doesn't know this. Do you recall you had testified earlier about -- how do I get this off?

Do you remember you were being questioned about Mr. Miller. We showed a picture of Mr. Miller walking out with you to the smoke break. And then you were asked this question about you coming in from the smoke break. Do you recall that?

A. Yes, sir.

Q. And counsel made the point that Mr. Miller -- if I said Brickman earlier, you went -- walked out with Mr. Miller. He made the point that Mr. Miller is not in this frame, right?

A. Yes, sir.

Q. He didn't show you the whole video of that, did he?

A. No, sir.

Q. I'm going to show you a document. We're going to mark it as Plaintiff's Exhibit 24.

Your Honor, I had to print this off my little -- during my break.

Don't talk about the content of this, but is this another still shot from the same time and the same camera?

A. Yes, sir.

MR. MURPHY: Okay. Move to admit Plaintiff's 24, Your Honor.

MR. SHANKMAN: No objection.

THE COURT: Plaintiff's Exhibit No. 24 would be admitted without objection.

(Plaintiff's Exhibit No. 24 was received into evidence.)

BY MR. MURPHY:

Q. Now, it's going to be very hard for the jury to

see this, but can you tell the jury the -- the time stamp on that?

A. One o'clock.

Q. Okay. 1:00 p.m. and how many seconds?

A. Fifty-nine seconds.

Q. Okay. And what's the time stamp on the one that Exhibit No. 11 that counsel showed you?

A. 1:00 p.m., 35 seconds.

Q. So this is 14 seconds after?

A. Yes, sir.

Q. Who's that gentleman down there entering the picture?

A. Mr. Miller.

MR. MURPHY: Your Honor, I have no further questions.

THE COURT: Anything further from this witness?

MR. SHANKMAN: Yes, sir. Very briefly.

RECROSS-EXAMINATION

BY MR. SHANKMAN:

Q. Looking at Plaintiff's Exhibit 25, where are you in this picture? I'm sorry. 24.

A. I would assume I'm in the office.

Q. You're probably, what, 50, 60 feet ahead?

A. I'm a fast walker. Yes, sir.

Q. Okay. But -- and what's the distance from

witness is going to say. So I'm uncomfortable with that, but the chief -- I'll be happy to tell the chief he can't mention the polygraph or anything that the judge said.

MR. MURPHY: That's -- that's what I was kind of getting at. So I'm not trying to -- I don't want to ask something that might look like a narrative and then have it pop up and say something and then you're upset with me.

THE COURT: Right. I'll -- I will do that, but the Court's not going to comment on the facts of the case.

MR. MURPHY: Right.

MR. SHANKMAN: Judge, could you just add that about the credibility of witnesses as long as you're -- as long as you're ---

THE COURT: Yes, sir. I'll be happy to say that he may not vouch for the credibility of a particular witness.

MR. SHANKMAN: Vouching or ---

THE COURT: Or comment on the credibility of a particular witness.

MR. SHANKMAN: Thank you.

MR. MURPHY: Now you said the report's out?

MR. SHANKMAN: The report's in.

MR. MURPHY: You ruled yesterday not to introduce it.

THE COURT: He can testify about what he did ---

MR. MURPHY: Right. And if we ask to use it to refresh his recollection, we'll ask him ---

THE COURT: You can use it to refresh his recollection within the bounds of what I've ruled.

MR. MURPHY: Right.

THE COURT: Are we ready -- we ready for our jury? Where's the chief?

MR. MURPHY: Did you want to bring him in now?

THE COURT: Go ahead and get the chief.

THE BAILIFF: (Complying.)

MR. MURPHY: And did you -- do you want to say anything to him before the jury got in here?

THE COURT: Chief?

THE WITNESS: Yes, sir.

THE COURT: The attorneys have requested that I basically inform you of what has been decided prior to your testimony.

THE WITNESS: Yes, sir.

THE COURT: There will be no discussion of any polygraph test or offers of polygraphs. There will be no discussion of specific statements the judge

A. Yes, sir.
Q. Chief, what I want to first do is kind of have you outline for the jury in your jurisdiction how the criminal process works. For example, somebody first brings a complaint to you. What -- what would that person be called?
A. Well, the complainant.
Q. The complainant?
A. Yes, sir.
Q. Okay. And is that what -- somebody doing that, is that what starts the process?
A. Yes, sir.
Q. Okay. What's the next step in the process generally? I know every case may be different ---
A. Yes, sir.
Q. --- but generally speaking, can you just walk the jury through the process from complaint to how you -- how you walk through your jurisdiction?
A. Yes. When -- once we get a complaint of any kind of criminal activity, the first thing we do is we like to take that complaint, look at it, talk to everyone that's involved. If we can speak with the -- the victim or the suspect, we speak -- we definitely would like to speak with the victim in this case.

In this particular case, initially BI-LO would be the victim and Ms. Styles would be the suspect, and we would talk to both of them and see if we can determine what charges to bring or what happened, see if we can determine the truth of the matter.

Q. Okay. And so you speak to witnesses. And then when we say BI-LO is the victim, would that be complainant?

A. Yes, sir. It would be the complainant.

Q. BI-LO was never determined or communicated to be a victim in this case?

A. That is a word that's used for our reporting software. In other words, that is who would be initially bringing a complaint, complainant or a victim.

Q. Okay. So after you do in a particular case what you do and investigating it, what -- what do you do next?

A. Once we get -- once we speak with everyone that we can speak with, we then take it to a judge. We explain the facts of the case to the judge, and the judge makes a determination if there's probable cause to get a warrant and go from there.

Q. And the decision of whether or not there's probable cause or whether or not to issue a warrant,

can that happen in your jurisdiction without judicial involvement?

A. No, sir.

Q. Now, when somebody's arrested, what happens to them? Walk me through the process. What do you do, how are they processed, and how is the intake done?

A. And the answer I just gave you, a person can be arrested without the warrant. The warrant essentially does the same thing, but, generally, if time has elapsed between the incident and us being notified, we have to seek a warrant. If it's something that's committed in our presence or freshly committed, then we can make a -- depending on the circumstances, we can make an arrest.

In this particular case, it would be something that we'd have to seek a warrant. And if we arrested someone, then they're processed into detention. It's -- it goes to the Solicitor's Office.

The Solicitor will then -- depending on the charge, it can go in front of the Grand Jury or it can travel through the court system, and the Solicitor makes determinations once the warrant has been dealt with by us and the jail. And I know that's rambling, but...

Q. Well, let me ask, when you arrest somebody, are they fingerprinted?
A. Yes, sir.
Q. You get mugshots?
A. Yes, sir.
Q. And does this create a public record?
A. Yes, sir.
Q. And the mugshots are obtained by people who publish these things?
A. They can be.
Q. Let's talk about this particular case. Do you recall Lisa Styles coming to your office on May 24, 2018?
A. Yes, sir.
Q. And did she show up on her own volition?
A. Yes, sir.
Q. And did she tell you her side of the story as to what happened?
A. Yes, sir.
MR. SHANKMAN: Objection, Your Honor. It's a lot of leading going on here.
THE COURT: Overruled.
BY MR. MURPHY:
Q. What do you recall Lisa telling you about her side of the story?

A. Well, I have in my case file, which I believe everyone else has as well, her statement. I can't recall in detail what she stated, but she stated that what she was being accused of basically was -- she was being accused of taking products that were essentially products which they were going to donate to a charity, which from my understanding they had done for seven years prior.

Q. Okay. And after Lisa told you this -- let me back up. You testified earlier you tried to get statements from both sides before you take something to a judge; is that right?

A. Yes, sir.

Q. All right. So you got Lisa's side of the story when she came to the department. Did you go to the store and speak to Mr. Brickman?

A. Yes, sir.

Q. And do you recall the date in which you did that?

A. I apologize, sir. That was on the 25th, May the 25th of 2018.

Q. So that was the day after Lisa came to see you?

A. Yes, sir.

Q. You were already at BI-LO interviewing Mr. Brickman?

A. Yes, sir.
Q. You did meet with Mr. Brickman in person on that day?
A. Yes, sir.
Q. And you asked him questions?
A. Yes, sir.
Q. And how would you describe Mr. Brickman's demeanor in your presence?
A. Initially -- initially, Mr. Brickman appeared nervous.
MR. SHANKMAN: Objection, Your Honor.
THE COURT: So noted. It's already been ruled on. Overruled.
BY MR. SHANKMAN:
Q. Did Mr. Brickman tell you whether or not he had anything to do with an investigation, the investigation into Ms. Styles?
A. He stated that he did not have anything to do with the investigation, that he merely provided the video. He initially noticed and then provided the video to loss prevention.
Q. Did Mr. Brickman tell you whether or not he had agreed to charitable donations?
A. He stated that he did not agree to a charitable donation.

Q. So you had Ms. Styles telling you one thing and Mr. Brickman telling you something different?
A. Yes, sir.
Q. And after Mr. Brickman told you there weren't charitable donations, did you obtain some information from Ms. Styles?
A. Yes, sir.
Q. Let me hand you what's already been admitted into evidence as Exhibit 15. And do you recall receiving this e-mail from Ms. Styles?
A. Yes, sir.
Q. Okay. And what is she forwarding there to you?
A. She's forwarding an e-mail from AIM, the Anderson Interfaith Ministries program director, which thanks them for, again, taking on this charity donation and list of children and their -- whether they have food allergies and their ages and that type of thing.
Q. Let me ask this: In your investigation -- now this investigation and these statements Ms. Styles had made, this was already after she had been given Miranda rights?
A. Yes, sir.
Q. Did you ask Ms. Styles for any information that she did not provide you?

A. No, sir.
Q. Now, that e-mail is dated on the 29th. Also, on the 29th, did you speak to a gentleman named Ken Miller of Southeastern Grocers?
A. Yes, sir.
Q. Did you ask Mr. Miller whether he was aware -- just a moment, please. Did you ask Mr. Miller if Mr. Brickman was aware that Ms. Styles had made a complaint against him?
A. Yes, sir.
Q. And what did Mr. Miller tell you?
A. He said that Mr. Brickman did know of the complaint lodged against him by Ms. Styles.
Q. And did you take all this information to the judge?
A. Yes, sir.
Q. Did you read him the report?
A. I didn't read it verbatim, no, sir, but I ---
Q. But you ---
A. --- highlighted what would be -- what he would need to consider in other words and ordered to determine if there was probable cause of the breach of trust.
Q. So you took the information BI-LO gave you?
A. Yes, sir.

Q. And the information Ms. Styles gave you, and that's what you presented to the judge?
A. Yes, sir.
Q. And, in fact, you even told the judge about that signed statement confession from Ms. Styles?
A. Yes, sir.
Q. Now, if Ms. Styles hadn't come to you and after being given Miranda rights hadn't voluntarily cooperated and gave you everything you asked for, the only information you would've had to present to the judge would be the information that BI-LO gave you?
A. Yes, sir.
Q. And after you presented all the information BI-LO gave you and all the information Ms. Styles gave you, did the judge issue a warrant?
A. No, sir.
Q. It is the judge's decision not to issue a warrant, what stopped the criminal process in this case?
A. Well, yes, sir.
Q. And what is the standard for issuance for a warrant?
A. There's elements to each crime. And if the elements are met, then the warrant would be issued

and it would proceed to the Solicitor's Office or it would proceed through the courts.

Q. But what is the level that you have to show in order to get a warrant?

A. You have to show probable cause that the crime had been committed.

Q. And is one of the elements of breach of trust personal gain?

A. Yes, sir.

MR. MURPHY: Your Honor, I don't have anything further at this time.

THE COURT: Mr. Shankman.

CROSS-EXAMINATION

BY MR. SHANKMAN:

Q. Good afternoon, Chief.

A. Good afternoon, sir.

Q. Hopefully, I'll be quick. Isn't it true that the fact that Ms. Styles paid BI-LO $450 that that was a factor considered by you and by the Court in its decision not to issue a warrant?

MR. MURPHY: Your Honor, I'm okay, but this opened the door.

THE COURT: Ask the question again.

MR. SHANKMAN: I'll rephrase it. Isn't it true that in your opinion that the fact that the $450 had

been repaid was a reason why the warrant was not issued?

MR. MURPHY: Your Honor, that goes right to your ruling. Just to let you know, it's opening the door.

THE COURT: Counsel approach.

(Sidebar discussion.)

BY MR. SHANKMAN:

Q. Was she ever arrested?

A. No, sir.

Q. Was she ever -- was a warrant ever issued for her arrest?

A. No, sir.

MR. SHANKMAN: Nothing further. Thank you.

MR. MURPHY: No redirect, Your Honor.

THE COURT: Okay. Thank you, Chief.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: All right. It's after 4:30. We're going to break -- we're going to break for the day.

Ladies and gentlemen, we're going to break for the day. We will start in the morning. The case will start at 9:30, so be in the jury room shortly before 9:30.

And remember your instructions. I think all of

Q. And so prior to March 13, 2018, you were district manager?
A. Yes.
Q. And you were the district manager over the Pendleton store?
A. Yes.
Q. How long have you been district manager over the Pendleton store?
A. A year and a half.
Q. Do you recall when you became the district manager over Pendleton?
A. August of 2016 if I remember correctly.
MR. MURPHY: Go to page 22, please.
MS. THWEATT: I'm sorry?
MR. MURPHY: Twenty-two.
MS. THWEATT: Okay.
MR. MURPHY: And we'll begin at line 4.
BY MR. MURPHY:
Q. During the time that you were a district manager, were you a Southeastern Grocers employee?
A. There was a merger between, and Southeastern Grocers was a company that was not in existence when I became a district manager.
Q. Let's start there and work forward. That's probably a better way. When did you become a

district manager?
A. Again, you're testing my memory. I was a district manager for 11 years, so you can go back from March 13th of 2017.
Q. '18?
A. Yeah. I think so. I mean, I'd have to look at my records.
Q. Well, you became the senior manager of operational effectiveness in March of 2018, right?
A. Correct.
Q. So 11 years from 2018 going backwards?
A. Right. Correct.
Q. When you first started, BI-LO was under different ownership?
A. Correct.
Q. You were district manager over BI-LO stores for 11 years regardless who the owner was, correct?
A. Correct.
Q. But in February 2018 while you're still district manager of the Pendleton store, were you employed by Southeastern Grocers?
A. Yes.
Q. Okay. So you were the district manager of the Pendleton store before Mike Brickman became the store manager?

A. Yes.

MR. MURPHY: Go to line -- page 26.

MS. THWEATT: Okay.

MR. MURPHY: Begin at 14.

MS. THWEATT: Okay.

BY MR. MURPHY:

Q. During the time that you were the district manager over the Pendleton store, which I understand to be August 2016 until March of 2018, did you receive any complaints from employees?

A. Yes.

Q. Which employees complained?

A. Lisa Styles.

Q. Anyone else?

A. No.

Q. Did Lisa Styles complain to you?

A. Yes.

Q. How many times did Lisa Styles complain to you?

A. Two times to my knowledge.

Q. Do you recall when the first time was?

A. I can tell you it was the holiday of -- again, my years I may get mixed up. It would have been the holiday Thanksgiving, Christmas of 2017.

Q. When was the second time Ms. Styles complained?

A. Around January or February of 2018.

MR. MURPHY: Go to page 28, beginning at line 20.

MS. THWEATT: Okay.

BY MR. MURPHY:

Q. What do you recall Ms. Styles' first complaint to you?

A. What I recall is it was a general complaint that I would actually say was hearsay based off what associates in Store 5566 had told her.

Q. Okay. Before you get into that, Store 5566 is what?

A. Pendleton store, 5566. Yeah, 5566.

Q. So Ms. Styles was telling you complaints of other employees?

A. Yes.

Q. Okay. Do you recall what other employees she said were complaining?

A. I do not recall specific associates that were called out. Just in general, that there was associates that were just not happy with Mike as being the store manager.

Q. Okay. What do you recall Ms. Styles telling you about the nature of the complaints from the employees?

A. On the first occasion, again it was hearsay.

More about how Mike was talking to people.

Q. What did she tell you about that?

A. To my recollection, it was more about he was very harsh, short. Didn't necessarily listen and communicate really the way they were used to from the prior manager.

MR. MURPHY: Go to page 32, starting at line 9.

MS. THWEATT: (Complying.)

BY MR. MURPHY:

Q. So after Ms. Styles complained to you the first time, did you go to the Pendleton store and talk to any employee -- any of the employees and ask them if there were any issues or follow-up about anything Ms. Styles brought to your attention?

A. The first time, no.

Q. Okay. Let's go to the -- let me ask this: Did you document Ms. Styles' first complaint to you at all?

A. I did not.

Q. Did you tell anybody at Southeastern Grocers or BI-LO that Ms. Styles had brought this first complaint to you?

A. I don't recall the first complaint. I could have mentioned it to my HR business partner, but again, typically in my position, first time