

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Michael Haley, Lisa Johnson,	)	
Sabrina Todd, Vince Osborne,	)	Civ. Action No. 3:15-5037-TLW
Dale Stigamier, and Alyssa Stigamier,	)	
	)	
Plaintiffs,	)	<b><u>NOTICE OF REMOVAL</u></b>
	)	
v.	)	
	)	
CSX Transportation, Inc.,	)	
	)	
Defendant.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	

Defendant CSX Transportation, Inc. (“CSXT”) files this Notice of Removal pursuant to 28 U.S.C. § 1441 thereby removing this case from the Court of Common Pleas, County of Richland, Fifth Judicial Circuit, State of South Carolina, in which Plaintiffs filed their Complaint and Amended Complaint, to the United States District Court, District of South Carolina, Columbia Division. In support of this Notice of Removal, CSXT states as follows:

1. CSXT and Plaintiffs are parties to a civil action brought against CSXT in the Richland County Court of Common Pleas captioned Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier, individually and as the representatives of a class of similarly situated persons, Plaintiffs, v. CSX Transportation, Inc., Civil Action No. 15-CP-40-06963, which action was commenced by the filing of a Summons and Complaint on November 18, 2015. Plaintiffs subsequently filed an Amended Complaint on November 20, 2015. As discussed further below, removal is proper based on diversity of citizenship. See 28 U.S.C. §§ 1332, 1441(a).

2. CSXT's registered agent was served with the Complaint on November 23, 2015 and with the Amended Complaint on November 25, 2015. CSXT is represented in this litigation by the undersigned attorney of record. Because this notice of removal is being filed within thirty days of service of the Summons and Complaint upon the first-served defendant, it is timely under 28 U.S.C. § 1446(b). A true and correct copy of all process, pleadings, and documents served on CSXT, in addition to the Proof of Service filed with the Court, is attached hereto as Exhibit "A."

3. This action originally could have been filed in this Court pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship exists between all parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Although the Complaint and Amended Complaint pray for relief in an unspecified amount, Plaintiffs seek recovery of actual, consequential, and special damages, punitive damages, and abatement of an alleged nuisance.

#### **A. Diversity of Citizenship**

4. A defendant may remove a case to federal court if the parties are diverse and meet the statutory requirements for diversity jurisdiction. See 28 U.S.C. §§ 1332(a), 1441(b); Richardson v. Kruchko & Fries, 966 F.2d 153, 155 (4th Cir. 1992) (federal jurisdiction over claim of retaliatory discharge for pro-union activities "based on diversity of citizenship").

5. Based on the following, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because it is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. For diversity purposes, an individual is a citizen of the state in which he or she is domiciled with the intent to remain. McCormick v. Aderholt, 293 F.3d 1254, 1257-58 (11th Cir.

2002). “The place where a man lives is properly taken to be his domicile until facts adduced establish to the contrary.” Dist. of Columbia v. Murphy, 314 U.S. 441, 455 (1941).

7. Plaintiffs’ Complaint and Amended Complaint reflect that Plaintiffs are “citizen[s] and resident[s] of Richland County, South Carolina.” (See Am. Compl. ¶¶ 1-5.) Accordingly, Plaintiffs reside and are domiciled in the State of South Carolina. No facts have been adduced to establish that Plaintiffs do not intend to remain domiciled in South Carolina. Therefore, Plaintiffs are citizens of South Carolina for diversity purposes.

8. Defendant CSXT is a corporation incorporated and existing under the laws of the State of Virginia and having its principal place of business in Jacksonville, Florida. CSXT’s Florida headquarters are where CSXT’s officers direct, control, and coordinate the corporation’s activities. When determining diversity of citizenship for purposes of removal under 28 U.S.C. § 1441, “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c). Therefore, CSXT is not now, and was not at the time of the institution of this civil action, a citizen of South Carolina for purposes of assessing diversity jurisdiction under 28 U.S.C. 1332(a).

#### **B. Plaintiffs’ Allegations and Amount in Controversy**

9. Plaintiffs’ Complaint and Amended Complaint allege flood-related damage to their properties, allegedly incurred during a rain event between October 2 and October 5, 2015 in Columbia, South Carolina. (Am. Compl. ¶ 14).

10. Plaintiffs allege their properties were flooded by water from Gills Creek. According to Plaintiffs, CSXT is at fault for the alleged flooding because two train trestles that cross Gills Creek “slowed and restricted” the creek.

11. Plaintiffs assert claims for negligence and negligence per se (Am. Compl. ¶¶ 25-30), nuisance (Am. Compl. ¶¶ 31-34), trespass (Am. Compl. ¶¶ 35-38), so-called “violation of South Carolina General Railroad Law” (Am. Compl. ¶¶ 39-42), and strict liability for alleged violation of S.C. Code Ann. § 49-11-10 (Am. Compl. ¶¶ 43-46).

12. According to the Complaint and Amended Complaint, CSXT was “negligent, careless, reckless, wanton, grossly negligent, and [in breach of] its duties” by (a) installing train trestles that “altered the watercourse’s normal flow;” (b) “failing to take reasonable steps to alleviate the water blocking effects of the trestles;” (c) “failing to act . . . to prevent harm to upstream property owners despite advance notice of a substantial rainstorm;” and (d) “stopping the course of Gills Creek, a South Carolina watercourse, in violation of S.C. Code Ann. § 49-11-10 so as to constitute negligence per se.” (Am. Compl. ¶ 29).

13. More specifically, Plaintiffs assert CSXT “made or kept up a dam or bank which stopped the course of waters causing them to overflow the lands of other persons . . . .” (Am. Compl. ¶ 45).

14. As a result of the alleged flooding, Plaintiffs assert “substantial property damage,” (Am. Compl. ¶ 17), specifically “destroyed homes” (Am. Compl. ¶ 33), “harm to the value of all their rights as property owners,” (Am. Compl. ¶ 38), and “substantial property damage and other losses.” (Am. Compl. ¶ 46).

15. For all these enumerated claims, Plaintiffs seek actual, consequential, and special damages, an award of punitive damages, costs and attorneys’ fees, abatement of an alleged nuisance, and such other relief as may be deemed just and proper.

16. Plaintiffs' Complaint and Amended Complaint do not, however, set forth any particular amount of damages attributable to any claim.<sup>1</sup>

17. When a complaint either seeks non-monetary relief, or does not set forth a specific demand, then the notice of removal may assert the amount in controversy. 28 U.S.C. § 1446(c)(2)(A & B).

18. Here, Plaintiffs seek non-monetary relief ("abatement of the nuisance"), and otherwise fail to set forth any amount in controversy. Therefore, CSXT may set forth the amount in controversy in the present Notice of Removal.

19. In Rosmer v. Pfizer, 263 F.3d 110 (4th Cir. 2001), the Fourth Circuit explained that if any single named representative plaintiff in a putative class action has a claim in excess of \$75,000, then a federal court has discretion to exercise jurisdiction over the entire class based on supplemental jurisdiction under 28 U.S.C. § 1367. Id., 263 F.3d at 112; see also Spann v. Style Crest Prods., 171 F. Supp. 2d 605, 607 (D.S.C. 2001); Allapattah Servs. v Exxon Corp., 333 F.3d 1248 (11<sup>th</sup> Cir. 2003).

20. The District of South Carolina has found that a claim for substantial actual damages plus punitive damages exceeds \$75,000 under a standard of preponderance of the evidence for purposes of removal. Am. Health & Life Ins. Co. v. Heyward, 272 F. Supp. 2d 578, 581 (D.S.C. 2003) (claim for \$69,436.29 plus unspecified punitive damages definitely exceeded \$75,000); see also Thompson v. Victoria Fire Cas. Co., 32 F. Supp. 2d 847, 849 (D.S.C. 1999) (amount in controversy was satisfied by claim for \$25,000 in actual damages plus claim for unspecified punitive damages).

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<sup>1</sup> Plaintiffs do assert that "[t]he amount in controversy for all class members exceeds one hundred dollars," for purposes of attempting to satisfy South Carolina's class action requirements. (Am. Compl. ¶ 24).

21. Though Plaintiffs have not specified their damages, CSXT is informed and believes that each named Plaintiff's alleged special damages exceed \$75,000. Upon information and belief, Plaintiffs Haley and Johnson own potentially flood-damaged property at 1023 Burwell Lane with tax-assessed value of \$244,900. (See Richland County Property Tax Information for 1023 Burwell Ln., Columbia, SC, certified copy attached hereto as Ex. "B.") Upon information and belief, Plaintiffs Todd and Osborne own potentially flood-damaged property at 1312 Glenhaven Drive with tax-assessed value of \$126,900. (See Richland County Property Tax Information for 1312 Glenhaven Dr., Columbia, SC, 29205, certified copy attached hereto as Ex. "C.") Furthermore, upon information and belief, Plaintiffs Stigamier own potentially flood-damaged property at 5912 Hampton Leas Lane with tax-assessed value of \$265,000. (See Richland County Property Tax Information for 5912 Hampton Leas Ln., Columbia, SC 29209, certified copy attached hereto as Ex. "D").

22. Each Plaintiff also seeks punitive damages, which are included in the calculation of the amount in controversy for purposes of assessing diversity jurisdiction. Heyward, 272 F. Supp. 2d 578 at 581; Thompson, 32 F. Supp. 2d at 849. Plaintiffs also seek an award of attorneys' fees, which also should be included in the amount in controversy. See, e.g., Azimi v. Ford Motor Co., 977 F. Supp. 847 (N.D. Ill. 1997) (amount calculation includes attorney fees and punitive damages, among other items).

23. In addition, Plaintiffs are seeking injunctive relief in the form of "abatement of the nuisance." Although the nature of that relief is not known at this early stage, CSXT asserts, upon information and belief, that any modification to the trestle(s) at issue or any other rail facilities would come at a cost in excess of \$75,000, both in terms of material and labor, and in terms of system-wide effect due to likely disruption of rail traffic. The Fourth Circuit has

recently held that “we ascertain the value of an injunction for amount in controversy purposes by reference to the larger of two figures: the injunction worth to the plaintiff or its cost to the defendant.” JTH Tax, Inc. v. Frashier, 624 F.3d 635, 639 (4<sup>th</sup> Cir. 2010).

**C. Diversity Jurisdiction Pursuant to 28 U.S.C. § 1332(a) is Present**

24. In view of the foregoing, CSXT hereby asserts that a preponderance of the evidence demonstrates the amount in controversy as to each named Plaintiff exceeds \$75,000. Because the parties are completely diverse, this Court possesses original jurisdiction under 28 U.S.C. § 1332(a), and removal of the entire case pursuant to 28 U.S.C. § 1441 is proper.

**D. The Remaining Removal Prerequisites Have Been Satisfied**

25. At the present time, removal to this Court and Division is appropriate pursuant to 28 U.S.C. §§ 1441(a) and 1446.

26. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b), having been filed within thirty (30) days of CSXT’s receipt of the Complaint.

27. Counsel for CSXT hereby certifies that this Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

28. Pursuant to statute, a copy of this Notice of Removal is being filed with the Richland County Court of Common Pleas, State of South Carolina, and a copy of this notice and its attachments are being served upon all counsel of record. Additionally, CSXT will promptly file and serve upon all parties a Notice of Filing of Notice of Removal. (See Exhibit “E”).

WHEREFORE, Defendant CSX Transportation, Inc. prays that this case be removed to the United States District Court for the District of South Carolina, Columbia Division.

Respectfully submitted this 22nd day of December, 2015.

/s/ Elizabeth A. McLeod  
ELIZABETH A. McLEOD  
South Carolina Bar No. 72660  
MARK C. WILBY  
South Carolina Bar No. 8000  
*Attorneys for CSX Transportation, Inc.*

OF COUNSEL:  
FULCHER HAGLER LLP  
Post Office Box 1477  
Augusta, GA 30903-1477  
(706) 724-0171  
[emcleod@fulcherlaw.com](mailto:emcleod@fulcherlaw.com)



**CERTIFICATE OF SERVICE**

I certify that on the 22nd day of December, 2015, I have served a copy of DEFENDANT CSX TRANSPORTATION, INC.'S NOTICE OF REMOVAL upon all interested parties as follows in accordance with ECF rules by electronically filing the foregoing with the Clerk of Court using the CM/ECF system:

Chad A. McGowan  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
McGowan, Hood, & Felder, LLC  
1517 Hampton Street  
Columbia, SC 29201  
[cmcgowan@mcgowanhood.com](mailto:cmcgowan@mcgowanhood.com)  
[jfelder@mcgowanhood.com](mailto:jfelder@mcgowanhood.com)  
[jandrews@mcgowanhood.com](mailto:jandrews@mcgowanhood.com)

As counsel for Plaintiffs

/S/ Elizabeth A. McLeod

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Michael Haley, Lisa Johnson, Sabrina Todd, Vince  
Osborne, Dale Stigamier, and Alyssa Stigamier,  
individually and as the representatives of a class of  
similarly situated persons,,

Plaintiff(s) )

vs. )

CSX Transportation, Inc., )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 40 - 06963

Submitted By: W. Jones Andrews, Jr.

Address: 1517 Hampton Street, Columbia, South Carolina  
29201

SC Bar #: 64294

Telephone #: (803) 779-0100

Fax #: (803) 787-0750

Other:

E-mail: jandrews@mcgowanhood.com

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

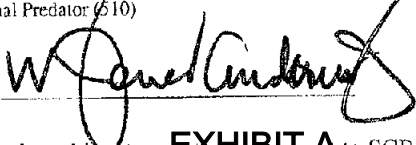
**DOCKETING INFORMATION** (Check all that apply)

\*If Action is Judgment/Settlement do not complete

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

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

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

Submitting Party Signature: 

Date: 11/18/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous

**EXHIBIT A**

Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Haley, Lisa Johnson, Sabrina Todd,  
Vince Osborne, Dale Stigamier, and Alyssa  
Stigamier, individually and as the  
representatives of a class of similarly  
situated persons,

Plaintiffs,

v.

CSX Transportation, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No: 15-CP-\_\_\_\_\_

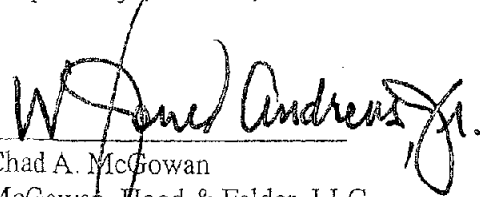
Summons

RICHLAND COUNTY  
FILED  
2015 NOV 18 PM 2:39  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

**TO: THE DEFENDANT ABOVE NAMED:**

**YOU ARE HEREBY SUMMONED** and required to Answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 1517 Hampton Street, Columbia, SC 29201 within thirty (30) days of service, exclusive of the date of service; and if you fail to Answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



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Attorneys for Plaintiffs

Columbia, SC  
November 18<sup>th</sup> 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier, individually and as the representatives of a class of similarly situated persons,

Plaintiffs,

v.

CSX Transportation, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No: 15-CP-\_\_\_\_\_

Complaint for Damages  
Jury Trial Demanded

RICHLAND COUNTY  
FILED  
2015 NOV 18 PM 2:39  
JEANETTE W. MCBRIDE  
C.P. & G.S.

Plaintiffs Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier, individually and as the representatives of a class of similarly situated persons, file this Complaint against Defendant CSX Transportation, Inc. ("CSX") and allege:

### PARTIES

1. Plaintiff Michael Haley is a citizen and resident of Richland County, SC.
2. Plaintiff Lisa Johnson is a citizen and resident of Richland County, SC.
3. Plaintiff Sabrina Todd is a citizen and resident of Richland County, SC.
4. Plaintiff Vince Osborne is a citizen and resident of Richland County, SC.
5. Plaintiff Dale Stigamier and Alyssa are citizens and residents of Richland County, SC.
6. Defendant CSX is a Virginia corporation that regularly transacts business in

South Carolina such that it should anticipate being haled into court here.

### JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action and the claims set forth in this complaint.

8. This Court has personal jurisdiction over CSX because CSX maintains substantial and continuous contacts in South Carolina and does substantial business in South Carolina.

5. Venue is proper pursuant to S.C. Code Ann. § 15-7-30 because Richland County is Plaintiffs' county of residence and the county where the most substantial part of the alleged acts and omissions giving rise to Plaintiffs' causes of action occurred.

### **FACTS**

6. Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier ("Named Plaintiffs") and members of the putative class (collectively "Plaintiffs") own property in Richland County in proximity to Gills Creek and north of South Beltline Boulevard.

7. CSX operates nearly 1,800 miles of railroad track in South Carolina including a rail line in Richland County that runs southeast from downtown Columbia to an area adjacent to Columbia Metropolitan Airport before crossing Gills Creek near South Beltline Boulevard and continuing east toward Sumter, South Carolina.

8. Near the point where the rail line controlled by CSX crosses South Beltline Boulevard and Gills Creek, CSX installed, caused to be installed, or is otherwise responsible for two train trestles that significantly restrict the flow of water down Gills Creek.

9. During heavy rains, the restricted water flow along Gills Creek caused by these trestles causes water to back up and flow over the land of upstream property owners.



10. In early October 2015, South Carolina experienced a substantial rainstorm. According to the National Weather Service, the Columbia Metropolitan Airport received nearly 11 inches of rain from October 2-4, 2015.

11. This rainstorm was forecast days in advance, and CSX had prior notice of the substantial influx of water likely to flow along Gills Creek during the storm.

12. During the rainstorm, the water flowing down Gills Creek was slowed and restricted by CSX's train trestles. As a result, water from Gills Creek backed up and flooded the land of upstream property owners including Plaintiffs.

13. Plaintiffs sustained substantial property damage and other losses as a result of the flood.

#### CLASS ACTION ALLEGATIONS

22. Plaintiffs reallege and incorporate by reference the allegations set forth above.

23. Pursuant to Rule 23, SCRCP, Named Plaintiffs bring this action on behalf of themselves and all other similarly situated persons. Named Plaintiffs are members of the class and Named Plaintiffs seek to represent the class defined as follows:

All owners of real property in Richland County north of train trestles on Gills Creek near South Beltline Boulevard that sustained water-related property damage following the October 2-5, 2015 rainstorm.

24. On information and belief, the class includes dozens of Richland County property owners and is so numerous that joinder of all members is impractical.

25. There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:

- a. Whether the train trestles CSX caused to be placed on Gills Creek near South Beltline Boulevard restricted the flow of water on Gills Creek;
- b. Whether CSX properly maintained the train trestles at Gills Creek near South

Beltline Boulevard;

- c. Whether CSX properly responded to forecasts of an approaching rainstorm; and
- d. Whether CSX's conduct was a proximate cause of the flooding that damaged Plaintiffs' property.

26. Named Plaintiffs' claims are typical of the absent class members in that all involve property damage suffered as a result of flooding near Gills Creek in October 2015.

27. Named Plaintiffs will fairly and adequately protect the interests of the other class members. Plaintiffs' counsel is experienced in handling class action claims. Neither Named Plaintiffs nor their counsel has any interests adverse to or in conflict with the absent class members.

28. The amount in controversy for all class members exceeds one hundred dollars.

### **FIRST CAUSE OF ACTION**

(Negligence)

14. Plaintiffs reallege and incorporate by reference the allegations set forth above.

15. CSX owned, controlled, operated, maintained, and/or managed train trestles across Gills Creek near South Beltline Boulevard in Richland County, South Carolina.

16. CSX had a duty to act with reasonable care when making alterations or improvements to property near Gills Creek so as not to affect the flow of the creek in a way that harmed the land of upstream property owners.

17. CSX had a duty to act with reasonable care to maintain its alterations or improvement to property near Gills Creek so as to prevent reasonably foreseeable harm to upstream property owners.

18. CSX was negligent, careless, reckless, wanton, grossly negligent, and breached its duties by

- a. Installing or causing to be installed train trestles on Gills Creek that altered the watercourse's normal flow;
- b. Failing to take reasonable steps to alleviate the water blocking effects of the trestles;
- c. Failing to act in October 2015 to prevent harm to upstream property owners despite advance notice of a substantial rainstorm; and
- d. Stopping the course of Gills Creek, a South Carolina watercourse, in violation of S.C. Code Ann. § 49-11-10 so as to constitute negligence per se.

19. As a direct and proximate result of CSX's acts and omissions described above, Plaintiffs suffered substantial property damage and other losses.

**SECOND CAUSE OF ACTION**  
(Nuisance)

20. Plaintiffs reallege and incorporate by reference the allegations set forth above.

21. CSX maintained train trestles across Gills Creek near South Beltline Boulevard in a way that caused water from the creek to back up on upstream property owners' land.

22. The flood of water that covered Plaintiffs' property destroyed homes and substantially interfered with Plaintiffs' use and enjoyment of their land.

23. As a direct and proximate result of CSX's conduct, Plaintiffs suffered substantial property damage and other losses.

**THIRD CAUSE OF ACTION**  
(Trespass)

24. Plaintiffs reallege and incorporate by reference the allegations set forth above.

25. CSX's use, maintenance, and operation of the train trestles described above was improper, unreasonable, and performed with knowledge of the potential harm that overflowing water could have on upstream landowners' property.

26. CSX's use, maintenance, and operation of the train trestles described above caused a physical intrusion of water on Plaintiffs' land and denied Plaintiffs exclusive possession of their property.

27. As a direct and proximate result of the trespass, Plaintiffs suffered damages including harm to the value of all their rights as property owners.

#### **FOURTH CAUSE OF ACTION**

(Violation of South Carolina General Railroad Law)  
(S.C. Code Ann. § 58-17-3910)

28. Plaintiffs reallege and incorporate by reference the allegations set forth above.

29. Pursuant to the South Carolina General Railroad Law, "Railroad corporations shall be liable to landowners for all damages resulting from the wrongful obstruction of watercourses by such corporations . . ." S.C. Code Ann. § 58-17-3910.

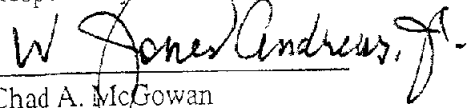
30. CSX wrongfully obstructed the flow of Gills Creek, a South Carolina watercourse, by owning, controlling, operating, maintaining, and/or managing train trestles across Gills Creek as described above.

31. As a direct and proximate result of CSX's conduct, Plaintiffs suffered substantial property damage and other losses.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendant for actual, consequential, and special damages, an award of punitive damages, costs and attorneys' fees, abatement of the nuisance, and for such other and further relief as this court deems just and proper.

Respectfully submitted,



Chad A. McGowan  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
(803) 327-7800  
cmcgowan@mcgowanhood.com

John G. Felder Jr.  
W. Jones Andrews Jr.  
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1517 Hampton Street  
Columbia, SC 29201  
(803) 779-0100  
jfelder@mcgowanhood.com  
jandrews@mcgowanhood.com

Attorneys for Plaintiffs

Columbia, SC  
November 18<sup>th</sup>, 2015

**NOV 23 2015**

**EXHIBIT A**

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Deborah Casey (NC)\*  
Ashley White Creech  
Shawn B. Deery  
Chance Farr (NC)



Lara Pettiss Harrill  
Patrick M. Killen  
William A. McKinnon (SC,DC)  
Anna S. Magann  
Robert V. Phillips  
James Stephen Welch\* (SC,OK)  
Joseph G. Wright, III\*  
Of Counsel\*

writers email: jfelder@mcgowanhood.com

November 23, 2015

*Via certified mail, restricted delivery*  
Corporate Creations Network, Inc.  
Registered Agent for CSX Transportation, Inc.  
6650 Rivers Avenue  
North Charleston, SC 29406

**Re: Michael Haley, et al. v. CSX Transportation, Inc.**  
**2015-CP-40-06963**

Dear Sir or Madam:

Plaintiffs have amended, as a matter of right, the Complaint previously filed on November 18, 2015 and served on you by letter dated November 19, 2015. This Amended Complaint supersedes the previously filed complaint.

Enclosed and served upon you as registered agent for CSX Transportation, Inc. please find a copy of the Amended Summons and Amended Complaint in the above case.

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to read 'John G. Felder, Jr.' with a stylized flourish at the end.

John G. Felder, Jr.

JGFjr/sll  
Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Haley, Lisa Johnson, Sabrina Todd,  
Vince Osborne, Dale Stigamier, and Alyssa  
Stigamier, individually and as the  
representatives of a class of similarly  
situated persons,

Plaintiffs,

v.

CSX Transportation, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No: 15-CP-40-06963

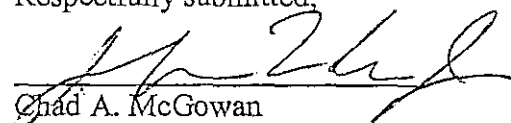
AMENDED SUMMONS  
(Jury Trial Demanded)

RICHLAND COUNTY  
FILED  
2015 NOV 20 AM 11:55  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the subscriber at his office at 1517 Hampton Street, Columbia, South Carolina 29201 within thirty (30) days of service, exclusive of the date of service; and if you fail to Answer the Amended Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

Respectfully submitted,



Chad A. McGowan  
McGowan, Hood & Felder, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
(803) 327-7800  
cmcgowan@mcgowanhood.com

John G. Felder Jr.  
W. Jones Andrews Jr.  
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1517 Hampton Street



Columbia, SC 29201  
(803) 779-0100  
jfelder@mcgowanhood.com  
jandrews@mcgowanhood.com

Attorneys for Plaintiffs

Dated: November 20, 2015

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Michael Haley, Lisa Johnson, Sabrina Todd,  
Vince Osborne, Dale Stigamier, and Alyssa  
Stigamier, individually and as the  
representatives of a class of similarly  
situated persons,

Plaintiffs,

v.

CSX Transportation, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No: 15-CP-46-06963

AMENDED COMPLAINT  
(Jury Trial Demanded)

RICHLAND COUNTY  
FILED  
2015 NOV 20 AM 11:55  
JEANNETTE H. MCBRIDE  
C.C.P. & C.D.

Plaintiffs Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier, individually and as the representatives of a class of similarly situated persons, file this Complaint against Defendant CSX Transportation, Inc. ("CSX") and allege:

PARTIES

1. Plaintiff Michael Haley is a citizen and resident of Richland County, South Carolina.
2. Plaintiff Lisa Johnson is a citizen and resident of Richland County, South Carolina.
3. Plaintiff Sabrina Todd is a citizen and resident of Richland County, South Carolina.
4. Plaintiff Vince Osborne is a citizen and resident of Richland County, South Carolina.
5. Plaintiffs Dale and Alyssa Stigamier are citizens and residents of Richland County, South Carolina.

6. Defendant CSX Transportation, Inc. is a Virginia corporation that regularly transacts business in South Carolina such that it should anticipate being haled into court here.

### JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action and the claims set forth in this complaint.

8. This Court has personal jurisdiction over CSX because CSX maintains substantial and continuous contacts in South Carolina and does substantial business in South Carolina.

9. Venue is proper pursuant to S.C. Code Ann. § 15-7-30 because Richland County is Plaintiffs' county of residence and the county where the most substantial part of the alleged acts and omissions giving rise to Plaintiffs' causes of action occurred.

### FACTS

10. Michael Haley, Lisa Johnson, Sabrina Todd, Vince Osborne, Dale Stigamier, and Alyssa Stigamier ("Named Plaintiffs") and members of the putative class (collectively "Plaintiffs") own property in Richland County in proximity to Gills Creek and north of South Beltline Boulevard.

11. CSX operates nearly 1,800 miles of railroad track in South Carolina including a rail line in Richland County that runs southeast from downtown Columbia to an area adjacent to Columbia Metropolitan Airport before crossing Gills Creek near South Beltline Boulevard and continuing east toward Sumter, South Carolina.

12. Near the point where the rail line controlled by CSX crosses South Beltline Boulevard and Gills Creek, CSX installed, caused to be installed, or is otherwise responsible for two train trestles that significantly restrict the flow of water down Gills Creek.

13. During heavy rains, water flow along Gills Creek is restricted by these trestles causing water to back up and flow over the land of upstream property owners.

14. In early October 2015, South Carolina experienced a substantial rainstorm. According to the National Weather Service, the Columbia Metropolitan Airport received nearly 11 inches of rain from October 2-5, 2015.

15. This rainstorm was forecast days in advance, and CSX had prior notice of the substantial influx of water likely to flow along Gills Creek during the storm.

16. During the rainstorm, the water flowing down Gills Creek was slowed and restricted by CSX's train trestles. As a result, water from Gills Creek backed up and flooded the land of upstream property owners including Plaintiffs.

17. Plaintiffs sustained substantial property damage and other losses as a result of the flood.

#### **CLASS ACTION ALLEGATIONS**

18. Plaintiffs reallege and incorporate by reference the allegations set forth above.

19. Pursuant to Rule 23, SCRCF, Named Plaintiffs bring this action on behalf of themselves and all other similarly situated persons. Named Plaintiffs are members of the class and Named Plaintiffs seek to represent the class defined as follows:

All owners of real property in Richland County north of train trestles on Gills Creek near South Beltline Boulevard that sustained water-related property damage following the October 2-5, 2015 rainstorm.

20. On information and belief, the class includes at least dozens of Richland County property owners and is so numerous that joinder of all members is impractical.

21. There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:

- a. Whether the train trestles CSX caused to be placed on Gills Creek near South Beltline Boulevard restricted the flow of water on Gills Creek;
- b. Whether CSX properly maintained the train trestles at Gills Creek near South

Beltline Boulevard;

- c. Whether CSX properly responded to forecasts of an approaching rainstorm; and
- d. Whether CSX's conduct was a proximate cause of the flooding that damaged Plaintiffs' property.

22. Named Plaintiffs' claims are typical of the absent class members in that all involve property damage suffered as a result of flooding near Gills Creek in October 2015.

23. Named Plaintiffs will fairly and adequately protect the interests of the other class members. Plaintiffs' counsel is experienced in handling class action claims. Neither Named Plaintiffs nor their counsel has any interests adverse to or in conflict with the absent class members.

- 24. The amount in controversy for all class members exceeds one hundred dollars.

**FIRST CAUSE OF ACTION**  
**(Negligence/ Negligence *Per Se*)**

- 25. Plaintiffs reallege and incorporate by reference the allegations set forth above.

26. CSX owned, controlled, operated, maintained, and/or managed train trestles across Gills Creek near South Beltline Boulevard in Richland County, South Carolina.

27. CSX had a duty to act with reasonable care when making alterations or improvements to property near Gills Creek so as not to affect the flow of the creek in a way that would harm the land of upstream property owners.

28. CSX had a duty to act with reasonable care to maintain its alterations or improvement to property near Gills Creek so as to prevent reasonably foreseeable harm to upstream property owners.

29. CSX was negligent, careless, reckless, wanton, grossly negligent, and breached its duties by:

- a. Installing or causing to be installed train trestles on Gills Creek that altered the watercourse's normal flow;
- b. Failing to take reasonable steps to alleviate the water blocking effects of the trestles;
- c. Failing to act in October 2015 to prevent harm to upstream property owners despite advance notice of a substantial rainstorm; and
- d. Stopping the course of Gills Creek, a South Carolina watercourse, in violation of S.C. Code Ann. § 49-11-10 so as to constitute negligence per se.

30. As a direct and proximate result of CSX's acts and omissions described above, Plaintiffs suffered substantial property damage and other losses.

**SECOND CAUSE OF ACTION**  
**(Nuisance)**

31. Plaintiffs reallege and incorporate by reference the allegations set forth above.

32. CSX maintained train trestles across Gills Creek near South Beltline Boulevard in a way that caused water from the creek to back up on upstream property owners' land.

33. The flood of water that covered Plaintiffs' property destroyed homes and substantially interfered with Plaintiffs' use and enjoyment of their land.

34. As a direct and proximate result of CSX's conduct, Plaintiffs suffered substantial property damage and other losses.

**THIRD CAUSE OF ACTION**  
**(Trespass)**

35. Plaintiffs reallege and incorporate by reference the allegations set forth above.

36. CSX's use, maintenance, and operation of the train trestles described above was improper, unreasonable, and performed with knowledge of the potential harm that overflowing water could have on upstream landowners' property.

37. CSX's use, maintenance, and operation of the train trestles described above caused a physical intrusion of water on Plaintiffs' land and denied Plaintiffs exclusive possession of their property.

38. As a direct and proximate result of the trespass, Plaintiffs suffered damages including harm to the value of all their rights as property owners.

**FOURTH CAUSE OF ACTION**  
**(Violation of South Carolina General Railroad Law)**  
**(S.C. Code Ann. § 58-17-3910)**

39. Plaintiffs reallege and incorporate by reference the allegations set forth above.

40. Pursuant to the South Carolina General Railroad Law, "Railroad corporations shall be liable to landowners for all damages resulting from the wrongful obstruction of watercourses by such corporations . . ." S.C. Code Ann. § 58-17-3910.

41. CSX wrongfully obstructed the flow of Gills Creek, a South Carolina watercourse, by owning, controlling, operating, maintaining, and/or managing train trestles across Gills Creek as described above.

42. As a direct and proximate result of CSX's conduct, Plaintiffs suffered substantial property damage and other losses.

**FIFTH CAUSE OF ACTION**  
**(Strict Liability)**  
**(S.C. Code Ann. § 49-11-10)**

43. Plaintiffs reallege and incorporate by reference the allegations set forth above.

44. Pursuant to the S.C. Code Ann. § 49-11-10, "No person shall be permitted or allowed to make or keep up any dam or bank to stop the course of any waters so as to overflow the lands of another person without the consent of such person first had and obtained..."

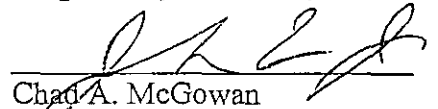
45. CSX made or kept up a dam or bank which stopped the course of waters causing them to overflow the lands of other persons without the consent of such persons in violation of S.C. Code Ann. § 49-11-10 amounting to strict liability on the part of CSX for any harm or damage caused by its conduct.

46. As a direct and proximate result of CSX's conduct, Plaintiffs suffered substantial property damage and other losses.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendant for actual, consequential, and special damages, an award of punitive damages, costs and attorneys' fees, abatement of the nuisance, and for such other and further relief as this court deems just and proper.

Respectfully submitted,



Chad A. McGowan  
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jfelder@mcgowanhood.com  
jandrews@mcgowanhood.com

Attorneys for Plaintiffs

Dated: November 20, 2015

Columbia, South Carolina



NOV 25 2015

EXHIBIT A

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC, GA, NC)  
S. Randall Hood  
John G. Felder, Jr.  
W. Jones Andrews, Jr.  
Jordan C. Calloway  
Susan F. Campbell  
Deborah G. Casey (NC)  
Ashley White Creech  
Shawn B. Deery  
Chance M. Farr (NC)



Lara Pettiss Harrill  
Patrick M. Killen  
Anna S. Magann  
William A. McKinnon (SC, DC)  
Robert V. Phillips  
James Stephen Welch\* (SC, OK)  
Joseph G. Wright, III\*  
Of Counsel\*

Writer's Email: [slocklier@mcgowanhood.com](mailto:slocklier@mcgowanhood.com)

## Transmittal Memorandum

To the Clerk of Court for Richland County

RE: Michael Haley, etc. v. CSX Transportation, Inc.  
Civil Action no. 2015-CP-40-06963

Date: December 1, 2015

Enclosed for filing are original(s) and copy(ies) of the following papers:

- 1 Proof of Service
- 2
- 3

Enclosed please find the above listed document(s). Please file according to your customary manner and return a file-stamped copy(ies) to us in the envelope provided.

Susan Locklier  
Paralegal

/sll

Enclosures

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT

Michael Haley, Lisa Johnson, Sabrina Todd,  
Vince Osborne, Dale Stigamier, and Alyssa  
Stigamier, individually and as the  
representatives of a class of similarly situated  
persons,

Civil Action No.: 15-CP-40-06963

Plaintiffs,

**PROOF OF SERVICE**  
**CSX TRANSPORTATION, INC.**

v.

CSX Transportation, Inc.,

Defendant.

The undersigned hereby certifies that the Amended Summons and Amended Complaint in the above action was served upon Defendant CSX Transportation, Inc. by Certified Mail, Return Receipt Requested, Restricted Delivery on their registered agent, Corporate Creations Network, Inc., 6650 Rivers Avenue, North Charleston, South Carolina 29406.

Pursuant to the request for Return Receipt, please find attached U.S. Postal Form 3811, signed by Dakota Weese on behalf of the Defendant CSX Transportation, Inc. on November 25, 2015.

On this the 1<sup>st</sup> day of December, 2015.

By: 

John G. Felder, Jr.  
McGowan, Hood & Felder, LLC  
1517 Hampton Street  
Columbia, South Carolina 29201  
Telephone: (803) 779-0100  
Facsimile: (803) 256-0702  
[jfelder@mcgowanhood.com](mailto:jfelder@mcgowanhood.com)  
Attorney for the Plaintiffs

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <input checked="" type="checkbox"/> <u>Dakota Weese</u> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Corporate Creations Network, Inc.  Registered Agent for CSX  Transportation, Inc.  6650 Rivers Avenue  North Charleston, SC 29406</p>		<p>B. Received by (Printed Name) <u>Dakota Weese</u> C. Date of Delivery <u>11/25/15</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>2. Article Number  (Transfer from service)</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>PS Form 3811, July 2013</p>		<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	
<p>7014 2120 0003 8994 3614</p>		<p>Domestic Return Receipt</p>	