

MAR 22 2023

STATE OF NORTH CAROLINA

File No.

22 CVS 2094

BUNCOMBE

County

FILED

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

EUGENE "GENE" BLANKENSHIP

2022 NOV 21 A

9:56

MOTION COVER SHEET

VERSUS

Name Of Defendant

SMOKY MOUNTAIN EVENT CENTER, INC BUNCOMBE CO.

C.S.C.

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

BY

Name Of Firm

Hyer & Agan, PLLC

38 Orange Street
Asheville, NC 28801

Telephone No.

828-254-1070

FAX No.

828-254-1071

Attorney Bar No.

35763

Initial Appearance in Case

Change of Address

MOTION

Table with 3 columns: Type of Motion, By (Identify Party), and Against (Identify Party). Rows include OTHR (Protective Order) and multiple 'All' entries for both parties.

Date

11/21/2022

Signature Of Attorney/Party

[Handwritten Signature]

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts...

(Over)

**TYPES OF MOTIONS**

Add Additional Party (ADDP)  
 Amend (AMND)  
 Assert Right Of Access (ARAS)  
 Attorney Fee (ATFE)  
 Change Of Venue (CHVN)  
 Claim Exemptions (CDEX)  
 Compel (CMPL)  
 Consolidation (CNSL)  
 Contempt (CNTP)  
 Continue (CNTN)  
 Court Costs (COST)  
 Default Judgment (DEFJ)  
 Deposition (DEPO)  
 Designate A Mediator (DSMD)  
 Disburse Funds (DFND)  
 Dismiss (Involuntary) (DISM)  
 Entry Of Default (EODF)  
 Ex Parte Restraining (EXPR)  
 Exempt From Arbitration (EXAR)  
 Exempt/Waive Mediation (EXMD)  
 Extension Of Time (EXTM)  
 Failure To Join Necessary Party (FJNP)  
 Failure To State A Claim (FASC)  
 Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)  
 Improper Venue/Division (IMVN)  
 In Limine (ILIM)  
 In The Cause (INTC)  
 Increase Bond (INBN)  
 Insufficiency Of Process (INPR)  
 Insufficiency Of Service Of Process (INSP)  
 Interplead (INTP)  
 Intervene (INTR)  
 Join (JOIN)  
 Judgment On Pleading (JOPL)  
 Jury View (JRVW)

Lack Jurisdiction (Subject Matter) (LJSM)  
 Lack Jurisdiction (Person) (LJPN)  
 Limit Deposition (LDEP)  
 Modification Of Alimony (MALI)  
 Modification Of Child Support In IV-D Actions (MSUP)  
 Modification Of Custody (MCUS)  
 Modification Of Support (MSUP)  
 Modification Of Visitation (MVIS)  
 More Definite Statement (Rule 12) (MDST)  
 Motion For Out Of State Attorney To Appear In NC  
 Courts In A Civil Or Criminal Matter  
 New Trial (NTRL)  
 Objection Of Exemptions Claimed (OEXC)  
 Other (OTHR) *(describe on front)*  
 Petition To Sue As Indigent (OTHR)  
 Preliminary Injunction (PREL)  
 Quash (QUSH)  
 Release From Stay Of Execution (RSEX)  
 Sanctions (SANC)  
 Selection Of Mediator By Agreement (SMAP)  
 Set Aside (VCMD)  
 Sever Issues Or Claims (SICL)  
 Show Cause (SHOW)  
 Special Practice In NC (ADMP)  
 Stay Of Execution (STEX)  
 Strike (STRK)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Summary Judgment (SUMJ)  
 Supplemental Procedures (SUPR)  
 Temporary Restraining Order (TROR)  
 Transfer (TRFR)  
 Vacate/Modify Judgment Or Order (VCMD)  
 Voluntary Dismissal With Or Without Prejudice (VOLD)  
 Withdraw As Counsel (WDCN)

**FEES IN G.S. 7A-308 APPLY**

Assert Right Of Access (ARAS)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Supplemental Procedures (SUPR)

**PRO HAC VICE FEES APPLY**

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter

475 63 17

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 2094

2022 NOV 21 A 9:56

EUGENE "GENE" BLANKENSHIP, JR.  
Plaintiff, BUNCOMBE CO., C.S.C.  
BY \_\_\_\_\_

v.

**MOTION FOR  
PROTECTIVE ORDER**

SMOKY MOUNTIAN EVENT CENTER, INC,

Defendant.  
\_\_\_\_\_ /

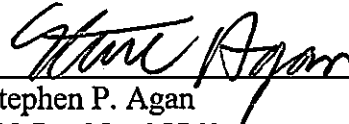
NOW COMES the Plaintiff, through counsel, and pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, and moves for entry of a Protective Order to protect the Parties' sensitive and confidential information, and, in support, would show the Court as follows:

1. The Parties, through counsel, have served written discovery requests in this matter, including interrogatories and requests for production of documents.
2. Some responsive documents may include sensitive personal and financial information, including, but not limited to, medical records, tax returns, social security numbers, bank account numbers, bank routing numbers, as well as confidential commercial information and trade secrets, competitively sensitive commercial information, and customer data.
3. The Parties are in need of a Protective Order to protect the disclosure of their sensitive and confidential information during the course of the litigation and after the conclusion of this action.
4. The Defendant, through counsel, has consented to this motion and the proposed Consent Protective Order.

WHEREFORE, the Plaintiff requests that the Court enter the attached proposed Consent Protective Order.

This the 21st day of November, 2022.

HYLER & AGAN, PLLC



---

Stephen P. Agan  
NC Bar No. 35763  
Attorney for Plaintiff  
38 Orange Street  
Asheville, NC 28801  
(828) 254-1070 – telephone  
(828) 254-1071 – fax  
steve@hylerandagan.com

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned counsel for Plaintiff has on this date served a copy of the foregoing **MOTION FOR PROTECTIVE ORDER** upon counsel for Defendant by email and by depositing a copy of the same in an official depository of the United States Postal Service in a postage-paid envelope, addressed as follows:

J. Rodrigo Pocasangre  
E-mail: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)  
Constangy, Brooks, Smith & Prophete, LLP  
100 Cherry Street, Suite 300  
Winston-Salem, NC 27101

Jonathan W. Yarbrough  
E-mail: [JYarbrough@constangy.com](mailto:JYarbrough@constangy.com)  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

This the 21st day of November, 2022.

HYLER & AGAN, PLLC

  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
Attorney for Plaintiff  
38 Orange Street  
Asheville, NC 28801  
(828) 254-1070 – telephone  
(828) 254-1071 – fax  
[steve@hylerandagan.com](mailto:steve@hylerandagan.com)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 2094

FILED

2022 NOV 21 A 10:14

EUGENE "GENE" BLANKENSHIP, JR.,  
BUNCOMBE CO., C.S.C.

Plaintiff,

BY LA

v.

SMOKY MOUNTAIN EVENT CENTER,  
INC.,

**CONSENT  
PROTECTIVE ORDER**

Defendant.

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THIS MATTER is before the Court pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure on motion for entry of a Protective Order to protect the Parties' sensitive and confidential information. After reviewing the Motion for Protective Order and the proposed Consent Protective Order, the Court believes the proposal is appropriate and that good cause exists for entering a protective order in this action.

It is, therefore, **ORDERED** as follows:

1. **DEFINITIONS.** The following definitions apply hereto:
  - 1.1 "Documents" means all documents and things subject to production, copying, or inspection under the North Carolina Rules of Civil Procedure.
  - 1.2 "Action" means the above-captioned matter.
  - 1.3 "Litigation Materials" means (a) any and all Documents and things produced or furnished during the course of litigating this Action by a Party or by a nonparty pursuant to a subpoena, (b) any Documents or information derived from or encompassing such material including without limitation copies, excerpts, or summaries thereof, and/or (c) any and all deposition transcripts and exhibits to depositions taken in this action.

1.4 “Confidential Material(s)” shall mean and refer to, but not be limited to, medical records of any the Parties, tax returns, social security numbers, account numbers for banking information, bank routing numbers, other highly sensitive material that can easily lead to identity theft, and non-public information that is not generally known to others and is of such a sensitive nature that the Designating Party reasonably believes in good faith that disclosure might result in embarrassment, damage, or injury to the Designating Party.

1.5 “Counsel of Record” shall mean (a) counsel who appear on the pleadings as counsel for a named party to this Action and (b) partners, associates, and employees of such counsel to whom it is reasonably necessary to disclose the information for this Action, including supporting personnel employed by the attorneys, such as paralegals, legal translators, legal secretaries, and legal clerks:

1.6 “Designating Party” shall mean any Party or any nonparty providing information in response to a discovery request.

1.7 “Receiving Party” shall mean any Party to this Action who receives any Confidential Material.

## 2. CONFIDENTIAL MATERIALS.

2.1 Any Designating Party may, in good faith, designate as Confidential Material any Litigation Materials that it produces or furnishes in this Action, including without limitation Documents or things produced in response to requests for production, transcripts and videos of depositions (including exhibits), affidavits, and pleadings, motions, briefs, or other papers that reflect or refer to such Litigation Materials.

2.2 Litigation Materials designated as Confidential Material shall be comprised of non-public information that the Designated Party furnishes in this Action that is not generally known to others and is of such a sensitive nature that the Designating Party reasonably believes in good

faith that disclosure might result in embarrassment, damage, or injury to the Designating Party and that the disclosure is likely to cause it irreparable injury and/or that the confidentiality of such material cannot be adequately maintained to protect the reasonable interests of the Designating Party unless disclosure is limited as set forth herein. Such information includes, without limitation, medical records of any the Parties, tax returns, social security numbers, account numbers for banking information, and bank routing numbers.

**3. TREATMENT OF CONFIDENTIAL INFORMATION.**

3.1 Confidential Materials shall be held in strict confidence, and, unless otherwise agreed by the Producing Party or ordered by the Court, shall not be revealed, discussed, or disclosed, directly or indirectly, in any manner, in any form, to any person or entity other than:

- (a) The Court and Court personnel, including any jury impaneled in this Action;
- (b) A deponent, during the course of the deposition;
- (c) Counsel of Record;
- (d) Any person retained by Counsel of Record as an expert or consultant to the extent deemed necessary by counsel to aid in the prosecution, defense, or settlement of the Action, provided, however, that such expert or consultant agrees to be bound by the provisions of this Consent Protective Order;
- (e) Any named Party to this Action;
- (f) Any court reporter or videographer used by any named party to this Action;
- (g) Any other litigation support vendors, such as copying or e-discovery service provides, used by any named party to this Action;
- (h) Any person with prior knowledge of the Confidential Material; and,



(i) Such other persons as hereafter may be designated by written stipulation of the named parties to this Action (such written stipulation to not be unreasonably withheld) or by further order of the Court.

Confidential Materials may be used at any deposition noticed in this Action provided the deposition participants and attendees abide by this Order.

**4. USE OF CONFIDENTIAL INFORMATION.**

4.1 All Confidential Material produced in this Action shall be used solely for the purposes of the preparation and trial of this Action, including appeals and re-trials, and shall not be used for any other purpose or in any administrative or other judicial proceeding, except upon written consent of the Designating Party, by order of the Court, or as otherwise provided herein.

4.2 Should Confidential Material be filed with the Court, it shall be filed under seal or properly redacted pursuant to applicable local rules and this Order.

4.3 In the event that a Party wishes to file or use as an exhibit as evidence at a hearing or trial, any Confidential Material without the protections contained herein, the Party must provide the Producing Party with five (5) business days' written notice. The Parties and/or their Outside Counsel shall then attempt to resolve the matter of continued confidentiality by either (a) removing the Confidential Material, or (b) creating a mutually acceptable redacted version of the document or materials that suffices for purposes of the case. If an amicable resolution proves unsuccessful, the Parties and/or attorneys may present the issue to the Court for resolution. The Designating Party will have the burden of persuasion that the document or material should be withheld from the public record in accordance with controlling precedent.

**5. SCOPE OF ORDER.** Nothing contained in this Consent Protective Order and no action taken pursuant to it shall prejudice the right of any party to this Action to object to discovery

or to contest the alleged relevancy or admissibility of the Documents produced subject to the terms of this Consent Protective Order.

**6. GENERAL PROVISIONS.**

6.1 Nothing in this Consent Protective Order shall limit or otherwise govern the use a Party may make of its own Documents or information or affect any other understandings or agreements between the Parties.

6.2 The provisions of this Consent Protective Order are without prejudice to any application by any Party at any time, on notice, for modification of, dissolution of, or relief from this Consent Protective Order or any provision hereof.

6.3 If a Party inadvertently fails to designate any Litigation Materials as Confidential pursuant to this Consent Protective Order, such Party may notify the Receiving Party of that error in writing and produce new versions of such Litigation Materials properly marked.

6.4 This Consent Protective Order shall not constitute a waiver of any Party's right to oppose any discovery request as provided in the North Carolina Rules of Civil Procedure.

**7. ATTORNEY-CLIENT AND ATTORNEY WORK PRODUCT.**

7.1 The inadvertent disclosure of any information protected by the attorney-client privilege or the attorney work-product doctrine SHALL NOT WAIVE any such privilege or doctrine.

7.2 In the event of an inadvertent disclosure of any information protected by the attorney-client privilege or the attorney work-product doctrine the Disclosing Party shall notify the recipient(s). The recipient(s) shall immediately return or destroy all copies of the Privileged Information and all documents summarizing it (including any such materials given to any third-party or individual pursuant to the terms of this Consent Protective Order) and shall not use or further disclose the Privileged Information until the claim of protection is resolved. The return or

destruction of Privileged Information shall not be deemed an admission that the information so returned is in fact protected and shall not shift any of the applicable burdens with respect thereto.

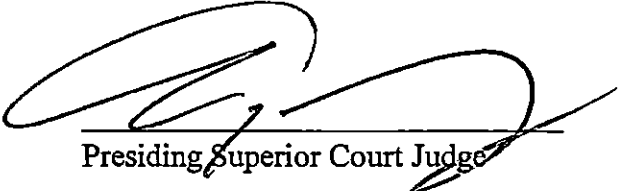
7.3 The party receiving Privileged Information may challenge the evidentiary privilege, doctrine or immunity invoked by the Disclosing Party by written motion; provided, however, that (a) the fact of disclosure shall not be considered as a waiver or in deciding whether the information is protected, and (b) the Court shall make the determination as if the Privileged Information had not been disclosed.

8. RETURN OF CONFIDENTIAL INFORMATION.

8.1 Upon the final termination of the Action, all persons having received Confidential Materials, shall within ninety (90) days of the final termination, unless otherwise ordered by any Court: (a) make a good faith effort to return such materials and all copies thereof (including summaries and excerpts) to counsel for the Designating Party, or (b) destroy all such Confidential Material and certify that fact in writing to counsel for the Designating Party.


8.2 Notwithstanding the foregoing paragraph, Counsel of Record may maintain in their files copies of work product, attorney-client communications, affidavits, affirmations, certifications, declarations, briefs, records on appeal, notices of motion, transcripts, exhibits, pleadings, discovery requests and responses, stipulations, correspondence between counsel for the Parties or any other Document filed with the Court that contain Confidential Material.

IT IS SO ORDERED, this the 21<sup>st</sup> day of November, 2022.

  
Presiding Superior Court Judge

Reviewed and approved by:

  
\_\_\_\_\_  
Stephen P. Agan  
Attorney for Plaintiff

  
\_\_\_\_\_  
J. Rodrigo Pocasangre  
Attorney for Defendant

*in permission  
by SA*

NORTH CAROLINA

BUNCOMBE COUNTY

EUGENE BLANKENSHIP,

v.

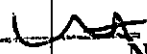
SMOKY MOUNTAIN EVENT CENTER,  
INC.

2022 NOV 18 A 10:00

BUNCOMBE CO., C.S.C.

Plaintiff,

BY



Defendant.

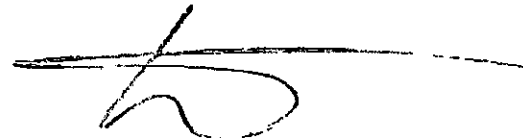
FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

22-CV-02094

NOTICE OF APPEARANCE FOR  
J. RODRIGO POCASANGRE

J. Rodrigo Pocasangre of the law firm of Constangy, Brooks, Smith & Prophete, LLC,  
hereby enters his appearance in the above-captioned matter on behalf of Defendant Smoky  
Mountain Event Center, Inc.

This the 16<sup>th</sup> day of November, 2022



J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
CONSTANGY, BROOKS, SMITH  
& PROPHETE, LLP  
100 North Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-1001  
Facsimile: (336) 748-9112  
Email: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)

*Attorney for Defendant*

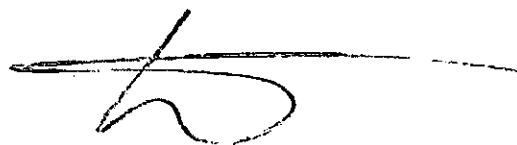
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing **NOTICE OF APPEARANCE FOR J. RODRIGO POCASANGRE** was served on opposing counsel by depositing a copy of same in the United States Mail in Winston-Salem, North Carolina, postage paid, and addressed as follows as well as served via e-mail to [steve@hylerandagan.com](mailto:steve@hylerandagan.com):

Stephen P. Agan  
Hyler & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

*Counsel for Plaintiff*

This the 16<sup>th</sup> day of November, 2022



---

J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
CONSTANGY, BROOKS, SMITH  
& PROPHETE, LLP  
100 North Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-1001  
Facsimile: (336) 748-9112  
Email: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)

*Attorney for Defendant*







**TYPES OF MOTIONS**

Add Additional Party (ADDP)  
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 Supplemental Procedures (SUPR)

**PRO HAC VICE FEES APPLY**

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 2094

2022 NOV 14 P 2:52

EUGENE "GENE" BLANKENSHIP, JR.,  
BUNCOMBE CO., C.S.C.

Plaintiff,

BY \_\_\_\_\_

v.

SMOKY MOUNTIAN EVENT CENTER, INC,

Defendant.

**PLAINTIFF'S MOTION  
FOR ENLARGEMENT OF TIME  
TO RESPOND TO WRITTEN  
DISCOVERY REQUESTS**

Plaintiff Eugene "Gene" Blankenship, Jr., through the undersigned counsel, hereby moves, pursuant to Rule 6(b) of the Rules of Civil Procedure, for an enlargement of time in which to respond to Defendant's written discovery requests, and would show the following:

1. On October 17, 2022, the Defendant, through counsel, served the undersigned counsel for Plaintiffs by email and by USPS mail with:
  - a. Defendant's First Set of Interrogatories to Plaintiff;
  - b. Defendant's First Requests for Production of Documents to Plaintiff; and
  - c. Defendant's First Requests for Admission to Plaintiff.
2. Copies of the Certificates of Service for these discovery requests are attached and marked Exhibit A, Exhibit B, and Exhibit C.
3. Under the Rules of Civil Procedure, Plaintiff's responses and/or objections to these discovery requests are due on or before November 16, 2022, which time has not expired.
4. Plaintiff and his counsel are in need of additional time within which to respond to these discovery requests and to produce the requested documents.
5. Plaintiff therefore moves the Court, pursuant to Rule 6(b) of the Rules of Civil Procedure, for an Order extending time within which to respond to Defendant's written discovery requests described above.

WHEREFORE, Plaintiff prays that the time within which he has to respond to Defendant's written discovery requests be extended for 30 days, up to and including December 16, 2022.

This the 14th day of November, 2022.

HYLER & AGAN, PLLC



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Stephen P. Agan  
NC Bar No. 35763  
Attorney for Plaintiff  
38 Orange Street  
Asheville, NC 28801  
(828) 254-1070 – telephone  
(828) 254-1071 – fax  
steve@hylerandagan.com

CERTIFICATE OF SERVICE

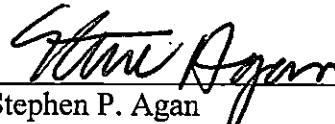
THIS IS TO CERTIFY that the undersigned counsel for Plaintiff has on this date served a copy of the foregoing **PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO WRITTEN DISCOVERY REQUESTS** upon counsel for Defendant by depositing a copy of the same in an official depository of the United States Postal Service in a postage-paid envelope, addressed as follows:

J. Rodrigo Pocasangre  
Constangy, Brooks, Smith & Prophete, LLP  
100 Cherry Street, Suite 300  
Winston-Salem, NC 27101

Jonathan W. Yarbrough  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

This the 14th day of November, 2022.

HYLER & AGAN, PLLC



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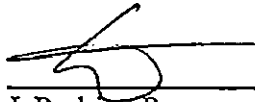
Stephen P. Agan  
NC Bar No. 35763  
Attorney for Plaintiff  
38 Orange Street  
Asheville, NC 28801  
(828) 254-1070 – telephone  
(828) 254-1071 – fax  
steve@hylerandagan.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing **DEFENDANT'S** **FIRST SET OF INTERROGATORIES TO PLAINTIFF** was served on opposing counsel by email at [steve@hylerandagan.com](mailto:steve@hylerandagan.com) and by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hyler & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

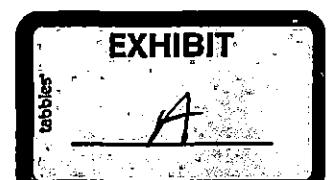
This the 17<sup>th</sup> day of October, 2022.



---

J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
E-mail: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)  
CONSTANGY, BROOKS, SMITH  
& PROPHETE, LLP  
100 N. Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-6862  
Facsimile: (336) 748-9112

*Attorney for Defendant*

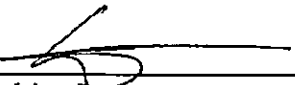


**CERTIFICATE OF SERVICE**

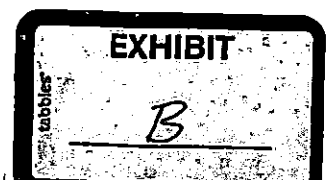
The undersigned hereby certifies that on this date a copy of the foregoing **DEFENDANT'S FIRST REQUESTS FOR PRODUCTION TO PLAINTIFF** was served on opposing counsel by e-mail at [steve@hylerandagan.com](mailto:steve@hylerandagan.com) and by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hyler & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

This the 17<sup>th</sup> day of October, 2022.

  
\_\_\_\_\_  
J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
E-mail: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)  
CONSTANGY, BROOKS, SMITH  
& PROPHETE, LLP  
100 N. Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-6862  
Facsimile: (336) 748-9112

*Attorney for Defendant*

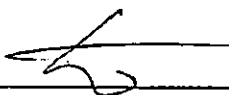


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing **DEFENDANT'S FIRST REQUESTS FOR ADMISSION TO PLAINTIFF** was served on opposing counsel by e-mail at [steve@hylerandagan.com](mailto:steve@hylerandagan.com) and by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hyler & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

This the 17<sup>th</sup> day of October, 2022.

  
\_\_\_\_\_  
J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
E-mail: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)  
CONSTANGY, BROOKS, SMITH  
& PROPHETE, LLP  
100 N. Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-6862  
Facsimile: (336) 748-9112

*Attorney for Defendant*







CERTIFICATE OF SERVICE

Pursuant to N.C.G.S. § 5A-23(a1), I certify that on this date, I served a copy of the foregoing **NOTICE OF WITHDRAWAL OF MOTION TO SHOW CAUSE FOR CIVIL CONTEMPT** upon Andrew Messer by depositing a copy thereof, enclosed in a postpaid envelope, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

Andrew Messer  
Haywood County Fire Marshall  
215 N Main Street  
Waynesville, NC 28786

Pursuant to Rule 5(b) of the Rules of Civil Procedure, I certify that on this date, I served a copy of the foregoing **NOTICE OF WITHDRAWAL OF MOTION TO SHOW CAUSE FOR CIVIL CONTEMPT** upon counsel for Defendant by depositing a copy thereof, enclosed in a postpaid envelope, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

Jonathan W. Yarbrough  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

This the 6th day of October, 2022.

HYLER & AGAN, PLLC

  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
38 Orange Street  
Asheville, NC 28801  
Tel: (828) 254-1070  
Fax: (828) 254-1071  
steve@hylerandagan.com  
*Attorney for Plaintiff*

**STATE OF NORTH CAROLINA**

Buncombe

County

**FILED**

File No.

22 CVS 2094

In The General Court Of Justice  
Superior Court Division

Name Of Plaintiff(s)

Eugene "Gene" Blankenship, Jr.

2022 SEP 30 P 3:16

BUNCOMBE CO., C.S.C.

Name And Address Of Plaintiff's Attorney (or Pro Se Plaintiff's Address)

Stephen P. Agan  
Hyer & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

**DESIGNATION OF MEDIATOR IN  
SUPERIOR COURT CIVIL ACTION**

Telephone No.

828-254-1070

Fax No. (if applicable)

Plaintiff's Attorney's Email Address (or Pro Se Plaintiff's Email Address)

steve@hyerandagan.com

**VERSUS**

Name Of Defendant(s)

Smoky Mountain Event Center, Inc.

**NOTICE:**  
Plaintiff's attorney should check and fill out only one of the two Sections, sign below, and return to the Senior Resident Superior Court Judge within 21 days after the date of the Order for Mediated Settlement Conference and distribute copies as noted below.

Name And Address Of Defendant's Attorney (or Pro Se Defendant's Address)

Jonathan W. Yarbrough  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

G.S. 7A-38.1; Rule 2 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions

Trial Date

07/17/2023

Date Of Order Referring Matter To Mediation

09/09/2022

Telephone No.

828-277-5137

Fax No. (if applicable)

828-277-5138

Deadline For Completion Of Mediated Settlement Conference

06/09/2023

Defendant's Attorney's Email Address (or Pro Se Defendant's Email Address)

jyarbrough@constangy.com

Tentative Trial Date

07/17/2023

**SECTION 1 - NOTICE OF SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT**

The above named case was referred to a mediated settlement conference. The parties have selected the mediator named below who has agreed to serve in this case and is certified pursuant to the Rules for Mediated Settlement Conferences.

Name And Address Of Certified Mediator

Frank Goldsmith  
Goldsmith Resolutions  
P.O. Box 102  
Fairview, NC 28730

Telephone No.

828-230-6977

Fax No. (if applicable)

Mediator's Email Address

frank@goldsmithresolutions.com

The parties and the mediator have agreed upon the mediator's rate of compensation as follows: (specify all terms of the compensation agreement.)

\$300 administrative fee + \$300 per hour

**NOTE:** As an aid to mediator selection, the NC Dispute Resolution Commission maintains a list of certified superior court mediators at [www.NCDRC.gov](http://www.NCDRC.gov). Click on "Find a Mediator" and then click on "Mediated Settlement Conference Program." You may search for mediators by name or by judicial district. Once a mediator's name appears on your screen, click on it for a complete contact and availability listing.

**SECTION 2 - MOTION FOR COURT APPOINTMENT OF MEDIATOR**

The above named case was referred to a mediated settlement conference.

The parties have been unable to agree upon the selection of a mediator and move the Senior Resident Superior Court Judge to appoint a certified mediator to conduct their conference.

Date

Name Of Attorney (or Pro Se Party)

Signature Of Attorney (or Pro Se Party)

Original-File Copy-Senior Resident Superior Court Judge or his/her designee  
Copy-Plaintiff Copy-Defendant Copy-Mediator  
(Over)

**ORDER OF APPOINTMENT**

The parties having reported their failure to agree upon the selection of a mediator or the parties having failed to notify the Court of their selection or nomination of a mediator within twenty-one (21) days after this case was ordered to mediation, the Court appoints the following certified mediator to conduct the mediated settlement conference.

Name And Address Of Certified Mediator	Telephone No.	Fax No. (if applicable)
	Mediator's Email Address	

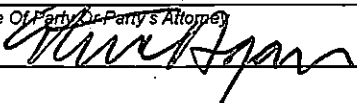
**NOTICE TO MEDIATOR:** *The mediator shall be responsible for reserving a place and making arrangements for the conference and giving timely notice to all attorneys and unrepresented parties of the time and location of the conference. The mediated settlement conference shall be completed by the completion deadline set forth above, and the mediator shall report the results of the conference to the Court within ten (10) days after the conference is completed.*

Date	Name Of Senior Resident Superior Court Judge (type or print)	Signature Of Senior Resident Superior Court Judge
------	--	---

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing Designation of Mediator in Superior Court Civil Action was served on the above-selected mediator and the parties at the addresses below by placing a copy of the same in the United States Mail, postage prepaid. (Please provide names and addresses for the mediator and parties served in the spaces below. Attach additional sheets if necessary.)

Name And Address Of Mediator Frank Goldsmith Goldsmith Resolutions P.O. Box 102 Fairview NC 28730	Name And Address Of Party Or Attorney
Name And Address Of Party Or Attorney Jonathan W. Yarbrough Constangy, Brook, Smith & Prophete, LLP 84 Peachtree Road, Suite 230 Asheville NC 28803	Name And Address Of Party Or Attorney
Name And Address Of Party Or Attorney	Name And Address Of Party Or Attorney
Name And Address Of Party Or Attorney	Name And Address Of Party Or Attorney

Date 09/30/2022	Name Of Party (type or print) Stephen P. Agan, Attorney for Plaintiff	Signature Of Party Or Party's Attorney 
--------------------	--	---



**TYPES OF MOTIONS**

Add Additional Party (ADDP)  
 Amend (AMND)  
 Assert Right Of Access (ARAS)  
 Attorney Fee (ATFE)  
 Change Of Venue (CHVN)  
 Claim Exemptions (CDEX)  
 Compel (CMPL)  
 Consolidation (CNSL)  
 Contempt (CNTP)  
 Continue (CNTN)  
 Court Costs (COST)  
 Default Judgment (DEFJ)  
 Deposition (DEPO)  
 Designate A Mediator (DSMD)  
 Disburse Funds (DFND)  
 Dismiss (Involuntary) (DISM)  
 Entry Of Default (EODF)  
 Ex Parte Restraining (EXPR)  
 Exempt From Arbitration (EXAR)  
 Exempt/Waive Mediation (EXMD)  
 Extension Of Time (EXTM)  
 Failure To Join Necessary Party (FJNP)  
 Failure To State A Claim (FASC)  
 Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)  
 Improper Venue/Division (IMVN)  
 In Limine (ILIM)  
 In The Cause (INTC)  
 Increase Bond (INBN)  
 Insufficiency Of Process (INPR)  
 Insufficiency Of Service Of Process (INSP)  
 Interplead (INTP)  
 Intervene (INTR)  
 Join (JOIN)  
 Judgment On Pleading (JOPL)  
 Jury View (JRVW)

Lack Jurisdiction (Subject Matter) (LJSM)  
 Lack Jurisdiction (Person) (LJPN)  
 Limit Deposition (LDEP)  
 Modification Of Alimony (MALI)  
 Modification Of Child Support In IV-D Actions (MSUP)  
 Modification Of Custody (MCUS)  
 Modification Of Support (MSUP)  
 Modification Of Visitation (MVIS)  
 More Definite Statement (Rule 12) (MDST)  
 Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter  
 New Trial (NTRL)  
 Objection Of Exemptions Claimed (OEXC)  
 Other (OTHR) *(describe on front)*  
 Petition To Sue As Indigent (OTHR)  
 Preliminary Injunction (PREL)  
 Quash (QUSH)  
 Release From Stay Of Execution (RSEX)  
 Sanctions (SANC)  
 Selection Of Mediator By Agreement (SMAP)  
 Set Aside (VCMD)  
 Sever Issues Or Claims (SICL)  
 Show Cause (SHOW)  
 Special Practice In NC (ADMP)  
 Stay Of Execution (STEX)  
 Strike (STRK)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Summary Judgment (SUMJ)  
 Supplemental Procedures (SUPR)  
 Temporary Restraining Order (TROR)  
 Transfer (TRFR)  
 Vacate/Modify Judgment Or Order (VCMD)  
 Voluntary Dismissal With Or Without Prejudice (VOLD)  
 Withdraw As Counsel (WDCN)

**FEES IN G.S. 7A-308 APPLY**

Assert Right Of Access (ARAS)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Supplemental Procedures (SUPR)

**PRO HAC VICE FEES APPLY**

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
**FILED** SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 2094

2022 SEP 29 A 11:00

EUGENE "GENE" BLANKENSHIP, JR. )  
BUNCOMBE CO., C.S.C. )

Plaintiff, )

BY )                      )

vs. )

**NOTICE OF HEARING**

SMOKY MOUNTAIN EVENT CENTER, )  
INC., )

Defendant. )  
\_\_\_\_\_ )

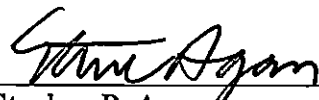
To: Andrew Messer  
Haywood County Fire Marshall  
215 N Main Street  
Waynesville, NC 28786

To: Jonathan W. Yarbrough  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

**PLEASE TAKE NOTICE** that Plaintiff, through the undersigned counsel, will bring on for hearing before the Judge presiding over Civil Session of Buncombe County Superior Court the attached **MOTION TO SHOW CAUSE FOR CIVIL CONTEMPT FOR FAILURE TO RESPOND TO A SUBPOENA FOR RECORDS** and pray for the relief requested in the Motion on Tuesday, November 1, 2022, at 9:20 a.m., or as soon thereafter as the Court may hear the motion. The motion will be brought for hearing at the Buncombe County Courthouse via video conferencing (Webex). Those wishing to participate in this hearing should contact the Buncombe County Trial Court Administrator at (828) 259-6479, or via email at [marc.shimberg@nccourts.org](mailto:marc.shimberg@nccourts.org), at least three (3) business days prior to the hearing.

This the 29th day of September, 2022.

HYLER & AGAN, PLLC

  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
38 Orange Street  
Asheville, NC 28801  
Tel: (828) 254-1070

W. COMBE COUNTY CLERK OF COURT

0273092 09/29/22 11:48:36

PAID TO: BLANKSHIP, EUGENE  
PAYEE: PD BY HYLER & AGAN PLLC  
CASE#: 22CVSC02094 UCAP:Y  
CITY:

2100 NOTION FEE	20.00
TOTAL PAID	20.00
CO TENDERED	20.00
CHANGE	.00

374 ID C103M

Fax: (828) 254-1071  
steve@hylerandagan.com  
*Attorney for Plaintiff*



STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
**FILED** SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 2094

2022 SEP 29 A 11:00

EUGENE "GENE" BLANKENSHIP, JR. )  
BUNCOMBE CO., C.S.C. )

Plaintiff, )

BY \_\_\_\_\_ )

vs. )

SMOKY MOUNTAIN EVENT CENTER, )  
INC., )

Defendant. )  
\_\_\_\_\_ )

**MOTION TO SHOW CAUSE FOR  
CIVIL CONTEMPT FOR FAILURE  
TO RESPOND TO A SUBPOENA  
FOR RECORDS  
[Rule 45(e)(1)]**

NOW COMES the Plaintiff, by and through the undersigned counsel, and hereby moves, pursuant to Rule 45 of the Rules of Civil Procedure and N.C.G.S. § 5A-23(a1), for Andrew Messer to appear and show cause as to why he should not be adjudged to be in civil contempt for willful failure to respond to a Subpoena for records issued and served in this action. In support of this verified motion, Plaintiff would show unto the Court the following:

1. On August 12, 2022, the undersigned counsel for Plaintiff executed a Subpoena in the above-captioned action directed to "Andrew Messer / Hawood County Fire Marshall," commanding him to produce and permit for inspection and copying certain records by September 16, 2022. A copy of the said Subpoena is attached hereto and marked Exhibit A.
2. The undersigned counsel caused the said Subpoena to be delivered to the Office of the Haywood County Sheriff for personal service on Mr. Messer.
3. On August 16, 2022, the Subpoena was served by personal delivery to Mr. Messer by an agent of the Haywood County Sheriff's Office, as evidenced by the completed Return of Service form attached hereto and marked Exhibit B.
4. The undersigned counsel had previously requested some of the same records be produced by Mr. Messer through a public records request sent by email on May 19, 2022. Mr. Messer called the undersigned counsel and acknowledged receipt of the email and said that he would produce the requested report, which is a public record. The undersigned counsel thereafter did not receive the requested record and, on June 6, 2022, sent a follow-up email to Mr. Messer regarding the same. Copies of these two emails are attached hereto and marked Exhibit C.
5. "A subpoena *duces tecum* is appropriate to make discovery of documentary evidence held by a non-party." *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 648 n.5, 531 S.E.2d 883, 887 (2000) (citing N.C.G.S. § 1A-1, Rule 45(d)).

6. Rule 45(e)(1) of the North Carolina Rules of Civil Procedure provides: "Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of court."

7. The records requested in the Subpoena attached as Exhibit A are relevant and material to Plaintiff's claims in this action and are "public records" under Section 132-1 of the North Carolina General Statutes.

8. At the time of the verification of this motion, the person to whom the Subpoena was directed, Andrew Messer, has failed to respond to the Subpoena.

WHEREFORE, Plaintiff respectfully moves the Court for the following relief:

1. That this Verified Motion be treated as an Affidavit in support of all orders of the Court;
2. That Andrew Messer be adjudged in willful civil contempt for failure to respond to a lawful Subpoena for records issued by counsel in this action; and
3. That the Court order Mr. Messer to comply with the Subpoena for records attached hereto and marked Exhibit A; and
4. That the Court grant the Plaintiff such other relief to which he is entitled under the laws of the State of North Carolina.

This the 29th day of September, 2022.

HYLER & AGAN, PLLC

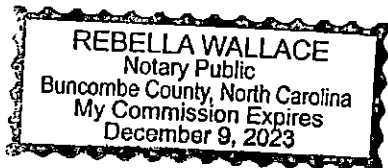
  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
38 Orange Street  
Asheville, NC 28801  
Tel: (828) 254-1070  
Fax: (828) 254-1071  
steve@hylerandagan.com  
*Attorney for Plaintiff*

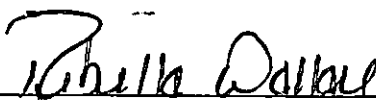
VERIFICATION

Stephen P. Agan, being first duly sworn, deposes and says that he is counsel of record for the Plaintiff in the foregoing action, that he has read the foregoing Motion thereof, and that the allegations of the Motion are true of his own knowledge.

  
\_\_\_\_\_  
Stephen P. Agan

Sworn to and subscribed before me on this the 29th day of September, 2022.



  
\_\_\_\_\_  
Notary Public

My commission expires: 12-9-23

CERTIFICATE OF SERVICE

Pursuant to N.C.G.S. § 5A-23(a1), I certify that on this date, I served a copy of the foregoing **NOTICE OF HEARING** and **MOTION TO SHOW CAUSE FOR CIVIL CONTEMPT FOR FAILURE TO RESPOND TO A SUBPOENA FOR RECORDS** upon Andrew Messer by depositing a copy thereof, enclosed in a postpaid envelope, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

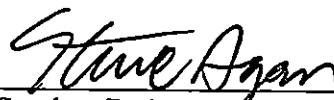
Andrew Messer  
Haywood County Fire Marshall  
215 N Main Street  
Waynesville, NC 28786

Pursuant to Rule 5(b) of the Rules of Civil Procedure, I certify that on this date, I served a copy of the foregoing **NOTICE OF HEARING** and **MOTION TO SHOW CAUSE FOR CIVIL CONTEMPT FOR FAILURE TO RESPOND TO A SUBPOENA FOR RECORDS** upon counsel for Defendant by depositing a copy thereof, enclosed in a postpaid envelope, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed as follows:

Jonathan W. Yarbrough  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803

This the 29th day of September, 2022.

HYLER & AGAN, PLLC

  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
38 Orange Street  
Asheville, NC 28801  
Tel: (828) 254-1070  
Fax: (828) 254-1071  
steve@hylerandagan.com  
*Attorney for Plaintiff*

STATE OF NORTH CAROLINA

File No.

22 CVS 02094

Buncombe

County

In The General Court Of Justice
District Superior Court Division

Eugene "Gene" Blankenship

Additional File Numbers

VERSUS

Smoky Mountain Event Center, Inc.

SUBPOENA

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name And Address Of Person Subpoenaed

Andrew Messer
Haywood County Fire Marshal
215 N Main Street
Waynesville, NC 28786

Alternate Address



Telephone No.

828-452-6717

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
produce and permit inspection and copying of the following items, at the place, date and time indicated below.
See attached list. (List here if space sufficient)

- 1. A copy of any report regarding any inspection performed by you or any other agent of your office, from September 1, 2021 to the present, of any part of the Smoky Mountain Event Center, located at 758 Crabtree Road, Waynesville, NC 28785.
2. Any and all written communications between you and any other person regarding any inspection performed by you or any agent of your office, from September 1, 2021 to the present, of any part of the Smoky Mountain Event Center.
3. Any and all written communications between you and any other person regarding Gene Blankenship.

The term "communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise. Written communications include e-mails and SMS/text messages.

Name And Location Of Court/Place Of Deposition/Place To Produce

Hylar & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date To Appear/Produce, Until Released

09/16/2022

Time To Appear/Produce, Until Released

12:00 p.m.

AM PM

Date

08/12/2022

Name And Address Of Applicant Or Applicant's Attorney

Stephen P. Agan
Hylar & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Signature

[Handwritten Signature]

- Deputy CSC Assistant CSC Clerk Of Superior Court
Magistrate Attorney/DA District Court Judge
Superior Court Judge

Telephone No. Of Applicant Or Applicant's Attorney

828-254-1070

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- personal delivery registered or certified mail, receipt requested and attached.
telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve:

Table with 4 columns: Service Fee, Date Served, Name Of Authorized Server, Signature Of Authorized Server, Title/Agency

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

**NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).**

**(c) Protection of Persons Subject to Subpoena**

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
- The subpoena fails to allow reasonable time for compliance.
  - The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
  - The subpoena subjects a person to an undue burden or expense.
  - The subpoena is otherwise unreasonable or oppressive.
  - The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) **Order to compel expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) **Order to quash expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

**(d) Duties In Responding to Subpoena**

- (1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.
- (4) **Inaccessible electronically stored information.** - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

**INFORMATION FOR WITNESS**

**NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."**

**DUTIES OF A WITNESS**

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

**BRIBING OR THREATENING A WITNESS**

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

**WITNESS FEE**

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

C 0222126

STATE OF NORTH CAROLINA

File No. 22 CVS 02094

Buncombe County

In The General Court Of Justice
District Superior Court Division

Eugene "Gene" Blankenship

Additional File Numbers

VERSUS

Smoky Mountain Event Center, Inc.

SUBPOENA

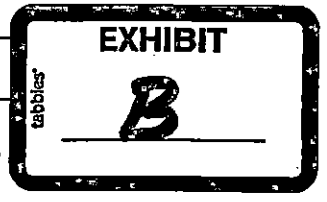
G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena
State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO Name And Address Of Person Subpoenaed
Andrew Messer
Haywood County Fire Marshal
215 N Main Street
Waynesville, NC 28786
Telephone No. 828-452-6717

Alternate Address
Telephone No.
RECEIVED
AUG 15 2022



YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
produce and permit inspection and copying of the following items, at the place, date and time indicated below.
See attached list. (List here if space sufficient)

- 1. A copy of any report regarding any inspection performed by you or any other agent of your office, from September 1, 2021 to the present, of any part of the Smoky Mountain Event Center, located at 758 Crabtree Road, Waynesville, NC 28785.
2. Any and all written communications between you and any other person regarding any inspection performed by you or any agent of your office, from September 1, 2021 to the present, of any part of the Smoky Mountain Event Center.
3. Any and all written communications between you and any other person regarding Gene Blankenship.

The term "communication" means the transmittal of information in the form of facts, ideas, inquiries, or otherwise. Written communications include e-mails and SMS/text messages.

Name And Location Of Court/Place Of Deposition/Place To Produce
Hyler & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date To Appear/Produce, Until Released
09/16/2022
Time To Appear/Produce, Until Released
12:00 p.m. AM PM

Name And Address Of Applicant Or Applicant's Attorney
Stephen P. Agan
Hyler & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date
08/12/2022
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court
Magistrate Attorney/DA District Court Judge
Superior Court Judge

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:
By personal delivery registered or certified mail, receipt requested and attached.
telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).
NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.
I was unable to serve this subpoena. Reason unable to serve:

Service Fee \$30.00 Paid Due Date Served 08/16/22 Name Of Authorized Server (type or print) Signature Of Authorized Server Title/Agency

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

**NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).**

**(c) Protection of Persons Subject to Subpoena**

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
  - a. The subpoena fails to allow reasonable time for compliance.
  - b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
  - c. The subpoena subjects a person to an undue burden or expense.
  - d. The subpoena is otherwise unreasonable or oppressive.
  - e. The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) **Order to compel: expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
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- (d) Duties in Responding to Subpoena**
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  - (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

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**From:** Steve Agan  
**Sent:** Monday, June 6, 2022 10:43 AM  
**To:** [andrew.messer@haywoodcountync.gov](mailto:andrew.messer@haywoodcountync.gov)  
**Subject:** RE: Smoky Mountain Event Center

Mr. Messer,

I am writing to follow up with you on this public records request. After we spoke briefly on the phone following your receipt my email on May 19th, my understanding is that you were going to provide our office with a copy of your inspection report. If you still intend to provide a copy the report, please let me know when you expect to do that. If you do not intend to provide a copy of the report, please let me know so that I can advise my client about potential next steps.

Sincerely,

Stephen P. Agan  
Hylar & Agan, PLLC  
[www.hylarandagan.com](http://www.hylarandagan.com)  
38 Orange Street  
Asheville, NC 28801  
~~(828) 254-1070~~  
~~(828) 254-1071~~ - fax



Sent from Mail for Windows 10

**From:** Steve Agan  
**Sent:** Thursday, May 19, 2022 3:34 PM  
**To:** [andrew.messer@haywoodcountync.gov](mailto:andrew.messer@haywoodcountync.gov)  
**Subject:** Smoky Mountain Event Center

Mr. Messer,

My name is Steve Agan. I represent Gene Blankenship, former manager of the Smoky Mountain Event Center. On his behalf, I am investigating a potential claim that he has of wrongful termination in violation of North Carolina public policy.

I understand that Mr. Blankenship invited you to perform an inspection of the buildings at the Smoky Mountain Event Center in November 2021. As part of my investigation, I would like to request a copy of any written report that you prepared following your inspection of that property, which is located at 785 Crabtree Road in Waynesville. This is a public records request made pursuant to Chapter 132 of the North Carolina General Statutes. If there is someone else to whom I should direct such a request, please advise.

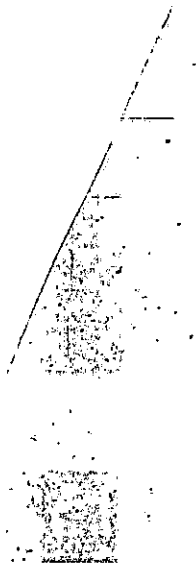
Beyond that, I would like to have an opportunity to speak with you about your recent dealings with Mr. Blankenship and other individuals affiliated with the Smoky Mountain Event Center. Just a phone

conversation is fine, and I would be happy to schedule a time that is convenient for you in the coming weeks.

Sincerely,

Stephen P. Agan  
Hyer & Agan, PLLC  
[www.hyerandagan.com](http://www.hyerandagan.com)  
38 Orange Street  
Asheville, NC 28801  
[\(828\) 254-1070](tel:8282541070)  
[\(828\) 254-1071](tel:8282541071) - fax

Sent from [Mail](#) for Windows 10





WHEREFORE, Defendant respectfully requests that the Court extend the deadline for answering or otherwise responding to Plaintiff's discovery request for an additional 30 days, through and including October 21, 2022. A proposed Order accompanies this Motion.

This the 19 day of September, 2022.



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Jonathan W. Yarbrough  
N.C. State bar No. 21316  
CONSTANGY, BROOKS,  
SMITH & PROPHEDE, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
[jyarbrough@constangy.com](mailto:jyarbrough@constangy.com)



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J. Rodrigo Pocasangre  
N.C. State Bar No. 41530  
CONSTANGY, BROOKS,  
SMITH & PROPHEDE, LLP  
100 North Cherry Street, Suite 300  
Winston-Salem, NC 27101  
Telephone: (336) 721-1001  
Facsimile: (336) 748-9112  
Email: [rpocasangre@constangy.com](mailto:rpocasangre@constangy.com)

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing **MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS, FIRST SET OF INTERROGATORIES, AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served on Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hyler & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

This the 14 day of September 2022.



Jonathan W. Yarbrough  
N.C. State bar No. 21316  
CONSTANGY, BROOKS,  
SMITH & PROPHETE, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
jyarbrough@constangy.com

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 02094  
FILED

EUGENE "GENE" BLANKENSHIP, JR., )

Plaintiff, )

vs. )

SMOKY MOUNTAIN EVENT CENTER, )  
INC., )

Defendant. )  
\_\_\_\_\_ )

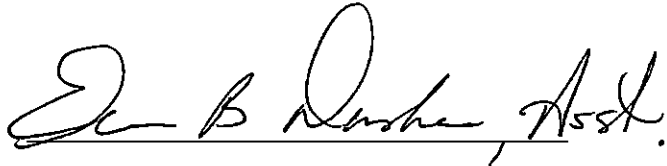
2022 SEP 19 P 3:43

BUNCOMBE CO., C.S.C.

BY  ORDER

After reviewing the Defendant's Motion and, upon good cause shown, the Court finds that the Defendant's Motion shall be GRANTED. Therefore, Defendants have up to and through October 21, 2022 in which to respond to Plaintiff's requests for discovery.

It is so ORDERED, this the 19<sup>th</sup> day of September, 2022.



Clerk of Court

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILED

COUNTY OF BUNCOMBE

FILE NO.: 22 CV 02094

2022 AUG 19 P 3:38

EUGENE BLANKENSHIP,

Plaintiff,

v.

SMOKY MOUNTAIN EVENT  
CENTER, INC.,

Defendant.

ANSWER

BUNCOMBE CO., C.S.C.

BY LA

NOW COMES Defendant Smoky Mountain Event Center, Inc. ("Defendant"), by and through undersigned counsel, and answers Plaintiff's Complaint as follows:

**FIRST DEFENSE**

Defendant alleges that Plaintiff fails to state a claim upon which relief may be granted against Defendant and that the claims for relief against same should be dismissed with prejudice pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

**SECOND DEFENSE AND ANSWER**

With respect to the specific allegations of Plaintiff's complaint, Defendant answers the correspondingly numbered paragraphs of such complaint as follows:

**I. PARTIES & JURISDICTION**

1. Defendant admits, upon information and belief, the allegations contained in Paragraph 1.
2. Defendant admits the allegations contained in Paragraph 2.
3. Defendant admits the allegations contained in Paragraph 3 sets forth the purported basis for establishing jurisdiction and venue in this Court, requiring no response from Defendant.



To the extent a response is required, Defendant does not contest that this Court has jurisdiction over the Plaintiff's claims and that Buncombe County is an appropriate venue for this action. However, Defendant specifically denies that it committed any unlawful or wrongful acts.

## II. RESPONSE TO FACTUAL ALLEGATIONS

4. Defendant admits the allegations contained in Paragraph 4.
5. Defendant admits the allegations contained in Paragraph 5.
6. Defendant admits the allegations contained in Paragraph 6.
7. Defendant admits the allegations contained in Paragraph 7.
8. Defendant admits the allegations contained in Paragraph 8.
9. Defendant admits, based upon information and belief, the allegations contained in Paragraph 9.
10. Paragraph 10 purports to describe the contents of a written document and requires no response from Defendant. To the extent a response is required, Defendant states that the document speaks for itself and denies any allegations inconsistent with the contents thereof.
11. Defendant admits the allegations contained in Paragraph 11.
12. Defendant admits the allegations contained in Paragraph 12.
13. Defendant admits the allegations contained in Paragraph 13.
14. Defendant admits the allegations contained in Paragraph 14.
15. Defendant denies the allegations contained in Paragraph 15.
16. Defendant admits that it bought a laptop computer at Plaintiff's request for him to use and that he seemingly had organizational skills. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 16.
17. Defendant admits that Plaintiff upgraded Defendant's computer records. Except as

expressly admitted, Defendant denies the allegations contained in Paragraph 17.

18. Defendant admits the allegations that SMEC changed the email address being used for SMEC as the email for the General Manager from managerhcfc@gmail.com to info@smokymountaineventcenter.org. Except as expressly admitted Defendant denies the allegations contained in Paragraph 18.

19. Defendant admits only that Plaintiff's job duties included managing events, including for example events such as those described in Paragraph 19. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 19.

20. Defendant admits only that Plaintiff's job duties included managing events and assisting event organizers. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 20.

21. Defendant admits only that it worked with the organizations described in Paragraph 21 and that the events are listed on Defendant's public calendar. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 21.

22. Defendant admits only that Plaintiff's job duties included managing events, including resolving date conflicts. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 22.

23. Defendant admits the allegations contained in Paragraph 23.

24. Paragraph 24 purports to set forth a legal conclusion requiring no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 66-255 speaks for itself and denies any allegations inconsistent with the contents thereof.

25. Paragraph 25 sets for legal conclusions and questions of law to which no answer is required. To the extent a response is Defendant denies the allegations contained in Paragraph 25.

26. Paragraph 26 purports to summarize and/or interpret a portion of a North Carolina statute, N.C. Gen. Stat. § 105-64.4(c) and requires no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 105-64.4(c), speaks for itself and denies any allegations inconsistent with the contents thereof.

27. Paragraph 27 purports to summarize and/or interpret a portion of a North Carolina statute, N.C. Gen. Stat. § 105-64.3(229) and requires no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 105-64.3(229), speaks for itself and denies any allegations inconsistent with the contents thereof.

28. Paragraph 28 purports to summarize and/or interpret a portion of a North Carolina statute, N.C. Gen. Stat. § 105-64.4(4b) and requires no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 105-64.4(4b), speaks for itself and denies any allegations inconsistent with the contents thereof.

29. Paragraph 29 purports to set forth legal conclusions and requires no response from Defendant. To the extent a response is required, Defendant denies the allegations contained in Paragraph 29.

30. Defendant admits that Plaintiff listed as an item for consideration N.C. Gen. Stat 66-255 on the Manager Report dated March 7, 2022, which report speaks for itself and is the best evidence of its contents. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 30.

31. Paragraph 31 purports to describe the contents of a written document and requires no response from Defendant. To the extent a response is required, Defendant states that the document speaks for itself and denies any allegations inconsistent with the contents thereof.

32. Paragraph 32 purports to summarize and/or interpret a portion of a North Carolina

statute, N.C. Gen. Stat. § 143-138 and requires no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 143-138 speaks for itself and denies any allegations inconsistent with the contents thereof.

33. Paragraph 33 purports to summarize and/or interpret a portion of a North Carolina Fire Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 1031.3 of the 2018 North Carolina State Fire Code speaks for itself and denies any allegations inconsistent with the contents thereof.

34. Paragraph 34 purports to summarize and/or interpret a portion of a North Carolina Fire Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 1031.6 of the 2018 North Carolina State Fire Code speaks for itself and denies any allegations inconsistent with the contents thereof.

35. Defendant denies the allegations contained in Paragraph 35.

36. Defendant is without sufficient knowledge as to Plaintiff's interactions with vendors to admit or deny the remaining allegations in Paragraph 36 and therefore leaves Plaintiff to his proof. To the extent a response is required, Defendant denies the allegations contained in Paragraph 36.

37. Defendant admits that the Haywood County Fire Marshal conducted a routine fire inspection on December 16, 2021 and that the Fire Marshal thereafter prepared a written report. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 37.

38. Defendant admits that the Fire Marshal noted minor compliance violations of the event center, which is owned by Haywood County. The remaining allegations in Paragraph 38 purport to summarize and/or interpret a portion of a North Carolina Food Code and requires no response from Defendant. To the extent a response is required, Defendant states that the North

Carolina Food Code speaks for itself and denies any allegations inconsistent with the contents thereof.

39. Paragraph 39 purports to summarize and/or interpret a portion of a North Carolina Fire Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 3003.1 of the 2018 North Carolina State Fire Code speaks for itself and denies any allegations inconsistent with the contents thereof.

40. Paragraph 40 purports to summarize and/or interpret a portion of the International Mechanical Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 401.2 of the International Mechanical Code speaks for itself and denies any allegations inconsistent with the contents thereof.

41. Paragraph 41 purports to summarize and/or interpret a portion of the International Mechanical Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 403.1 of the International Mechanical Code speaks for itself and denies any allegations inconsistent with the contents thereof.

42. Paragraph 42 purports to summarize and/or interpret a portion of the International Mechanical Code and requires no response from Defendant. To the extent a response is required, Defendant states that Section 506 of the International Mechanical Code speaks for itself and denies any allegations inconsistent with the contents thereof.

43. Defendant admits that the Fire Marshal disallowed grilling inside the Café. Defendants are without sufficient knowledge as to Plaintiff's interactions with third parties to admit or deny the remaining allegations in paragraph 43 and therefore leaves Plaintiff to his proof. Except as expressly admitted Defendant denies the allegations contained in Paragraph 43.

44. Defendant denies the allegations contained in the first two sentences of Paragraph

44. Defendant is without sufficient knowledge as to Plaintiff's interactions with third parties to admit or denying the remaining allegations in Paragraph 44 and therefore leaves Plaintiff to his proof. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 44.

45. Defendant is without sufficient knowledge as to Plaintiff's interactions with third parties to admit or deny the remaining allegations in Paragraph 45 and therefore leaves Plaintiff to his proof. To the extent a response is required, Defendant denies the allegations contained in Paragraph 45.

46. Defendant admits that a contractor who was not employed by the Defendant was treated for an injury sustained while setting up equipment in August of 2021. Defendant denies the allegations contained in Paragraph 46 and further denies that the injury was caused by any unsafe working conditions or negligence on the part of Defendant.

47. The allegations contained in Paragraph 47 are lacking context and therefore Defendant denies the allegations contained in Paragraph 47.

48. Paragraph 48 purports to summarize and/or interpret a portion of a North Carolina statute, N.C. Gen. Stat. § 55A-3-02(a)(7) and requires no response from Defendant. To the extent a response is required, Defendant states that N.C. Gen. Stat. § 55A-3-02(a)(7) speaks for itself and denies any allegations inconsistent with the contents thereof.

49. Paragraph 49 purports to summarize and/or interpret judicial authority and requires no response from Defendant. To the extent a response is required, Defendant states that case authority speaks for itself and denies any allegations inconsistent with the contents thereof.

50. Paragraph 50 purports to recite the contents of a written document and requires no response from Defendant. To the extent a response is required, Defendant states that the document speaks for itself and denies any allegations inconsistent with the contents thereof.

51. Defendant is without sufficient knowledge as to Plaintiff's interactions with third parties to admit or deny the remaining allegations in Paragraph 51 and therefore leaves Plaintiff to his proof. To the extent a response is required, Defendant denies the allegations contained in Paragraph 51.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53.

54. Defendant denies the allegations contained in Paragraph 54.

55. Defendant admits the allegations contained in Paragraph 55.

56. Defendant admits that Mr. Long notified Plaintiff of his discharge on or around March 18, 2022. The remaining allegations in Paragraph 56 purport to recite the contents of a written document and requires no response from Defendant. To the extent a response is required, Defendant states that the document speaks for itself and denies any allegations inconsistent with the contents thereof.

57. Defendant denies the allegations contained in Paragraph 57.

58. Paragraph 58 purports to summarize and/or interpret the contents of a written document and requires no response from Defendant. To the extent a response is required, Defendant states that the document speaks for itself and denies any allegations inconsistent with the contents thereof.

59. Defendant admits the allegations contained in Paragraph 59.

60. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 60 and therefore leaves Plaintiff to his proof.

61. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 61 and therefore leaves Plaintiff to his proof.

62. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 62 and therefore leaves Plaintiff to his proof.

63. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 63 and therefore leaves Plaintiff to his proof.

64. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 64 and therefore leaves Plaintiff to his proof.

65. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 65 and therefore leaves Plaintiff to his proof.

66. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 66 and therefore leaves



Plaintiff to his proof.

67. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge and that the Southern Rock Woodstock event was discussed in passing. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 67 and therefore leaves Plaintiff to his proof.

68. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 68 and therefore leaves Plaintiff to his proof.

69. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 69 and therefore leaves Plaintiff to his proof.

70. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 70 and therefore leaves Plaintiff to his proof.

71. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 71 and therefore leaves Plaintiff to his proof.

72. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient

information to admit or deny the specific quotations contained in Paragraph 72 and therefore leaves Plaintiff to his proof.

73. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 73 and therefore leaves Plaintiff to his proof.

74. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 74 and therefore leaves Plaintiff to his proof.

75. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 75 and therefore leaves Plaintiff to his proof.

76. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 76 and therefore leaves Plaintiff to his proof.

77. Defendant admits only that Mr. Long and Mr. Wilder met with Plaintiff to notify him of his discharge on or around March 18, 2022. Defendant is presently without sufficient information to admit or deny the specific quotations contained in Paragraph 77 and therefore leaves Plaintiff to his proof.

**FIRST CAUSE OF ACTION**  
**(Wrongful Discharge in Violation of Public Policy of the State of North Carolina)**

78. Defendant incorporates by reference its responses to Paragraphs 1-77 of the Complaint as if fully set forth herein.

79. Defendant denies the allegations contained in Paragraph 79

80. Defendant denies the allegations contained in Paragraph 80.

81. Defendant denies the allegations contained in Paragraph 81.

82. Defendant denies the allegations contained in Paragraph 82.

83. Defendant denies the allegations contained in Paragraph 83.

### **THIRD DEFENSE**

Some or all of Plaintiff's claims are or may be barred by the applicable statute of limitations.

### **FOURTH DEFENSE**

Defendant asserts that Plaintiff was, at all material times, an at-will employee of Defendant and, therefore, Plaintiff was subject to discharge at any time, with or without cause, so long as said discharge was not for an unlawful reason.

### **FIFTH DEFENSE**

Plaintiff's employment with Defendant was terminated for legitimate, non-retaliatory reasons, and Plaintiff's alleged complaints played no part in Defendant's decision to terminate his employment.

### **SIXTH DEFENSE**

Plaintiff's claims are barred to the extent that they are predicated on regulations, laws, codes, or other authority which are not capable of supporting a claim for wrongful discharge in violation of public policy.

### **SEVENTH DEFENSE**

Any amount which Plaintiff claims is due and owing to Plaintiff for lost wages and other employment benefits must be mitigated and reduced by the amount of wages and benefits Plaintiff earned (including unemployment compensation benefits), or through the exercise of reasonable diligence could have earned, during the period for which lost wages and benefits are sought by Plaintiff. Plaintiff further must mitigate all damages and to the extent Plaintiff has failed to do so, Plaintiff's damage claims must be reduced.

#### **EIGHTH DEFENSE**

To the extent Plaintiff engaged in activity protected by North Carolina law or policy, Defendant would have terminated Plaintiff's employment even in the absence of such protected activity.

#### **NINTH DEFENSE**

To the extent that Plaintiff was involved in any improper activities occurring during his employment, or failed to properly notice and act upon any such activities, Plaintiff is estopped from recovering for his claims.

#### **TENTH DEFENSE**

To the extent that Plaintiff was involved in any improper activities occurring during his employment, or failed to properly notice and act upon any such activities, Plaintiff is estopped from recovering for his claims.

#### **ELEVENTH DEFENSE**

Plaintiff's claims may be barred in whole or in part by the doctrines of waiver, release, accord, and satisfaction. Further, Plaintiff's claims may be barred by the doctrines of estoppel or unclean hands by reason of his conduct and actions, including acts of commission and omission.

#### **TWELFTH DEFENSE**

Defendant is entitled to recover its costs of court and attorneys' fees for the defense of Plaintiff's action because this action is frivolous and without foundation in law or in fact.

#### **THIRTEENTH DEFENSE**

Any award of damages should be barred or limited to the extent that the relief demanded by Plaintiff is improper, barred in whole or in part by the doctrine of after-acquired evidence, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the laws upon which his claims rest. Any claim for punitive damages is limited by and subject to the applicable provisions of federal law, the Constitution of the United States and the North Carolina Constitution.

#### **FOURTEENTH DEFENSE**

Plaintiff's claims lack merit because any employment actions allegedly taken by Defendant with respect to Plaintiff were made in good faith and based upon legitimate business reasons completely unrelated to any impermissible factor or protected activity, and were taken in good faith, without malice or reckless indifference towards the Plaintiff and not in violation of any statute or common law.

#### **FIFTEENTH DEFENSE**

To the extent certain supervisors, managers, employees and/or agents of Defendant may have engaged in inappropriate conduct or unlawful action, the fact of which is expressly denied, such conduct is outside the course and scope of their employment, authority and/or agency, was in direct contravention of Defendant's policies, and occurred without Defendant's consent or ratification. Accordingly, Defendant cannot be vicariously liable for such actions or conduct.

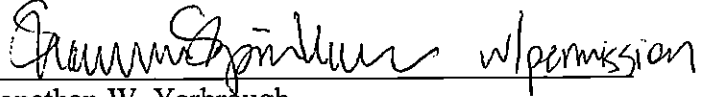
#### **SIXTEENTH DEFENSE**

Defendant has not had an opportunity to conduct a full and sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act expediently to inform itself as to the pertinent facts and prevailing circumstances surrounding any claimed damages and hereby give notice of their intent to assert any affirmative defenses or allegations of fact that this information-gathering process may indicate are supported by law.

WHEREFORE, having fully answered the allegations in Plaintiff's Complaint, Defendant respectfully prays that:

1. Plaintiff have and recover nothing of Defendant;
2. Plaintiff not be awarded any form of legal or equitable relief;
3. The Court dismiss Plaintiff's action with prejudice;
4. The costs of this action and Defendant's reasonable attorneys' fees be taxed against Plaintiffs as may be allowed by law;
5. The Court award such other and further relief is just and proper.

This the 19<sup>th</sup> day of August, 2022.

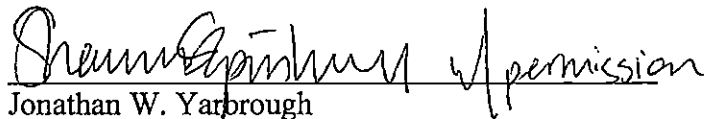
  
Jonathan W. Yarbrough  
N.C. State Bar No. 21316  
CONSTANGY, BROOKS, SMITH & PROPHETE,  
LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
[jyarbrough@constangy.com](mailto:jyarbrough@constangy.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing ANSWER was served on Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hyer & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

This the 19<sup>th</sup> day of August, 2022.

 *Jonathan W. Yarbrough* *W. Yarbrough*

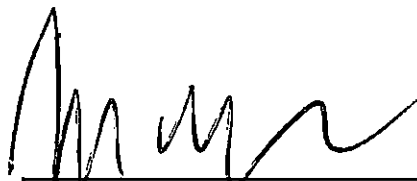
Jonathan W. Yarbrough  
N.C. State Bar No. 21316  
CONSTANGY, BROOKS, SMITH & PROPHETE,  
LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
[jyarbrough@constangy.com](mailto:jyarbrough@constangy.com)





WHEREFORE, Defendant respectfully requests that the Court extend the deadline for answering or otherwise responding to Plaintiff's Complaint for an additional 30 days, through and including August 22, 2022. A proposed Order accompanies this Motion.

This the 18 day of July, 2022.



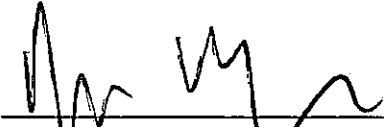
Jonathan W. Yarbrough  
N.C. State bar No. 21316  
CONSTANGY, BROOKS,  
SMITH & PROPHETE, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
[iyarbrough@constangy.com](mailto:iyarbrough@constangy.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing **MOTION FOR EXTENSION OF TIME TO ANSWER, MOVE OR OTHERWISE PLEAD IN RESPONSE TO COMPLAINT** was served on Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Agan  
Hylar & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801

This the 18 day of July 2021.



---


Jonathan W. Yarbrough  
N.C. State bar No. 21316  
CONSTANGY, BROOKS,  
SMITH & PROPHETE, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: (828) 277-5137  
Facsimile: (828) 277-5138  
jyarbrough@constangy.com

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 02094

**FILED**

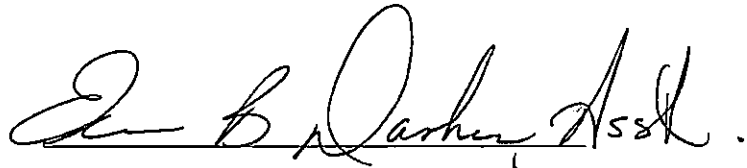
**2022 JUL 18 P 3:50**

EUGENE "GENE" BLANKENSHIP, JR.,	)
Plaintiff,	)
<b>BUNCOMBE CO., C.S.C.</b>	)
BY. 	)
vs.	)
SMOKY MOUNTAIN EVENT CENTER,	)
INC.,	)
Defendant.	)

ORDER

After reviewing the Defendant's Motion and, upon good cause shown, the Court finds that the Defendant's Motion shall be GRANTED. Therefore, Defendants have up to and through August 22, 2022 in which to answer, move or otherwise please in response to the Complaint.

It is so ORDERED, this the <sup>ed</sup>18 day of July, 2022.



Clerk of Court

FILED

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 22 CVS 02094  
BUNCOMBE CO., C.S.C.

EUGENE "GENE" BLANKENSHIP, JR. )

Plaintiff, )

vs. )

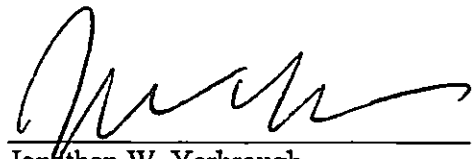
SMOKY MOUNTAIN EVENT CENTER, )  
INC., )

Defendant. )

ACCEPTANCE OF SERVICE  
OF SUMMONS AND COMPLAINT

I, Jonathan W. Yarbrough, hereby make a general appearance on behalf of Defendant Smoky Mountain Event Center, Inc. in the above-entitled action pending in the General Court of Justice, Superior Court Division, Buncombe County, North Carolina and do hereby accept service of process and acknowledge receipt of a Summons and copy of the Complaint on behalf of the Defendant. Service of process by an officer or otherwise is hereby expressly waived. This Acceptance of Service is executed in accordance with Rule 4(j)(6) of the Rules of Civil Procedure and this Acceptance shall have the same force and effect as would exist had the process been served upon the Defendant by delivery of the Summons and copy of the Complaint.

This the 22 day of June, 2022.



Jonathan W. Yarbrough  
NC State Bar No. 21316  
Constangy, Brooks, Smith & Prophete, LLP  
84 Peachtree Road, Suite 230  
Asheville, NC 28803  
Telephone: 828.333.4218  
Facsimile: 828.277.5138  
Email: JYarbrough@constangy.com

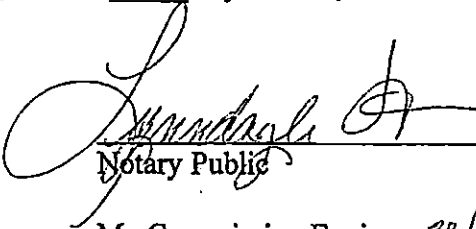
STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify and acknowledge that Jonathan W. Yarbrough personally appeared before me this date and executed the foregoing Acceptance of Service of Summons and Complaint.

WITNESS my hand and official seal, this the 22<sup>nd</sup> day of June, 2022.

LYNNDAYLE JONES  
NOTARY PUBLIC  
Buncombe County  
North Carolina  
My Commission Expires 28 AUGUST 2024

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 28 AUGUST 2024

STATE OF NORTH CAROLINA

File No.

22CV 02094

BUNCOMBE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
EUGENE BLANKENSHIP, JR.
Address
18 Offshore Drive
City, State, Zip
Asheville, NC 28805

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s)
SMOKY MOUNTAIN EVENT CENTER, INC.

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Smoky Mountain Event Center, Inc.
c/o Chris Caldwell
758 Crabtree Road
Waynesville, NC 28785

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
Stephen P. Agan
Hyler & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date Issued 6-9-2022 Time 4:23 AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>



STATE OF NORTH CAROLINA

File No.

22CV 02094

BUNCOMBE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: EUGENE BLANKENSHIP, JR.
Address: 18 Offshore Drive
City, State, Zip: Asheville, NC 28805

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Name Of Defendant(s): SMOKY MOUNTAIN EVENT CENTER, INC.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: Smoky Mountain Event Center, Inc.
c/o Thomas A. Long
1012 Sonoma Road
Canton, NC 28716

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales.
¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff): Stephen P. Agan
Hyler & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date Issued: 6-9-2022 Time: 4:23 AM

Signature: [Handwritten Signature]

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA

File No.

22CV 02094

BUNCOMBE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
EUGENE BLANKENSHIP, JR.
Address
18 Offshore Drive
City, State, Zip
Asheville, NC 28805

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s)
SMOKY MOUNTAIN EVENT CENTER, INC.

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Smoky Mountain Event Center, Inc.
c/o Thomas A. Long
758 Crabtree Road
Waynesville, NC 28785

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)
Stephen P. Agan
Hyler & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Date Issued 6-9-2022 Time 4:23 AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA

**FILED**

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF BUNCOMBE

2022 JUN -9 P 4: 23

FILE NO. 22CV 02094

EUGENE "GENE" BLANKENSHIP, JR., )  
BUNCOMBE CO., C.S.C. )

Plaintiff, )

BY \_\_\_\_\_ )

vs. )

SMOKY MOUNTAIN EVENT CENTER, )  
INC., )

**COMPLAINT**

Defendant. )  
\_\_\_\_\_ )

NOW COMES the Plaintiff, Eugene "Gene" Blankenship, Jr., complaining of the Defendant, and alleges and says:

**PARTIES & JURISDICTION**

1. Plaintiff, Eugene "Gene" Blankenship, Jr. (hereinafter, "Plaintiff"), is and at all relevant times has been a citizen and resident of Buncombe County, North Carolina.
2. Defendant, Smoky Mountain Event Center, Inc. (hereinafter, "SMEC"), is a non-profit corporation organized and existing under the laws of the State of North Carolina, with its principal office in Haywood County, North Carolina.
3. Buncombe County Superior Court has subject-matter jurisdiction over the claim alleged herein and Buncombe County is a proper venue under N.C. Gen. Stat. § 1-82.

**FACTUAL ALLEGATIONS**

4. On or about September 27, 2021, Plaintiff was hired by SMEC to work as the manager of SMEC's community event center and fairgrounds in Haywood County, North Carolina.
5. SMEC has been in active operation in Haywood County for over 30 years, formerly named the "Haywood County Agriculture and Activities Center Association," the "Haywood County Fair Association," and "Haywood County Fairgrounds, Inc."
6. At all relevant times, SMEC has operated a community event center located at 758 Crabtree Road, Waynesville, NC 28785 on approximately 30 acres of land, which includes two large exhibit halls, a covered regulation-size arena, a livestock barn, thirty box stalls, and a fairgrounds (hereinafter, the "Subject Property").

BUMING COUNTY CLERK OF COURT

N311.57

06/09/22 16:47:32

PAYER: BLANKENSHIP, EUGENE, JR  
PAYEE: PD BY HYLER & AGAN, PLLC  
CASE#: 22CVS002094 UCAP:Y  
CITY:

21120 SC-CIVIL FEES	179.05
21124 SC-CV LAA FEES	.95
24600 JUD TECH & FAC	4.00
22120 CO FAC FEE S CV	16.00
TOTAL PAID	200.00
CO TENDERED	200.00
CHANGE	.00

3512 ID C10KFB

7. Haywood County has owned the property on which SMEC operates since 1990 and, since then, has leased the property at 758 Crabtree Road to SMEC and its predecessors for an annual rental payment of \$1 per year.

8. Haywood County entered into a Ground Lease Agreement with SMEC's predecessor, Haywood County Fair Association, on August 23, 1990, which is recorded in the Haywood County Public Registry at Book 434, Page 1717, which lease was amended on August 22, 1991, which amendment is recorded at Book 434, Page 1736 (collectively, the "Ground Lease Agreement").

9. The Ground Lease Agreement was automatically extended by its own terms for 10 years on August 23, 2000; August 23, 2010; and August 23, 2020, and is currently in effect and binding upon SMEC.

10. The duties of SMEC under the Ground Lease Agreement with Haywood County are express statements of policy of Haywood County, which is a body corporate and politic and a subdivision of the State of North Carolina. Those duties include:

a. SMEC's duty to "use the Demised Premises for lawful purposes;"

b. SMEC's duty to "comply with all laws, ordinances, decrees, orders, rules and regulations of any lawful authority, agency or governmental unit having jurisdiction over the Demised Premises for the adjacent public streets;"

c. SMEC's duty to "at its sole cost and expense . . . keep or cause to be kept insured for the mutual benefit of [Haywood County] and [SMEC], all improvements now or hereafter located on or appurtenant to the Demised Premises against loss or damage by fire and such other risks . . .;"

d. SMEC's duty to "at its sole cost and expense . . . keep or cause to be kept in force, for the mutual benefit of [Haywood County] and [SMEC], Commercial General Liability Insurance, and Worker's Compensation insurance per attached Addendum A;"

e. SMEC's duty to "at its sole cost and expense . . . maintain throughout the Term the Demised Premises . . . in a good and first-class condition and state of repair, ordinary wear and tear only excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction and all [of] their respective departments, bureaus and officials;"

f. SMEC's duty to "protect, indemnify and save harmless [Haywood County] from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, attorneys' fees and expenses by reason of (i) ownership of the Demised Premises or any interest therein or receipt of any rent or other sum therefrom, (ii) any accident, injury or death of persons or loss of or damage to property occurring on or about the

Demised Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (iii) any use, nonuse or condition of the Demised Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (iv) any failure on the part of [SMEC] to perform or comply with any of the terms of [the Ground Lease Agreement] or (v) performance by persons other than [Haywood County], its agents or employees of any labor or services or the furnishing of any materials or other property in respect to the Demised Premises or any part thereof;" and

g. SMEC's duty to "at [SMEC's] expense resist and defend . . . any action, suit or proceeding . . . brought against [Haywood County] by reason of such occurrence . . . by counsel designated by [SMEC]."

11. The "Mission Statement" of SMEC is: "Smoky Mountain Event Center seeks to promote and encourage agricultural, manufacturing, educational, recreational, cultural, and art activities and events for the enrichment of Haywood County."

12. At all times relevant to this Complaint, SMEC has, in furtherance of its mission, managed and operated at the Subject Property a monthly indoor flea market, horse shows, dog shows, gun shows, rodeos, music concerts, truck and tractor shows, a hemp festival, and a Cinco de Mayo festival, among other events and activities.

13. At all times relevant to this Complaint, SMEC was governed and controlled by the following officers and directors:

- a. Thomas Long, Chairman;
- b. Ben Wilder, Treasurer;
- c. Patricia Blake, Secretary;
- d. Jonathan Jackson, Board Member;
- e. Vickie Reece, Board Member;
- f. Anessa Jaynes, Board Member; and
- g. Gina Zachary-Doan, Board Member.

14. At all times relevant to this Complaint, the persons identified in Paragraph 13 acted within the course and scope of their authority as agents of SMEC for all of the acts and omissions alleged herein.

15. During his tenure as manager, Plaintiff at all times performed his job competently and professionally, in furtherance of the mission of SMEC, and in compliance with SMEC's duties under the Ground Lease Agreement with Haywood County.

16. When Plaintiff first began working as manager, all of the SMEC's records were on one laptop hard drive, so could only be accessed on that particular computer. Also, all of the past and existing contracts between SMEC and its clients were stored in a single computer file, with no back-up system, and were disorganized.



17. Plaintiff significantly upgraded SMEC's computer records by creating a cloud-based filing system, using a Google Workspace account. He converted all of the client contracts into PDF format, created individual computer file folders for each client, and created sub-folders by year to organize all of the client contracts within each folder.

18. When Plaintiff first began working as manager, SMEC used the email address, managerhcfg@gmail.com, for the general manager's email. Use of a Gmail email is not a best practice for any non-profit organization with a public-facing website and significant community impact. He contacted SMEC's webmaster and was able to change the primary email contact to coincide with SMEC's registered domain name: info@smokymountaineventcenter.org.

19. Plaintiff planned for and managed dozens of events during his five-and-a-half months of employment with SMEC, including a county fair, a rodeo, multiple flea markets, other specialty markets, arts and crafts fairs, gun shows, music concerts, horse shows, a Christmas lights display, a political event, and a cornhole tournament.

20. Plaintiff was not shy about getting his hands dirty and getting the job done right. During his first few days on the job, Plaintiff was inside the Great Smokies Arena operating a leaf blower to assist the organizer of the J.R. Rodeo in cleaning off the bleachers, which had been covered in dirt and were being washed with a hose.

21. Plaintiff brought in several new clients to the facility, including the Micro Professional Wrestling Organization (May 7, 2022 event), Dusty's Circus (June 16-17, 2022 event), and Southern Rock Woodstock (July 30, 2022 event). Each of the events are still listed on SMEC's calendar, [www.smokymountaineventcenter.org/calender-of-events](http://www.smokymountaineventcenter.org/calender-of-events), and the Southern Rock Woodstock concert is "SOLD OUT."

22. Plaintiff also secured a new carnival company for its fall county fair, RD Entertainment, because the previous company was inflexible about changing the date of the event from August to October. Plaintiff got on the phone and called carnival operators all around the country over the course of several weeks to secure this new company's business.

23. One of Plaintiff's important duties as manager was to make sure that SMEC was in compliance with North Carolina statutory laws and regulations governing its operations and users of the facility.

24. One of the North Carolina statutes that Plaintiff sought to bring SMEC into compliance with is N.C. Gen. Stat. § 66-255, which went into effect on August 23, 2013, and provides as follows:

A specialty market operator or operator of an event where space is provided to a vendor must maintain a daily registration list of all specialty market or other vendors selling or offering goods for sale at the specialty market or other event. The registration list must clearly and legibly show each vendor's name, permanent address, and certificate of registration number. The specialty market operator or other event operator must require each vendor to exhibit a valid certificate of registration for visual inspection by

the specialty market operator or other event operator at the time of registration, and must require each vendor to keep the certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator or other event operator for no less than two years and must at any time be made available upon request to any law enforcement officer or the Secretary of Revenue or the Secretary's duly authorized agent. For purposes of the registration list, the exemptions in G.S. 66-256 do not apply.

25. During his employment, Plaintiff discovered that SMEC was not in compliance with N.C. Gen. Stat. § 66-255, in that:

a. It did not maintain a daily registration list of vendors offering goods for sale at the monthly flea markets; and

b. It did not require each vendor offering goods for sale at the monthly flea markets to conspicuously and prominently display a valid certificate of registration with the North Carolina Department of Revenue.

26. N.C. Gen. Stat. § 105-164.4(c) provides, in part: "Before a person may engage in business as a retailer . . . in this State, the person must obtain a certificate of registration from the Department [of Revenue] in accordance with G.S. 105-164.29."

27. The term "retailer" is defined in N.C. Gen. Stat. § 105-164.3(229) to include: "A person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of items sourced to this State."

28. N.C. Gen. Stat. § 105-164.4(4b) provides: "A person who sells tangible personal property at a specialty market or other event, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the specialty market or other event. The term 'specialty market' has the same meaning as defined in G.S. 66-250."

29. While some of the sellers at SMEC's monthly flea market did sell only household personal property, the vast majority were "retailers" subject to the sales tax provisions of Article 5 of Chapter 105 of the North Carolina General Statutes and many of those retailers were not in compliance with the registration requirement of N.C. Gen. Stat. § 105-164.4(c).

30. Plaintiff attempted on multiple occasions to bring SMEC into compliance with N.C. Gen. Stat. § 66-255, including addressing vendors directly about their non-compliance in a respectful and professional manner and by listing this statute as in item for discussion in a written report to SMEC's board of directors on March 7, 2022.

31. A copy of Plaintiff's March 7, 2022 written report to SMEC's board of directors is attached hereto as Plaintiff's Exhibit 1 and incorporated by reference.

32. Another North Carolina statute that Plaintiff sought to bring SMEC in compliance with was N.C. Gen. Stat. § 143-138, which provides in relevant part:

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

(b1) Fire Protection; Smoke Detectors. – The Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e) . . .

33. Section 1031.3 of the 2018 North Carolina State Fire Code provides, in relevant part: “A *means of egress* shall be free from obstructions that would prevent its use[.]”

34. Section 1031.6 of the 2018 North Carolina State Fire Code provides, in relevant part: “Furnishings, decorations or other objects shall not be placed so as to obstruct *exits*, access thereto, egress therefrom, or visibility thereof.”

35. During his employment, Plaintiff discovered that SMEC was not in compliance with N.C. Gen. Stat. § 143-138 and the 2018 North Carolina State Fire Code in that vendors using SMEC’s exhibit halls were blocking egress from the buildings during public events.

36. Plaintiff attempted to bring SMEC into compliance with N.C. Gen. Stat. § 143-138 and the 2018 North Carolina State Fire Code by addressing vendors directly about blocking egress from the buildings in a respectful and professional manner.

37. In November 2021, Plaintiff had invited the Haywood County Fire Marshal, Andrew Messer, to inspect the buildings on the property for compliance with the 2018 North

Carolina Fire Prevention Code. The Fire Marshal came and performed an inspection and prepared a written report about issues that needed to be addressed.

38. One of the issues that the Fire Marshal found was that SMEC was not in compliance with 15A NCAC 18A .2650, which incorporates by reference the 2017 North Carolina Food Code, effective October 1, 2021, which provides in Section 6-304.11: "If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided."

39. In addition, Section 3003.1 of the 2018 North Carolina State Fire Code provides: "Enclosed rooms or *basements* containing industrial ovens or furnaces shall be provided with combustion air in accordance with the *International Mechanical Code* and the *International Fuel Gas Code*, and with ventilation air in accordance with the *International Mechanical Code*."

40. Section 401.2 of the 2021 International Mechanical Code provides, in relevant part: "Every occupied space shall be ventilated by natural means in accordance with Section 402 or by mechanical means in accordance with Section 403."

41. Section 403.1 of the 2021 International Mechanical Code provides, in relevant part: "Mechanical ventilation shall be provided by a method of supply air and return or *exhaust air* [.] The amount of supply air shall be approximately equal to the amount of return and *exhaust air*. The system shall not be prohibited from producing negative or positive pressure. The system to convey *ventilation air* shall be designed and installed in accordance with Chapter 6."

42. Section 506 of the 2021 International Mechanical Code is titled, "Commercial Kitchen Hood Ventilation System Ducts and Exhaust Equipment," and Section 506.1 provides: "Commercial kitchen hood ventilation ducts and exhaust *equipment* shall comply with the requirements of this section. Commercial kitchen grease ducts shall be designed for the type of cooking *appliance* and hood served."

43. The Fire Marshal disallowed cooking with grease on the grill in the kitchen at the "Apple Orchard Café" because there was no hood vent sufficient for that type of commercial cooking inside of an occupied building. The building would be filled with smoke on the days when people were cooking with grease on the grill. Following the Fire Marshal's instructions, Plaintiff told the people using the kitchen in the café that they could no longer cook with grease until a proper hood vent was installed.

44. Several of SMEC's directors complained to Plaintiff about his decision to invite the Fire Marshal to inspect the buildings. Director Vicki Reese told the Plaintiff that she was going to call the Fire Chief, whom she knew personally, apparently to find out his opinions about issues that the Fire Marshal had included in his report. Plaintiff later spoke with the Fire Chief who informed the Plaintiff that he had asked Ms. Reese for a copy of the Fire Marshal's report.

45. In late December 2021, Plaintiff approached an individual taking down Christmas lights at SMEC's facility and asked whether he was covered under a workers' compensation insurance policy by his employer as required under The North Carolina Workers' Compensation Act, N.C.G.S. § 97-1 – 97-200. This person was working high above the ground on an extension

ladder, about thirty feet high, and was not using any equipment to secure himself from falling. It appeared to be a serious accident waiting to happen.

46. Only four months earlier, in August 2021, a worker helping to set up a ride at the Haywood County Fair was airlifted to Mission Hospital with serious injuries after part of the unassembled ride fell on top of him.

47. Soon after that incident in December, Thomas Long and Ben Wilder told the Plaintiff to: "Leave them alone."

48. Another North Carolina statute that Plaintiff sought to bring SMEC in compliance with was N.C. Gen. Stat. § 55A-3-02(a)(7), which grants non-profit corporations the power: "To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations[.]"

49. Under North Carolina law, "[A] general manager [of a corporation], if his authority is not limited, has power to bind the corporation by contracts made in good faith and within the corporate power, without any resolution of the board of directors expressly authorizing the contracts." *Warren v. Littleton Orange Crush Bottling Co.*, 204 N.C. 288, 290-291, 168 S.E. 226 (1933) (citing *Lumber Co. v. Elias*, 199 N.C. 103, 154 S.E. 54 (1930)).

50. SMEC's Facility Rental Contract includes the following provision: "5. The applicant must provide written proof of liability insurance with a minimum of 1 million dollars coverage for the entire rental period at least 30 business days prior to the scheduled event."

51. During his employment Plaintiff discovered that one company entering into a Facility Rental Contract with SMEC did not provide written proof of liability insurance with a minimum of 1 million dollars coverage for the entire rental period.

52. Referring to that company's owner, SMEC's board chair, Thomas Long, told the Plaintiff to: "Leave this guy alone."

53. Instead of supporting and assisting Plaintiff in his duty as manager to ensure that SMEC was in compliance with the above-referenced North Carolina statutes and regulations, officers and board members of SMEC repeatedly undermined his authority by:

- a. Doing nothing to assist him in bringing SMEC into compliance;
- b. Speaking negatively about Plaintiff with non-compliant facility users;
- c. Excusing the non-compliance of facility users and other individuals; and
- d. Terminating his employment.

54. Even before Plaintiff had listed N.C. Gen. Stat. § 66-255 as in item for discussion in his monthly report on March 7, 2022, one of SMEC's corporate officers, Ben Wilder, remarked to the Plaintiff: "If we complied with that, we might as well shut down the flea market. We'll chase off all the vendors!"

55. On Monday, March 14, 2022, SMEC's board of directors had a meeting in closed session and decided to terminate Plaintiff's employment.

56. SMEC's board chair, Thomas Long, wrote a note to Plaintiff informing him that his employment by SMEC was terminated effective Friday, March 18, 2022, and did not give Plaintiff the note until Friday, March 18, 2022. A copy of Mr. Long's note is attached hereto as Plaintiff's Exhibit 2 and incorporated by reference.

57. Plaintiff's termination was a surprise to him, as he had always performed his duties as SMEC's manager in a competent and professional manner and had never received any negative performance evaluations during his employment.

58. No specific reasons for his termination were stated in Mr. Long's note other than a vague reference to "your performance over the last few weeks," and a sardonic reference to "your skill set and character traits."

59. SMEC's board chair, Thomas Long, and its Treasurer, Ben Wilder, conducted a final meeting with the Plaintiff on Friday, March 18, 2022, before he was physically escorted off the property by a law enforcement officer.

60. During the meeting, Thomas Long said: "I'm not comfortable doing this. It's just one of those things. It didn't work out." Plaintiff asked, "So what's, ah, what's the issue?"

61. Thomas Long then said, "Well, I think at this point, I don't think it's worth even having a discussion. I think we just need to . . ."

62. Ben Wilder then said: "I don't think it's a specific item, it's just a general . . . random challenges and things that pop up. It was brought up to the board, to us, that they wanted to, that a group wanted to discuss it and proposed a vote on it that night. Because what was, that was a lengthy discussion, um, back and forth on it."

63. Plaintiff then said, "Well, there's got to be a reason for it, because everything I've done here has been for the benefit of this place. You know, there's got to be a reason behind it, because I'm sitting here doing everything in my power to make this place a better place."

64. Thomas Long then said, "Well, Gene, here's the policies, and I told you before, you know, that when I came to the flea market, I'm very impressed with . . . your organizational skills and everything. You can ask Ben, and I mean, we kinda went back and we . . . Ben'll tell ya' I mean he, we want to make this work. But it, it just ain't gonna work."

65. Plaintiff then said, "So doing all the right things isn't the way y'all want to do it?" Ben Wilder then said: "No, I think it is, I think some stuff goes too far."

66. Thomas Long then interrupted Ben and said, "No, now wait a minute, wait a minute, wait a minute . . ." Plaintiff then asked, "What doesn't go too far?"

67. A side discussion ensued about the Plaintiff having taken issue with Thomas Long's use of the term "gutter bait" in relation to the Southern Rock Woodstock concert. About that particular issue, Thomas Long later said during the meeting: "That has nothing to do with our conversation here today." And Mr. Long later said: "That, I didn't even know about this discussion you brought up about that. That didn't even, I don't even know what you're talking about. . . . Gene, Gene, that don't have anything to do with this discussion."

68. In response to Plaintiff's question, "What doesn't go too far," Ben Wilder said: "You know at this point we're good. I mean it's unfortunate, because I really had high hopes. But, there are just red flags; every other week it was something new and exciting."

69. Ben Wilder then said: "It's not even about that. I mean this week it's let's make all our flea market people have . . . permits to sell stuff, or whatever it was."

70. Plaintiff then said, "But that's law. That's the law"

71. Ben Wilder then said: "I know, but it's just, I don't have the time of day, and the board doesn't have the time of day to deal with some new wild card out of left field thing every two weeks. And that's the challenge. I think other thing, I think you did everything else great."

72. Plaintiff then said, "So I'll call the Department of Revenue and tell them that y'all believe that their laws are a wild card."

73. Ben Wilder then said: "There's a second statute in there that talks about flea markets that protects most home goods in flea market selling."

74. Plaintiff then said, "That's right, but it's not, it doesn't apply to, it doesn't apply to three-quarters of those people."

75. Ben Wilder then said: "Right. And so, by you creating more risk . . ."

76. Plaintiff then said, "That's not risk. That's the law."

77. Ben Wilder then said: "I know but it's a can of worms that has not been opened and it's like you dumped a can of worms on the table. We run the risk of losing \$25,000 worth of flea market."

**FIRST CAUSE OF ACTION**  
**WRONGFUL DISCHARGE IN VIOLATION OF**  
**NORTH CAROLINA PUBLIC POLICY**

78. Plaintiff re-alleges and incorporates by reference all of the allegations in the preceding paragraphs of this Complaint.

79. During his employment, Plaintiff attempted to bring SMEC into compliance with express policy declarations in North Carolina statutes, codes and regulations related to:

- a. Duties of specialty market operators for sales tax purposes;
- b. Registration of specialty market vendors for sales tax purposes;
- c. Fire safety at public events;
- d. Commercial kitchen ventilation systems;
- e. Workers' compensation insurance; and/or
- f. Making contracts to protect the interests of SMEC.

80. In response to Plaintiff's actions to bring SMEC into compliance with one or more of these express declarations of North Carolina public policy, SMEC retaliated against him by terminating his employment in violation of his rights under the common law.

81. As a direct and proximate result of Plaintiff's wrongful discharge in violation of North Carolina public policy, Plaintiff suffered compensatory damages in the form of lost salary and benefits, reputational harm, and emotional distress, in an amount exceeding \$25,000.00.

82. SMEC's conduct as described herein was willful, malicious, oppressive, wanton, and recklessly in disregard of Plaintiff's rights, so as to entitle Plaintiff to punitive damages under North Carolina law in an amount to be determined by the trier of fact.

83. SMEC's officers and directors were aware of, condoned, and participated in the illegal discharge of Plaintiff.

### PRAYER

WHEREFORE, Plaintiff demands a trial by jury of all issues so triable and respectfully prays for the following relief:

1. For a judgment declaring that the acts and practices of the Defendant complained of herein are in violation of North Carolina law.
2. For a money judgment allowing the Plaintiff to recover his compensatory damages, which are in an amount exceeding \$25,000.00, against the Defendant for wrongful discharge in violation of North Carolina public policy.
3. For a money judgment allowing the Plaintiff to recover punitive damages, in an amount to be determined by the fact finder, against the Defendant for its conduct that was willful, malicious, wanton, and recklessly in disregard of Plaintiff's rights.
4. For a money judgment representing pre-judgment interest.
5. For all costs of suit, including reasonable attorneys' fees as allowed by law.



6. For such other and further relief as may be just, proper, and necessary to afford complete relief to Plaintiff and to provide Plaintiff that to which he is entitled at the time this action is tried.

THIS the 9th day of June, 2022.

  
\_\_\_\_\_  
Stephen P. Agan  
NC Bar No. 35763  
Hyer & Agan, PLLC  
38 Orange Street  
Asheville, NC 28801  
Tel: (828) 254-1070  
Fax: (828) 254-1071  
steve@hylerandagan.com  
*Attorney for Plaintiff*



## MANAGER REPORT Monday March 7, 2022

Gene Blankenship

### Events

- 62 October 2021 through February 2022
- 78 January 2022 through June 2022
- 140 Scheduled Events

### Purchase Items

- **Cleaning Supplies**
- **2 50' Cord Reel for AO Attic Fans**

### Items for Consideration

- **NC Sales And Use Certificate of Registration**
  - **Effective August 23, 2013, N. C. Gen. Stat. § 66-255 states, in part, "[a] specialty market operator or operator of an event where space is provided to a vendor must maintain a daily registration list of all specialty market or other vendors selling or offering goods for sale at the specialty market or other event.**
  - **Effective August 23, 2013, N. C. Gen. Stat. § 66-255**
- **Infinity Networks SMEC IT Infrastructure Quote**
- **Part Time Office Coordinator**
- **2022 HCF additional Performers**
- **Drive Thru Light Show No Updated Insurance**
- **SMEC Conflict of Interest Policy**

### March Events

- **03/03-06/2022 NC Association of Fairs Cary, NC**
- **03/05/2022 Flea Market Apple Orchard/Dogwood**
- **03/09-23/2022 Duck Duck Goose Setup Sale AO**
- **03/25-26/2022 Cotton Tail Market Full Facility**

### April Events

- **04/2/2022 Flea Market**
- **04/07-9/2022 Southeastern WildLife Conclave AO**
- **4/9/2022 SM Equestrian Open GSA**
- **SMEC Purchase Timer**
- **Is SMEC funding available?**
  - **Lots of Volunteers**
  - **Arena Concessions run by SMEC Board**
- **04/15/2022 BRACA AO**
- **4/20/2022 Hemp Fest Concert GSA**
- **4/21-24/2022 Western Carolina Dog Fanciers Full Rental**



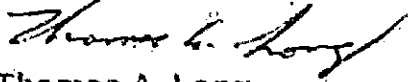
- 4/29/2022 Voices in the Laurel Bingo Fundraiser AO

Gene Blankenship

The board of directors met Monday 3/14/22 in closed session to discuss your job as Smoky Mountain Event Center Manager. The board carefully reviewed your performance over the last few weeks. It is my duty to inform from the managing board's guidance that effective on Friday 3/18/2022 your employment at the SMEC is separated and no longer needed.

Thank you for your work here. We wish you success as you seek employment that fits your skill set and character traits.

Sincerely



Thomas A. Long  
SMEC board chair

tabbles®  
PLAINTIFF'S  
EXHIBIT  
2

STATE OF NORTH CAROLINA

BUNCOMBE

County

FILED

File No.

22CV 02094

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
EUGENE BLANKENSHIP, JR.
18 Offshore Drive
Asheville, NC 28805

2022 JUN -9 4: 23

BUNCOMBE CO., C.S.C.

GENERAL

CIVIL ACTION COVER SHEET

Name And Address Of Plaintiff 2

BY

INITIAL FILING SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1
SMOKY MOUNTAIN EVENT CENTER, INC.
c/o Thomas A. Long
758 Crabtree Road
Waynesville, NC 28785

Name And Address Of Attorney Or Party, If Not Represented
(complete for initial appearance or change of address)

Stephen P. Agan
Hylar & Agan, PLLC
38 Orange Street
Asheville, NC 28801

Summons Submitted

Yes No

Telephone No. 828-254-1070

Cellular Telephone No.

NC Attorney Bar No. 35763

Attorney Email Address

Name And Address Of Defendant 2

Initial Appearance in Case Change of Address

Name Of Firm
Hylar & Agan, PLLC

Fax No. 828-254-1071

Summons Submitted

Yes No

Counsel For

All Plaintiffs All Defendants Only: (list party(ies) represented)

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- Amend (AMND)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Assess Costs (COST)
Answer/Reply (ANSW-Response) (see Note)
Change Venue (CHVN)
Complaint (COMP)
Confession Of Judgment (CNFJ)
Consent Order (CONS)
Consolidate (CNSL)
Contempt (CNTP)
Continue (CNTN)
Compel (CMPL)
Counterclaim (CTCL) Assess Court Costs
Crossclaim (list on back) (CRSS) Assess Court Costs
Dismiss (DISM) Assess Court Costs
Exempt/Waive Mediation (EXMD)
Extend Statute Of Limitations, Rule 9 (ESOL)
Extend Time For Complaint (EXCO)
Failure To Join Necessary Party (FJNP)

- Failure To State A Claim (FASC)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Improper Venue/Division (IMVN)
Including Attorney's Fees (ATTY)
Intervene (INTR)
Interplead (OTHR)
Lack Of Jurisdiction (Person) (LJPN)
Lack Of Jurisdiction (Subject Matter) (LJSM)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)
Rule 12 Motion In Lieu Of Answer (MDLA)
Sanctions (SANC)
Set Aside (OTHR)
Show Cause (SHOW)
Transfer (TRFR)
Third Party Complaint (list Third Party Defendants on back) (TPCL)
Vacate/Modify Judgment (VCMD)
Withdraw As Counsel (WDCN)
Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

**CLAIMS FOR RELIEF**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Administrative Appeal (ADMA)      | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD)                            |
| <input type="checkbox"/> Appointment Of Receiver (APRC)    | <input type="checkbox"/> Medical Malpractice (MDML)                                  | <input type="checkbox"/> Real Property (RLPR)                                |
| <input type="checkbox"/> Attachment/Garnishment (ATTC)     | <input type="checkbox"/> Minor Settlement (MSTL)                                     | <input type="checkbox"/> Specific Performance (SPPR)                         |
| <input type="checkbox"/> Claim And Delivery (CLMD)         | <input type="checkbox"/> Money Owed (MNYO)   | <input checked="" type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT)      | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG)                           | Wrongful discharge in violation of North Carolina public policy              |
| <input type="checkbox"/> Condemnation (CNDM)               | <input type="checkbox"/> Negligence - Other (NEGO)                                   |  |
| <input type="checkbox"/> Contract (CNTR)                   | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN)                  |  |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP)                      |  |
| <input type="checkbox"/> Injunction (INJU)                 |  |  |

Date

6/09/2022

Signature



**FEES IN G.S. 7A-308 APPLY**  
 Assert Right Of Access (ARAS)  
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)  
 Supplemental Procedures (SUPR)

**PRO HAC VICE FEES APPLY**  
 Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

*Plaintiff(s) Against Whom Counterclaim Asserted*

*Defendant(s) Against Whom Crossclaim Asserted*