

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**STATE CERTIFIED TERMITE & PEST, LLC,  
JEFFREY SCHULTZ and WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
State Certified Termite & Pest, LLC**

**Plaintiffs,**

**v.**

**SCOTT W. MCDERMITT**

**Defendant/Counter Plaintiff and Third-Party Plaintiff**

**v.**

**JEFFREY SCHULTZ and WILLIAM R. ROGERS**

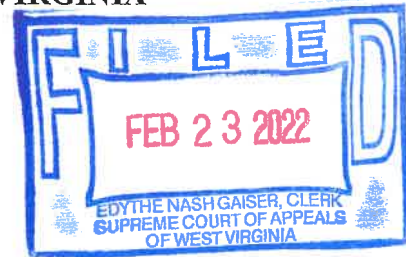
**Counter Defendants**

**AND**

**STATE CERTIFIED TERMITE AND PEST, LLC.  
a West Virginia limited liability company,**

**Third-Party Defendant.**

**TO: THE HONORABLE CHIEF JUSTICE**



**FILE COPY**

**DO NOT REMOVE  
FROM FILE**

**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiffs, State Certified Termite & Pest, LLC, Jeffrey Schultz, William Rogers, and Third-Party Defendant State Certified Termite and Pest, LLC, by counsel, the Riddell Law Group, Christian Riddell, Esq. and Nicola Smith, Esq., respectfully request the above-styled case be referred to the Business Court Division.

1. In regard to additional related actions, there are no known related actions.
2. This action involves:
  - X Breach of Contract;
  - X Disputes involving Commercial Entities

X Liability of Shareholders, Directors, Officers, Partners, etc.

3. In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here:

Plaintiffs initiated a cause of action to recover assets from a disassociated manager, the Defendant, and to wind down a company (the “Company”) wrongfully shut down by the Defendant. The Defendant alleges in its counterclaim and third party complaint that the individual Plaintiffs and a new business created by a Plaintiff, committed fraud by taking assets from the Company. The principal claims in these actions involve matters of significance to the transactions, operations, or governance between business entities as required by TCR 29.04(a)(1). The principal claims involve provisions in the Company’s operating agreement regarding competing businesses, as well as provisions in Chapter 31B of the West Virginia Code regarding the fiduciary duties of a member, a manager, and a disassociated manager of a company. The claims also center around whether or not a disassociated member is able to bring a claim on behalf of a business from which he wrongfully dissociated himself, against another business. The Defendant has also brought charges against one Plaintiff for stalking using google tracking technology.

The interests of judicial economy weigh in favor of referral and that specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversies as required by TCR 29.04(a)(2), as the wind up of the Company has been delayed for over two years, and the second company is unable to operate efficiently due to the lack of a resolution.

4. In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents (See Exhibits 1 through 15):
  1. Verified Complaint
  2. The Plaintiff’s Motion for Entry of a Preliminary Injunction Order
  3. Order Granting Temporary Preliminary Injunction and Setting Hearing
  4. Defendant's Answer to Complaint and Counterclaim
  5. Answer of the Plaintiff’s to Defendant’s Counterclaim

6. Defendant's Response to Plaintiff's Partial Motion for Summary Judgment and or Failure to State Claim upon which Relief may be Granted and or Judgment on the Pleadings and Defendant's Cross Motion for Leave to File an Amended Counterclaim
  7. Defendant's First Amended Counterclaim
  8. Amended Reply of the Plaintiffs to Defendant's Amended Counterclaim
  9. Motion to File Amended Complaint
  10. Order from August 20, 2020 Initial Hearing
  11. Protective Order
  12. Defendant's Second Amended Counterclaim and Third Party Complaint
  13. Second Amended Reply of William Rogers to Defendant's Second Amended Counterclaim
  14. Answer of William Rogers and Jeffrey Schultz to the Defendant's Second Amended Counterclaim and Third-Party Complaint
  15. Answer of State Certified Termite and Pest to the Defendant's Third-Party Complaint
5. In regard to expedited review, the Movant:
- X DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

**WHEREFORE**, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 17<sup>th</sup> day of February, 2022

/s/ Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)  
Christian J. Riddell Esq. (WVSB #1222)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949  
Smith@theRiddellLawGroup.com

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**STATE CERTIFIED TERMITE & PEST, LLC,  
JEFFREY SCHULTZ and WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
State Certified Termite & Pest, LLC**

**Plaintiffs,**

**vs.**

**SCOTT W. MCDERMITT**

**Berkeley County Circuit Court  
Civil Action No. 20-C-170**

**Defendant/Counter Plaintiff and Third-Party Plaintiff**

**v.**

**JEFFREY SCHULTZ and WILLIAM R. ROGERS**

**Counter Defendants**

**AND**

**STATE CERTIFIED TERMITE AND PEST, LLC.  
a West Virginia limited liability company,**

**Third-Party Defendant.**

**TO: THE HONORABLE CHIEF JUSTICE**

**CERTIFICATE OF SERVICE**

I, Nicola Smith, do hereby certify that on this 17<sup>th</sup> day of February, 2022, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by the WV E-File system to Judge R. Steven Redding; Michael Scales; the Berkeley County Circuit Clerk's Office and by first class mail, postage prepaid to the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401 and the West Virginia Supreme Court of Appeals, Edythe Nash Gaiser, Clerk of Court, Capitol Complex, 1900 Kanawha Blvd., East Building 1, Room E-317, Charleston, WV 25304.

/s/ Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following complaint was FILED on 7/28/2020 11:20:32 AM

Notice Date: 7/28/2020 11:20:32 AM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



# COVER SHEET

E-FILED | 7/28/2020 11:20 AM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

**Accurate Pest Management, LLC v. Scott W. McDermitt**

**First Plaintiff:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**First Defendant:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**Judge:**

Steven Redding

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Tort

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☒ Yes ☐ No

**Case will be ready for trial by:** 7/28/2021

**Mediation Requested:**

☐ Yes ☒ No

**Substantial Hardship Requested:**

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Christian Riddell, 329 S. Queen Street, Martinsburg, WV 25401

## SERVED PARTIES

**Name:** Scott W. McDermitt  
**Address:** 238 Kathys Lane, Hedgesville WV 25427  
**Days to Answer:** 20      **Type of Service:** Plaintiff - Private Process Server

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC**

**Plaintiffs,**

**v.**

**Civil Action No. \_\_\_\_\_**

**SCOTT W. MCDERMITT,**

**Defendant.**

**VERIFIED COMPLAINT**

The Plaintiffs, Jeffrey W. Schultz, William R. Rogers, and Accurate Pest Management, LLC hereby Complain as follows:

**PARTIES**

1. The Plaintiff, Accurate Pest Management, LLC (the "LLC"), is a West Virginia limited liability company, and is engaged in pest management in Berkeley County and Jefferson County, West Virginia.
2. Plaintiff Jeffrey W. Schultz ("Schultz") is a citizen and resident of Jefferson County, West Virginia.
3. Schultz is a member of the LLC, owning 41% of the membership units.
4. Plaintiff William R. Rogers ("Rogers") is a citizen and resident of Jefferson County, West Virginia.
5. Rogers is a member of the LLC, owning 18% of the membership units.
6. Rogers is an employee of the LLC, receiving \$8,000.00 per month in pay.

7. Defendant Scott W. McDermitt ("McDermitt") is a citizen and resident of Berkeley County, West Virginia.
8. McDermitt is a member of the LLC, owning 41% of the membership units.
9. McDermitt is an employee of the LLC, receiving \$8,000.00 per month in pay.
10. Upon information and belief, McDermitt is the sole proprietor of a new pest control company.

### **JURISDICTION & VENUE**

11. This Court may exercise general and specific personal jurisdiction over the Plaintiffs and the Defendant to this civil action because the LLC routinely conducts business in Berkeley County, and McDermitt resides in Berkeley County, West Virginia.
12. This Court may exercise jurisdiction over the subject matter of this civil action pursuant to West Virginia Code §51-2-2. The amount in controversy exceeds \$7,500.00.
13. This Court is the proper venue for this civil action pursuant to West Virginia Code §56-1-1(a).
14. This Civil Action is brought by the LLC as authorized by a vote of the individual Plaintiffs as members holding a majority of the interests in the LLC. In the event the Defendant disputes this right, the individual Plaintiffs also assert derivatively the right of the LLC pursuant to West Virginia Code §31B-11-1101 and Rule 23.1 of the West Virginia Rules of Civil Procedure, and in conformance with West Virginia Code §31B-11-1103.
15. The individual Plaintiffs state that the Defendant refuses to surrender control of the Company's assets, which he is using for personal use and in the operation of his new business, and refuses to communicate with the individual Plaintiffs.

### **FACTS**

16. Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
17. LLC is a manager-managed company.
18. Until June 4, 2020, McDermitt was the elected Manager of the LLC pursuant to the Second Amended and Restated Operating Agreement dated September 17, 2007, (the "Agreement") by and among the members of the LLC: Schultz, McDermitt and Rogers. The Agreement is hereto attached as Exhibit 1.
19. McDermitt's duties as Manager included
20. managing finances, making payroll requests for himself and Rogers, collecting checks and mail from the post office box, managing the bank account, and other day to day operational activities as authorized by the Agreement.
21. In an effort to discuss questions regarding finances and other concerns about the LLC's operation, a meeting of the members was called.
22. On June 4, 2020 at 4:00 p.m., all of the members of the LLC, McDermitt, Rogers and Schultz, held a meeting before James B. Crawford, III, at the law office of Crawford Law Group PLLC.
23. The unsigned minutes of such meeting as drafted by Mr. Crawford are attached hereto as Exhibit 2.
24. The members voted unanimously to replace McDermitt as Manager, and to elect Rogers as the new LLC Manager, responsible for managing the books and records of the LLC.
25. Following the meeting, the members agreed to place Rogers' name on the LLC's bank account at the Bank of Charles Town, No. 1023829, (the "Account"), and to remove McDermitt's name from the account.

26. At the Bank of Charles Town ("BCT") on the same day, McDermitt falsely insisted to a BCT employee that he was still the Managing Member, and he would not allow his name to be removed from the Account, although Rogers' name was added.
27. On June 30, 2020, Rogers discovered that BCT had removed him from the Account at the unilateral request of McDermitt.
28. McDermitt continues to control the LLC despite having been removed as Managing Member on June 4, 2020.
29. McDermitt continues to exclude the other members of the LLC, including Managing Member Rogers, from exercising any management or control over the LLC.
30. Upon information and belief, McDermitt is using the Account to pay his own personal expenses that have no business purpose, including but not limited to cell phone bills for his family members and girlfriend and supplies and chemicals for his new pest control business.
31. Upon information and belief, McDermitt is collecting checks from the LLC's clients.
32. Upon information and belief, McDermitt is continuing to use the LLC's custom invoices for his own personal business.
33. On July 23, 2020, McDermitt cashed a check for \$2,000.00 with BCT.
34. McDermitt remains in possession of the LLC's assets, and upon information and belief is using such assets for his new business. Such items include, but are not limited to:
  - a. Company cell phone with phone number 304-676-2277
  - b. 2014 Nissan NV
  - c. 2006 Chevrolet Silverado 1500
  - d. 2004 Toyota Tacoma
  - e. 2006 Nissan Frontier
  - f. Vehicle fixtures and equipment boxes
  - g. Safety equipment and respirator

- h. Termite Rig, valued at approximately \$4,000.00
- i. Hilti Termite Drill, valued at approximately \$800.00
- j. (4) Hilti drill bits, valued at approximately \$80.00 each
- k. Hand tools, valued at approximately \$300.00
- l. (8) Gallons of Boracare, valued at approximately \$80.00 per gallon
- m. (2) buckets of Timbor, valued at approximately \$132.00 each
- n. (2) cases of centerfire, valued at approximately \$300.00 each
- o. (4) packages of Termadore, valued at \$180.00 each
- p. (1) Birchmier backpack, valued at approximately \$300.00
- q. (1) B&G Compressed air sprayer, valued at approximately \$300.00
- r. (6) cans of Zenprox Extend, valued at \$20.00 per can
- s. (1) bucket of mouse bait, valued at approximately \$100.00
- t. (2) dust bulbs, valued at approximately \$60.00 each
- u. (1) case of Low Profile rat baiters valued at approximately \$100.00
- v. Custom uniform shirts, valued at \$40.00 each
- w. A storage shed purchased by the LLC for \$3,700.00
- x. The opportunities of the LLC, in the form of its goodwill and customers
- y. The pest application license issued by the West Virginia Department of Agriculture
- z. The LLC's stationary and billing forms

35. Upon information and belief, McDermitt is still accessing the Post Office Box and collecting checks from clients.
36. On information and belief, McDermitt paid himself wages, despite the fact that he is no longer performing the work for which said payments were intended as compensation, while refusing to pay Rogers wages or expenses, despite the fact that Rogers continues to undertake the LLC's requisite work and obligations.
37. Upon information and belief, McDermitt's personal distributions from the LLC are unrepresentative of his share as owner of 44% of the membership units.
38. Upon information and belief, McDermitt has, unilaterally and without consultation, terminated the LLC's pesticide application license with the Department of Agriculture, preventing the LLC from operating.



39. McDermitt has refused the requests of Rogers, the new Manager, and Schultz, to share any bank records or access to the Account, to return the Post Office key, or to in anyway cooperate.
40. On June 29, 2020, McDermitt drafted and gave to Rogers, Schultz, and Crawford, a "Notice of Dissolution," whereby McDermitt attempted to unilaterally dissolve the LLC and "demand redemption" of his ownership interest in the LLC. The Notice of Dissolution that the Defendant, "hereby gives notice of resignation as Managing Member and member of the LLC," effective July 25, 2020. The Notice of Dissolution is hereto attached as Exhibit 3.
41. The Agreement specifies in Paragraph 10(a) that upon the dissociation of a member, the business of the Company may be continued by consent of a Majority of interest of the remaining members.
42. The remaining members, Rogers and Schultz, have no intention of dissolving the LLC.

#### **COUNT I – CONVERSION**

43. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
44. Upon information and belief, Defendant has wrongfully and intentionally converted Plaintiffs' assets by wrongful acts in violation of the Plaintiffs' rights and thereby have deprived Plaintiffs of such assets.
45. As a direct and proximate result of the Defendant's conduct, Plaintiffs suffered damages in an amount yet to be determined.

#### **COUNT II – UNJUST ENRICHMENT**

46. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
47. Upon information and belief, Defendant has been unjustly enriched by his willful, wanton and reckless conduct as described herein.
48. Defendant has been unjustly enriched in an amount equal to the value of company property in his possession, misappropriated funds, unequal distributions, and unequal payment.
49. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered damages in an amount yet to be determined.
50. It is inequitable to allow McDermitt to be unjustly enriched without compensating the Plaintiffs.

### **COUNT III – BREACH OF FIDUCIARY DUTY**

51. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
52. McDermitt owed the Plaintiffs a fiduciary duty to conduct activities with loyalty, care and the utmost good faith and fair dealing.
53. Upon information and belief, McDermitt has breached, and continues to breach, his fiduciary duties to the Plaintiffs, by (a) refusing to provide Rogers and Schultz with requested financial information or access to the Account, (b) negligently, recklessly and intentionally misappropriating LLC funds, (c) failing to make equal distributions to the members, (d) refusing to pay Roger's wages (e) clandestinely creating his own company using supplies, equipment, money, and opportunity of the LLC for the private advantage of himself and to the detriment of the Plaintiffs, and (f) holding out his new company as the LLC, or a successor to the LLC, to current clients.

54. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

#### **COUNT IV – FRAUDULENT MISREPRESENTATION**

55. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

56. Upon information and belief, McDermitt repeatedly and fraudulently misrepresented the LLC's expenditures, as numerous expenditures were personal expenditure, not necessary for the business's ordinary course of business.

57. The Defendant fraudulently misrepresented that he was the Manager of the LLC, authorized to use the Account at BCT.

58. The Plaintiffs justifiably relied and/or was damaged by the Defendant's misrepresentations.

59. McDermitt further made misrepresentations to BCT employees in order to induce them to restrict access to the bank accounts and financial records.

60. The Defendants actions constitute actual and constructive fraud.

61. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

#### **COUNT V – ACCOUNTING AND RIGHT TO INFORMATION**

62. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

63. As members of the LLC , Rogers and Shultz are entitled to an accounting of the LLC's finances and book.

64. McDermitt has refused Rogers, the Managing Member, and Schultz, a member, access to requested financial information and intentionally removed Rogers from the Account at the Bank of Charles Town, despite no longer being the Manager of the LLC.
65. McDermitt is required to provide Plaintiffs and their attorneys with an accounting of, including the unfettered right to access, inspect and copy, all matters associated with the financial health of the LLC, including but not limited to an accounting of all financial statements, checks, bills, legers, invoices and receipts.
66. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

#### **COUNT VI – VALUATION**

67. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
68. The Plaintiffs request an Order establishing the value of the Defendant's interest in the LLC as a disassociated member, to be offset or extinguished by the amounts found to be owing to the Plaintiffs by the Defendant, in accordance with West Virginia Code §31B-7-702 and 702, and Paragraph 10 of the Agreement.

#### **COUNT VII – PRELIMINARY INJUNCTIVE RELIEF**

69. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
70. Plaintiffs have suffered irreparable harm from Defendant's actions by virtue of the damage Defendant has done to their business interests, as discussed above, including but not limited to interference with LLC's client relationships, intentional and potentially

permanent damage to LLC's status with relevant state licensing authorities, and damage to LLC's reputation.

71. The Plaintiffs continue to suffer irreparable harm if McDermitt is not enjoined from using the LLC's assets, and as direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

72. Although monetary damages incurred by Plaintiffs from Defendant's conduct would normally be amenable to a monetary remedy at law, Plaintiffs, by virtue of the fact that, absent discovery, they have no knowledge of the extent of the monetary damages nor of Defendant's ability to pay any monetary compensation awarded, may further suffer irreparable harm from any continued financial damage that Defendant does to the company in the event that Defendant lacks sufficient resources to provide full compensation.

#### **COUNT VIII – PUNITIVE DAMAGES**

73. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

74. The actions of the Defendant, McDermitt, which were intentional, willful and reckless, and undertaken in complete disregard for the Plaintiffs' rights.

75. The Plaintiffs have suffered damages due to such actions of the Defendant. The Plaintiffs are entitled to punitive and exemplary damages in an amount sufficient to dissuade the Defendant and others similarly situated from so acting in the future.

**WHEREFORE**, the Plaintiffs, Jeffrey W. Schultz, William R. Rogers, as Members and Accurate Pest Management, LLC, respectfully request that a judgment be entered in their favor and against the Defendant, Scott W. McDermitt, as follows:

- a) For all amounts owed by Defendant to Plaintiffs in order to fully and completely compensate Plaintiffs for all damages associated with Defendant's actions;
- b) For all amounts paid or transferred out of the LLC to him or to other persons, for any purpose unrelated to the LLC's business;
- c) For punitive damages against Defendant due to his intentional and fraudulent misconduct;
- d) For the allowance of pre-judgment and post-judgment interest at the applicable rate on the judgment from and after the date of judgment until its satisfaction;
- e) For the recovery of attorneys' fees, out-of-pocket expenses, and costs, based upon the Defendants fraud, and pursuant to Paragraph 7(i) of the Agreement and West Virginia Code §31B-7-702(d) and (e); and,
- f) For a Preliminary Injunction against the Defendant in accordance with the Motion of the Plaintiffs for Entry of a Preliminary Injunction Order;
- g) Such other and further relief as this Court deems just and proper.

**The Plaintiffs demand a jury trial.**

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC  
By Counsel**

/s/Christian J. Riddell

Christian J. Riddell (WV State Bar #12202)

Riddell Law Group

329 S. Queen Street

Martinsburg, WV 25401

(304)267-3949

/s/Nicola D. Smith

Nicola D. Smith (WV State Bar #11251)

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC

Plaintiffs,

v.

Civil Action No. \_\_\_\_\_

SCOTT W. MCDERMITT,

Defendant.

VERIFICATION

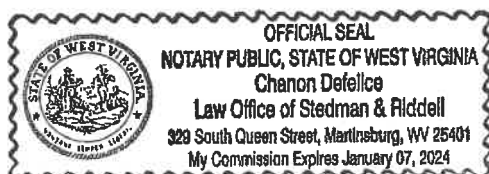
I, William Rogers, Plaintiff in the foregoing Action, after being duly sworn, says that the facts and allegations contained in the Verified Complaint are true, except insofar as they are therein stated to be upon information and belief, and that insofar as they are therein stated, they are believed to be true.

  
William R. Rogers

Taken, subscribed and sworn to before the undersigned authority this 27<sup>th</sup> day of July, 2020.

My Commission expires: 11/7/2024

  
NOTARY PUBLIC





IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC

Plaintiffs,

v.

Civil Action No. \_\_\_\_\_

SCOTT W. MCDERMITT,

Defendant.

VERIFICATION

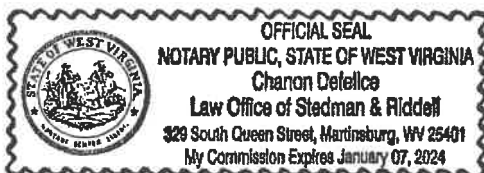
I, Jeffrey W. Schultz, Plaintiff in the foregoing Action, after being duly sworn, says that the facts and allegations contained in the Verified Complaint are true, except insofar as they are therein stated to be upon information and belief, and that insofar as they are therein stated, they are believed to be true.

  
Jeffrey W. Schultz

Taken, subscribed and sworn to before the undersigned authority this 27<sup>th</sup> day of July, 2020.

My Commission expires: 1/7/2024

  
NOTARY PUBLIC



SECOND AMENDED AND RESTATED OPERATING AGREEMENT

OF

ACCURATE PEST MANAGEMENT LLC

This Second Amended and Restated Operating Agreement, dated as of the 17<sup>th</sup> day of September, 2007, by and among Accurate Pest Management LLC (Company) and Scott W. McDermitt, Jeffrey W. Schultz and William R. Rogers (collectively, "Members").

WITNESSETH:

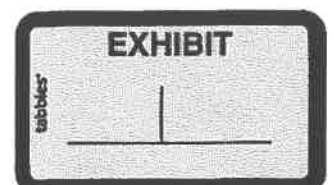
In consideration of the covenants and mutual agreements hereinafter set forth, the parties hereto (hereinafter collectively referred to as the "Members") agree as follows:

1. **FORMATION OF LIMITED LIABILITY COMPANY.** The Members form a limited liability company (hereinafter referred to as the "Company") pursuant to the provisions of the West Virginia Limited Liability Company Act ("Act").

2. **GENERAL PROVISIONS.**

a. Name. The name of the Company shall be Accurate Pest Management LLC and all business of the Company shall be conducted in that name.

b. Purpose. The general purpose of the company is to engage in (1) the business of pest control, fumigation, pest extermination and sterilization, termite control, including the use of such chemicals as the company and its subsidiaries may be licensed or permitted to use and preparation of escrow reports and the making of inspections as required and the servicing of the properties in the manner of extermination and fumigation and all phases of work of pest control in whatever respect the company or its authorized subsidiaries may be licensed to do. (2) To inspect septic systems and to conduct tests as to their function and issue reports thereof. (3) To inspect water



systems, check the same for potability, to conduct the necessary laboratory tests for contaminants and to make reports thereof, and (4) to engage in such other activities permitted under the laws of the State of West Virginia.

c. Principal Office. The principal office and place of business of the Company shall be 475 West Burr Blvd, Kearneysville, WV 25430, or such other place as the Members or Manager may from time to time determine following notice to the Members.

d. Term. The period of duration of the limited liability company shall expire when the Company is dissolved and terminated in accordance with the provisions of Section 10 of this Agreement.

### 3. CAPITAL.

a. Capital Contribution of Members. In exchange for their interests in the Company, the Members shall contribute to the Company in cash or property the amounts set forth opposite their names on the attached Schedule of Members, Contributions and Interest.

b. Timing and Additional Capital Contributions. Should the Operating Manager determine that additional capital is needed, and provides to each Member (a) the total amount of additional Capital Contributions required, (b) the reason the additional Capital Contribution is required, (c) each Member's proportionate share of the total additional Capital Contributions (calculated by multiplying the Member's Percentage Interest set forth in "SCHEDULE OF MEMBERS, CONTRIBUTIONS AND INTERESTS" of the operating agreement and any amendments thereto, by the total additional Capital Contribution required) and (d) the date each Member's additional Capital Contribution is due and payable, which date shall be at least thirty (30) days after the notice has been given, then the Members may make additional capital contributions as required. A Member's proportionate share shall be payable in cash or by certified check. No

Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company (excluding applicable requirements from financial institutions lending funds to the Company). If the Operating Manager determines, in lieu of requiring additional capital contributions from the Members, to obtain a loan from a financial institution, then all Members will be responsible for meeting the reasonable equity requirements imposed by the financial institution and executing a guaranty agreement of said loan, if required by the financial institution.

c. No right to Withdraw Capital. No interest shall accrue on a contribution to the capital of the Company, and no Member shall have the right to withdraw from the Company or be repaid any contribution of capital except as otherwise specifically provided herein.

d. Failure to Contribute Additional Capital Contribution. If a Member fails to pay when due all or any portion of any Capital Contribution set forth in Section 3 (a) and the remaining contributing Members agree to contribute the shortfall, then the Percentage Interest shall be adjusted as follows: Each Member's existing capital (the "Existing Capital") shall be computed as the produce of such Member's existing Percentage Interest and the net fair market value of Company assets (before taking into account the additional capital contributions). Each Member's new Percentage Interest shall be the percentage derived by dividing the sum of each Member's Existing Capital and additional capital contribution made under Section 3 (a) et seq. and "Schedule of Members, Contributions and Interest." by the aggregate of such sums determined for all Members. The net fair market value of Company assets shall be determined by agreement of all Members (or if they fail to agree, then by an MAI-designated appraiser chosen by the Operating Manager). If the remaining contributing Members do not agree to contribute the shortfall, then the Percentage Interest shall not be adjusted and the Operating

Manager shall have the option of borrowing such funds on behalf of the Company pursuant to Section 7.

e. Capital Accounts. A separate capital account shall be maintained for each Member. There shall be credited to each Member's capital account: 1) the amount of cash and the fair market value of any property contributed by the Member, 2) the Member's share of the profits of the Company, 3) the amount of any increase to the basis of assets of the Company due to an election under Section 754 of the Internal Revenue Code of 1986, as amended ("Code"); and there shall be charged against each Member's capital account: 1) the amount of all distributions to the Member, and 2) the Member's share of losses of the Company.

#### 4. MEMBERS' INTEREST.

a. The Company Units. The interest of the Members in the Company shall initially be divided into 100 equal units ("Units"), each unit representing one percent of the capital interest in the Company. The Members and their respective interest in the Company following the contributions described in Section 3 hereof shall be as set forth on the attached Schedule of Members, Contributions and Interest. The Manager may issue certificates of interest to the holders of the Units in such form as it may consider appropriate.

b. Actions by Manager with Respect to Sales of Units. The Manager shall, with respect to any sale of Units, (i) make a notation in the appropriate records of the Company with respect to such sale, and (ii) obtain a written representation from each purchaser of Units as to his residence.

#### 5. PROFITS AND LOSSES.

Taxable income, gain, loss, deduction or credit shall be allocated among the Members in accordance with their respective interest in the Company at the end of the Company year; provided,

however, that if any Members have contributed property other than money to the Company, the allocations shall be governed by Section 704(c) of the Code. If any Units have been transferred or assigned during any taxable year, the allocation of the interest represented thereby shall be prorated between the transferor and the transferee based upon the time the transferor and transferee held the Units during the year.

## **6. DISTRIBUTIONS.**

The cash flow of the Company may be distributed among the Members in accordance with their interest in the Company. Such distributions shall occur within 30 days after the end of each calendar quarter and with such lessor or greater frequency as the Manager shall determine is consistent with the orderly administration of the business of the Company.

The "cash flow" of the Company, shall be equal to the taxable income of the Company, increased by the amount allowable as depreciation on the Company's assets, the amount of any amortization deduction and the amount of any other items deductible for federal income tax purposes in excess of actual cash payments with respect thereto, and decreased by the amount of any repayment of the principal portion of any debt of the Company, all cash expenditures not deductible for federal income tax purposes or the amount thereof in excess of the amount deductible for federal income tax purposes, and the amount of all other expenses and all reserves set aside by the Manager as it shall determine are necessary or desirable to provide for actual or contingent liabilities, working capital requirements of the Company, and for any other purpose necessary or incidental to the proper management and function of the business of the Company.

## **7. MANAGEMENT.**

a. Authority of the Manager. Except as otherwise expressly provided herein, all decisions respecting any matter set forth in this Agreement or otherwise affecting or arising out of

the conduct of the business of the Company shall be made by the Manager. The Manager shall have the exclusive right and full authority to manage, conduct and operate the Company business. Specifically, but not by way of limitation, the Manager shall be authorized to: (i) employ such agents, employees, managers, accountants, attorneys, consultants and other person necessary or appropriate to carry out the business and affairs of the Company and to pay as an expense of the Company such reasonable fees, expenses, salaries, wages and other compensation to such persons as the Manager shall determine; (ii) cause to be paid all amounts due and payable by the Company to any person or entity; (iii) pay, expend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise upon such terms as the Manager may determine and upon such evidence as it may deem sufficient any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Company; (iv) invest or reinvest proceeds received upon condemnation; (v) make any and all expenditures or investments of excess funds in obligations which the Manager, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; (vi) sell or lease Company property on such terms and conditions as the Manager shall determine to be in the best interest of the Company; (vii) incur such indebtedness on behalf of the Company as the Manager deems necessary to carry out the business and affairs of the Company; and (viii) purchase insurance insuring the Manager and its employees from personal liability for actions taken in good faith on behalf of the Company. With respect to all of its obligations, powers and responsibilities under this Agreement, the Manager is authorized to execute and deliver for and on behalf of the Company such deeds, leases, notes, contracts, agreements, assignments, bills of sale, security agreements, loan agreements, deeds of trust and other documents in such form and on such terms and conditions as it shall deem proper.

b. Liability of Manager. The Manager shall not be liable, responsible or accountable in damages or otherwise to any Member for, and the Company shall indemnify and save harmless the Manager from, any loss or damage incurred by reason of any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement, provided that the Manager was not guilty of gross negligence, willful misconduct or breach of fiduciary duty with respect to such act or omission and the satisfaction of any indemnification and any saving harmless shall be from and limited to Company assets, no Member having any personal liability on account thereof. Any act or omission performed or omitted by the Manager in good faith on advice of counsel to the Company shall be conclusively deemed to have been performed or omitted in good faith.

c. Limitations on Authority of Manager. Notwithstanding any provision of the Agreement to the contrary, the Manager shall not engage in any activity or business on behalf of the Company which is not within the scope of the purposes for which the Company is created. Unless having first obtained the consent of the Management Committee, the Manager shall not authorize the substitution of a new Manager, or, without having first obtained the consent of the Members, incur any indebtedness on behalf of the Company for which the Members would be personally liable. As used in this paragraph, the consent of the Members means consent of the holders of more than 50% of the units, which consent shall be obtained in writing within 60 days of written notice of the action requiring such consent given to all Members. The Members may take any action by meeting or by written action without meeting.

d. Appointment of Manager. Scott W. McDermitt is appointed the Manager of the Company, to serve until his removal or until his successor has been appointed and has undertaken its duties.



e. Management Committee. The Management Committee shall consist of three Members who shall have been selected by the Members in writing without the necessity of Amendment of this Agreement, and at any time and from time to time, and the Members shall fill any vacancy occurring in the position of the Management Committee in such manner. All actions of the Management Committee shall be effective upon majority approval of the members of the Management Committee, and the Management Committee may act by meeting or by action without meeting, which shall be effective upon the written consent thereto by a majority in interest of the Members. The Management Committee shall have authority, with or without cause, at any time to remove the Manager.

f. Vote of Members. The Members shall have one vote per each unit of the Company held by each of the Members and any action required permitted to be taken by the Members may be taken only upon a majority vote of the units of the Company.

g. Loans of Members to Company. As provided by West Virginia Code 31-1A-22, a Member or Manager may lend money to or transact other business with the Limited Liability Company and, subject to equitable law, has the same rights and obligations in respect thereto as a person who is not a Member or Manager.

h. Duties of Parties. (i.) Nothing in this agreement shall be deemed to restrict in any way the rights of any member to conduct any other business or activity whatsoever, and the Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to their respective rights to maintain, expand or diversify such interests and activities and to receive and enjoy profits or compensation there from. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or

activities of any other Member, and ( ii.) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their affiliates. In any of those cases, those dealings and undertakings shall be at an arm's length and on commercially reasonable terms.

i. Indemnification. If any Member engages in fraud, gross negligence or an intentional breach of this Agreement, said Member agrees to indemnify the other Members against any actual out of pocket costs or expenses incurred by the other Members as a direct result of such fraud, gross negligence or intentional breach of this Agreement.

## **8. BOOKS, RECORDS AND AUDITS.**

a. Books and Records. The Manager shall keep, or cause to be kept, at the principal office of the Company, full and true books and records of account for the Company, which shall be open to reasonable inspection and examination by the Members or their duly authorized representatives. The Manager shall not be required to deliver or mail copies of the articles of organization, or any amendment or cancellation thereof to the Members.

b. Accounting Period, Annual Financial Statements. The accounting period of the Company shall be the calendar year hereinafter referred to as the Company's (taxable year). The Manager shall provide each Member with a financial statement of the Company as soon after the end of the calendar year as is reasonably possible.

c. Audits. Upon written request or demand of the holders of 50% or more of the Units, the Manager shall cause an audit of the Company books to be made by the certified public accountant or accountants designated in such demand or request. The costs of any such audit shall be paid by the Company. Any Member may request and obtain an audit of the Company's books upon written demand and at the sole expense of the requesting Member.

d. Federal Income Tax Information. As soon as possible after the close of each Company year, a report shall be furnished of the net profits or losses of the Company to each Member, together with a statement indicating the Member's share in the profits or losses for such year.

**9. ASSIGNMENT OF INTEREST IN COMPANY.** The Units may not be assigned, except in accordance with the provisions of this section.

a. Units are Restricted Securities. The Units have not been registered under the Securities Act of 1933 as amended (the "Securities Act") under the securities laws of any state, and may not be offered, sold, pledged, hypothecated or otherwise transferred unless and until registered under the Securities Act or, in the opinion of counsel in form and substance satisfactory to the Company, such offer, sale, pledge, hypothecation or transfer is in compliance therewith.

b. Right of First Refusal on Sale of Units. Any Member desiring to sell his Units shall first notify the Company in writing of his intention to sell, stating the name and address of the proposed purchaser, the number of Units proposed to be sold, the consideration proposed to be received therefore, and the proposed terms of sale. Any such offer by the manager shall operate as a conversion of the interest of the manager to that of a Member, and a new Manager shall be appointed in accordance with Section 9(d). The Company shall have the exclusive right and privilege to purchase the Units proposed to be sold for the consideration and upon the terms stated in such written notice at any time within 30 days of the later of (i) receipt of such written notice, or (ii) appointment of a Manager to act on the Company's behalf. If the Company does not purchase the Units so offered, during the next succeeding 60-day period the Member desiring to sell Units may then sell such Units to the person and at the price and terms stated in the offer. If the Units are not sold, they shall not be subsequently sold without first again offering them to the Company as

hereinabove provided. This section 9(b) shall not apply to any transfer of the Units by gift, bequest or laws of intestacy, nor shall it be construed as limiting in any way the authority and discretion of the Manager either to give or withhold his/her/its consent to any proposed assignment of Units by a Member under Section 9(c), even though the Company shall not have exercised its right and privilege to purchase such Units.

c. Consent Required for Substitution of New Members. Subject to Sections 9(a) and 9(b), any one or more Units held by a Member may be assigned by such Member at any time by written assignment in form and substance approved by the manager, but only (i) upon execution and delivery by the assignee of a written acceptance and adoption of this Agreement, as the same may be amended, together with such other documents, if any, as the Manager may require; (ii) the payment to the Company by the Member selling his Units of all reasonable expenses incurred by the Company in connection with such assignment; and (iii) with the unanimous written consent of the Members, which consent may, in each case, be given or denied in their absolute discretion. Upon such execution and consent, when applicable, but not otherwise, the assignee shall, with respect to the Units assigned, be admitted to the Company and become a substituted Member therein. The power of attorney given by the assignor Member pursuant to Section 11 hereof shall survive the delivery of such assignment for the purpose of enabling the Manager to execute, acknowledge, file and record all instruments necessary to effectuate such substitution.

d. Appointment and Substitution of New Manager. Subject to Section 10(b) herein, within 60 days of the event resulting in the withdrawal of the Manager, the Management Committee, pursuant to Section 7(e) above, shall appoint a new Manager. Failure of the Management Committee to appoint a new Manager within 60 days as set forth above shall result in disillusionment of the Company.

e. Resignation of Manager. The Manager shall not resign without written consent of a majority in interest of the Management Committee.

#### **10. DEATH, RESIGNATION, EXPULSION, BANKRUPTCY, DISSOLUTION, ETC. OF A MEMBER**

a. Death, Resignation, etc. of a Member. If a Member dies, resigns, or is expelled from the Company, becomes Bankrupt, has a court of competent jurisdiction enter an order or decree adjudicating him incompetent to manage his estate or person, dissolves and commences winding-up, or if the existence of a Member that is a corporation or other legal entity shall terminate (the "Incapacitated Member"), the Company shall be dissolved unless the business of the Company is continued by the consent of a Majority of Interest of the remaining Members (as such term is interpreted for purposes of Section 301.7701-2(b)(1) of the Regulations). If the business of the Company is continued, a Majority of Interest of the remaining Members shall elect either to (i) permit the Incapacitated Member's successor in interest to continue as an Assignee or substitute Member, or (ii) cause the Company to redeem the interest of the Incapacitated Member. If the Incapacitated Member's successor-in-interest continues as an assignee or substitute Member then, the successor-in-interest shall be liable for the Incapacitated Member's obligations arising under this Agreement and the Act.

b. Designation of Assignee. A Member may, by written instrument, designate any person to become the assignee of all or a portion of his interest as a Member immediately upon his death. Such a designee, if he is then living, shall become an Assignee of such interest immediately upon the assignor's death without requirement of any action on the part of the legal representatives of the assignor Member; such legal representatives of the estate of such deceased Member shall have no interest whatsoever in the Company. Any such designation must be filed with the Company during

such Member's lifetime. Such designation may be revoked from time to time and a new such designation made and filed with the Company. In no event shall a designee become a substitute Member unless the requirements of Article 9 of this Agreement are satisfied.

c. Redemption of Member's Interest. If the interest of the Incapacitated Member is to be redeemed, the price of the Incapacitated Member's interest shall be an amount equal to the amount of cash that the Incapacitated Member would have received if the assets of the Company were sold for an amount equal to 95% of their value as determined pursuant to Article 10 d. below and the proceeds of such deemed sale were distributed (following the allocation of Net Income and Net Losses pursuant to Article 5) pursuant to Article 10 j.

d. Valuation. The value of the assets of the Company shall be determined by (i) a written valuation made, and agreed to, by the Incapacitated Member, or its legal representative, and the remaining Members, or (ii) if the Incapacitated Member, or its legal representative, and the remaining Members cannot agree on a valuation, an independent expert appraiser mutually acceptable to the remaining Members and the Incapacitated Member, or his legal representative, as the case might be. In the event the Members are the Incapacitated Member, or his legal representative, as the case might be, cannot agree on the selection of an independent expert appraiser within thirty (30) days after the election of the other Members under Article 10 a. to redeem the interest of the Incapacitated Member, the Members, and the Incapacitated Member, or its legal representative, as the case might be, shall within ten (10) days after the expiration of the thirty (30) days period and by written notice to the other party, each select an independent expert appraiser to determine the value of the assets of the Company. If a party fails to appoint its appraiser within the period specified above, then the other party may serve notice on the party failing to appoint an appraiser asking such notice and if the appraiser is not appointed within such additional ten (10) day

period, the appraiser appointed by the other party shall be the sole appraiser. If only one appraiser has been selected, the value of the assets of the Company shall be the value selected by such appraiser and if two appraisers have been selected, the value shall be the average of the values determined by the appraisers.

e. Closing. The closing of the redemption of an Incapacitated Member's interest in the Company shall take place at the principal office of the Company at such time and upon such date as the remaining Members shall specify in a notice to the Incapacitated Member, or his legal representative, as the case might be, but in no event more than sixty (60) days after the determination of the value of the assets of the Company.

f. Payment of Purchase Price. The purchase price of an Incapacitated Member's interest in the Company shall be paid to the Incapacitated member, or his legal representative, as the case might be, at the closing specified in Article 10 e. above, entirely in cash or by bank officer's check or, at the option of the remaining Members, partly in cash (to the extent of not less than ten percent (10%) of the aggregate redemption price), with the balance represented by an unsecured promissory note payable in equal annual installments over a five-year period, bearing interest on the unpaid balance annually at the minimum rate necessary to avoid imputed interest under the Code.

g. Deficit in Capital Account. In the event an Incapacitated Member has a deficit in his Capital Account following the redemption of his interest in the Company, he shall be obligated to restore the amount of such deficit to the Company in the time and manner required in the Regulations under Section 704(b) of the Code.

h. Continuation of Company. In the event that the disillusionment of the Company pursuant to the events of disillusionment described in section 10 a. above, the business and affairs of the Company shall not be discontinued and the Company shall remain in existence as a Limited

Liability Company under the laws of the State of West Virginia, if the remaining unanimously agree to continue the Company under this Agreement within 60 days of such event of disillusionment.

i. Liquidation. The dissolution of the Company shall be effective on the date on which the event occurs giving rising to such dissolution, but the Company shall not be wound up until the Company's articles of organization shall have been canceled and the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company prior to the winding-up of the Company, the business of the Company and the rights of the Members shall continue to be governed by this Agreement. Upon dissolution of the Company and in the event the Members do not elect to substitute a new Manager as provided in Section 9(b) or 10(b), the Manger, or (in the absence of a Manager) a liquidator appointed with the consent of the Members, shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the cancellation of the Company's articles of organization.

j. Distributions in Liquidations. Upon the dissolution of the Company and the incident to the winding-up of the Company's business and affairs, the Manger (or liquidator, as applicable) shall pay or make provision for the payment of all liabilities and obligations of the Company to creditors other than members, actual or contingent, and all expenses of liquidation. Any amounts deemed necessary by the Manager (or liquidator) to provide a reserve for any unforeseen liabilities and obligations may, in the Manager's (or liquidator's) discretion, be deposited in a bank or trust company upon such terms and for such period of time as the Manger (or liquidator) may determine. Following the payment of or provision for the liabilities of the Company as aforesaid, the remaining assets of the Company shall be distributed in the following order of priority: (i) to the payment of all liabilities and obligations to Members, (ii) any remaining assets then to be allocated to the Members proportionately in accordance with their capital account balances and (iii) any



remaining assets, if any, to the members in accordance with their capital accounts.

## 11. AMENDMENTS.

a. Amendments. Amendments to this Agreement may be proposed by any Member holding 5% or more of the Units. Following such proposal, the Manager shall submit to the Members a written, verbatim statement of any proposed amendment, providing that counsel for the Company shall have approved of the same in writing as to form, and the Manager shall include in any such submission a recommendation as to the proposed amendment. The Manager shall seek the written vote of the Members on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. For purposes of obtaining a written vote, the Manager may require a response within a reasonable specified time, but not less than 7 days, and failure to respond in such time period shall constitute a vote which is consistent with the Manager's recommendation with respect to the proposal. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives the affirmative vote of holders of a majority of the Units.

b. Restrictions on Amendments. Notwithstanding Section 11(a) hereof,

(i) This Agreement shall not be amended without the consent of each Member adversely affected if such amendment would (A) modify the limited liability of a Member; or (B) alter the interest of a Member in profits, losses, or any Company distributions; and

(ii) This Agreement may be amended by the Manager, without the consent of any of the Members; (A) to add to the representations, duties, or obligations of the Manager or surrender any right or power granted to the Manager herein for the benefit of the Members; (B) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with

respect to matters or questions arising under this Agreement not inconsistent with the intent of this Agreement; and (C) to change any provision of this Agreement required to be so changed by the staff of the Securities and Exchange Commission or any other federal agency or by a state "Blue Sky" commissioner or similar official, which change is deemed by such commissioner, agency, or official to be for the benefit or protection of the Members; Provided that no amendment shall be adopted pursuant to this Section 11(b)(ii) unless the adoption thereof is for the benefit of or not adverse to the interest of the Members, and does not violate Section 11(b)(i) hereof.

## 12. MISCELLANEOUS.

a. Notices. Any and all notices, elections, consent or demands permitted or required to be made under this Agreement shall be made in writing signed by the Member giving such notice, election, consent or demand and shall be delivered personally or sent by registered or certified mail to the Company or other Members at the address or addresses set forth in the Company's records or to such other address as may be supplied by written notice given in conformity with the terms of this paragraph.

b. Successors and Assigns. Subject to the restrictions on transfers set forth herein, this Agreement and each and every provision hereof shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors in title, heirs and assigns, and each and every successor in interest to any Member, whether such successors acquires such an interest by way of gift, purchase, foreclosure or by any other method, shall hold such interest subject to all the terms and provisions of this Agreement.

c. Applicable Law. This Agreement and the rights of the parties hereunder shall be governed by the laws of the State of West Virginia.

d. Counterparts. This Agreement may be executed in any number of separate

counterparts, all of which taken together shall be deemed one original instrument notwithstanding that all parties are not signatory to the same counterpart.

e. Headings. The headings used in this Agreement are used solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

f. Severability. In the event any part of this agreement is found to be void, the remaining provisions thereof shall nevertheless be binding with the same affect as though the void parts were deleted.

IN WITNESS HEREOF, this Agreement has been executed by each of the Members as of the day and year first above written.

Members:

  
\_\_\_\_\_  
Scott W. McDermitt

  
\_\_\_\_\_  
Jeffrey W. Schultz

  
\_\_\_\_\_  
William R. Rogers

PREPARED BY: James B. Crawford, III  
CRAWFORD & KELLER PLLC  
P.O. BOX 266  
Charles Town, WV 25414

SCHEDULE OF MEMBERS, CONTRIBUTIONS AND INTERESTS

	<u>Members</u>	<u>Contributions</u>	<u>Interests</u>
1.	Scott W. McDermitt	\$ <u>410</u>	<u>41</u> %
2.	Jeffrey W. Schultz	\$ <u>410</u>	<u>41</u> %
3.	William R. Rogers	\$ <u>180</u>	<u>18</u> %


This meeting being held this 4<sup>th</sup> day of June, 2020 at the law office of Crawford Law Group PLLC, 120 N. George Street, Charles Town, WV 25414 at 4:00 p.m. Those attending were the owners of State Certified; Jeffery Schultz, owner of 33.3%, Scott McDermott, owner of a like amount and Bill Rogers, owner of 15% of the company.

The purpose of the meeting was to address certain matters and issues between the parties and as a result of a lengthy discussion, the parties have agreed as follows:

1. That the company will reimburse Jeffery Schultz for the purchase of Nick Petti's shares purchased in 2017 in the amount of \$32,678.71. This money shall be reimbursed with a rate of 4% and shall be paid by the Company to Jeffery Schultz in the sum of \$601.83 per month until paid.
2. The members of the company agreed to reinstate the company with the State of West Virginia as State Certified LLC and to select Accurate Pest Control as a dba.
3. All of the extra cars and trucks will be disposed of. Scott will be responsible for doing this and shall do the same within six (6) months of this agreement.
4. The company is currently paying rent to Emily in the amount of \$200.00 per month. The company will vacate the premises and terminate the rent.
5. The storage shed which is on Emily's property which was bought by the Company shall be purchased by Scott McDermott for the sum of \$\_\_\_\_\_.
6. The salaries of Scott and Bill shall remain the same. Any surplus at the end of the year shall be divided in accordance with the percentages of the Company's ownership. The parties may agree to distribute the profit on a different time frame.
7. Bill Rogers is elected as the Manager and will take over the books of the Company. He is authorized to hire outside help to help manage the financials of the Company.



The undersigned hereby agree that the above is the agreement and binding upon all of the members of the organization as of this \_\_\_\_ day of June, 2020.

\_\_\_\_\_  
Jeffery Schultz

\_\_\_\_\_  
Scott McDermott

\_\_\_\_\_  
Bill Rogers

## NOTICE OF DISSOLUTION

Pursuant to § 10.a. of the Amendment of Ownership of ACC – Pest Management, LLC, “the LLC”, dated September 17, 2007, I hereby give notice of resignation as managing member and member of the LLC. This is to demand the redemption of my 41% membership interest in the LLC. This is effective as of July, 25<sup>th</sup>, 2020.

Date

6/29/2020

  
\_\_\_\_\_  
Scott W. McDermitt

To: Accurate Pest Management, LLC  
P.O. Box 1077  
Charles Town, WV  
25413

CC: Mr. Wm. Richard Rogers  
Mr. Jeffrey W. Schultz  
James B. Crawford, III, Esq.

EXHIBIT

3



## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following motion was FILED on 7/28/2020 11:27:10 AM

Notice Date: 7/28/2020 11:27:10 AM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtswv.gov





**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC**

**Plaintiffs,**

**v.**

**Civil Action No.: 20-C-170**

**SCOTT W. MCDERMITT,**

**Defendant.**

**THE PLAINTIFF'S MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION  
ORDER**

Pursuant to West Virginia Code § 53-5-1, et seq., and West Virginia Code § 31B-4-403, and West Virginia Rule of Civil Procedure 65, the Plaintiffs, Jeffrey W. Schultz ("Schultz"), William R. Rogers ("Rogers") and Accurate Pest Management, LLC (the "LLC" or the "Company") request the entry of a Preliminary Injunction Order against the Defendant, a minority member, for conversion and unlawful appropriation of the LLC's property, including, but not limited to, the payment of his, his family's and his girlfriend's personal expenses and the use of the LLC's property including, but not limited to money, bank account, vehicles, supplies, pest application license, post office box, equipment and opportunities, including in the operation of his new pest control business in competition with the LLC.

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC  
By Counsel**

/s/Christian J. Riddell

Christian J. Riddell (WV State Bar #12202)

Riddell Law Group

329 S. Queen Street

Martinsburg, WV 25401

(304)267-3949

/s/Nicola D. Smith

Nicola D. Smith (WV State Bar #11251)

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC**

**Plaintiffs,**

**v.**

**Civil Action No.: 20-C-170**

**SCOTT W. MCDERMITT,**

**Defendant.**

**BRIEF IN SUPPORT OF THE MOTION OF THE PLAINTIFFS FOR ENTRY OF A  
PRELIMINARY INJUNCTION ORDER**

**I. STATEMENT OF THE FACTS**

Plaintiffs, Jeffrey W. Schultz (“Schultz”), William R. Rogers (“Rogers”) and Accurate Pest Management, LLC (the “LLC” or the “Company”) request the entry of a Preliminary Injunction Order against the Defendant, a minority member, restraining him from conversion and unlawful appropriation, including, but not limited to, the payment of his, his family’s and his girlfriend’s personal expenses and the use of the LLC’s property, including but not limited to money, bank account, pest control license, post office box, invoices, vehicles, supplies, equipment and opportunities, including but not limited to the operation of his new pest control business in competition with the LLC.

1. The Plaintiff, Schultz, is a member of the LLC, owning 41% of the membership units.
2. The Plaintiff, Rogers, is a member of the LLC, owning 18% of the membership units.

3. Defendant McDermitt is a member of the LLC, owning 41% of the membership units.
4. On June 4, 2020 at 4:00 p.m., all of the members of the LLC, McDermitt, Rogers and Schultz, held a meeting before James B. Crawford, III, at the law office of Crawford Law Group PLLC.
5. Mr. Crawford drafted meeting minutes showing, among other things, that Rogers was unanimously elected as the Managing Member, replacing McDermitt, and that Rogers, “will take over the books of the company.” Exhibit 1.
6. Under Section 7(f) of the Second Amended and Restated Operating Agreement dated September 17, 2007, (the “Agreement”) actions by the members are, “upon majority vote of the units of the company.” Exhibit 2.
7. On June 29, 2020, McDermitt in his “Notice of Dissolution,” that he “hereby gives notice of resignation as managing member and member of the LLC,” effective July 25, 2020. The Notice of Dissolution is hereto attached as Exhibit 3.
8. The Notice also states that the Defendant was unilaterally dissolving the LLC in accordance with Section 10 of the Agreement, even though the individual Plaintiffs, the majority members, do not consent.
9. As stated in the Verified Complaint, McDermitt has converted LLC funds to pay for his own expenses, unrelated to the LLC’s business.
10. As further stated in the Verified Complaint, the Defendant continues to solely control the LLC’s bank account, falsely claiming to the depository, the Bank of Charles Town, that he is the LLC’s Managing Member.
11. The Defendant continues to collect mail and checks made payable to the LLC from the LLC’s post office box.

12. Upon information and belief, McDermitt cashes or deposits Company checks, using the money to fund his new business and to pay his own salary, although he is no longer working for the LLC.
13. Upon information and belief, McDermitt unilaterally cancelled the LLC's pesticide application license issued by the West Virginia Department of Agriculture.
14. McDermitt is also continues to use the LLC's equipment and personality, including but not limited to money, bank account, vehicles, supplies, equipment and opportunities, including but not limited to the operation of his new pest control business in competition with the LLC.
15. The Plaintiffs request a Preliminary Injunction ordering the Defendant to cease and desist acting as the LLC's Managing Member, and ordering the Defendant to cause the LLC's bank account, license, books and records, post office box and other personalty to be controlled by the dully elected Managing Member, William R. Rogers.
16. The Plaintiffs also request that the Defendant be restrained from using LLC personalty and equipment as recited above, for his own personal use or in the operation of his new business.

## **II. ARGUMENT**

This Court has general jurisdiction to award an injunction pursuant to West Virginia Code § 53-5-1, et seq., to enter an injunction “to protect any plaintiff in a suit for specific property . . . against injury from the sale, removal or concealment of such property.” Pursuant to the West Virginia Uniform Limited Liability Act, (the “Act”), “[a] member may maintain an action

against . . . another member for legal or equitable relief, with or without an accounting of the company's business, to enforce: (1) The member's rights under the operating agreement; (2) The member's rights under this chapter; and (3) The rights and otherwise protect the interests of the member. . .". West Virginia Code § 31B-4-410(a)(1),(2) and (3).

Under Paragraphs 7(a)(ii) and (vii) of the Agreement, the Managing Member may only use LLC funds to pay, "all amounts due and payable by the Company," and "to incur such indebtedness on behalf of the Company as . . . necessary to carry out the business and affairs of the Company." Exhibit 2. Under West Virginia Code § 31B-4-407(b), a member who knew distributions were made in violation of the Act or the operating agreement, "is personally liable to the company." The Defendant, when he was a member of the LLC, had a fiduciary duty to the LLC "to account to the company and to hold as trustee for it any property, profit or benefit derived by the member in the conduct . . . of the company's business or derived from the use by the member of the company's property, including the appropriation of a company's opportunity." West Virginia Code §31B-4-409(b)(1). Paragraph 8(a) of the Agreement and West Virginia Code §31B-4-408(b)(2) provide that a member or his attorney shall have reasonable access to inspect the books and records of the LLC, and "other information concerning the company's business or affairs."

A member "has the power to dissociate from a limited liability company at any time." West Virginia Code §31B-6-602(a). As a result, "upon a member's dissociation from a limited liability company: (1) The member's right to participate in the management and conduct of the company's business terminates . . .". W.V. Code §31B-6-603(b)(1).

Under West Virginia law, the factors to be considered in ruling on a motion for a Preliminary Injunction are as follows:

The granting or refusal of an injunction, whether mandatory or preventive, calls for the exercise of sound judicial discretion in view of all the circumstances of the particular case; regard being had to the nature of the controversy, the object for which the injunction is being sought, and the comparative hardship or convenience to the respective parties involved in the award or denial of the writ.

Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W. Va. 15, 24, 393 S.E.2d 653, 662, (1990), citing, State ex rel. Donley v. Baker, 112 W.Va. 263, 164 S.E.154 (1932). The Supreme Court has cited the old, “flexible” approach previously used by the United States Court of Appeals:

Under the balance of hardship test the district court must consider, in 'flexible interplay,' the following four factors in determining whether to issue a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest.

Id. at 662, quoting, Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley, 756 F.2d 1048, 1054 (1985). The Court explains that these factors are to be considered in “flexible interplay.” Id. Accordingly, the importance of any one factor may vary based on the severity of the other present factors.

The purpose of a Preliminary Injunction, “is to preserve the *status quo*” until the rights of the parties can be determined at trial or by motion. Galford v. Henry, 93 W. Va. 404, 405, 116 S.E. 683, 684 (1923). A right to injunctive relief may be shown by affidavit or verified complaint. West Virginia Code § 53-5-8; Ashland Oil v. Kaufmann, 181 W.Va. 728, 732, 384 S.E.2d 173, 177 (1989).

An injunction is an appropriate remedy under West Virginia Code § 53-5-1 to prevent the Defendant from continuing to use LLC funds and property, and because he is no longer a member, having resigned from participating in the business of the LLC. In addition, the harm to the LLC is irreparable, in that it cannot operate if the Defendant maintains control of the bank account, pesticide application license, vehicles, supplies, equipment and opportunities.

Finally, weighing the relative harm to the parties squarely falls in the favor of the Plaintiffs. The Defendant simply has no right to exercise any control over the LLC or its assets, including the checking account, books and records, license, post office box, and opportunities. The Plaintiffs' rights are clear under applicable West Virginia law. For these reasons, the Plaintiffs also have established that they will prevail on the merits. An injunction should issue to stop the Defendant from misusing and looting LLC assets. The Plaintiffs request that the Court exercise its discretion to not require a bond pursuant to West Virginia Code § 53-5-9, as it is an unnecessary expense to the LLC, and because the Plaintiffs are acting as fiduciaries pursuant to West Virginia Code § 31B-4-409.

### **III. CONCLUSION**

For the forgoing reasons, the Plaintiffs request entry of an immediate Order granting a Preliminary Injunction against the Defendant, Scott W. McDermitt:

(a) Enjoining the Defendant from exercising control of, and to turn over to the Plaintiffs, the LLC's property, including monies, personalty, equipment, supplies, motor vehicles, books and records, checking account, license, opportunities, goodwill, customers, post office box, and any other information relating to the LLC's business;



- (b) Ordering Defendant to cause the Plaintiff, William R. Rogers, to be substituted as the sole signatory on the LLC's checking account at the Bank of Charles Town and any other bank or institutional account controlled by the Defendant containing LLC funds;
- (c) Ordering the Defendant to turn over to the Plaintiffs all mail or checks in any way related to the LLC or his work as a prior employee of the LLC;
- (d) Ordering the Defendant to transfer to the LLC the pesticide application license issued by the West Virginia Department of Agriculture
- (e) Ordering the Defendant turn over the post office box key to the Plaintiffs;
- (f) Enjoining the Defendant and those acting through him from using the assets or opportunities of the LLC in the operation of his new business or otherwise; and
- (g) Such other and further relief as this Court finds just and proper.

**ACCURATE PEST MANAGEMENT, LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT, LLC  
By Counsel**

/s/Christian J. Riddell  
Christian J. Riddell (WV State Bar #12202)  
Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

/s/Nicola D. Smith  
Nicola D. Smith (WV State Bar #11251)

This meeting being held this 4<sup>th</sup> day of June, 2020 at the law office of Crawford Law Group PLLC, 120 N. George Street, Charles Town, WV 25414 at 4:00 p.m. Those attending were the owners of State Certified; Jeffery Schultz, owner of 33.3%, Scott McDermott, owner of a like amount and Bill Rogers, owner of 15% of the company.

The purpose of the meeting was to address certain matters and issues between the parties and as a result of a lengthy discussion, the parties have agreed as follows:

1. That the company will reimburse Jeffery Schultz for the purchase of Nick Petti's shares purchased in 2017 in the amount of \$32,678.71. This money shall be reimbursed with a rate of 4% and shall be paid by the Company to Jeffery Schultz in the sum of \$601.83 per month until paid.
2. The members of the company agreed to reinstate the company with the State of West Virginia as State Certified LLC and to select Accurate Pest Control as a dba.
3. All of the extra cars and trucks will be disposed of. Scott will be responsible for doing this and shall do the same within six (6) months of this agreement.
4. The company is currently paying rent to Emily in the amount of \$200.00 per month. The company will vacate the premises and terminate the rent.
5. The storage shed which is on Emily's property which was bought by the Company shall be purchased by Scott McDermott for the sum of \$\_\_\_\_\_.
6. The salaries of Scott and Bill shall remain the same. Any surplus at the end of the year shall be divided in accordance with the percentages of the Company's ownership. The parties may agree to distribute the profit on a different time frame.
7. Bill Rogers is elected as the Manager and will take over the books of the Company. He is authorized to hire outside help to help manage the financials of the Company.



The undersigned hereby agree that the above is the agreement and binding upon all of the members of the organization as of this \_\_\_\_ day of June, 2020.

\_\_\_\_\_  
Jeffery Schultz

\_\_\_\_\_  
Scott McDermott

\_\_\_\_\_  
Bill Rogers

SECOND AMENDED AND RESTATED OPERATING AGREEMENT

OF

ACCURATE PEST MANAGEMENT LLC

This Second Amended and Restated Operating Agreement, dated as of the 17<sup>th</sup> day of September, 2007, by and among Accurate Pest Management LLC (Company) and Scott W. McDermitt, Jeffrey W. Schultz and William R. Rogers (collectively, "Members").

WITNESSETH:

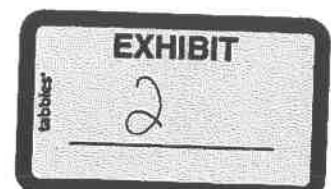
In consideration of the covenants and mutual agreements hereinafter set forth, the parties hereto (hereinafter collectively referred to as the "Members") agree as follows:

1. **FORMATION OF LIMITED LIABILITY COMPANY.** The Members form a limited liability company (hereinafter referred to as the "Company") pursuant to the provisions of the West Virginia Limited Liability Company Act ("Act").

2. **GENERAL PROVISIONS.**

a. Name. The name of the Company shall be Accurate Pest Management LLC and all business of the Company shall be conducted in that name.

b. Purpose. The general purpose of the company is to engage in (1) the business of pest control, fumigation, pest extermination and sterilization, termite control, including the use of such chemicals as the company and its subsidiaries may be licensed or permitted to use and preparation of escrow reports and the making of inspections as required and the servicing of the properties in the manner of extermination and fumigation and all phases of work of pest control in whatever respect the company or its authorized subsidiaries may be licensed to do. (2) To inspect septic systems and to conduct tests as to their function and issue reports thereof. (3) To inspect water



systems, check the same for potability, to conduct the necessary laboratory tests for contaminants and to make reports thereof, and (4) to engage in such other activities permitted under the laws of the State of West Virginia.

c. Principal Office. The principal office and place of business of the Company shall be 475 West Burr Blvd, Kearneysville, WV 25430, or such other place as the Members or Manager may from time to time determine following notice to the Members.

d. Term. The period of duration of the limited liability company shall expire when the Company is dissolved and terminated in accordance with the provisions of Section 10 of this Agreement.

### 3. CAPITAL.

a. Capital Contribution of Members. In exchange for their interests in the Company, the Members shall contribute to the Company in cash or property the amounts set forth opposite their names on the attached Schedule of Members, Contributions and Interest.

b. Timing and Additional Capital Contributions. Should the Operating Manager determine that additional capital is needed, and provides to each Member (a) the total amount of additional Capital Contributions required, (b) the reason the additional Capital Contribution is required, (c) each Member's proportionate share of the total additional Capital Contributions (calculated by multiplying the Member's Percentage Interest set forth in "SCHEDULE OF MEMBERS, CONTRIBUTIONS AND INTERESTS" of the operating agreement and any amendments thereto, by the total additional Capital Contribution required) and (d) the date each Member's additional Capital Contribution is due and payable, which date shall be at least thirty (30) days after the notice has been given, then the Members may make additional capital contributions as required. A Member's proportionate share shall be payable in cash or by certified check. No

Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company (excluding applicable requirements from financial institutions lending funds to the Company). If the Operating Manager determines, in lieu of requiring additional capital contributions from the Members, to obtain a loan from a financial institution, then all Members will be responsible for meeting the reasonable equity requirements imposed by the financial institution and executing a guaranty agreement of said loan, if required by the financial institution.

c. No right to Withdraw Capital. No interest shall accrue on a contribution to the capital of the Company, and no Member shall have the right to withdraw from the Company or be repaid any contribution of capital except as otherwise specifically provided herein.

d. Failure to Contribute Additional Capital Contribution. If a Member fails to pay when due all or any portion of any Capital Contribution set forth in Section 3 (a) and the remaining contributing Members agree to contribute the shortfall, then the Percentage Interest shall be adjusted as follows: Each Member's existing capital (the "Existing Capital") shall be computed as the produce of such Member's existing Percentage Interest and the net fair market value of Company assets (before taking into account the additional capital contributions). Each Member's new Percentage Interest shall be the percentage derived by dividing the sum of each Member's Existing Capital and additional capital contribution made under Section 3 (a) et seq. and "Schedule of Members, Contributions and Interest." by the aggregate of such sums determined for all Members. The net fair market value of Company assets shall be determined by agreement of all Members (or if they fail to agree, then by an MAI-designated appraiser chosen by the Operating Manager). If the remaining contributing Members do not agree to contribute the shortfall, then the Percentage Interest shall not be adjusted and the Operating

Manager shall have the option of borrowing such funds on behalf of the Company pursuant to Section 7.

e. Capital Accounts. A separate capital account shall be maintained for each Member. There shall be credited to each Member's capital account: 1) the amount of cash and the fair market value of any property contributed by the Member, 2) the Member's share of the profits of the Company, 3) the amount of any increase to the basis of assets of the Company due to an election under Section 754 of the Internal Revenue Code of 1986, as amended ("Code"); and there shall be charged against each Member's capital account: 1) the amount of all distributions to the Member, and 2) the Member's share of losses of the Company.

#### **4. MEMBERS' INTEREST.**

a. The Company Units. The interest of the Members in the Company shall initially be divided into 100 equal units ("Units"), each unit representing one percent of the capital interest in the Company. The Members and their respective interest in the Company following the contributions described in Section 3 hereof shall be as set forth on the attached Schedule of Members, Contributions and Interest. The Manager may issue certificates of interest to the holders of the Units in such form as it may consider appropriate.

b. Actions by Manager with Respect to Sales of Units. The Manager shall, with respect to any sale of Units, (i) make a notation in the appropriate records of the Company with respect to such sale, and (ii) obtain a written representation from each purchaser of Units as to his residence.

#### **5. PROFITS AND LOSSES.**

Taxable income, gain, loss, deduction or credit shall be allocated among the Members in accordance with their respective interest in the Company at the end of the Company year; provided,

however, that if any Members have contributed property other than money to the Company, the allocations shall be governed by Section 704(c) of the Code. If any Units have been transferred or assigned during any taxable year, the allocation of the interest represented thereby shall be prorated between the transferor and the transferee based upon the time the transferor and transferee held the Units during the year.

## 6. DISTRIBUTIONS.

The cash flow of the Company may be distributed among the Members in accordance with their interest in the Company. Such distributions shall occur within 30 days after the end of each calendar quarter and with such lessor or greater frequency as the Manager shall determine is consistent with the orderly administration of the business of the Company.

The "cash flow" of the Company, shall be equal to the taxable income of the Company, increased by the amount allowable as depreciation on the Company's assets, the amount of any amortization deduction and the amount of any other items deductible for federal income tax purposes in excess of actual cash payments with respect thereto, and decreased by the amount of any repayment of the principal portion of any debt of the Company, all cash expenditures not deductible for federal income tax purposes or the amount thereof in excess of the amount deductible for federal income tax purposes, and the amount of all other expenses and all reserves set aside by the Manager as it shall determine are necessary or desirable to provide for actual or contingent liabilities, working capital requirements of the Company, and for any other purpose necessary or incidental to the proper management and function of the business of the Company.

## 7. MANAGEMENT.

a. Authority of the Manager. Except as otherwise expressly provided herein, all decisions respecting any matter set forth in this Agreement or otherwise affecting or arising out of



the conduct of the business of the Company shall be made by the Manager. The Manager shall have the exclusive right and full authority to manage, conduct and operate the Company business. Specifically, but not by way of limitation, the Manager shall be authorized to: (i) employ such agents, employees, managers, accountants, attorneys, consultants and other person necessary or appropriate to carry out the business and affairs of the Company and to pay as an expense of the Company such reasonable fees, expenses, salaries, wages and other compensation to such persons as the Manager shall determine; (ii) cause to be paid all amounts due and payable by the Company to any person or entity; (iii) pay, expend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise upon such terms as the Manager may determine and upon such evidence as it may deem sufficient any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Company; (iv) invest or reinvest proceeds received upon condemnation; (v) make any and all expenditures or investments of excess funds in obligations which the Manager, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement; (vi) sell or lease Company property on such terms and conditions as the Manager shall determine to be in the best interest of the Company; (vii) incur such indebtedness on behalf of the Company as the Manager deems necessary to carry out the business and affairs of the Company; and (viii) purchase insurance insuring the Manager and its employees from personal liability for actions taken in good faith on behalf of the Company. With respect to all of its obligations, powers and responsibilities under this Agreement, the Manager is authorized to execute and deliver for and on behalf of the Company such deeds, leases, notes, contracts, agreements, assignments, bills of sale, security agreements, loan agreements, deeds of trust and other documents in such form and on such terms and conditions as it shall deem proper.

b. Liability of Manager. The Manager shall not be liable, responsible or accountable in damages or otherwise to any Member for, and the Company shall indemnify and save harmless the Manager from, any loss or damage incurred by reason of any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement, provided that the Manager was not guilty of gross negligence, willful misconduct or breach of fiduciary duty with respect to such act or omission and the satisfaction of any indemnification and any saving harmless shall be from and limited to Company assets, no Member having any personal liability on account thereof. Any act or omission performed or omitted by the Manager in good faith on advice of counsel to the Company shall be conclusively deemed to have been performed or omitted in good faith.

c. Limitations on Authority of Manager. Notwithstanding any provision of the Agreement to the contrary, the Manager shall not engage in any activity or business on behalf of the Company which is not within the scope of the purposes for which the Company is created. Unless having first obtained the consent of the Management Committee, the Manager shall not authorize the substitution of a new Manager, or, without having first obtained the consent of the Members, incur any indebtedness on behalf of the Company for which the Members would be personally liable. As used in this paragraph, the consent of the Members means consent of the holders of more than 50% of the units, which consent shall be obtained in writing within 60 days of written notice of the action requiring such consent given to all Members. The Members may take any action by meeting or by written action without meeting.

d. Appointment of Manager. Scott W. McDermitt is appointed the Manager of the Company, to serve until his removal or until his successor has been appointed and has undertaken its duties.

e. Management Committee. The Management Committee shall consist of three Members who shall have been selected by the Members in writing without the necessity of Amendment of this Agreement, and at any time and from time to time, and the Members shall fill any vacancy occurring in the position of the Management Committee in such manner. All actions of the Management Committee shall be effective upon majority approval of the members of the Management Committee, and the Management Committee may act by meeting or by action without meeting, which shall be effective upon the written consent thereto by a majority in interest of the Members. The Management Committee shall have authority, with or without cause, at any time to remove the Manager.

f. Vote of Members. The Members shall have one vote per each unit of the Company held by each of the Members and any action required permitted to be taken by the Members may be taken only upon a majority vote of the units of the Company.

g. Loans of Members to Company. As provided by West Virginia Code 31-1A-22, a Member or Manager may lend money to or transact other business with the Limited Liability Company and, subject to equitable law, has the same rights and obligations in respect thereto as a person who is not a Member or Manager.

h. Duties of Parties. (i.) Nothing in this agreement shall be deemed to restrict in any way the rights of any member to conduct any other business or activity whatsoever, and the Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to their respective rights to maintain, expand or diversify such interests and activities and to receive and enjoy profits or compensation there from. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or

activities of any other Member, and ( ii.) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their affiliates. In any of those cases, those dealings and undertakings shall be at an arm's length and on commercially reasonable terms.

i. Indemnification. If any Member engages in fraud, gross negligence or an intentional breach of this Agreement, said Member agrees to indemnify the other Members against any actual out of pocket costs or expenses incurred by the other Members as a direct result of such fraud, gross negligence or intentional breach of this Agreement.

#### **8. BOOKS, RECORDS AND AUDITS.**

a. Books and Records. The Manager shall keep, or cause to be kept, at the principal office of the Company, full and true books and records of account for the Company, which shall be open to reasonable inspection and examination by the Members or their duly authorized representatives. The Manager shall not be required to deliver or mail copies of the articles of organization, or any amendment or cancellation thereof to the Members.

b. Accounting Period. Annual Financial Statements. The accounting period of the Company shall be the calendar year hereinafter referred to as the Company's (taxable year). The Manager shall provide each Member with a financial statement of the Company as soon after the end of the calendar year as is reasonably possible.

c. Audits. Upon written request or demand of the holders of 50% or more of the Units, the Manager shall cause an audit of the Company books to be made by the certified public accountant or accountants designated in such demand or request. The costs of any such audit shall be paid by the Company. Any Member may request and obtain an audit of the Company's books upon written demand and at the sole expense of the requesting Member.

d. Federal Income Tax Information. As soon as possible after the close of each Company year, a report shall be furnished of the net profits or losses of the Company to each Member, together with a statement indicating the Member's share in the profits or losses for such year.

9. **ASSIGNMENT OF INTEREST IN COMPANY.** The Units may not be assigned, except in accordance with the provisions of this section.

a. Units are Restricted Securities. The Units have not been registered under the Securities Act of 1933 as amended (the "Securities Act") under the securities laws of any state, and may not be offered, sold, pledged, hypothecated or otherwise transferred unless and until registered under the Securities Act or, in the opinion of counsel in form and substance satisfactory to the Company, such offer, sale, pledge, hypothecation or transfer is in compliance therewith.

b. Right of First Refusal on Sale of Units. Any Member desiring to sell his Units shall first notify the Company in writing of his intention to sell, stating the name and address of the proposed purchaser, the number of Units proposed to be sold, the consideration proposed to be received therefore, and the proposed terms of sale. Any such offer by the manager shall operate as a conversion of the interest of the manager to that of a Member, and a new Manager shall be appointed in accordance with Section 9(d). The Company shall have the exclusive right and privilege to purchase the Units proposed to be sold for the consideration and upon the terms stated in such written notice at any time within 30 days of the later of (i) receipt of such written notice, or (ii) appointment of a Manager to act on the Company's behalf. If the Company does not purchase the Units so offered, during the next succeeding 60-day period the Member desiring to sell Units may then sell such Units to the person and at the price and terms stated in the offer. If the Units are not sold, they shall not be subsequently sold without first again offering them to the Company as

hereinabove provided. This section 9(b) shall not apply to any transfer of the Units by gift, bequest or laws of intestacy, nor shall it be construed as limiting in any way the authority and discretion of the Manager either to give or withhold his/her/its consent to any proposed assignment of Units by a Member under Section 9(c), even though the Company shall not have exercised its right and privilege to purchase such Units.

c. Consent Required for Substitution of New Members. Subject to Sections 9(a) and 9(b), any one or more Units held by a Member may be assigned by such Member at any time by written assignment in form and substance approved by the manager, but only (i) upon execution and delivery by the assignee of a written acceptance and adoption of this Agreement, as the same may be amended, together with such other documents, if any, as the Manager may require; (ii) the payment to the Company by the Member selling his Units of all reasonable expenses incurred by the Company in connection with such assignment; and (iii) with the unanimous written consent of the Members, which consent may, in each case, be given or denied in their absolute discretion. Upon such execution and consent, when applicable, but not otherwise, the assignee shall, with respect to the Units assigned, be admitted to the Company and become a substituted Member therein. The power of attorney given by the assignor Member pursuant to Section 11 hereof shall survive the delivery of such assignment for the purpose of enabling the Manager to execute, acknowledge, file and record all instruments necessary to effectuate such substitution.

d. Appointment and Substitution of New Manager. Subject to Section 10(b) herein, within 60 days of the event resulting in the withdrawal of the Manager, the Management Committee, pursuant to Section 7(e) above, shall appoint a new Manager. Failure of the Management Committee to appoint a new Manager within 60 days as set forth above shall result in disillusionment of the Company.

e. Resignation of Manager. The Manager shall not resign without written consent of a majority in interest of the Management Committee.

**10. DEATH, RESIGNATION, EXPULSION, BANKRUPTCY, DISSOLUTION, ETC.  
OF A MEMBER**

a. Death, Resignation, etc. of a Member. If a Member dies, resigns, or is expelled from the Company, becomes Bankrupt, has a court of competent jurisdiction enter an order or decree adjudicating him incompetent to manage his estate or person, dissolves and commences winding-up, or if the existence of a Member that is a corporation or other legal entity shall terminate (the "Incapacitated Member"), the Company shall be dissolved unless the business of the Company is continued by the consent of a Majority of Interest of the remaining Members (as such term is interpreted for purposes of Section 301.7701-2(b)(1) of the Regulations). If the business of the Company is continued, a Majority of Interest of the remaining Members shall elect either to (i) permit the Incapacitated Member's successor in interest to continue as an Assignee or substitute Member, or (ii) cause the Company to redeem the interest of the Incapacitated Member. If the Incapacitated Member's successor-in-interest continues as an assignee or substitute Member then, the successor-in-interest shall be liable for the Incapacitated Member's obligations arising under this Agreement and the Act.

b. Designation of Assignee. A Member may, by written instrument, designate any person to become the assignee of all or a portion of his interest as a Member immediately upon his death. Such a designee, if he is then living, shall become an Assignee of such interest immediately upon the assignor's death without requirement of any action on the part of the legal representatives of the assignor Member; such legal representatives of the estate of such deceased Member shall have no interest whatsoever in the Company. Any such designation must be filed with the Company during

such Member's lifetime. Such designation may be revoked from time to time and a new such designation made and filed with the Company. In no event shall a designee become a substitute Member unless the requirements of Article 9 of this Agreement are satisfied.

c. Redemption of Member's Interest. If the interest of the Incapacitated Member is to be redeemed, the price of the Incapacitated Member's interest shall be an amount equal to the amount of cash that the Incapacitated Member would have received if the assets of the Company were sold for an amount equal to 95% of their value as determined pursuant to Article 10 d. below and the proceeds of such deemed sale were distributed (following the allocation of Net Income and Net Losses pursuant to Article 5) pursuant to Article 10 j.

d. Valuation. The value of the assets of the Company shall be determined by (i) a written valuation made, and agreed to, by the Incapacitated Member, or its legal representative, and the remaining Members, or (ii) if the Incapacitated Member, or its legal representative, and the remaining Members cannot agree on a valuation, an independent expert appraiser mutually acceptable to the remaining Members and the Incapacitated Member, or his legal representative, as the case might be. In the event the Members are the Incapacitated Member, or his legal representative, as the case might be, cannot agree on the selection of an independent expert appraiser within thirty (30) days after the election of the other Members under Article 10 a. to redeem the interest of the Incapacitated Member, the Members, and the Incapacitated Member, or its legal representative, as the case might be, shall within ten (10) days after the expiration of the thirty (30) days period and by written notice to the other party, each select an independent expert appraiser to determine the value of the assets of the Company. If a party fails to appoint its appraiser within the period specified above, then the other party may serve notice on the party failing to appoint an appraiser asking such notice and if the appraiser is not appointed within such additional ten (10) day



period, the appraiser appointed by the other party shall be the sole appraiser. If only one appraiser has been selected, the value of the assets of the Company shall be the value selected by such appraiser and if two appraisers have been selected, the value shall be the average of the values determined by the appraisers.

e. Closing. The closing of the redemption of an Incapacitated Member's interest in the Company shall take place at the principal office of the Company at such time and upon such date as the remaining Members shall specify in a notice to the Incapacitated Member, or his legal representative, as the case might be, but in no event more than sixty (60) days after the determination of the value of the assets of the Company.

f. Payment of Purchase Price. The purchase price of an Incapacitated Member's interest in the Company shall be paid to the Incapacitated member, or his legal representative, as the case might be, at the closing specified in Article 10 e. above, entirely in cash or by bank officer's check or, at the option of the remaining Members, partly in cash (to the extent of not less than ten percent (10%) of the aggregate redemption price), with the balance represented by an unsecured promissory note payable in equal annual installments over a five-year period, bearing interest on the unpaid balance annually at the minimum rate necessary to avoid imputed interest under the Code.

g. Deficit in Capital Account. In the event an Incapacitated Member has a deficit in his Capital Account following the redemption of his interest in the Company, he shall be obligated to restore the amount of such deficit to the Company in the time and manner required in the Regulations under Section 704(b) of the Code.

h. Continuation of Company. In the event that the disillusionment of the Company pursuant to the events of disillusionment described in section 10 a. above, the business and affairs of the Company shall not be discontinued and the Company shall remain in existence as a Limited

Liability Company under the laws of the State of West Virginia, if the remaining unanimously agree to continue the Company under this Agreement within 60 days of such event of disillusionment.

i. Liquidation. The dissolution of the Company shall be effective on the date on which the event occurs giving rising to such dissolution, but the Company shall not be wound up until the Company's articles of organization shall have been canceled and the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company prior to the winding-up of the Company, the business of the Company and the rights of the Members shall continue to be governed by this Agreement. Upon dissolution of the Company and in the event the Members do not elect to substitute a new Manager as provided in Section 9(b) or 10(b), the Manger, or (in the absence of a Manager) a liquidator appointed with the consent of the Members, shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the cancellation of the Company's articles of organization.

j. Distributions in Liquidations. Upon the dissolution of the Company and the incident to the winding-up of the Company's business and affairs, the Manger (or liquidator, as applicable) shall pay or make provision for the payment of all liabilities and obligations of the Company to creditors other than members, actual or contingent, and all expenses of liquidation. Any amounts deemed necessary by the Manager (or liquidator) to provide a reserve for any unforeseen liabilities and obligations may, in the Manager's (or liquidator's) discretion, be deposited in a bank or trust company upon such terms and for such period of time as the Manger (or liquidator) may determine. Following the payment of or provision for the liabilities of the Company as aforesaid, the remaining assets of the Company shall be distributed in the following order of priority: (i) to the payment of all liabilities and obligations to Members, (ii) any remaining assets then to be allocated to the Members proportionately in accordance with their capital account balances and (iii) any

remaining assets, if any, to the members in accordance with their capital accounts.

## 11. AMENDMENTS.

a. Amendments. Amendments to this Agreement may be proposed by any Member holding 5% or more of the Units. Following such proposal, the Manager shall submit to the Members a written, verbatim statement of any proposed amendment, providing that counsel for the Company shall have approved of the same in writing as to form, and the Manager shall include in any such submission a recommendation as to the proposed amendment. The Manager shall seek the written vote of the Members on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. For purposes of obtaining a written vote, the Manager may require a response within a reasonable specified time, but not less than 7 days, and failure to respond in such time period shall constitute a vote which is consistent with the Manager's recommendation with respect to the proposal. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives the affirmative vote of holders of a majority of the Units.

b. Restrictions on Amendments. Notwithstanding Section 11(a) hereof,

(i) This Agreement shall not be amended without the consent of each Member adversely affected if such amendment would (A) modify the limited liability of a Member; or (B) alter the interest of a Member in profits, losses, or any Company distributions; and

(ii) This Agreement may be amended by the Manager, without the consent of any of the Members; (A) to add to the representations, duties, or obligations of the Manager or surrender any right or power granted to the Manager herein for the benefit of the Members; (B) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with

respect to matters or questions arising under this Agreement not inconsistent with the intent of this Agreement; and (C) to change any provision of this Agreement required to be so changed by the staff of the Securities and Exchange Commission or any other federal agency or by a state "Blue Sky" commissioner or similar official, which change is deemed by such commissioner, agency, or official to be for the benefit or protection of the Members; Provided that no amendment shall be adopted pursuant to this Section 11(b)(ii) unless the adoption thereof is for the benefit of or not adverse to the interest of the Members, and does not violate Section 11(b)(i) hereof.

## 12. MISCELLANEOUS.

a. Notices. Any and all notices, elections, consent or demands permitted or required to be made under this Agreement shall be made in writing signed by the Member giving such notice, election, consent or demand and shall be delivered personally or sent by registered or certified mail to the Company or other Members at the address or addresses set forth in the Company's records or to such other address as may be supplied by written notice given in conformity with the terms of this paragraph.

b. Successors and Assigns. Subject to the restrictions on transfers set forth herein, this Agreement and each and every provision hereof shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors in title, heirs and assigns, and each and every successor in interest to any Member, whether such successors acquires such an interest by way of gift, purchase, foreclosure or by any other method, shall hold such interest subject to all the terms and provisions of this Agreement.

c. Applicable Law. This Agreement and the rights of the parties hereunder shall be governed by the laws of the State of West Virginia.

d. Counterparts. This Agreement may be executed in any number of separate


counterparts, all of which taken together shall be deemed one original instrument notwithstanding that all parties are not signatory to the same counterpart.

e. Headings. The headings used in this Agreement are used solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

f. Severability. In the event any part of this agreement is found to be void, the remaining provisions thereof shall nevertheless be binding with the same affect as though the void parts were deleted.

IN WITNESS HEREOF, this Agreement has been executed by each of the Members as of the day and year first above written.

Members:

  
\_\_\_\_\_  
Scott W. McDermitt




  
\_\_\_\_\_  
Jeffrey W. Schultz

  
\_\_\_\_\_  
William R. Rogers

PREPARED BY: James B. Crawford, III  
CRAWFORD & KELLER PLLC  
P.O. BOX 266  
Charles Town, WV 25414

SCHEDULE OF MEMBERS, CONTRIBUTIONS AND INTERESTS

	<u>Members</u>	<u>Contributions</u>	<u>Interests</u>
1.	Scott W. McDermitt	\$ <u>410</u>	<u>41</u> %
2.	Jeffrey W. Schultz	\$ <u>410</u>	<u>41</u> %
3.	William R. Rogers	\$ <u>180</u>	<u>18</u> %

## NOTICE OF DISSOLUTION

Pursuant to § 10.a. of the Amendment of Ownership of ACC – Pest Management, LLC, “the LLC”, dated September 17, 2007, I hereby give notice of resignation as managing member and member of the LLC. This is to demand the redemption of my 41% membership interest in the LLC. This is effective as of July, 25<sup>th</sup>, 2020.

Date

6/24/2020

  
\_\_\_\_\_  
Scott W. McDermitt

To: Accurate Pest Management, LLC  
P.O. Box 1077  
Charles Town, WV  
25413

CC: Mr. Wm. Richard Rogers  
Mr. Jeffrey W. Schultz  
James B. Crawford, III, Esq.





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

**To:** Christian John Riddell  
stedmanriddell@gmail.com

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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following order - motion was FILED on 7/29/2020 1:51:27 PM

Notice Date: 7/29/2020 1:51:27 PM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov





E-FILED | 7/29/2020 1:51 PM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

**Accurate Pest Management, LLC,  
Jeffery Schultz,  
William R Rogers,  
Plaintiffs,**

Case No. CC-02-2020-C-170

## Order Granting Temporary Preliminary Injunction and Setting Hearing

Upon review of the pleadings, therein, the Court FINDS that the Motion for Preliminary Injunction has merit and is necessary to prevent irreparable harm to the Plaintiffs, pending a hearing on the relief sought, which will be scheduled forthwith herein.

WHEREFORE, it is hereby ORDERED and ADJUDGED that a preliminary injunction is hereby GRANTED until such as time as a hearing is held in this matter with the following instructions/prohibitions placed upon the Defendant:

(a) Defendant is enjoined from exercising control over the Property of Accurate Pest Management, LLC (hereafter "LLC"), and to turn over to the Plaintiffs all property belonging to the Company, including monies, personalty, equipment, supplies, motor vehicles, books and records, checking account, license, opportunities, goodwill, customers, post office box, and any other information relating to the LLC's business;

(b) The Plaintiff, William R. Rogers, shall be substituted as the sole signatory on

the LLC's checking account at the Bank of Charles Town and any other bank or institutional account controlled by the Defendant containing LLC funds, and shall be authorized to act as Managing Member of the LLC for all purposes;

(c) Defendant shall turn over to the Plaintiff Rogers all mail or checks written to the LLC or in any way related to the LLC or his work as a prior employee of the LLC;

(d) Defendant shall reinstate and transfer to the LLC the pesticide application license issued by the West Virginia Department of Agriculture.

(f) Defendant and those acting through him shall be enjoined from using the assets or opportunities of the LLC in the operation of his new business or otherwise.

It is further ORDERED that a hearing on the matter shall be set for Monday, the 10th day of August, 2020 at 2:00 p.m. The parties are directed to appear to protect their interests.

The Clerk is directed to furnish attested copies of this Order to counsel for the Plaintiffs and to the Defendant.

Prepared (prior to the Court's edits) by:

/s/Christian J. Riddell  
Christian J. Riddell (WV State Bar #12202)  
Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

/s/ Steven Redding  
Circuit Court Judge  
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.



## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following answer was FILED on 8/26/2020 3:37:10 PM

Notice Date: 8/26/2020 3:37:10 PM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



# COVER SHEET

E-FILED | 8/26/2020 3:37 PM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

**Accurate Pest Management, LLC v. Scott W. McDermitt**

**First Plaintiff:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**First Defendant:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**Judge:**

Steven Redding

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Tort

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☒ Yes ☐ No

**Case will be ready for trial by:**

**Mediation Requested:**

☐ Yes ☒ No

**Substantial Hardship Requested:**

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Michael Scales, 314 W John St, Martinsburg, WV 25401

## SERVED PARTIES

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs.

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**DEFENDANT'S ANSWER TO COMPLAINT**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, Michael L. Scales, Esq. and the law firm of Michael L. Scales, PLLC, and for his Answer to Plaintiff's Complaint, respectfully states as follows:

1. Defendant denies the allegations contained in paragraph 1 of the Complaint, as the alleged LLC changed its name to State Certified Termite & Pest LLC in 2011, and its charter was revoked in 2015.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint, if the LLC actually exists; otherwise they are denied.
4. Defendant admits the same allegations contained in paragraph 2 of the Complaint.
5. Defendant admits the allegations contained in paragraph 5 of the Complaint, if the LLC exists; otherwise, denied.
6. Defendant admits the allegations contained in paragraph 6 of the Complaint as of June, 2020 if the LLC exists; otherwise, they are denied.
7. Defendant admits the allegations contained in paragraph 7 of the Complaint.

8. Defendant admits the allegations contained in paragraph 8 of the Complaint, if the LLC exists; otherwise, they are denied.

9. Defendant admits the allegations contained in paragraph 9 of the Complaint as of June, 2020, if the LLC exists; otherwise, they are denied.

10. Defendant denies the allegations contained in paragraph 10 of the Complaint.

11. Defendant admits the allegations that he resides in Berkeley County, West Virginia, but otherwise denies the remaining allegations contained in paragraph 11 of the Complaint.

12. Defendant has no information upon which to form a belief as to the allegations in paragraph 12 of the Complaint.

13. Defendant admits the allegations contained in paragraph 13 of the Complaint if the LLC actually exists; otherwise, they are denied.

14. Paragraph 14 of the Complaint is not an allegation of fact but a proposition of Plaintiffs' intent for which WVRCP requires no answer; but if the Court rules otherwise, Defendant denies the allegations in paragraph 14. Furthermore, if the LLC exists, the individual defendants cannot act derivatively for the LLC because they constitute a majority of the voting membership interests of the alleged LLC.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.

16. Defendant incorporates by reference his answers to paragraphs 1 through 15 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 16 of the Complaint.

17. Defendant admits the allegations contained in paragraph 17 of the Complaint if the LLC actually still exists; otherwise, they are denied.

18. Defendant admits the allegations contained in paragraph 18 of the Complaint if the LLC actually still exists; otherwise, they are denied.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint as it is not a complete sentence and is a confusing allegation.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint as it is not a complete sentence and is a confusing allegation.

21. Defendant admits that there was a meeting but denies that the purpose was as alleged in paragraph 21. Furthermore, if the alleged LLC does not exist, the meeting is a nullity.

22. Defendant admits the allegations contained in paragraph 22 of the Complaint if the LLC actually exists; otherwise, they are denied.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint as he has never seen those alleged minutes before being served with process by service of the Complaint. Furthermore, if the alleged LLC does not exist, that writing is a nullity.

24. Defendant admits the allegations contained in paragraph 24 of the Complaint insofar and only insofar as electing Rogers as the new manager if the alleged LLC actually exists. Otherwise, all allegations are denied.

25. Defendant admits the allegations contained in paragraph 25 of the Complaint if the alleged LLC actually exists; otherwise, they are denied.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 27 of the Complaint, but denies that he made any such request to BCT as he believes that neither Rogers nor Schultz ever signed the required signatory cards for the bank account at BCT when it was first established.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint, and further states that the alleged LLC may not have existed since 2015.



29. Defendant denies the allegations contained in paragraph 29 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint.

34. Defendant admits in part the allegations in paragraph 34 that he has in his possession certain of the personalty identified in paragraph 34 of the Complaint, but denies that he is using any of that property. Defendant furthermore states that the alleged LLC may not have owned any property since 2015 when its charter was revoked.

35. Defendant denies the allegations contained in paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint, and the alleged LLC may not have existed since 2015.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint, and the alleged LLC may not have existed since 2015.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint, and the alleged LLC may not have existed since 2015.

39. Defendant denies the allegations contained in paragraph 39 of the Complaint.

40. Defendant admits that the document speaks for itself, but otherwise denies the remaining allegations contained in paragraph 40 of the Complaint, if the alleged LLC actually exists; otherwise denies the allegations.

41. Defendant admits that the document speaks for itself, but otherwise denies the remaining allegations contained in paragraph 41 of the Complaint.

42. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 42 of the Complaint.

43. Defendant incorporates by reference his answers to paragraphs 1 through 42 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 43 of Count I of the Complaint.

44. Defendant denies the allegations contained in paragraph 44 of the Complaint.

45. Defendant denies the allegations contained in paragraph 45 of the Complaint.

46. Defendant incorporates by reference his answers to paragraphs 1 through 45 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 46 of Count II of the Complaint.

47. Defendant denies the allegations contained in paragraph 47 of the Complaint.

48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

49. Defendant denies the allegations contained in paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in paragraph 50 of the Complaint.

51. Defendant incorporates by reference his answers to paragraphs 1 through 50 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 51 of Count III of the Complaint.

52. Defendant denies the allegations contained in paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in paragraph 54 of the Complaint.

55. Defendant incorporates by reference his answers to paragraphs 1 through 55 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 55 of Count IV of the Complaint.

56. Defendant denies the allegations contained in paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

62. Defendant incorporates by reference his answers to paragraphs 1 through 61 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 62 of Count V of the Complaint.

63. Defendant denies the allegations contained in paragraph 63 of the Complaint.

64. Defendant denies the allegations contained in paragraph 64 of the Complaint.

65. Defendant denies the allegations contained in paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in paragraph 66 of the Complaint.

67. Defendant incorporates by reference his answers to paragraphs 1 through 66 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 67 of Count VI of the Complaint.

68. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 68 of the Complaint, but denies that Plaintiffs are entitled to any set off's or credits against Defendant's distributional share of the alleged LLC if it actually exists.

69. Defendant incorporates by reference his answers to paragraphs 1 through 68 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 69 of Count VII of the Complaint.

70. Defendant denies the allegations contained in paragraph 70 of the Complaint.

71. Defendant denies the allegations contained in paragraph 71 of the Complaint.

72. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 72 of the Complaint.

73. Defendant incorporates by reference his answers to paragraphs 1 through 72 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 73 of Count VIII of the Complaint.

74. Defendant denies the allegations contained in paragraph 74 of the Complaint.

75. Defendant denies the allegations contained in paragraph 75 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Waiver and estoppel.

2. Plaintiffs have a duty to elect remedies.

3. Count IV for alleged fraud misrepresentations has not been pled with particularity as required by WVRCP Rule 9(b) and Defendant moves for its dismissal pursuant to WVRCP Rule 12(b)(6).

4. That Rogers and Defendant agreed that each may pay for certain minor personal expenses with the business credit cards for Home Depot and Lowe's. Furthermore, Rogers received personal assets in the nature of a 2018 Toyota Tacoma pickup truck and 2014 Nissan Envy purchased and paid for entirely by the business, but the certificate of title was taken solely

in the name of Rogers at Rogers' sole request. These payments for Rogers were in excess of \$50,000.00.

WHEREFORE, Defendant, Scott W. McDermitt, having answered the Complaint, demands that it be dismissed, and that he be awarded her costs expended, including reasonable attorneys fees and costs.

DEFENDANT DEMANDS A TRIAL BY JURY.

**I. COUNTERCLAIM OF DEFENDANT, SCOTT MCDERMITT  
AGAINST PLAINTIFF, WILLIAM R. ROGERS**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, who, for his Counterclaim against Defendant, William R. Rogers, and respectfully states as follows:

1. That Defendant, Scott W. McDermitt, is, and for all times and matters relevant herein, been a resident of Berkeley County, West Virginia.
2. That Plaintiff, William R. Rogers, for all times and matters relevant herein, is a resident and has been a resident of Jefferson County, West Virginia.
3. That both Plaintiff, William R. Rogers and Defendant were both agents for a business known as State Certified Termite & Pest, and were both the two operating agents of that business.
4. That these parties Rogers and Defendant shared a certain cellular phone network while they were acting as agents for State Certified Termite & Pest with U.S. Cellular.
5. That unbeknownst to Defendant, and specifically without his consent or approval, and without that of any of the members of Defendant's family, Rogers purposefully, intentionally, illegally, wantonly and willfully tracked the whereabouts of Defendant and his family members by the use of the cellphone network, and violated the privacy of the Defendant and his family by an unreasonable intrusion upon the seclusion of the Defendant and his family by tracking their

whereabouts at all times during the day and night for a period of approximately two (2) years, ending in June of 2020.

6. That Defendant believes upon information that Rogers tracked physicians' appointments to which the Defendant and his family took, including those of their minor son.

7. That Rogers violated Defendant's right of privacy, including Defendant's right to be let alone and kept secret his private communications, conversations, affairs and whereabouts, which is an unwarranted invasion or violation of which gives rise to a common law of action for invasion of privacy for which Rogers proximately caused harm and damages to Defendant.

8. That as the proximate result of Rogers wrongfully, intentionally, willfully, wantonly and illegally, and in violation of the Defendant's right of privacy, Defendant has been caused harm and damages in an amount to be determined from the evidence.

9. That all of such actions were wanton, willful, oppressive and malicious for which punitive damages are awardable to Defendant.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment against Plaintiff, William R. Rogers, in an amount to be determined from the evidence, including attorneys fees, court costs, pre- and post-judgment interest and punitive damages, and for such other relief as the Court deems necessary and proper.

**II. COUNTERCLAIM FOR DISASSOCIATION AND FOR AN ORDER  
REQUIRING PLAINTIFFS TO PURCHASE DEFENDANT'S  
DISTRIBUTIONAL INTERESTS**

**NOW COMES** Defendant, Scott W. McDermitt, who alleges and complains as follows against Plaintiffs:

1. That Defendant incorporates by reference paragraphs 1 through 5 inclusive and paragraphs 7 and 8 of the Complaint, except the name of the alleged LLC should have been State Certified Termite & Pest LLC in paragraph 1 of the Complaint.

2. That Defendant notified Plaintiffs of his intention to disassociate by the notice provided to the Plaintiffs on June 29, 2020, to be effective July 25, 2020, a copy of which is attached hereto as Exhibit 1.

3. That Exhibit 1 expressly provides that the Defendant disassociated from the alleged LLC pursuant to §31B-6-601(1) and §36B-6-602(a) of the W.Va. *Code*.

4. That the alleged LLC has advised the Defendant that it intends to continue the business of the alleged LLC, and not dissolve it.

5. That the effect of the alleged LLC deciding to continue the business requires the alleged LLC to purchase the distributional shares of Defendant pursuant to §36B-7-701(a)(1) and §36B-7-702 of the W.Va. *Code*.

6. That Defendant demands that the alleged LLC and the other individual Plaintiffs purchase this Defendant's 41% distributional share pursuant to the last-mentioned statutes.


7. That if the alleged LLC and the individual Plaintiffs refuse or default with respect to the purchase of the Defendant's distributional shares, then Defendant demands dissolution of the alleged LLC if not already dissolved by virtue of the loss of its charter.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment that the alleged LLC, State Certified Termite & Pest, LLC, and/or Plaintiffs purchase the distributional interests owned by Defendant in the manner provided by statute; and, if the alleged LLC or individual Plaintiffs do not purchase Defendant's distributional interests within the time limitations set forth in the statute, then for the Court to order dissolution of the alleged LLC, if not already dissolved; to pay

Defendant his 41% of the alleged LLC, and for Defendant's court costs, attorneys fees and for such other relief as the Court deems necessary and proper in the premises.

For all claims above which permit trial by jury, **DEFENDANT DEMANDS A TRIAL BY JURY.**

Scott W. McDermitt, Defendant  
By Counsel


  
\_\_\_\_\_  
Michael L. Scales, Attorney at Law  
Counsel for Defendant  
Michael L. Scales, PLLC  
314 W. John Street  
Martinsburg, WV 25401  
(304) 263-0000  
WV Bar No. 3277



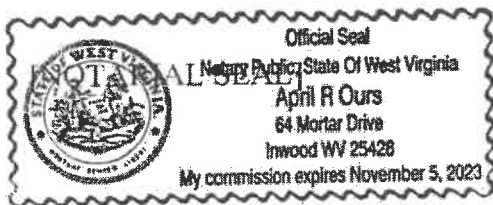
## VERIFICATION

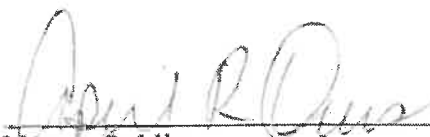
STATE OF WEST VIRGINIA,  
COUNTY OF BERKELEY, to-wit:

Personally appeared before the undersigned authority, SCOTT W. MCDERMITT, Defendant named in the foregoing Answer and Counterclaim, after having been duly sworn upon his oath, deposes and states that the facts and allegations contained in the foregoing Answer and Counterclaim are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, he believes them to be true.

  
\_\_\_\_\_  
Scott W. McDermitt

Taken, subscribed and sworn to, before me, the undersigned authority, this 26<sup>th</sup> day  
of August, 2020, by **Scott W. McDermitt**.



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

My commission expires: Nov. 5, 2023

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs.

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**CERTIFICATE OF SERVICE**

I, Michael L. Scales, Attorney for Defendant, Scott W. McDermitt, do hereby certify that I have served a true copy of ANSWER TO COMPLAINT AND COUNTERCLAIM OF DEFENDANT by the Court's e-filing system, and by mailing a true copy thereof to counsel for Plaintiffs, Christian J. Riddell, Esq., this 26<sup>th</sup> day of August, 2020.



Michael L. Scales, Attorney at Law

## NOTICE OF DISSOLUTION

Pursuant to § 10.a. of the Amendment of Ownership of ACC – Pest Management, LLC, "the LLC", dated September 17, 2007, I hereby give notice of resignation as managing member and member of the LLC. This is to demand the redemption of my 41% membership interest in the LLC. This is effective as of July, 25<sup>th</sup>, 2020.

6/29/2020  
Date

  
\_\_\_\_\_  
Scott W. McDermitt

To: Accurate Pest Management, LLC  
P.O. Box 1077  
Charles Town, WV  
25413

CC: Mr. Wm. Richard Rogers  
Mr. Jeffrey W. Schultz  
James B. Crawford, III, Esq.

EXHIBIT #  
\_\_\_\_\_

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs.

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**DEFENDANT'S ANSWER TO COMPLAINT**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, Michael L. Scales, Esq. and the law firm of Michael L. Scales, PLLC, and for his Answer to Plaintiff's Complaint, respectfully states as follows:

1. Defendant denies the allegations contained in paragraph 1 of the Complaint, as the alleged LLC changed its name to State Certified Termite & Pest LLC in 2011, and its charter was revoked in 2015.
2. Defendant admits the allegations contained in paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in paragraph 3 of the Complaint, if the LLC actually exists; otherwise they are denied.
4. Defendant admits the same allegations contained in paragraph 2 of the Complaint.
5. Defendant admits the allegations contained in paragraph 5 of the Complaint, if the LLC exists; otherwise, denied.
6. Defendant admits the allegations contained in paragraph 6 of the Complaint as of June, 2020 if the LLC exists; otherwise, they are denied.
7. Defendant admits the allegations contained in paragraph 7 of the Complaint.

8. Defendant admits the allegations contained in paragraph 8 of the Complaint, if the LLC exists; otherwise, they are denied.

9. Defendant admits the allegations contained in paragraph 9 of the Complaint as of June, 2020, if the LLC exists; otherwise, they are denied.

10. Defendant denies the allegations contained in paragraph 10 of the Complaint.

11. Defendant admits the allegations that he resides in Berkeley County, West Virginia, but otherwise denies the remaining allegations contained in paragraph 11 of the Complaint.

12. Defendant has no information upon which to form a belief as to the allegations in paragraph 12 of the Complaint.

13. Defendant admits the allegations contained in paragraph 13 of the Complaint if the LLC actually exists; otherwise, they are denied.

14. Paragraph 14 of the Complaint is not an allegation of fact but a proposition of Plaintiffs' intent for which WVRCP requires no answer; but if the Court rules otherwise, Defendant denies the allegations in paragraph 14. Furthermore, if the LLC exists, the individual defendants cannot act derivatively for the LLC because they constitute a majority of the voting membership interests of the alleged LLC.

15. Defendant denies the allegations contained in paragraph 15 of the Complaint.

16. Defendant incorporates by reference his answers to paragraphs 1 through 15 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 16 of the Complaint.

17. Defendant admits the allegations contained in paragraph 17 of the Complaint if the LLC actually still exists; otherwise, they are denied.

18. Defendant admits the allegations contained in paragraph 18 of the Complaint if the LLC actually still exists; otherwise, they are denied.

19. Defendant denies the allegations contained in paragraph 19 of the Complaint as it is not a complete sentence and is a confusing allegation.

20. Defendant denies the allegations contained in paragraph 20 of the Complaint as it is not a complete sentence and is a confusing allegation.

21. Defendant admits that there was a meeting but denies that the purpose was as alleged in paragraph 21. Furthermore, if the alleged LLC does not exist, the meeting is a nullity.

22. Defendant admits the allegations contained in paragraph 22 of the Complaint if the LLC actually exists; otherwise, they are denied.

23. Defendant denies the allegations contained in paragraph 23 of the Complaint as he has never seen those alleged minutes before being served with process by service of the Complaint. Furthermore, if the alleged LLC does not exist, that writing is a nullity.

24. Defendant admits the allegations contained in paragraph 24 of the Complaint insofar and only insofar as electing Rogers as the new manager if the alleged LLC actually exists. Otherwise, all allegations are denied.

25. Defendant admits the allegations contained in paragraph 25 of the Complaint if the alleged LLC actually exists; otherwise, they are denied.

26. Defendant denies the allegations contained in paragraph 26 of the Complaint.

27. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 27 of the Complaint, but denies that he made any such request to BCT as he believes that neither Rogers nor Schultz ever signed the required signatory cards for the bank account at BCT when it was first established.

28. Defendant denies the allegations contained in paragraph 28 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

29. Defendant denies the allegations contained in paragraph 29 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

30. Defendant denies the allegations contained in paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in paragraph 31 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

32. Defendant denies the allegations contained in paragraph 32 of the Complaint, and further states that the alleged LLC may not have existed since 2015.

33. Defendant denies the allegations contained in paragraph 33 of the Complaint.

34. Defendant admits in part the allegations in paragraph 34 that he has in his possession certain of the personalty identified in paragraph 34 of the Complaint, but denies that he is using any of that property. Defendant furthermore states that the alleged LLC may not have owned any property since 2015 when its charter was revoked.

35. Defendant denies the allegations contained in paragraph 35 of the Complaint.

36. Defendant denies the allegations contained in paragraph 36 of the Complaint, and the alleged LLC may not have existed since 2015.

37. Defendant denies the allegations contained in paragraph 37 of the Complaint, and the alleged LLC may not have existed since 2015.

38. Defendant denies the allegations contained in paragraph 38 of the Complaint, and the alleged LLC may not have existed since 2015.

39. Defendant denies the allegations contained in paragraph 39 of the Complaint.

40. Defendant admits that the document speaks for itself, but otherwise denies the remaining allegations contained in paragraph 40 of the Complaint, if the alleged LLC actually exists; otherwise denies the allegations.

41. Defendant admits that the document speaks for itself, but otherwise denies the remaining allegations contained in paragraph 41 of the Complaint.

42. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 42 of the Complaint.

43. Defendant incorporates by reference his answers to paragraphs 1 through 42 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 43 of Count I of the Complaint.

44. Defendant denies the allegations contained in paragraph 44 of the Complaint.

45. Defendant denies the allegations contained in paragraph 45 of the Complaint.

46. Defendant incorporates by reference his answers to paragraphs 1 through 45 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 46 of Count II of the Complaint.

47. Defendant denies the allegations contained in paragraph 47 of the Complaint.

48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

49. Defendant denies the allegations contained in paragraph 49 of the Complaint.

50. Defendant denies the allegations contained in paragraph 50 of the Complaint.

51. Defendant incorporates by reference his answers to paragraphs 1 through 50 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 51 of Count III of the Complaint.

52. Defendant denies the allegations contained in paragraph 52 of the Complaint.

53. Defendant denies the allegations contained in paragraph 53 of the Complaint.

54. Defendant denies the allegations contained in paragraph 54 of the Complaint.



55. Defendant incorporates by reference his answers to paragraphs 1 through 55 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 55 of Count IV of the Complaint.

56. Defendant denies the allegations contained in paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in paragraph 58 of the Complaint.

59. Defendant denies the allegations contained in paragraph 59 of the Complaint.

60. Defendant denies the allegations contained in paragraph 60 of the Complaint.

61. Defendant denies the allegations contained in paragraph 61 of the Complaint.

62. Defendant incorporates by reference his answers to paragraphs 1 through 61 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 62 of Count V of the Complaint.

63. Defendant denies the allegations contained in paragraph 63 of the Complaint.

64. Defendant denies the allegations contained in paragraph 64 of the Complaint.

65. Defendant denies the allegations contained in paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in paragraph 66 of the Complaint.

67. Defendant incorporates by reference his answers to paragraphs 1 through 66 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 67 of Count VI of the Complaint.

68. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 68 of the Complaint, but denies that Plaintiffs are entitled to any set offs or credits against Defendant's distributional share of the alleged LLC if it actually exists.

69. Defendant incorporates by reference his answers to paragraphs 1 through 68 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 69 of Count VII of the Complaint.

70. Defendant denies the allegations contained in paragraph 70 of the Complaint.

71. Defendant denies the allegations contained in paragraph 71 of the Complaint.

72. Defendant has no information upon which to form a belief as to the allegations contained in paragraph 72 of the Complaint.

73. Defendant incorporates by reference his answers to paragraphs 1 through 72 inclusive of this Answer, including his affirmative defenses, in answer to paragraph 73 of Count VIII of the Complaint.

74. Defendant denies the allegations contained in paragraph 74 of the Complaint.

75. Defendant denies the allegations contained in paragraph 75 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Waiver and estoppel.

2. Plaintiffs have a duty to elect remedies.

3. Count IV for alleged fraud misrepresentations has not been pled with particularity as required by WVRCP Rule 9(b) and Defendant moves for its dismissal pursuant to WVRCP Rule 12(b)(6).

4. That Rogers and Defendant agreed that each may pay for certain minor personal expenses with the business credit cards for Home Depot and Lowe's. Furthermore, Rogers received personal assets in the nature of a 2018 Toyota Tacoma pickup truck and 2014 Nissan Envy purchased and paid for entirely by the business, but the certificate of title was taken solely

in the name of Rogers at Rogers' sole request. These payments for Rogers were in excess of \$50,000.00.

WHEREFORE, Defendant, Scott W. McDermitt, having answered the Complaint, demands that it be dismissed, and that he be awarded her costs expended, including reasonable attorneys fees and costs.

DEFENDANT DEMANDS A TRIAL BY JURY.

**I. COUNTERCLAIM OF DEFENDANT, SCOTT MCDERMITT  
AGAINST PLAINTIFF, WILLIAM R. ROGERS**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, who, for his Counterclaim against Defendant, William R. Rogers, and respectfully states as follows:

1. That Defendant, Scott W. McDermitt, is, and for all times and matters relevant herein, been a resident of Berkeley County, West Virginia.
2. That Plaintiff, William R. Rogers, for all times and matters relevant herein, is a resident and has been a resident of Jefferson County, West Virginia.
3. That both Plaintiff, William R. Rogers and Defendant were both agents for a business known as State Certified Termite & Pest, and were both the two operating agents of that business.
4. That these parties Rogers and Defendant shared a certain cellular phone network while they were acting as agents for State Certified Termite & Pest with U.S. Cellular.
5. That unbeknownst to Defendant, and specifically without his consent or approval, and without that of any of the members of Defendant's family, Rogers purposefully, intentionally, illegally, wantonly and willfully tracked the whereabouts of Defendant and his family members by the use of the cellphone network, and violated the privacy of the Defendant and his family by an unreasonable intrusion upon the seclusion of the Defendant and his family by tracking their

whereabouts at all times during the day and night for a period of approximately two (2) years, ending in June of 2020.

6. That Defendant believes upon information that Rogers tracked physicians' appointments to which the Defendant and his family took, including those of their minor son.

7. That Rogers violated Defendant's right of privacy, including Defendant's right to be let alone and kept secret his private communications, conversations, affairs and whereabouts, which is an unwarranted invasion or violation of which gives rise to a common law of action for invasion of privacy for which Rogers proximately caused harm and damages to Defendant.

8. That as the proximate result of Rogers wrongfully, intentionally, willfully, wantonly and illegally, and in violation of the Defendant's right of privacy, Defendant has been caused harm and damages in an amount to be determined from the evidence.

9. That all of such actions were wanton, willful, oppressive and malicious for which punitive damages are awardable to Defendant.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment against Plaintiff, William R. Rogers, in an amount to be determined from the evidence, including attorneys fees, court costs, pre- and post-judgment interest and punitive damages, and for such other relief as the Court deems necessary and proper.

**II. COUNTERCLAIM FOR DISASSOCIATION AND FOR AN ORDER  
REQUIRING PLAINTIFFS TO PURCHASE DEFENDANT'S  
DISTRIBUTIONAL INTERESTS**

**NOW COMES** Defendant, Scott W. McDermitt, who alleges and complains as follows against Plaintiffs:

1. That Defendant incorporates by reference paragraphs 1 through 5 inclusive and paragraphs 7 and 8 of the Complaint, except the name of the alleged LLC should have been State Certified Termite & Pest LLC in paragraph 1 of the Complaint.

2. That Defendant notified Plaintiffs of his intention to disassociate by the notice provided to the Plaintiffs on June 29, 2020, to be effective July 25, 2020, a copy of which is attached hereto as Exhibit 1.

3. That Exhibit 1 expressly provides that the Defendant disassociated from the alleged LLC pursuant to §31B-6-601(1) and §36B-6-602(a) of the W.Va. *Code*.

4. That the alleged LLC has advised the Defendant that it intends to continue the business of the alleged LLC, and not dissolve it.

5. That the effect of the alleged LLC deciding to continue the business requires the alleged LLC to purchase the distributional shares of Defendant pursuant to §36B-7-701(a)(1) and §36B-7-702 of the W.Va. *Code*.

6. That Defendant demands that the alleged LLC and the other individual Plaintiffs purchase this Defendant's 41% distributional share pursuant to the last-mentioned statutes.

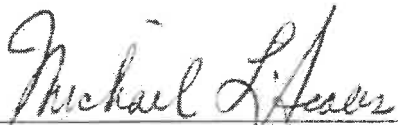
7. That if the alleged LLC and the individual Plaintiffs refuse or default with respect to the purchase of the Defendant's distributional shares, then Defendant demands dissolution of the alleged LLC if not already dissolved by virtue of the loss of its charter.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment that the alleged LLC, State Certified Termite & Pest, LLC, and/or Plaintiffs purchase the distributional interests owned by Defendant in the manner provided by statute; and, if the alleged LLC or individual Plaintiffs do not purchase Defendant's distributional interests within the time limitations set forth in the statute, then for the Court to order dissolution of the alleged LLC, if not already dissolved; to pay

Defendant his 41% of the alleged LLC, and for Defendant's court costs, attorneys fees and for such other relief as the Court deems necessary and proper in the premises.

For all claims above which permit trial by jury, **DEFENDANT DEMANDS A TRIAL BY JURY.**


Scott W. McDermitt, Defendant  
By Counsel

  
Michael L. Scales, Attorney at Law  
Counsel for Defendant  
Michael L. Scales, PLLC  
314 W. John Street  
Martinsburg, WV 25401  
(304) 263-0000  
WV Bar No. 3277

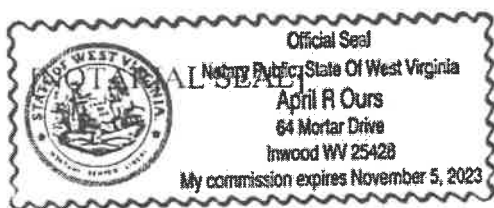
**VERIFICATION**


STATE OF WEST VIRGINIA,  
COUNTY OF BERKELEY, to-wit:

Personally appeared before the undersigned authority, SCOTT W. MCDERMITT, Defendant named in the foregoing Answer and Counterclaim, after having been duly sworn upon his oath, deposes and states that the facts and allegations contained in the foregoing Answer and Counterclaim are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, he believes them to be true.

  
\_\_\_\_\_  
Scott W. McDermitt

Taken, subscribed and sworn to, before me, the undersigned authority, this 26<sup>th</sup> day of August, 2020, by Scott W. McDermitt.



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

My commission expires:

Nov. 5, 2023

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs.

v.


Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**CERTIFICATE OF SERVICE**

I, Michael L. Scales, Attorney for Defendant, Scott W. McDermitt, do hereby certify that I have served a true copy of ANSWER TO COMPLAINT AND COUNTERCLAIM OF DEFENDANT by the Court's e-filing system, and by mailing a true copy thereof to counsel for Plaintiffs, Christian J. Riddell, Esq., this 26<sup>th</sup> day of August, 2020.



Michael L. Scales, Attorney at Law




## NOTICE OF DISSOLUTION

Pursuant to § 10.a. of the Amendment of Ownership of ACC – Pest Management, LLC, "the LLC", dated September 17, 2007, I hereby give notice of resignation as managing member and member of the LLC. This is to demand the redemption of my 41% membership interest in the LLC. This is effective as of July, 25<sup>th</sup>, 2020.

Date

4/29/2020

  
\_\_\_\_\_  
Scott W. McDermitt

To: Accurate Pest Management, LLC  
P.O. Box 1077  
Charles Town, WV  
25413

CC: Mr. Wm. Richard Rogers  
Mr. Jeffrey W. Schultz  
James B. Crawford, III, Esq.

EXHIBIT #  
\_\_\_\_\_



## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following letter to judge was FILED on 9/15/2020 5:02:29 PM

Notice Date: 9/15/2020 5:02:29 PM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**ANSWER OF THE PLAINTIFFS TO DEFENDANT'S COUNTERCLAIM**

The Plaintiffs, by Counsel, hereby Answers Defendant's Counterclaim as follows:

**FIRST DEFENSE**

The Plaintiffs assert the following Affirmative Defenses: assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, unclean hands, statute of frauds, statute of limitations, waiver, offset, recoupment and counterclaim.

**SECOND DEFENSE**

As to the enumerated allegations of Defendant's Counterclaim, Plaintiffs respond as follows:

**COUNT I**

1. The allegations at paragraph 1 do not require a response from Plaintiffs.
2. Plaintiffs admit the allegations at paragraph 2.

3. Plaintiffs admit the allegations at paragraph 3.
4. Plaintiffs admit the allegations at paragraph 4.
5. Plaintiffs deny the allegations at paragraph 5 and demand strict proof thereof. Plaintiffs admit that Defendant's business cell phone was being tracked through the business email, but denies that this was caused by Plaintiffs, and further denies that it was done without Defendant's express or implied consent. In support of this response, Plaintiff attached the Affidavit of William Rogers as **Exhibit A** to this Answer.
6. Plaintiffs deny the allegations at paragraph 6 and demand strict proof thereof. Plaintiffs admit that Defendant's business cell phone was being tracked through the business email, but denies that this was done without Defendant's express or implied consent. In support of this response, Plaintiff attached the Affidavit of William Rogers as Exhibit A to this Answer.
7. Plaintiffs deny the allegations at paragraph 7 and demand strict proof thereof.
8. Plaintiffs deny the allegations at paragraph 8 and demand strict proof thereof.
9. Plaintiffs deny the allegations at paragraph 9 and demand strict proof thereof

## COUNT II

1. The Plaintiffs admit that the name of the alleged LLC should have been State Certified Termite & Pest LLC in Paragraph 1 of the Complaint, and in response to the allegations set forth in Paragraphs 1-5 and 7-8 of the Defendant's Counterclaim, the Plaintiffs have filed a Motion to Dismiss and/or for Summary Judgment.
2. The Plaintiffs admit the allegations set forth in Paragraph 2 of Count II the Defendant's Counterclaim that the notice attached as Exhibit 1 to the Counterclaim speaks for itself,

and the Plaintiffs deny any remaining allegations in Paragraphs 2 and 3 of Count II of the Counterclaim.

3. The Plaintiffs admit the allegations set forth in Paragraph 4 of Count II of the Defendant's Counterclaim.
4. In response to Paragraph 5 of Count II of the Defendant's Counterclaim, the Plaintiff asserts that the cited sections of code speak for themselves.
5. The Plaintiffs admit that the Defendant makes the demand as stated in Paragraph 6 of Count II of the Defendant's Counterclaim, but denies that the Defendant is entitled to the relief requested.
6. The Plaintiffs deny the allegations set forth in Paragraph 7 of Count II of the Defendant's Counterclaim.

WHEREFORE, Plaintiffs, having answered Defendant's Counterclaims, demand that it be dismissed, and that they be awarded costs expended, including reasonable attorneys fees and costs.

**PLAINTIFFS DEMAND A TRIAL BY JURY**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

/s/Christian J. Riddell  
Christian J. Riddell Esq. (WVSB #1222)

/s/Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)

The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Christian J. Riddell, hereby swear that on the 15<sup>th</sup> day of September, 2020, I served a true copy of the aforementioned Answer Of Plaintiffs To Defendant's Counterclaim upon counsel for the Defendant by filing the same with the Court via the WV Efile system.

/s/ Christian J. Riddell  
Christian J. Riddell, Esq. State Bar #12202  
The Riddell Law Group  
329 S. Queen Street Martinsburg, WV 25401  
(304) 267-3949

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

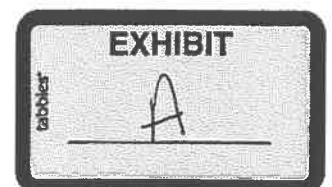
**SCOTT W. MCDERMITT,**

**Defendant.**

**AFFIDAVIT OF WILLIAM W. ROGERS**

The Affidavit of William W. Rogers, attached hereto as Exhibit A, provides as follows:

1. I am a Plaintiff in the above referenced action, and is a member of State Certified Termite & Pest LLC (the "Company").
2. Members of the Company, including Defendant, used the Company's email address, statecertwv@gmail.com, to conduct business.
3. The Company's email inbox received a monthly email for Defendant from Google Maps Timeline at "noreply-maps-timeline@google.com," such as the email attached hereto as Exhibit 1, beginning on the date Defendant connected the Company's email to the Company's telephone number on the cellular device that he used, until the date that the Defendant disconnected the phone number from the email system in June of 2020.



4. It is clear that the Defendant connected that the Google Maps Location Application on his mobile device to the Company's email system, and that he opted for monthly "Timeline Emails." I have attached an example of how such a setting would be enacted via my own Iphone, attached as Exhibit 2, and while I believe Defendant used a Samsung phone, there would clearly have been an equivalent way for him to enact the same setting.
5. I occasionally reviewed such emails in the Company's email inbox.
6. When I periodically checked the Company email, I could see that the Defendant often, but not always, deleted such emails.
7. That in June 9, 2020, I asked the Defendant why he only working six hours a day and coming home at 2 p.m. – facts which I discovered from viewing the timeline updates discussed above.
8. I never saw any email updates regarding the timelines or location activities of any of the cellphone numbers of the cellphones used by members of the Defendant's family, and, as such, I assume that those phones must not have been linked to our business email system.
9. I did not know at any time the locations or activities of the Company cellphone numbers or cellphones used by members of the Defendant's family.
10. The Company email ceased receiving the Defendant's monthly location summaries on June 10, 2020.
11. I believe Defendant disconnected phone number 304-676-2277 from the email – either by switching carriers or changing the settings on his phone - in response to me confronting him about not working full 8 hour days.



12. The Court found this phone number to be property of the Company at a hearing held on August 20, 2020. As such, the email system and the Defendant's telephone number were both owned by the Company.

13. I believed in good faith that the Google Maps Location Application connected to the Company's email system showing the location of the phone using the Company's number and used by the Defendant was proper and used for the purpose for which it was intended.

WWR 9/15/2020  
William W. Rogers

State of: West Virginia

County of: Berkeley

Taken, subscribed and sworn to before the undersigned authority this 15<sup>th</sup> day of September 2020

My Commission expires: 5/19/25.

[Signature]  
NOTARY PUBLIC





## Fwd: 🌐 State, your July update

1 message

From: **Google Maps Timeline** <noreply-maps-timeline@google.com>  
Date: Thu, Aug 6, 2020 at 6:54 AM  
Subject: 🌐 State, your July update  
To: <statecertwv@gmail.com>

This Timeline email is an automated summary of places you've been, which may be fewer this month due to the **COVID-19** response in your area.

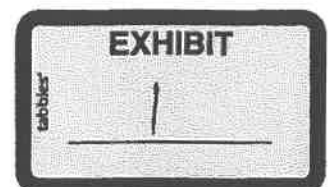
## State, here's your new Timeline update

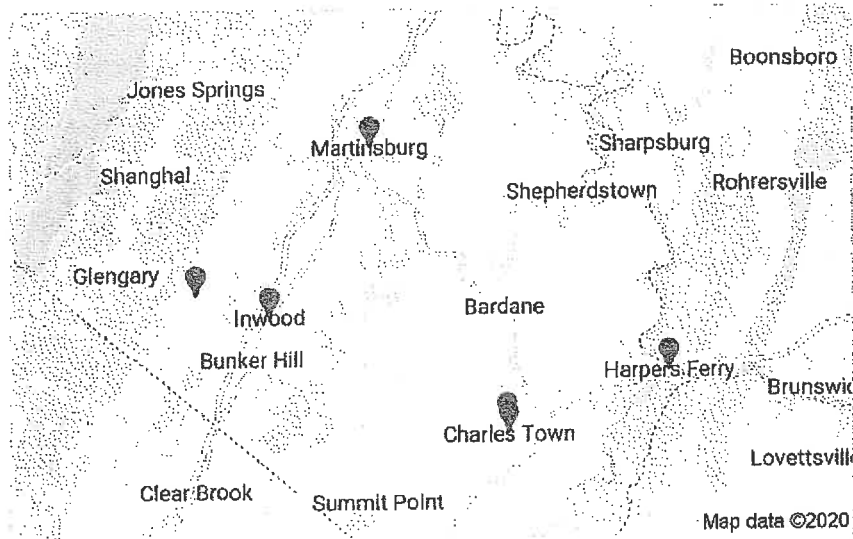
You're receiving this monthly email because you turned on Location History, a Google Account-level setting that saves where you go in your private Timeline.

Location History data also helps give you personalized information on Google, including better restaurant recommendations, and suggestions for a faster commute. You can view, edit, and delete this data anytime in Timeline.

[Explore Timeline](#)

[Location History: ON](#)  
[Manage Settings](#)





### Your July visits

6  
Cities

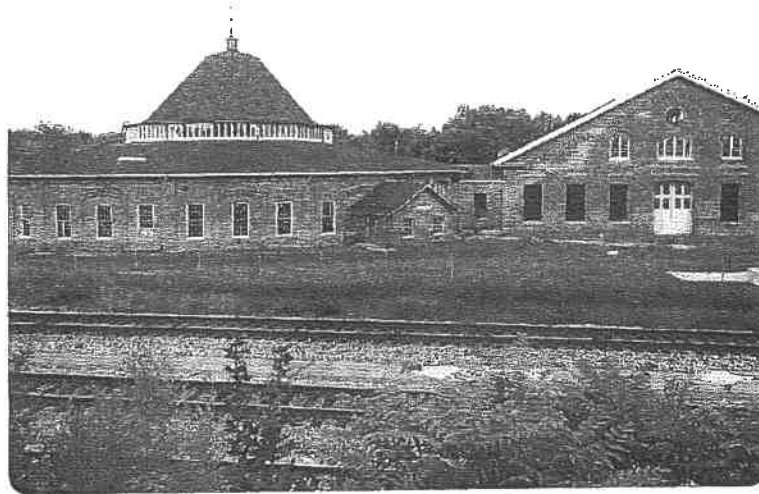
17  
Places  
13 new



### Your July activity

171 mi  
8 hr

Highlights  
Cities visited



Martinsburg

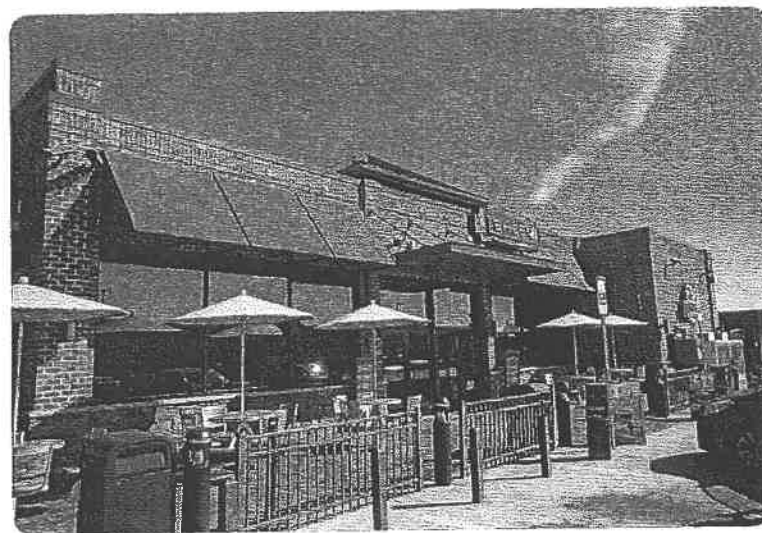


Inwood



Charles Town

## Highlights Places visited

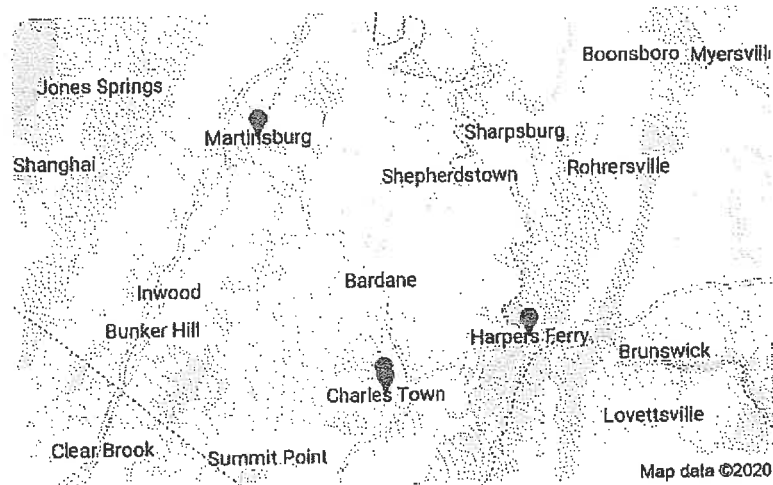


Sheetz #438

 See all visited places

Trip highlight

**Ranson, Martinsburg, Charles Town  
and Harpers Ferry**



Ranson

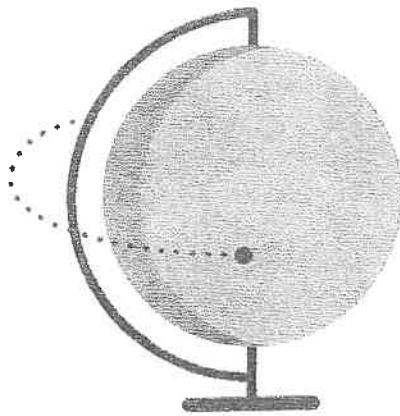


Martinsburg



Charles Town

 [View trip](#)



50% around the world this year

You've traveled a total of 11,571 miles so far in 2020



Your all time data

59

Cities

2535

Places

Manage your Location History

Visit your private Timeline to view, edit and delete your Location History

Go to your Timeline

Pause your Location History

Visit Activity controls anytime to pause your Location History

Gmail - Fwd: 🌐 State, your July update

[Go to Activity controls](#)

Did you like this email?

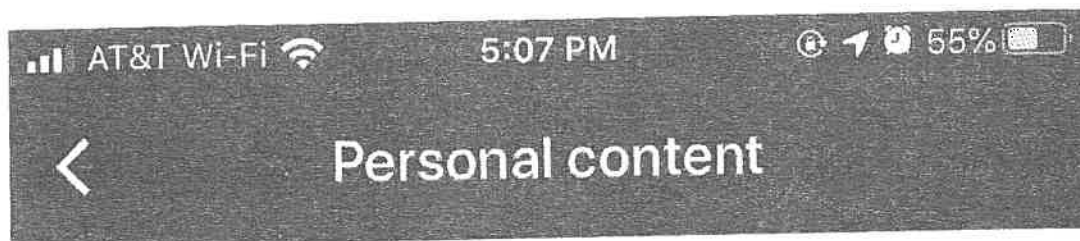


You received this email because you opted in to Location History. If you don't want to receive summaries about your visits and activities, [unsubscribe here](#).

**Google**

Google LLC

1600 Amphitheatre Parkway, Mountain View, CA 94043



## Your map

## Personal events

Show personalized features in Maps, such as map annotations and trip suggestions, based on events from your Calendar and reservations in Gmail



## Your timeline

## Google Photos

Show your Google Photos in timeline



## Timeline emails

Get highlights of your timeline in your inbox

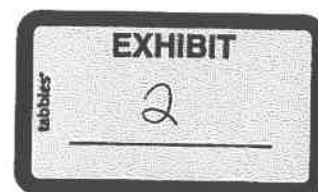


## App history

Web & App Activity is on

Enable edits and improve the quality of your timeline

## Location settings







## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following motion response was FILED on 10/1/2020 11:35:18 AM

Notice Date: 10/1/2020 11:35:18 AM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
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**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS.

Plaintiffs.

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**DEFENDANT'S RESPONSE TO PLAINTIFFS' PARTIAL MOTION FOR  
SUMMARY JUDGMENT AND/OR FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF MAY BE GRANTED AND/OR JUDGMENT ON  
THE PLEADINGS; AND, DEFENDANT'S CROSS MOTION FOR  
LEAVE TO FILE AN AMENDED COUNTERCLAIM**

NOW COMES Defendant, Scott W. McDermitt, by counsel, in response to the Plaintiffs' Partial Motion for Summary Judgment and/or Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted pursuant to WVRCP Rule 12(b)(6) and/or motion for Judgment on the Pleadings WVRCP Rule 12(c) ("Plaintiffs' Motion"), and Defendant's response and cross motion for leave to file an Amended Counterclaim pursuant to WVRCP Rule 15, and respectfully says as follows:

1. That Plaintiff Rogers' use of the Google Maps cell phone network to track the whereabouts of the Defendant and his family was unknown to the Defendant until June 28, 2020 when he received a text from Rogers referencing same. See Exhibit 4 to Defendant's Affidavit, attached hereto, paragraphs 5 and 10.

2. That to track Defendant and Defendant's family and their whereabouts, including stops at physicians' offices, and seeking inquiry as to why Defendant and his family were making so many trips to the doctors' offices in June of 2020, is much beyond the business of State Certified Termite & Pest, LLC, and were made in bad faith and without justification, proximately causing Defendant severe emotional harm and damages, is a matter which is much beyond the normal

course of business, and is highly sensitive to the sensibilities of ordinary persons, and actionable. See Affidavit of Defendant attached hereto as Exhibit 1, paragraphs 11 and 14.

3. That Rogers' actions in tracking Defendant and his family are violations of §61-3C-12 of the *W.Va. Code*. Affidavit of Defendant ¶ 11.

4. That Defendant did not know that the cell phone contract with U.S. Cellular permitted a party within the network to add Google Maps and to locate other individuals on the network, and did not know that such a function was made available through the cellular agreement with the carrier until he received notification from Rogers that he was tracking Defendant for two years prior to June 28, 2020. See Affidavit attached hereto paragraphs 5, 6 and 7, and Exhibits 1, 2 and 3 to the Affidavit.

5. That Rogers took advantage of Defendant in 2018, and unbeknown to Defendant and without his knowledge and consent, added functions on Defendant's then newly-acquired Android smart phone to track Defendant and his family and had the Location Histories secretly sent to Rogers' sole email address and cell phone number. See Affidavit of Defendant ¶¶ 2-9, and Exhibits 1, 2 and 3 to the Affidavit.

6. That he did not know of the existence of the capabilities of Google Maps and that he and his family could be tracked by those functions. See Affidavit of Defendant, ¶¶ 5-10.

7. That it is unclear from the Affidavit attached to Plaintiffs' Answer whether the affiant, William W. Rogers, is the same person as the named Plaintiff in the Complaint, William R. Rogers.

8. That in order for waiver to apply, or implied consent to be a defense, there must be a known right by the person who has allegedly waived consent or allegedly impliedly consented which would also constitute a waiver or estoppel. See *Ara v. Erie Ins. Co.*, 182 W.Va. 266, 387

S.E.2d 320 (1989), syl. pt. 2; and, *Parsons v. Halliburton Energy Services, Inc.*, 237 W.Va. 138, 785 S.E.2d 844 (2016), syl. pts. 1 and 2.

9. That Defendant never knew that Rogers could track him and his family by a Google Maps App; that Rogers could download that App onto his cell phone; initiate that App; and have that App secretly send to Rogers his and his family's whereabouts. Affidavit, ¶s 4-10.

10. That in Plaintiffs' Motion and William W. Rogers' attached affidavit, William W. Rogers does not deny tracking Defendant and his family for two (2) years beginning in 2018, and concluding in 2020.

11. Equitable estoppel is not available to Rogers as a defense because equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who, on his part, acquires some corresponding right, either of property, of contract, or of remedy. Estoppel *in pais* is one that arises from acts, conduct or declarations of a person, whereby he designedly induces another to alter his position injuriously to himself. The doctrine always presupposes error on one side and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. *Michie's Jurisprudence*, Vol. 7A (hardbound), 2012 Replacement Volume, LexisNexis, Matthew Bender & Co., Inc., "Estoppel", §14 Estoppel In Pais, A. Estoppel by Representations or Conduct, pg. 490, citing *Norfolk & W.R. Co. v. Perdue*, 40 W.Va. 442, 21 S.E. 755 (1895); *Kimble v. Wetzel Natural Gas Co.*, 134 W.Va. 761, 61 S.E.2d 728 (1950); *Blais v. Allied Exterminating Co.*, 198 W.Va. 674, 482 S.E.2d 659 (1996) (applying Va. Law); *Barnett v. Wolfolk*, 149 W.Va. 246, 140 S.E.2d 466 (1965); and, *Atkinson v. Plum*, 50 W.Va. 104, 40 S.E. 587 (1901).

Under these principles, certainly equitable estoppel is not available as a defense to Rogers to a claim of invasion of privacy because:

a) the permission by Defendant to initiate Defendant's new cell phone Android does not expressly nor impliedly grant permission to Rogers to clandestinely initiate Google Maps Location App on that Android to secretly track and spy upon Defendant and his family members, and track their whereabouts for two (2) years;

b) Rogers conduct cannot be considered "in good faith" if the Android cell phone was purchased for the business purposes of State Certified Pest & Termite, LLC and constitutes daily violations of §61-3C-12 of the *W.Va. Code*; and,

c) How has Rogers been injuriously wronged and what conduct of Defendant led Rogers to believe he could set up Defendant's cell phone to be tracked?

12. That there are genuine issues of material fact as to the following matters: (a) whether or not the Defendant knew of the existence of the Google Maps function, permitting Rogers to track Defendant on the network of the cell phone prior to Defendant being apprised of same by Rogers' text on June 28, 2020 by Rogers; (b) whether or not the sensitivities of an ordinary person would be offended by the actions of Rogers in tracking the location of the Defendant and Defendant's family since Rogers' actions are violations of §61-3C-12 of the *W.Va. Code*; (c) whether Rogers was acting in good faith when he was tracking Defendant and his family; and, (d) what damages were proximately caused by Rogers to Defendant by virtue of the tracking actions taken by Rogers in tracking the Defendant and his family for two years prior to June 28, 2020.


13. That Defendant hereby cross moves the Court pursuant to WVRCF Rule 15 to permit Defendant to amend his Counterclaim to add an allegation in Count I thereof that the actions of Rogers, in tracking Defendant and Defendant's family members for two (2) years prior to June 28,

2020, exceeded the sensitivities of an ordinary person, and proximately caused severe emotional harm and damages to Defendant.

14. That Rogers has not been unfairly surprised by this cross motion to amend since there has been no Scheduling Order entered by the Court, and there is ample opportunity for Plaintiffs to obtain discovery as to Count I of the Counterclaim as it will be amended.

WHEREFORE, Defendant, Scott W. McDermitt, asserts that there can be no dismissal of his Count I claim for invasion of privacy in his Counterclaim against Plaintiff, William R. Rogers (or William W. Rogers – if William R. Rogers is a misnomer in the Complaint like the name of the Plaintiff limited liability company), as genuine issues of material fact abound; and, to grant leave to Defendant to amend his Counterclaim Count I to include an allegation that the actions of Rogers against Defendant are such that they are beyond the sensitivities of an ordinary person, and that Rogers has proximately caused Defendant to suffer emotional distress so severe that no reasonable person could be expected to endure it, or other suitable language to include the reasons set forth in the Affidavit of Defendant attached hereto and referenced in paragraphs 11 and 14 of that Affidavit; and, to accordingly deny Plaintiff Rogers' Motion to Dismiss, Summary Judgment and/or Judgment on the Pleadings, or such other relief as the Court deems meet and just in these premises.

Scott W. McDermitt, Defendant  
By Counsel

  
\_\_\_\_\_  
Michael L. Scales, Attorney at Law  
Counsel for Defendant  
Michael L. Scales, PLLC  
314 W. John Street  
Martinsburg, WV 25401  
(304) 263-0000  
WV Bar No. 3277

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs.

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**CERTIFICATE OF SERVICE**

I, Michael L. Scales, Attorney for Defendant, Scott W. McDermitt, do hereby certify that I have served a true copy of DEFENDANT'S RESPONSE TO PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND/OR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND/OR JUDGMENT ON THE PLEADINGS; AND, DEFENDANT'S CROSS MOTION FOR LEAVE TO FILE AN AMENDED COUNTERCLAIM by the Court's e-filing system, to counsel for Plaintiffs, Christian J. Riddell, Esq., this 1<sup>st</sup> day of October, 2020.



Michael L. Scales, Attorney at Law

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, I.LC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs,

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**AFFIDAVIT OF DEFENDANT**

STATE OF WEST VIRGINIA  
COUNTY OF BERKELEY, to-wit:

SCOTT W. MCDERMITT, by me being first duly sworn upon his oath, deposes and states as follows:

1. That he is the Defendant in the above named civil action docketed by the Clerk of the Circuit Court of Berkeley County, West Virginia as Civil Action No. 20-C-170.

2. That he had no knowledge that the cell phone contract that he had with U.S. Cellular contained a network whereby another party of the network could be tracked by another party within that same network.

3. That prior to 2018, he had a “flip” phone, and did not know how to use a smart phone, such as an Android, which he acquired in 2018.

4. That Plaintiff, William R. Rogers (“Rogers”) volunteered to set up his Android smart phone since he did not know how to use one in 2018.

5. That unbeknownst to him at the time in 2018 and without his consent – express or implied, Rogers included the Google Maps App as part of his new Android smart phone, and initiated the gmail shared function of Google Maps App since it was the default function to not



have that App installed or initiated without Rogers affirmatively selecting it and Rogers opted him in. See “Manage Your Location History” from Google Account Help attached hereto as Exhibit 1.

6. That Rogers assigned the name of his Android smart phone as “State’s Phone”, so Rogers could track it (see Ex. 2).

7. That Rogers had complete control of the State Certified Termite & Pest LLC gmail business account with all contacts, including Location Histories, regarding the shared Google account being sent to Rogers’ email address (bill.rogers.wv@gmail.com) and Rogers’ cell phone number (304) 676-5182. See Exhibit 3.

8. That Rogers finally texted him on 6/28/2020 and stated that Rogers had been tracking him for two (2) years (see Ex. 4).

9. That all of the google map tracking events by Rogers were unknown to him and without his consent until June 28, 2020 when he received Rogers’ text message (Ex. 4).

10. That he has never expressly nor impliedly consented to having Rogers track his or his family’s whereabouts by the use of Google Maps or otherwise.

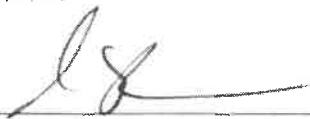
11. That these actions by Rogers were willful, wanton, malicious and much exceed the sensibilities of ordinary persons since he believes they violate §61-3C-12 of the W.Va. *Code*. (See Ex. 5).

12. That he could not impliedly consent to Rogers’ use of the Google Maps app on his Android cell phone to track his whereabouts if he did not know that such function existed on the network until June 28, 2020.

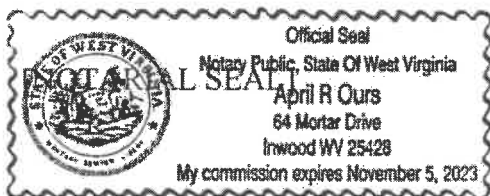
13. That it was highly offensive for Rogers to be inquiring why his wife and son had so many doctor appointments, and why they were going to the doctor so often which question was posed to him by Rogers in June of 2020.


14. That Rogers' use of the cell phone Google Maps app to ascertain the whereabouts of him and his family members for the past two (2) years has proximately caused him severe emotional harm and damages; is highly offensive, and much beyond the reasonable sensitivities of an ordinary person, and much beyond the business of Plaintiff, State Certified Termite & Pest LLC, for which the cell phone network was to be used, and therefore Rogers used that function in bad faith, illegally, wrongfully and maliciously against him to track his whereabouts for two (2) years beginning in 2018 continuously until June 28, 2020.

AND FURTHER SAITH THE AFFIANT NAUGHT.

  
\_\_\_\_\_  
Scott W. McDermitt

Taken, subscribed and sworn to before me the undersigned authority, this 29<sup>th</sup> day of September, 2020.



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

My commission expires: \_\_\_\_\_

Nov. 5, 2023

## Manage your Location History

Location History is a Google Account-level setting that saves where you go with every mobile device where:

- You're signed in to your Google Account,
- You have turned on Location History, and
- The device has Location Reporting turned on.

When you turn on Location History, you may see a number of benefits across Google products and services, including personalized maps, recommendations based on places you've visited, help finding your phone, real-time traffic updates about your commute, and more useful ads.

- Location History is turned off by default for your Google Account and can only be turned on if you opt in.
- You can pause Location History at any time in your Google Account's Activity controls.
- You control what's saved in your Location History. You can view the places where you've been in Google Maps Timeline, and you can edit or delete information through Timeline as well.

**Important:** Some of these steps work only on Android 8.0 and up. [Learn how to check your Android version.](#)

## Turn Location History on or off

You can turn off Location History for your account at any time. If you use a work or school account, your administrator needs to make this setting available for you. If they do, you'll be able to use Location History as any other user.

1. Go to the "Location History" section of your Google Account.
2. Choose whether your account or your devices can report Location History to Google.
  - **Your account and all devices:** At the top, turn Location History on or off.
  - **Only a certain device:** Under "This device" or "Devices on this account," turn the device on or off.

### When Location History is on

- Google only receives Location History for each device where you are signed in and you have Location Reporting turned on.
- You can change the Location Reporting setting for each device where you're signed in, and limit which devices provide location data to be included in Location History. If you want to change your Location History settings, you can choose to:
  - Report your location from only some of your devices, but not others.
  - Report your location from all your devices.
  - Turn off Location History for your Google Account. Your location won't be reported from any of your devices and you will not have new Location History recorded to your account.
- Your settings for other location services on your device, like Google Location Services and Find My Device, are not changed.

### When Location History is off

- New location information is no longer saved to your Location History.
- Previous activity is not deleted from your Location History. You can manually delete your Location History.
- Your settings for other location services on your device, like Google Location Services and Find My Device, are not changed.
- Some location data may continue to be saved in other settings, like Web & App Activity, as part of your use of other services, like Search and Maps, even after you turn off Location History.

## Delete Location History

You can manage and delete your Location History information with Google Maps Timeline. You can choose to delete all of your history, or only parts of it.

**Important:** When you delete Location History information from Timeline, you won't be able to see it again.

Use the Google Maps app

**EXHIBIT #**

Use a web browser

## Automatically delete your Location History

You can choose to automatically delete Location History that's older than 3 months or 18 months.

Use the Google Maps app

Use a web browser

## What happens after you delete some or all Location History

If you delete some or all of your Location History, some personalized experiences across Google may be degraded or lost. For example:

- Albums in Google Photos automatically created from places you've visited
- Recommendations based on places you've visited
- Real-time information about the best time to leave for home or work in order to beat the traffic

**Important:** If you have other settings like Web & App Activity turned on and you pause Location History or delete location data from Location History, you may still have location data saved in your Google Account as part of your use of other Google sites, apps, and services. For example, location data may be saved as part of activity on Search and Maps when your Web & App Activity setting is on, and included in your photos depending on your camera app settings.

## Usage & diagnostics for Location History

When you turn on Location History, your device may send diagnostic information to Google about what's working and not working for Location History. If you turn Location History off, you can decide whether to share usage and diagnostics information.


All usage and diagnostics information is used in accordance with Google's privacy policy

What information your device could share

How shared information helps Google improve

## Learn more about other location settings

- Choose which apps can use your location: Learn how to manage app location settings.
- Learn how to turn your device's location on or off.
- Find your location on a map: Learn how to find & improve your location's accuracy in Google Maps.
- Manage your history of the places you've been and the routes you've traveled: Learn how to edit your timeline on Google Maps.

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## Nearby Share

Off

### Account & device



State Certified

statecertwv@gmail.com



Device name

State's Phone

NAME added  
to the phone  
PHONE added  
NAME shared  
PHONE shared



Device visibility

All contacts

EXPIRE

## Settings and recommendations to help you keep your account secure

## We keep your account protected

The Security Checkup gives you personalized recommendations to secure your account



Get started

Signing in to Google

Password

Last changed 7:50 PM

*Rogers had complete control of google account business email.*

Use your phone to sign in

☐ Off

2-Step Verification

☐ Off

## Ways we can verify it's you

These can be used to make sure it's really you signing in or to reach you if there's suspicious activity in your account

Recovery phone

(304) 676-5182

*Rogers cell.*

Recovery email

bill.rogers.wv@gmail.com

## Recent security activity



Password changed

Millville, WV, USA - 7:50 PM

EXHIBIT #

3

8/12/2020

2020-06-28

m. I am glad to hand over managing member to you. It is not as simple as handing you a checkbook. Please work on that transfer list. I already removed my license from the residex/target regulatory department and paid that invoice bill. Again, I went to us cellular and pulled all phones off the acct, and left your number with 2 business phones. Must do transfer of ownership. Just like bank was, this is up to you. It's a lot man. I have done it for years and glad to be done with it. Get that list done so you can do it all.

Date: 2020-06-28 18:38:58

I just saw a 600 us cellular Bill come out automatically from the business account. I have gotten the bank to email me return bank statements from a long time

Date: 2020-06-28 18:38:59

ago and you have been paying for your personal shit on our dime and it's fraud. I also have tracked your phone for 2 years and you have been home between 2 and

Date: 2020-06-28 18:38:59

3 every day. Not doing half the amount of work. That's why you are missing shit! You have lied to me for a very long time! I have proof so no more lies!

Date: 2020-06-28 18:51:27

Whoa....that is bullshit. In order to remove my own cell phone off the business plan, it had to be paid in full. You wanted me to move my phones so I did what I had to do to remove it. And if you tracked me so closely, one, you would see how very early I start work. Do you start at 5 or 530 am? No, you do not. Also, if you have been tracking me, that is a sign you need help. It is ridiculous to me that you act the

EXHIBIT #

4

8/12/2020

2020-06-28

way you do. I am honest. And so many times I could have been dishonest, I chose the high road. Why? Because you and I worked our asses off together. There was no way I would take any chance on messing up a good thing. Fraud? Wow! Tracking me? Wow. wow.wow. but guess what- dont give a shit because I have done nothing wrong. Try to wrap your head around that. That should be an eye opener to you bill. You have created a world that didnt ever exist. My name and my self worth and my friendship to you gave me pride. I dont even know what to say to you. Have you ever looked at all the toys and possibly frivolous stuff the business has bought you?

Date: 2020-06-28 18:53:35

6000.00 down on a Tacoma, 1000.00 mud tires, over 400.00 payment, all in your name! Talk about fraud and misuse of company money, I cant believe I let you strong arm me into that!

Date: 2020-06-28 18:58:38

Why would you remove your cell phone? That's even more suspicious! I have it on paper now so gig is up for you and you might spend time in jail which is sad! I

Date: 2020-06-28 18:58:39

hope the greed was worth it! I'm definitely worked for all those things and I will gladly pay the business back for all of it at any time. I also paid 30 grand

Date: 2020-06-28 18:58:39

out of pocket witch you said you would pay me back. How much have you paid out of your pocket?

Date: 2020-06-28 19:00:03





Code 12

(2) Facebook...

West Virgi...

Municipal...

WV State...


Can My Bu...

Classwork...

Classes


berkeley Messenger

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# West Virginia Legislature

2ND SESSION OF THE 84TH LEGISLATURE



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## WEST VIRGINIA CODE CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

#### §61-3C-12. COMPUTER INVASION OF PRIVACY.

Any person who knowingly, willfully and without authorization accesses a computer or computer network and examines any employment, salary, credit or any other financial or personal information relating to any other person, after the time at which the offender knows or reasonably should know that he is without authorization to view the information displayed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in the county jail for not more than six months, or both.

EXHIBIT

WV Code updated with legislation passed through the 2017 Regular Session

West Virginia Code Online is an unofficial copy of the annotated WV Code, provided as a convenience. It has NOT been edited for publication, and is not in any way official or authoritative.

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## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
Accurate Pest Management, LLC v. Scott W. McDermitt  
CC-02-2020-C-170

The following supporting documents was FILED on 11/30/2020 2:32:26 PM

Notice Date: 11/30/2020 2:32:26 PM

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**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs,

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**DEFENDANT'S FIRST AMENDED COUNTERCLAIM**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, Michael L. Scales, Esq. and the law firm of Michael L. Scales, PLLC, and for his First Amended Counterclaim, respectfully states as follows:

**I. COUNTERCLAIM OF DEFENDANT, SCOTT MCDERMITT  
AGAINST PLAINTIFF, WILLIAM R. ROGERS  
FOR INVASION OF PRIVACY**

1. That Defendant, Scott W. McDermitt, is, and for all times and matters relevant herein, been a resident of Berkeley County, West Virginia.
2. That Plaintiff, William R. Rogers, for all times and matters relevant herein, is a resident and has been a resident of Jefferson County, West Virginia.
3. That both Plaintiff, William R. Rogers and Defendant were both agents for a business known as State Certified Termite & Pest, and were both the two operating agents of that business.
4. That these parties Rogers and Defendant shared a certain cellular phone network while they were acting as agents for State Certified Termite & Pest with U.S. Cellular.
5. That unbeknownst to Defendant, and specifically without his consent or approval, and without that of any of the members of Defendant's family, Rogers purposefully, intentionally,

illegally, wantonly and willfully tracked the whereabouts of Defendant and his family members by the use of the cellphone network, and violated the privacy of the Defendant and his family by an unreasonable intrusion upon the seclusion of the Defendant and his family by tracking their whereabouts at all times during the day and night for a period of approximately two (2) years, ending in June of 2020.

6. That even though Defendant's cell phone network was shared with Rogers as a business phone line, Defendant had no knowledge nor expectation that through Google Maps, Rogers had the ability to track Defendant and his family's whereabouts.

7. That Defendant believes upon information that Rogers tracked physicians' appointments to which the Defendant and his family took, including those of their minor son.

8. That Rogers violated Defendant's right of privacy, including Defendant's right to be let alone and kept secret his private communications, conversations, affairs and whereabouts, which is an unwarranted invasion or violation of which gives rise to a common law of action for invasion of privacy for which Rogers proximately caused excessive harm and damages to Defendant.

9. That as the proximate result of Rogers wrongfully, intentionally, willfully, wantonly and illegally, and in violation of the Defendant's right of privacy, Defendant has been caused harm and damages in an amount to be determined from the evidence.

10. That all of such actions were wanton, willful, oppressive and malicious for which punitive damages are awardable to Defendant.

11. That the actions of Rogers in tracking Defendant and Defendant's family members for two (2) years prior to June 28, 2020 exceeded the sensitivities of an ordinary person; were

intrusions that would be highly offensive to a reasonable person; and proximately caused severe emotional harm and damages to Defendant.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment against Plaintiff, William R. Rogers, in an amount to be determined from the evidence, including attorneys fees, court costs, pre- and post-judgment interest and punitive damages, and for such other relief as the Court deems necessary and proper.

**II. COUNTERCLAIM FOR DISASSOCIATION OF STATE CERTIFIED  
TERMITE & PEST, LLC AND FOR AN ORDER  
REQUIRING PLAINTIFFS TO PURCHASE DEFENDANT'S  
DISTRIBUTIONAL INTERESTS**

1. That Defendant incorporates by reference paragraphs 1 through 5 inclusive and paragraphs 7 and 8 of the Complaint, except the name of the alleged LLC should have been State Certified Termite & Pest LLC in paragraph 1 of the Complaint.

2. That Defendant notified Plaintiffs of his intention to disassociate by the notice provided to the Plaintiffs on June 29, 2020, to be effective July 25, 2020, a copy of which is attached hereto as Exhibit 1.

3. That Exhibit 1 expressly provides that the Defendant disassociated from the alleged LLC pursuant to §31B-6-601(1) and §36B-6-602(a) of the W.Va. *Code*.

4. That the alleged LLC has advised the Defendant that it intends to continue the business of the alleged LLC, and not dissolve it.

5. That the effect of the alleged LLC deciding to continue the business requires the alleged LLC to purchase the distributional shares of Defendant pursuant to §36B-7-701(a)(1) and §36B-7-702 of the W.Va. *Code*.

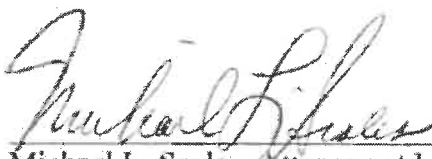
6. That Defendant demands that the alleged LLC and the other individual Plaintiffs purchase this Defendant's 41% distributional share pursuant to the last-mentioned statutes.

7. That if the alleged LLC and the individual Plaintiffs refuse or default with respect to the purchase of the Defendant's distributional shares, then Defendant demands dissolution of the alleged LLC if not already dissolved by virtue of the loss of its charter.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment that the alleged LLC, State Certified Termite & Pest, LLC, and/or Plaintiffs purchase the distributional interests owned by Defendant in the manner provided by statute; and, if the alleged LLC or individual Plaintiffs do not purchase Defendant's distributional interests within the time limitations set forth in the statute, then for the Court to order dissolution of the alleged LLC, if not already dissolved; to pay Defendant his 41% of the alleged LLC, and for Defendant's court costs, attorneys fees and for such other relief as the Court deems necessary and proper in the premises.

For all claims above which permit trial by jury, **DEFENDANT DEMANDS A TRIAL BY JURY.**

Scott W. McDermitt, Defendant  
By Counsel

  
Michael L. Scales, Attorney at Law  
Counsel for Defendant  
Michael L. Scales, PLLC  
314 W. John Street  
Martinsburg, WV 25401  
(304) 263-0000  
WV Bar No. 3277

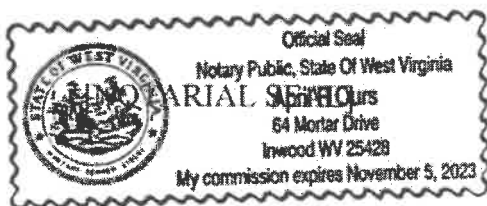
VERIFICATION

STATE OF WEST VIRGINIA,  
COUNTY OF BERKELEY, to-wit:

Personally appeared before the undersigned authority, SCOTT W. MCDERMITT, Defendant named in the foregoing First Amended Counterclaim, after having been duly sworn upon his oath, deposes and states that the facts and allegations contained in the foregoing First Amended Counterclaim are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, he believes them to be true.

  
\_\_\_\_\_  
Scott W. McDermitt

Taken, subscribed and sworn to, before me, the undersigned authority, this 30th day of November, 2020, by Scott W. McDermitt.



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

My commission expires: Nov. 5, 2023

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC.  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,

Plaintiffs,

v.

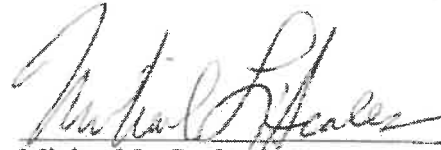
Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant.

**CERTIFICATE OF SERVICE**

I, Michael L. Scales, Attorney for Defendant, Scott W. McDermitt, do hereby certify that I have served a true copy of DEFENDANT'S FIRST AMENDED COUNTERCLAIM by the Court's e-filing system, and by mailing a true copy thereof to counsel for Plaintiffs, Christian J. Riddell, Esq., this 30<sup>th</sup> day of November, 2020.



Michael L. Scales, Attorney at Law





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
Accurate Pest Management, LLC v. Scott W. McDermitt  
CC-02-2020-C-170

The following letter to judge was FILED on 12/8/2020 2:56:59 PM

Notice Date: 12/8/2020 2:56:59 PM

Virginia Sine  
CLERK OF THE CIRCUIT  
Berkeley  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**AMENDED REPLY OF THE PLAINTIFFS TO DEFENDANT'S  
AMENDED COUNTERCLAIM**

The Plaintiffs, by Counsel, hereby Reply Defendant's Amended Counterclaim as follows:

**FIRST DEFENSE**

The Plaintiffs assert the following Affirmative Defenses: assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, unclean hands, statute of frauds, statute of limitations, waiver, offset, recoupment and counterclaim, and any other defenses made known by further discovery or otherwise.

## **SECOND DEFENSE**

The Defendant's Amended Counterclaim fails to state a claim upon which relief may be granted, for the reasons stated in the Plaintiffs Partial Motion to Dismiss and/or for Judgment on the Pleadings and Reply and other reasons that may become apparent in discovery or otherwise.

## **THIRD DEFENSE**

As to the enumerated allegations of Defendant's Counterclaim, Plaintiffs respond as follows:

### COUNT I

1. Plaintiffs admit the allegations at Paragraph 1.
2. Plaintiffs admit the allegations at Paragraph 2.
3. Plaintiffs deny the allegations at Paragraph 3. There are/were three Members of the Company: Jeffrey Schultz, William Rogers, and Scott McDermitt. The designated Managing Member was Scott McDermitt. The Company employed and paid a salary to two employees who also happened to be Members, Mr. McDermitt and Mr. Rogers. Mr. Schultz and Mr. Rogers were not Managers or operating agents, until Mr. Rogers became Manager pursuant to the Company meeting and resolution of June 4, 2020.
4. Plaintiffs deny the allegations at Paragraph 4, and assert that the Company paid for U.S. Cellular service to be provided to its employees.
5. Plaintiffs deny the allegations at Paragraph 5 and demand strict proof thereof, except that Plaintiffs admit that Google was tracking the Defendant and sending him monthly emails with updates, but denies that this was caused in any way by Plaintiffs.

6. Plaintiffs deny the allegations at Paragraph 6 and demand strict proof thereof.
7. Plaintiffs deny the allegations at Paragraph 7 and demand strict proof thereof.
8. Plaintiffs deny the allegations at Paragraph 8 and demand strict proof thereof.
9. Plaintiffs deny the allegations at Paragraph 9 and demand strict proof thereof.
10. Plaintiffs deny the allegations at Paragraph 10 and demand strict proof thereof.
11. Plaintiffs deny the allegations at Paragraph 11 and demand strict proof thereof

## COUNT II

1. The Plaintiffs incorporate by reference answers to Paragraphs 1-11. The Plaintiffs admit that the name of the alleged LLC should have been State Certified Termite & Pest LLC as stated in Paragraph 1 of Count II.
2. The Plaintiffs admit the allegations set forth in Paragraph 2 in so much as Mr. McDermitt attempted to unilaterally dissociate and dissolve the Company by drafting himself a notice and by publishing in the newspaper, among other things.
3. Plaintiffs deny the allegations at Paragraph 3 and demand strict proof thereof.
4. Plaintiffs deny the allegations at Paragraph 4 and further states that it is not possible to continue operating the Company due to the failure of Mr. McDermitt to properly file with the Secretary of State, among other things.
5. Plaintiffs deny the allegations at Paragraph 5 and demand strict proof thereof; the Plaintiff further asserts that the cited sections of code speak for themselves.
6. The Plaintiffs admit that the Defendant made the demand as stated in Paragraph 6 of Count II of the Defendant's Counterclaim, but denies that the Defendant is entitled to the relief requested.

7. Plaintiffs deny the allegations at Paragraph 5, and the Plaintiffs assert that the Company was administratively dissolved in 2015 and therefore cannot continue to operate
8. The Plaintiffs deny all allegations of the Amended Counterclaim not specifically admitted.

WHEREFORE, Plaintiffs, having answered the Defendant's Amended Counterclaims, demand that it be dismissed, and that they be awarded costs expended, including reasonable attorneys fees and costs.

**PLAINTIFFS DEMAND A TRIAL BY JURY**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

/s/Christian J. Riddell  
Christian J. Riddell Esq. (WVSB #1222)

/s/Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)

The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Christian J. Riddell, hereby swear that on the 8 day of December, 2020, I served a true copy of the aforementioned Amended Answer of the Plaintiffs To Defendant's Amended Counterclaim upon counsel for the Defendant by filing the same with the Court via the WV Efile system.

/s/ Christian J. Riddell  
Christian J. Riddell, Esq. State Bar #12202  
The Riddell Law Group  
329 S. Queen Street Martinsburg, WV 25401  
(304) 267-3949



## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Nicola Smith  
nicoladaresmith@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following motion was FILED on 2/9/2021 4:35:55 PM

Notice Date: 2/9/2021 4:35:55 PM

Virginia Sine  
CLERK OF THE CIRCUIT COURT  
Berkeley County  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**MOTION TO FILE AMENDED COMPLAINT**

COME NOW, the Plaintiffs, by and through counsel, and pursuant to Rule 15 of the West Virginia Rules of Civil Procedure respectfully requests leave of the Court to file the attached Amended Complaint.

The Plaintiffs mistakenly filed this action under an old name, Accurate Pest Management, LLC, which was changed by amendment on June 3, 2011, to State Certified Termite & Pest LLC, (the "Company"), as shown on the report from the West Virginia Secretary of State, attached hereto as Exhibit 1. The June 3, 2011 amendment also added a DBA, Envirotech Pest Services of the Eastern Panhandle. The Plaintiffs propose to include in the Amended Complaint an introductory paragraph stating this information.

The Plaintiffs discovered after filing their Complaint that the Company was administratively dissolved by the Secretary of State on November 1, 2015, due to the Defendant's failure to file the Annual Report. The Plaintiffs further request that the Proposed Amended Complaint be supplemented with the following new count:

**COUNT VII – WIND DOWN**

38. The Company was administratively dissolved on November 1, 2015, because Mr. McDermitt failed to file an Annual Report with the Secretary of State.
39. The Defendant allowed for the two-year renewal time period with the Secretary of State to expire, so that the Company cannot be reinstated.
40. As a result of the Defendant's failure, the Company has been dissolved and cannot be reinstated.



41. The Plaintiffs, pursuant to West Virginia Code §31B-8-802, request that the Company's affairs be wound up, and that after collecting all sums due to the Company for assets and money improperly taken, for the proceeds to be distributed to the creditors and the Company's members as their interests may dictate.

Wherefore, the Plaintiffs request leave to file a Complaint using the name State Certified Termite & Pest LLC, adding a paragraph clarifying the official, past and d/b/a of the Company, adding a Count requesting a wind up because the Company cannot be reinstated, and all other relief this Court deems just and proper.

Respectfully Submitted,

/s/Nicola Smith  
Nicola Smith, Esq (#11251)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304) 267-3949

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## West Virginia Secretary of State — Online Data Services

### Business and Licensing

Online Data Services Help

### Business Organization Detail

*NOTICE: The West Virginia Secretary of State's Office makes every reasonable effort to ensure the accuracy of information. However, we make no representation or warranty as to the correctness or completeness of the information. If information is missing from this page, it is not in the The West Virginia Secretary of State's database.*

#### STATE CERTIFIED TERMITE & PEST LLC

Organization Information								
Org Type	Effective Date	Established Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
LLC   Limited Liability Company	12/13/1999		12/13/1999	Domestic	Profit		11/1/2015	Revoked (Failure to File Annual Report)

Organization Information			
Business Purpose		Capital Stock	
Charter County	Jefferson	Control Number	0
Charter State	WV	Excess Acres	
At Will Term	A	Member Managed	MGR
At Will Term Years		Par Value	
Authorized Shares		Young Entrepreneur	Not Specified

Addresses	
Type	Address
Designated Office Address	208 N. CHARLES STREET CHARLES TOWN, WV, 25414 USA
Mailing Address	P O BOX 1077 CHARLES TOWN, WV, 25414 USA
Notice of Process Address	SCOTT W. MCDERMITT 2800 MIDDLEWAY PIKE BUNKER HILL, WV, 25413 USA
Principal Office Address	208 N. CHARLES STREET CHARLES TOWN, WV, 25414 USA

Type	Address
------	---------

Officers	
Type	Name/Address
<b>Manager</b>	SCOTT MCDERMITT 2800 MIDDLEWAY PIKE BUNKER HILL, WV, 25413 USA
<b>Manager</b>	25
<b>Member</b>	WILLIAM DOGERS PO BOX 161 CHARLESTON, WV, 25414 USA
<b>Member</b>	JEFFERY SHULTZ PINE WOOD HARPERS FERRY, WV, 25425 USA
<b>Organizer</b>	JAMES B. CRAWFORD, III CRAWFORD & KELLER PLLC 120 N. GEORGE STREET CHARLES TOWN, WV, 25414 USA
Type	Name/Address

DBA			
DBA Name	Description	Effective Date	Termination Date
ENVIROTECH PEST SERVICES OF THE EASTERN PANHANDLE	TRADENAME	1/26/2005	
DBA Name	Description	Effective Date	Termination Date

Name Changes	
Date	Old Name
<b>6/3/2011</b>	ACCURATE PEST MANAGEMENT, LLC
Date	Old Name

Date	Amendment
<b>6/3/2011</b>	AMENDMENT FILED CHANGING NAME FROM ACCURATE PEST MANAGEMENT, LLC - ALSO CHANGED TERM TO AT-WILL & UPDATED ADDRESSES.
Date	Amendment

Annual Reports	
Filed For	
2014	
2013	
2012	
2011	

2010
2009
2008
2007
2006
2005
2004
2003
2002
2001
2000
<b>Date filed</b>

For more information, please contact the Secretary of State's Office at 304-558-8000.

Monday, February 8, 2021 — 5:45 PM

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**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**STATE CERTIFIED TERMITE & PEST LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
STATE CERTIFIED TERMITE & PEST**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**AMENDED COMPLAINT**

The Plaintiffs, Jeffrey W. Schultz, William R. Rogers, and State Certified Termite & Pest LLC, hereby Complain as follows:

**PARTIES**

1. The Plaintiff, State Certified Termite & Pest LLC, (the "LLC"), formerly known as Accurate Pest Management, LLC, and registered as doing business as Envirotech Pest Services of the Eastern Panhandle, is a West Virginia limited liability company, engaged in pest management in Berkeley County and Jefferson County, West Virginia.
2. Plaintiff Jeffrey W. Schultz ("Schultz") is a citizen and resident of Jefferson County, West Virginia.
3. Shultz is a member of the LLC, owning 41% of the membership units.
4. Plaintiff William R. Rogers ("Rogers") is a citizen and resident of Jefferson County, West Virginia.
5. Rogers is a member of the LLC, owning 18% of the membership units.

6. Rogers is an employee of the LLC, receiving \$8,000.00 per month in pay.
7. Defendant Scott W. McDermitt (“McDermitt”) is a citizen and resident of Berkeley County, West Virginia.
8. McDermitt is a member of the LLC, owning 41% of the membership units.
9. McDermitt is an employee of the LLC, receiving \$8,000.00 per month in pay.
10. Upon information and belief, McDermitt is the sole proprietor of a new pest control company.

### **JURISDICTION & VENUE**

11. This Court may exercise general and specific personal jurisdiction over the Plaintiffs and the Defendant to this civil action because the LLC routinely conducts business in Berkeley County, and McDermitt resides in Berkeley County, West Virginia.
12. This Court may exercise jurisdiction over the subject matter of this civil action pursuant to West Virginia Code §51-2-2. The amount in controversy exceeds \$7,500.00.
13. This Court is the proper venue for this civil action pursuant to West Virginia Code §56-1-1(a).
14. This Civil Action is brought by the LLC as authorized by a vote of the individual Plaintiffs as members holding a majority of the interests in the LLC. In the event the Defendant disputes this right, the individual Plaintiffs also assert derivatively the right of the LLC pursuant to West Virginia Code §31B-11-1101 and Rule 23.1 of the West Virginia Rules of Civil Procedure, and in conformance with West Virginia Code §31B-11-1103.
15. The individual Plaintiffs state that the Defendant refuses to surrender control of the Company’s assets, which he is using for personal use and in the operation of his new

business, and refuses to communicate with the individual Plaintiffs.

### **FACTS**

16. Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
17. LLC is a manager-managed company.
18. Until June 4, 2020, McDermitt was the elected Manager of the LLC pursuant to the Second Amended and Restated Operating Agreement dated September 17, 2007, (the “Agreement”) by and among the members of the LLC: Schultz, McDermitt and Rogers. The Agreement is hereto attached as Exhibit 1.
19. McDermitt’s duties as Manager included managing finances, making payroll requests for himself and Rogers, collecting checks and mail from the post office box, managing the bank account, and other day to day operational activities as authorized by the Agreement.
20. In an effort to discuss questions regarding finances and other concerns about the LLC’s operation, a meeting of the members was called.
21. On June 4, 2020 at 4:00 p.m., all of the members of the LLC, McDermitt, Rogers and Schultz, held a meeting before James B. Crawford, III, at the law office of Crawford Law Group PLLC.
22. The unsigned minutes of such meeting as drafted by Mr. Crawford are attached hereto as Exhibit 2.
23. The members voted unanimously to replace McDermitt as Manager, and to elect Rogers as the new LLC Manager, responsible for managing the books and records of the LLC.
24. Following the meeting, the members agreed to place Rogers’ name on the LLC’s bank account at the Bank of Charles Town, No. 1023829, (the “Account”), and to remove

McDermitt's name from the account.

25. At the Bank of Charles Town ("BCT") on the same day, McDermitt falsely insisted to a BCT employee that he was still the Managing Member, and he would not allow his name to be removed from the Account, although Rogers' name was added.
26. On June 30, 2020, Rogers discovered that BCT had removed him from the Account at the unilateral request of McDermitt.
27. McDermitt continues to control the LLC despite having been removed as Managing Member on June 4, 2020.
28. McDermitt continues to exclude the other members of the LLC, including Managing Member Rogers, from exercising any management or control over the LLC.
29. Upon information and belief, McDermitt is using the Account to pay his own personal expenses that have no business purpose, including but not limited to cell phone bills for his family members and girlfriend and supplies and chemicals for his new pest control business.
30. Upon information and belief, McDermitt is collecting checks from the LLC's clients.
31. Upon information and belief, McDermitt is continuing to use the LLC's custom invoices for his own personal business.
32. On July 23, 2020, McDermitt cashed a check for \$2,000.00 with BCT.
33. McDermitt remains in possession of the LLC's assets, and upon information and belief is using such assets for his new business. Such items include, but are not limited to:
  - a. Company cell phone with phone number 304-676-2277
  - b. 2014 Nissan NV
  - c. 2006 Chevrolet Silverado 1500
  - d. 2004 Toyota Tacoma
  - e. 2006 Nissan Frontier
  - f. Vehicle fixtures and equipment boxes



- g. Safety equipment and respirator
- h. Termite Rig, valued at approximately \$4,000.00
- i. Hilti Termite Drill, valued at approximately \$800.00
- j. (4) Hilti drill bits, valued at approximately \$80.00 each
- k. Hand tools, valued at approximately \$300.00
- l. (8) Gallons of Boracare, valued at approximately \$80.00 per gallon
- m. (2) buckets of Timbor, valued at approximately \$132.00 each
- n. (2) cases of centerfire, valued at approximately \$300.00 each
- o. (4) packages of Termadore, valued at \$180.00 each
- p. (1) Birchmier backpack, valued at approximately \$300.00
- q. (1) B&G Compressed air sprayer, valued at approximately \$300.00
- r. (6) cans of Zenprox Extend, valued at \$20.00 per can
- s. (1) bucket of mouse bait, valued at approximately \$100.00
- t. (2) dust bulbs, valued at approximately \$60.00 each
- u. (1) case of Low Profile rat baiters valued at approximately \$100.00
- v. Custom uniform shirts, valued at \$40.00 each
- w. A storage shed purchased by the LLC for \$3,700.00
- x. The opportunities of the LLC, in the form of its goodwill and customers
- y. The pest application license issued by the West Virginia Department of Agriculture
- z. The LLC's stationary and billing forms

- 34. Upon information and belief, McDermitt is still accessing the Post Office Box and collecting checks from clients.
- 35. On information and belief, McDermitt paid himself wages, despite the fact that he is no longer performing the work for which said payments were intended as compensation, while refusing to pay Rogers wages or expenses, despite the fact that Rogers continues to undertake the LLC's requisite work and obligations.
- 36. Upon information and belief, McDermitt's personal distributions from the LLC are unrepresentative of his share as owner of 44% of the membership units.
- 37. Upon information and belief, McDermitt has, unilaterally and without consultation, terminated the LLC's pesticide application license with the Department of Agriculture, preventing the LLC from operating.
- 38. McDermitt has refused the requests of Rogers, the new Manager, and Schultz, to share

any bank records or access to the Account, to return the Post Office key, or to in anyway cooperate.

39. On June 29, 2020, McDermitt drafted and gave to Rogers, Schultz, and Crawford, a “Notice of Dissolution,” whereby McDermitt attempted to unilaterally dissolve the LLC and “demand redemption” of his ownership interest in the LLC. The Notice of Dissolution that the Defendant, “hereby gives notice of resignation as Managing Member and member of the LLC,” effective July 25, 2020. The Notice of Dissolution is hereto attached as Exhibit 3.

40. The Agreement specifies in Paragraph 10(a) that upon the dissociation of a member, the business of the Company may be continued by consent of a Majority of interest of the remaining members.

41. The remaining members, Rogers and Schultz, have no intention of dissolving the LLC.

#### **COUNT I – CONVERSION**

42. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

43. Upon information and belief, Defendant has wrongfully and intentionally converted Plaintiffs’ assets by wrongful acts in violation of the Plaintiffs’ rights and thereby have deprived Plaintiffs of such assets.

44. As a direct and proximate result of the Defendant’s conduct, Plaintiffs suffered damages in an amount yet to be determined.

#### **COUNT II – UNJUST ENRICHMENT**

45. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

46. Upon information and belief, Defendant has been unjustly enriched by his willful, wanton and reckless conduct as described herein.
47. Defendant has been unjustly enriched in an amount equal to the value of company property in his possession, misappropriated funds, unequal distributions, and unequal payment.
48. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered damages in an amount yet to be determined.
49. It is inequitable to allow McDermitt to be unjustly enriched without compensating the Plaintiffs.

### **COUNT III – BREACH OF FIDUCIARY DUTY**

50. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
51. McDermitt owed the Plaintiffs a fiduciary duty to conduct activities with loyalty, care and the utmost good faith and fair dealing.
52. Upon information and belief, McDermitt has breached, and continues to breach, his fiduciary duties to the Plaintiffs, by (a) refusing to provide Rogers and Schultz with requested financial information or access to the Account, (b) negligently, recklessly and intentionally misappropriating LLC funds, (c) failing to make equal distributions to the members, (d) refusing to pay Roger's wages (e) clandestinely creating his own company using supplies, equipment, money, and opportunity of the LLC for the private advantage of himself and to the detriment of the Plaintiffs, and (f) holding out his new company as the LLC, or a successor to the LLC, to current clients.
53. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered

damages in an amount yet to be determined.

#### **COUNT IV – FRAUDULENT MISREPRESENTATION**

54. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
55. Upon information and belief, McDermitt repeatedly and fraudulently misrepresented the LLC's expenditures, as numerous expenditures were personal expenditure, not necessary for the business's ordinary course of business.
56. The Defendant fraudulently misrepresented that he was the Manager of the LLC, authorized to use the Account at BCT.
57. The Plaintiffs justifiably relied and/or was damaged by the Defendant's misrepresentations.
58. McDermitt further made misrepresentations to BCT employees in order to induce them to restrict access to the bank accounts and financial records.
59. The Defendants actions constitute actual and constructive fraud.
60. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

#### **COUNT V – ACCOUNTING AND RIGHT TO INFORMATION**

61. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.
62. As members of the LLC , Rogers and Shultz are entitled to an accounting of the LLC's finances and book.
63. McDermitt has refused Rogers, the Managing Member, and Schultz, a member, access to requested financial information and intentionally removed Rogers from the Account at

the Bank of Charles Town, despite no longer being the Manager of the LLC.

64. McDermitt is required to provide Plaintiffs and their attorneys with an accounting of, including the unfettered right to access, inspect and copy, all matters associated with the financial health of the LLC, including but not limited to an accounting of all financial statements, checks, bills, ledgers, invoices and receipts.

65. As a direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

#### **COUNT VI – VALUATION**

66. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

67. The Plaintiffs request an Order establishing the value of the Defendant's interest in the LLC as a disassociated member, to be offset or extinguished by the amounts found to be owing to the Plaintiffs by the Defendant, in accordance with West Virginia Code §31B-7-702 and 702, and Paragraph 10 of the Agreement.

#### **COUNT VII – WIND DOWN**

68. The Company was administratively dissolved on November 1, 2015, because Mr. McDermitt failed to file an Annual Report with the Secretary of State.

69. The Defendant allowed for the two-year renewal time period with the Secretary of State to expire, so that the Company cannot be reinstated.

70. As a result of the Defendant's failure, the Company has been dissolved and cannot be reinstated.

71. The Plaintiffs, pursuant to West Virginia Code §31B-8-802, request that the Company's affairs be wound up, and that after collecting all sums due to the Company for assets and

money improperly taken, for the proceeds to be distributed to the creditors and the Company's members as their interests may dictate.

#### **COUNT VIII – PRELIMINARY INJUNCTIVE RELIEF**

72. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

73. Plaintiffs have suffered irreparable harm from Defendant's actions by virtue of the damage Defendant has done to their business interests, as discussed above, including but not limited to interference with LLC's client relationships, intentional and potentially permanent damage to LLC's status with relevant state licensing authorities, and damage to LLC's reputation.

74. The Plaintiffs continue to suffer irreparable harm if McDermitt is not enjoined from using the LLC's assets, and as direct and proximate result of the Defendant's conduct, the Plaintiffs have suffered damages in an amount yet to be determined.

75. Although monetary damages incurred by Plaintiffs from Defendant's conduct would normally be amenable to a monetary remedy at law, Plaintiffs, by virtue of the fact that, absent discovery, they have no knowledge of the extent of the monetary damages nor of Defendant's ability to pay any monetary compensation awarded, may further suffer irreparable harm from any continued financial damage that Defendant does to the company in the event that Defendant lacks sufficient resources to provide full compensation.

#### **COUNT IX – PUNITIVE DAMAGES**

76. The Plaintiffs hereby incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

77. The actions of the Defendant, McDermitt, which were intentional, willful and reckless, and undertaken in complete disregard for the Plaintiffs' rights.

78. The Plaintiffs have suffered damages due to such actions of the Defendant. The Plaintiffs are entitled to punitive and exemplary damages in an amount sufficient to dissuade the Defendant and others similarly situated from so acting in the future.

**WHEREFORE**, the Plaintiffs, Jeffrey W. Schultz, William R. Rogers, as Members and State Certified Termite & Pest LLC, respectfully request that a judgment be entered in their favor and against the Defendant, Scott W. McDermitt, as follows:

- a) For all amounts owed by Defendant to Plaintiffs in order to fully and completely compensate Plaintiffs for all damages associated with Defendant's actions;
- b) For all amounts paid or transferred out of the LLC to him or to other persons, for any purpose unrelated to the LLC's business;
- c) For punitive damages against Defendant due to his intentional and fraudulent misconduct;
- d) For the allowance of pre-judgment and post-judgment interest at the applicable rate on the judgment from and after the date of judgment until its satisfaction;
- e) For the recovery of attorneys' fees, out-of-pocket expenses, and costs, based upon the Defendants fraud, and pursuant to Paragraph 7(i) of the Agreement and West Virginia Code §31B-7-702(d) and (e); and,
- f) For a Preliminary Injunction against the Defendant in accordance with the Motion of the Plaintiffs for Entry of a Preliminary Injunction Order;
- g) Such other and further relief as this Court deems just and proper.

**The Plaintiffs demand a jury trial.**

**STATE CERTIFIED TERMITE & PEST LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
STATE CERTIFIED TERMITE & PEST LLC  
By Counsel**

/s/Nicola D. Smith

Nicola D. Smith (WV State Bar #11251)  
Christian J. Riddell (WV State Bar #12202)  
Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

**To:** Christian John Riddell  
stedmanriddell@gmail.com

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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following order - case was FILED on 2/16/2021 12:21:37 PM

Notice Date: 2/16/2021 12:21:37 PM

Virginia Sine  
CLERK OF THE CIRCUIT COURT  
Berkeley County  
380 W. South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



**In the Circuit Court of Berkeley County, West Virginia**

**Accurate Pest Management, LLC,**  
**Jeffery Schultz,**  
**William R Rogers,**  
Plaintiffs,

vs.)

**Scott W. McDermitt,**  
Defendant

)  
)  
)  
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)

Case No. CC-02-2020-C-170

**Order from August 20, 2020 Initial Hearing**

This matter came before the Court on August 20, 2020. Appearing were the Plaintiffs, Accurate Pest Management, LLC, Jeffery Schultz, and William Rogers, by counsel, Christian J. Riddell, Christopher Smith, and Nicola Smith, and the Defendant, Scott McDermitt, by counsel, Michael Scales for an initial hearing in the above styled case and upon the Court's granting of a Temporary Preliminary Injunction by Amended Order entered July 31, 2020.

The Court finds that the parties do not contest the preliminary injunction entered in this matter by the Court. However, the ownership status of certain items of property, and whether they are covered under said injunction, is contested. The parties agreed to allow counsels to confer to determine whether agreement could be reached as to the disputed items of personal property, and agreed further that a subsequent contested hearing shall be set in the event that agreement cannot be reached.

The parties further indicated that the matter of the ownership over telephone number (304) 676-2277 would not be agreed upon, and requested that the Court hear evidence and render a verdict as to the limited issue of the ownership of said number. Said evidence was elicited and heard by the Court.

WHEREUPON, it is hereby ADJUDGED and ORDERED that telephone number (304)

676-2277 is an asset and the property of Accurate Pest Management, LLC, and that it is therefore within the parameters of paragraphs (a) and (f) of the Court's July 31, 2020 Amended Order Granting Temporary Preliminary Injunction.

It is further ORDERED that Defendant McDermitt shall have ten days to do those things necessary to cause the number to be transferred to Accurate Pest Management, LLC, through its phone service provider or carrier or otherwise, so the number may be used by the Plaintiffs for the pendency of these proceedings.

It is further ORDERED that counsel for both parties shall schedule a conference call with the Court's legal assistant to set a subsequent hearing in this matter, at which time evidence shall be taken on the ownership status of any piece of property still in dispute.

The exceptions and objections to the rulings herein by any party are hereby noted and preserved for the record.

The Clerk shall furnish attested copies of this Order to all counsel of record and to any self represented party or parties.

**/s/ R. Steven Redding**  
Circuit Court Judge  
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.



## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
Accurate Pest Management, LLC v. Scott W. McDermitt  
CC-02-2020-C-170

The following order - case was FILED on 4/29/2021 3:53:16 PM

Notice Date: 4/29/2021 3:53:16 PM

Virginia Sine  
CLERK OF THE CIRCUIT COURT  
Berkeley County  
380 W South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtswwv.gov



**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT, LLC,  
JEFFERY SCHULTZ and WILLIAM R. ROGERS,**

**Plaintiffs.**

**v.**

**Civil Action No. 20-C-170**

**SCOTT W. MCDERMITT,**

**Defendant.**

**PROTECTIVE ORDER**

**THIS MATTER** came before the Court pursuant to Defendant's Motion for a Protective Order to protect dissemination of banking and financial records of the Defendant.

It appearing to the Court that Defendant's Motion is well taken, it is **ORDERED** as follows:

**I. DISCOVERY PHASE**

A. If a party, or a non-party producing information in this civil action, or an attorney for the party or non-party, has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a request or court order, are confidential and should not be disclosed other than in connection with this action and pursuant to this Protective Order, the party, non-party, or attorney shall clearly mark each such document or other material as "**CONFIDENTIAL**". The individual or entity designating the document or materials "**CONFIDENTIAL**" must take care to limit any such designation to specific documents or materials that qualify for protection under the appropriate standards. Mass, indiscriminate, or routine designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper (*e.g.* to unnecessarily encumber or delay the case development process or impose unnecessary expense and burden on another party) expose the designating

individual or entity to sanctions. If it comes to the attention of the designating individual or entity that a document or other material has been improperly marked as "CONFIDENTIAL", the designating individual or entity must promptly notify all parties that the erroneous designation is being withdrawn and must replace the improperly designated document or material with a copy that is not marked "CONFIDENTIAL".

B. If a party or an attorney for a party disputes whether a document or other material should be marked "CONFIDENTIAL", the parties and/or attorneys shall attempt to resolve the dispute with the designating individual or entity. If they are unsuccessful, the party or attorney challenging the "CONFIDENTIAL" designation shall do so by filing an appropriate motion.

C. No party or attorney or other person subject to this Protective Order shall distribute, transmit, or otherwise divulge any document or other material which is marked "CONFIDENTIAL", or the contents thereof, except in accordance with this Protective Order. Court personnel are not subject to this Protective Order while engaged in the performance of their official duties.

D. Any document or other material which is marked "CONFIDENTIAL", or the contents thereof, may be used by a party, or a party's attorney, expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Protective Order shall prevent the use of any document or other material which is marked "CONFIDENTIAL", or the contents thereof, at any deposition taken in this action.

E. If a party or attorney wishes to disclose any document or other material which is marked "CONFIDENTIAL", or the contents thereof, to any person actively engaged in working

on this action (*e.g.*, expert witness, paralegal, associate, consultant), the person making the disclosure shall do the following:

1. Provide a copy of this Protective Order to the person to whom disclosure is made;
2. Inform the person to whom disclosure is made that she/he is bound by this Protective Order;
3. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;
4. Instruct the person to whom disclosure is made to return any document or other material which is marked "**CONFIDENTIAL**" at the conclusion of the case, including notes or memoranda made from "**CONFIDENTIAL**" material; and
5. Maintain a list of persons to whom disclosure was made and the "**CONFIDENTIAL**" materials which were disclosed to that person.

## **II. POST-DISCOVERY PHASE**

A. If any party, non-party, or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any "**CONFIDENTIAL**" document or material, she/he must provide reasonable notice to the party that produced the document or material. The parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the "**CONFIDENTIAL**" marking, or (b) creating a mutually acceptable redacted version 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 proponent of continued confidentiality will

have the burden of persuasion that the document or material should be withheld from the public record in accordance with applicable law.

B. Within thirty days after the conclusion of the action or any appeal thereof, each party shall gather the "CONFIDENTIAL" materials, copies thereof, and related notes and memoranda, including materials given by that party to any other individual, and shall return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order, unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of a receiving party or the party's expert witness or consultant, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including drafts of preliminary reports submitted by an expert or consultant, which includes information produced as "CONFIDENTIAL", so long as that work product does not duplicate verbatim substantial portions or the text or images of confidential documents. Any such work product retained by an attorney shall continue to be "CONFIDENTIAL" and shall be subject to this protective order. The attorney may use his or her work product in other litigation provided that the attorney does not use or disclose the confidential documents.

The Court notes the timely objection and exception to this Order by Plaintiffs.

The Clerk is directed to e-file a copy of this Order to counsel of record: Michael L. Scales, Esq., Christian Riddell, Esq. and Nicola D. Smith, Esq.; and, to mail a copy to Charles Dunbar, Esq., counsel for the Bank of Charles Town, to his address of Jackson & Kelly, PLLC, P.O. Box 553, Charleston, WV 25322.





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

To: Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

CC-02-2020-C-170

The following third party complaint was FILED on 9/7/2021 11:23:10 AM

Notice Date: 9/7/2021 11:23:10 AM

Virginia Sine  
CLERK OF THE CIRCUIT COURT  
Berkeley County  
380 W South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtsww.gov



# COVER SHEET

E-FILED | 9/7/2021 11:23 AM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

**Accurate Pest Management, LLC v. Scott W. McDermitt**

**First Plaintiff:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**First Defendant:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**Judge:**

Steven Redding

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Tort

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☒ Yes ☐ No

**Case will be ready for trial by:** 5/2/2022

**Mediation Requested:**

☐ Yes ☒ No

**Substantial Hardship Requested:**

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Michael Scales, 314 W John St, Martinsburg, WV 25401

## SERVED PARTIES

**Name:** State Certified Termite And Pest LLC

**Address:** 64 Carlson Lane, Harpers Ferr WV 25425

**Days to Answer:** 30      **Type of Service:** Secretary of State - Certified - Including Copy Fee

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFREY SCHULTZ and WILLIAM R. ROGERS,  
individually and derivatively on behalf of Accurate  
Pest Management, LLC,

Plaintiffs

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant/Counter Plaintiff and Third-Party Plaintiff

v.

JEFFREY SCHULTZ and WILLIAM R. ROGERS,

Counter Defendants

AND

STATE CERTIFIED TERMITE AND PEST LLC,  
a West Virginia limited liability company,

Third-Party Defendant.

**DEFENDANT'S SECOND AMENDED COUNTERCLAIM  
AND THIRD-PARTY COMPLAINT**

**NOW COMES** Defendant, Scott W. McDermitt, by counsel, Michael L. Scales, Esq. and the law firm of Michael L. Scales, PLLC, and for his Second Amended Counterclaim against Jeffrey Schultz and William R. Rogers, Counter Defendants and State Certified Termite And Pest LLC, a West Virginia limited liability company, and respectfully states as follows:

1. That Defendant, Scott W. McDermitt ("McDermitt"), is, and for all times and matters relevant herein, been a resident of Berkeley County, West Virginia.

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2. That Plaintiff, William R. Rogers ("Rogers"), for all times and matters relevant herein, is a resident and has been a resident of Jefferson County, West Virginia.

3. That McDermitt believes upon information that Schultz is a resident of Jefferson County, West Virginia.

4. That State Certified Termite & Pest LLC ("old LLC") was a pest control business operating in Berkeley and Jefferson Counties, West Virginia and continued in existence until November 1, 2015, when it was administratively dissolved by the Secretary of State of West Virginia for non-filing of its annual reports.

5. That the membership units of the old LLC were held 41% by McDermitt, 41% by Schultz, and 18% by Rogers.

6. That the old LLC continued to operate its pest control business -- even though administratively resolved until June, 2020, when McDermitt, Rogers and Schultz learned from the old LLC counsel, James B. Crawford, III, on June 4, 2020 members meeting that the old LLC had been dissolved.

7. That McDermitt believes upon information that Third-Party Defendant, State Certified Termite And Pest LLC is a single-member West Virginia limited liability company ("new LLC"), with its single member being Rogers, which was organized by Rogers and whose Articles of Organization were filed with the Secretary of State of West Virginia on July 10, 2020. (See Ex. 1).

8. That both the old LLC and the new LLC were and are in the pest control business generally in Berkeley and Jefferson Counties of West Virginia.

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**I. COUNTERCLAIM OF DEFENDANT, SCOTT McDERMITT  
AGAINST PLAINTIFF, WILLIAM R. ROGERS  
FOR INVASION OF PRIVACY**

9. That Rogers, McDermitt and Schultz were all members of a business known as State Certified Termite & Pest LLC ("the LLC" or the "old LLC"), a West Virginia limited liability company, and were both the two operating agents of that business.

10. That these parties Rogers and McDermitt shared a certain cellular phone network while they were acting as agents for the LLC with U.S. Cellular.

11. That unbeknownst to McDermitt, and specifically without his consent or approval, and without that of any of the members of McDermitt's family, Rogers purposefully, intentionally, illegally, wantonly and willfully tracked the whereabouts of McDermitt and his family members by the use of the cellphone network, and violated the privacy of the McDermitt and his family by an unreasonable intrusion upon the seclusion of the McDermitt and his family by tracking their whereabouts at all times during the day and night for a period of approximately two (2) years, ending in June of 2020.

12. That even though McDermitt's cell phone network was shared with Rogers as a business phone line, McDermitt had no knowledge nor expectation that through Google Maps, Rogers had the ability to track McDermitt and his family's whereabouts.

13. That McDermitt believes upon information that Rogers tracked physicians' appointments to which the McDermitt and his family took, including those of their minor son.

14. That Rogers violated McDermitt's right of privacy, including McDermitt's right to be let alone and kept secret his private communications, conversations, affairs and whereabouts, which is an unwarranted invasion or violation of which gives rise to a common law of action for

invasion of privacy for which Rogers proximately caused excessive harm and damages to McDermitt.

15. That as the proximate result of Rogers wrongfully, intentionally, willfully, wantonly and illegally, and in violation of the McDermitt's right of privacy, McDermitt has been caused harm and damages in an amount to be determined from the evidence.

16. That all of such actions were wanton, willful, oppressive and malicious for which punitive damages are awardable to McDermitt.

17. That the actions of Rogers in tracking McDermitt and McDermitt's family members for two (2) years prior to June 28, 2020 exceeded the sensitivities of an ordinary person; were intrusions that would be highly offensive to a reasonable person; and proximately caused severe emotional harm and damages to McDermitt.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment against Plaintiff, William R. Rogers, in an amount to be determined from the evidence, including attorneys fees, court costs, pre- and post-judgment interest and punitive damages, and for such other relief as the Court deems necessary and proper.

## **II. FRAUD AGAINST PLAINTIFFS, ROGERS AND SCHULTZ**

18. McDermitt incorporates by reference paragraphs 1 through 17 inclusive for this Second Amended Counterclaim and Third-Party Complaint, Count II as if set forth in their entirety herein.

19. That on or about June 4, 2020, McDermitt was summoned to the law office of James B. Crawford, III in Charles Town, Jefferson County, West Virginia, Mr. Crawford being the LLC counsel the old LLC, for a members meeting of the old LLC, to discuss the dissolution of the old LLC in 2015 for not filing annual reports, the removal of McDermitt as manager, and for a turnover

of the LLC records and bank accounts from McDermitt to Rogers as the new manager. (See copy of unsigned minutes of members meeting of June 4, 2020 prepared by Attorney Crawford – Ex. 2).

20. That at that members meeting held on June 4, 2020, Rogers and Schultz advised McDermitt that they wanted to continue the business of the old LLC and were retaining Mr. Crawford to reinstate or reorganize the old LLC, as it was dissolved on November 1, 2015 for failure to file annual reports with the Secretary of State of West Virginia (see Ex. 3).

21. That in that regard, Mr. Crawford filed a request with the West Virginia Secretary of State on June 18, 2020 to reserve the name of “State Certified Termite & Pest LLC”, a copy of which is attached hereto as Exhibit 4.

22. That sometime during July of 2020, Plaintiffs filed this civil action, individually and derivatively for the old LLC, against McDermitt which representation implied that the old LLC was to be reorganized and that McDermitt would have a 41% of the membership interest in the reorganized old LLC that was dissolved in 2015.

23. That Rogers and Schultz fraudulently misrepresented those facts and circumstances regarding the reorganization of the old LLC, and Rogers and Schultz misrepresented that they were going to “continue the business”.

24. That the statements and acts of Rogers and Schultz were false and fraudulent and were made to McDermitt with the intention of having McDermitt rely upon those false representations.

25. That McDermitt reasonably relied upon those false representations and in so doing has lost his 41% interest in the old LLC, and McDermitt’s equitable interest in the assets,



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intellectual property of the customer list, cash, cash in banks, telephone numbers and all corporate opportunities of the old LLC.

26. That McDermitt's reasonable reliance upon the false and fraudulent representations of Rogers and Schultz were intended to have McDermitt rely upon them which he did, and upon his reasonable reliance in so doing, he has been harmed and damaged in an amount to be determined from the evidence but are at least the value of McDermitt's 41% interest in the old LLC.

27. That the actions of Rogers and Schultz in falsely representing that the old LLC's business would be continued and that the old LLC would be reinstated or reorganized with the same interests that McDermitt, Schultz and Rogers had in the old LLC being terminated by the Secretary of State of West Virginia in 2015 were false, and McDermitt has been harmed and damaged, and that the actions of Rogers and Schultz were wanton, willful, malicious and fraudulent for which McDermitt is entitled to punitive damages.

28. That McDermitt demands punitive damages from Rogers and Schultz, each and both, jointly and severally.

29. That Rogers has organized a new LLC entitled "State Certified Termite And Pest LLC" ("new LLC") as a fraudulent concealment and to make McDermitt believe it is the same limited liability company as the old LLC to take, abscond with and usurp the assets of the old LLC and its opportunities for which Rogers must account.

30. That Rogers and Schultz fraudulently represented to McDermitt that they were acting for the old LLC (bringing this civil action "derivatively" for the benefit of the old LLC), when in fact they were bringing this civil action fraudulently to acquire the assets of the old LLC for the sole benefit of Rogers' new LLC with virtually the same name as the old LLC.

31. That Rogers and Schultz fraudulently represented to the Court on July 29, 2020, at a hearing before this Honorable Court that the name of the old LLC was Accurate Pest Management LLC and that they were derivatively seeking all of the assets of the old LLC from McDermitt, as the old LLC's former manager, for the benefit of the old LLC, when in fact they fraudulently induced the Court and McDermitt to turn over all of those assets, records, opportunities, customer lists, and cash and cash in banks to Rogers for the sole benefit of his single-member new LLC.

32. That as the proximate cause of Rogers and Schultz's fraud and fraudulent concealment, McDermitt has been harmed and damaged at least by the loss of his 41% membership in the old LLC, plus all attorneys fees and costs to defend a fraudulent civil action against him.

33. That the fraud and fraudulent concealment by Rogers and Schultz dictate that McDermitt is entitled to punitive damages.

WHEREFORE, Defendant, Scott W. McDermitt, demands judgment against the Plaintiffs, William R. Rogers and Jeffery Schultz, each and both, jointly and severally, in an amount to be determined from the evidence, plus interest, court costs, punitive damages; and also for an accounting by Plaintiff Rogers as to all of the assets, cash, receipts and income for which he has wrongfully and fraudulently converted from State Certified Termite & Pest LLC from the date of July 10, 2020 to the present which have been utilized by State Certified Termite And Pest LLC plus all draws and payments to Rogers from the new LLC and for judgment for 41% of such total amount; and, for such other relief as the Court deems necessary and proper.

### **III. INVOLUNTARY DISSOLUTION OF NEW LLC AND ACCOUNTING BY ROGERS**

34. McDermitt incorporates by reference paragraphs 1 through 33 inclusive for Count III of his Counterclaim and Third-Party Complaint as if set forth in their entirety herein.

35. That Rogers organized State Certified Termite And Pest LLC (the new LLC) in order to perpetrate a fraud against the dissolved old LLC and McDermitt in order to fraudulently obtain all of the assets, cash, cash in bank, telephone number, customer lists and opportunities of the old LLC in which Rogers only had an 18% interest to his solely owned new LLC in which he owned 100% of the membership interests.

36. That Rogers has solely owned the new LLC since July 10, 2020, but has operated the new LLC to take over, abscond with, convert and steal all of the old LLC's pest management business to the exclusion of McDermitt and McDermitt's 41% membership interest in the old LLC.

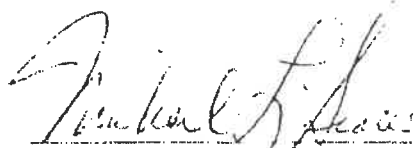
37. That because Rogers has used the new LLC as a vehicle to perpetrate a fraud, McDermitt has the right to seek from this Court a dissolution of the new LLC pursuant to §31B-8-801(b)(5)(v) of the *W.Va. Code*. As the manager, Rogers, as the member in control of the company (old LLC) has acted in a manner that is illegal, oppressive, fraudulent and/or unfairly to McDermitt, in that he owed a duty of loyalty and a fiduciary duty to the old LLC and McDermitt with respect to the assets, and the opportunities of the old LLC to wind up the old LLC as a fiduciary, which he has breached.

38. That Rogers must be compelled to account for all money and property that the new LLC has received since its organization on July 10, 2020, and to account and pay over to McDermitt 41% of the profits and assets of the new LLC since that date to the present date.

WHEREFORE, Defendant and Counter-Plaintiff, Scott W. McDermitt, demands judgment that the Court order Third-Party Defendant, State Certified Termite And Pest LLC be dissolved pursuant to §31B-8-801(b)(5)(v) of the *W.Va. Code* for the fraudulent acts of Rogers; but in the interim for the Court to order that an independent receiver be appointed to safeguard the assets, tangible and intangible, of State Certified Termite And Pest LLC from Rogers' control; for Rogers

to account for all of his transactions as manager/sole owner of State Certified Termite And Pest LLC since July 10, 2020; and, to distribute the net assets of State Certified Termite And Pest in accordance with the percentages of members in the old LLC: 41% to McDermitt; 41% to Schultz; and, 18% to Rogers; and the Court to award Defendant and Third-Party Plaintiff, Scott W. McDermitt, his attorneys fees and costs, or for such other relief as the Court deems meet and just in the premises.

**DEFENDANT DEMANDS A TRIAL BY JURY FOR ALL CLAIMS TRIABLE BY JURY.**




Michael L. Seales, Attorney at Law  
Counsel for Defendant/Counter Plaintiff/  
Third Party Plaintiff, Scott W. McDermitt  
Michael L. Seales, PLLC  
314 W. John Street  
Martinsburg, WV 25401  
(304) 263-0000  
WV Bar No. 3277

Scott W. McDermitt, Defendant/Counter Plaintiff/  
Third Party Plaintiff  
By Counsel

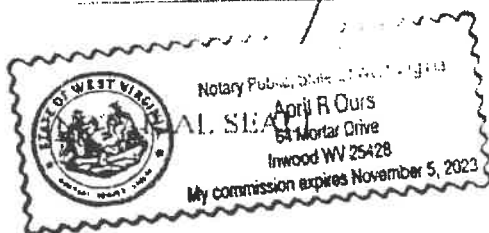
## VERIFICATION

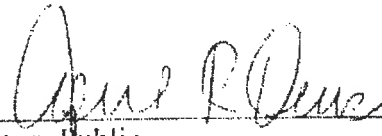
STATE OF WEST VIRGINIA,  
COUNTY OF BERKELEY, to-wit:

Personally appeared before the undersigned authority, SCOTT W. McDERMITT, Defendant/Counter Plaintiff/Third Party Plaintiff named in the foregoing Second Amended Counterclaim and Third-Party Complaint, after having been duly sworn upon his oath, deposes and states that the facts and allegations contained in the foregoing Second Amended Counterclaim and Third-Party Complaint are true, except insofar as they are therein stated to be upon information and belief; and insofar as they are alleged upon information and belief, he believes them to be true.

  
\_\_\_\_\_  
Scott W. McDermitt

Taken, subscribed and sworn to, before me, the undersigned authority, this 29<sup>th</sup> day  
of JANUARY, 2021, by Scott W. McDermitt.



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

My commission expires: Nov. 5, 2023

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

ACCURATE PEST MANAGEMENT, LLC,  
JEFFREY SCHULTZ and WILLIAM R. ROGERS,  
individually and derivatively on behalf of Accurate  
Pest Management, LLC,

Plaintiffs

v.

Civil Action No. 20-C-170

SCOTT W. MCDERMITT,

Defendant/Counter Plaintiff and Third-Party Plaintiff

v.

JEFFREY SCHULTZ and WILLIAM R. ROGERS,

Counter Defendants

AND

STATE CERTIFIED TERMITE AND PEST LLC,  
a West Virginia limited liability company,

Third-Party Defendant.

**CERTIFICATE OF SERVICE**

I, Michael L. Seales, Attorney for Defendant/Counter Plaintiff/Third Party Plaintiff, Scott W. McDermitt, do hereby certify that I have served a true copy of DEFENDANT'S SECOND AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT by the Court's e-filing system, and by mailing a true copy thereof to counsel for Plaintiffs, Christian J. Riddell, Esq. and Nicola Smith, Esq., this 24<sup>th</sup> day of January, 2021.

  
Michael L. Seales, Attorney at Law



## Articles of Organization of Limited Liability Company

Business Legal Name:  
State certified termite and pest

For filing with the West Virginia Secretary of State  
a Business for West Virginia Partner  
tel: (304) 558-8000

Business Legal Name	State certified termite and pest
Submitted Date	07.09.2020
Registration Type	New Business 2
Registrant Type	A business formed in West Virginia.
Charter Type	Domestic
Class	For Profit
Organization Type	Limited Liability Company
County	Jefferson
WV Effective Date	07.09.2020
Business Legal Purpose	Pest control company
Member/Manager Managed	Manager
At Will Term	At Will
Members Liable?	No
Primary Business Location	64 Carlson lane Harpers Ferry . WV 25425 Phone #: (304)676-5182 County Jefferson
Tax Return Mailing Address	64 Carlson lane Harpers Ferry . WV 25425
Agent of Process	William Rogers State certified termite and pest 64 Carlson lane Harpers Ferry . WV 25425
Principal Office	64 Carlson lane Harpers Ferry . WV 25425
Designated Office	64 Carlson lane Harpers Ferry . WV 25425
Organizer Information	William Rogers State certified termite and pest 64 Carlson lane Harpers Ferry . WV 25425
Manager Information	William Rogers State certified termite and pest 64 Carlson lane Harpers Ferry . WV 25425
Source of Business	ALL NEW
Primary Business Class	8129 Other Personal Service 812990 - All Other Personal Services
Business Activity Public?	No
Offer credit services?	No
Purchase future payments?	No
Are you a scrap metal dealer or recycler?	No
Veteran-Owned organization?	No
Company Website Address	Statecertwv@gmail.com
Would you like to be contacted by a WWSBDC business coach?	No
Would you like to take advantage of the Young Entrepreneurs Act?	No

EXHIBIT #



## Articles of Organization of Limited Liability Company

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Business Legal Name:  
State certified term te and pest

For filling with the West Virginia Secretary of State  
a Business for West Virginia Partner  
tel: (304) 558-8000

I certify the information provided is true. I further certify that I am duly authorized to file this document on behalf of this organization as required by West Virginia Code. I agree that the electronic entry of my name below represents my signature and authorization for this filing.

William Rogers

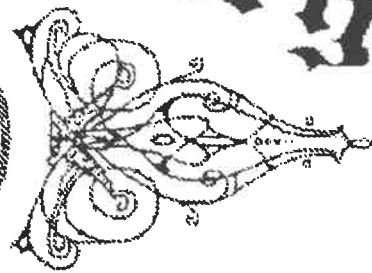
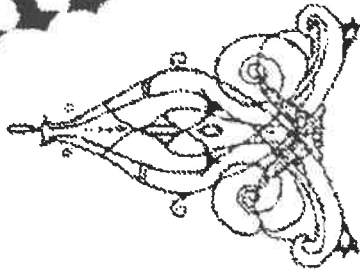
Authorized By

ORGANIZER

Capacity



# State of West Virginia



## Certificate

*I, Mac Warner, Secretary of State,  
of the State of West Virginia, hereby certify that*

STATE CERTIFIED TERMITE AND PEST LLC

has filed the appropriate registration documents in my office according to the provisions of the West Virginia Code and hereby declare the organization listed above as duly registered with the Secretary of State's Office.

*Given under my hand and  
the Great Seal of West Virginia  
on this day of  
July 10, 2020*



*Mac Warner*

*Secretary of State*

This meeting being held this 4<sup>th</sup> day of June, 2020 at the law office of Crawford Law Group PLLC, 120 N. George Street, Charles Town, WV 25414 at 4:00 p.m. Those attending were the owners of State Certified; Jeffery Schultz, owner of 33.3%, Scott McDermott, owner of a like amount and Bill Rogers, owner of 15% of the company.

The purpose of the meeting was to address certain matters and issues between the parties and as a result of a lengthy discussion, the parties have agreed as follows:

1. That the company will reimburse Jeffery Schultz for the purchase of Nick Petti's shares purchased in 2017 in the amount of \$32,678.71. This money shall be reimbursed with a rate of 4% and shall be paid by the Company to Jeffery Schultz in the sum of \$601.83 per month until paid.
2. The members of the company agreed to reinstate the company with the State of West Virginia as State Certified LLC and to select Accurate Pest Control as a dba.
3. All of the extra cars and trucks will be disposed of. Scott will be responsible for doing this and shall do the same within six (6) months of this agreement.
4. The company is currently paying rent to Emily in the amount of \$200.00 per month. The company will vacate the premises and terminate the rent.
5. The storage shed which is on Emily's property which was bought by the Company shall be purchased by Scott McDermott for the sum of \$\_\_\_\_\_.
6. The salaries of Scott and Bill shall remain the same. Any surplus at the end of the year shall be divided in accordance with the percentages of the Company's ownership. The parties may agree to distribute the profit on a different time frame.
7. Bill Rogers is elected as the Manager and will take over the books of the Company. He is authorized to hire outside help to help manage the financials of the Company.

EXHIBIT #

2

The undersigned hereby agree that the above is the agreement and binding upon all of the members of the organization as of this \_\_\_\_\_ day of June, 2020.

\_\_\_\_\_  
Jeffery Schultz

\_\_\_\_\_  
Scott McDermott

\_\_\_\_\_  
Bill Rogers

**West Virginia Secretary of State — Online Data Services****Business and Licensing**

## Online Data Services Help

**Business Organization Detail**

*NOTICE: The West Virginia Secretary of State's Office makes every reasonable effort to ensure the accuracy of information. However, we make no representation or warranty as to the correctness or completeness of the information. If information is missing from this page, it is not in the The West Virginia Secretary of State's database.*

**STATE CERTIFIED TERMITE & PEST LLC**

Organization Information								
Org Type	Effective Date	Established Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
LLC   Limited Liability Company	12/13/1999		12/13/1999	Domestic	Profit		11/1/2015	Revoked (Failure to File Annual Report)

Organization Information			
Business Purpose		Capital Stock	
Charter County	Jefferson	Control Number	0
Charter State	WV	Excess Acres	
At Will Term	A	Member Managed	MGR
At Will Term Years		Par Value	
Authorized Shares		Young Entrepreneur	Not Specified

EXHIBIT #

3

**Addresses**

Type	Address
<b>Designated Office Address</b>	208 N. CHARLES STREET CHARLES TOWN, WV, 25414 USA
<b>Mailing Address</b>	P O BOX 1077 CHARLES TOWN, WV, 25414 USA
<b>Notice of Process Address</b>	SCOTT W. MCDERMITT 2800 MIDDLEWAY PIKE BUNKER HILL, WV, 25413 USA
<b>Principal Office Address</b>	208 N. CHARLES STREET CHARLES TOWN, WV, 25414 USA
Type	Address

**Officers**

Type	Name/Address
<b>Manager</b>	SCOTT MCDERMITT 2800 MIDDLEWAY PIKE BUNKER HILL, WV, 25413 USA
<b>Manager</b>	25
<b>Member</b>	WILLIAM DOGERS PO BOX 161 CHARLESTON, WV, 25414 USA
<b>Member</b>	JEFFERY SHULTZ PINE WOOD HARPERS FERRY, WV, 25425 USA
<b>Organizer</b>	JAMES B. CRAWFORD, III CRAWFORD & KELLER PLLC 120 N. GEORGE STREET CHARLES TOWN, WV, 25414 USA
Type	Name/Address

**DBA**

DBA Name	Description	Effective Date	Termination Date
ENVIROTECH PEST SERVICES OF THE EASTERN PANHANDLE	TRADENAME	1/26/2005	

DBA Name	Description	Effective Date	Termination Date
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**Name Changes**

Date	Old Name
6/3/2011	ACCURATE PEST MANAGEMENT, LLC
Date	Old Name

Date	Amendment
6/3/2011	AMENDMENT FILED CHANGING NAME FROM ACCURATE PEST MANAGEMENT, LLC - ALSO CHANGED TERM TO AT-WILL & UPDATED ADDRESSES.
Date	Amendment

**Annual Reports**

Filed For
2014
2013
2012
2011
2010
2009
2008
2007
2006
2005
2004
2003
2002
2001
2000
Date filed

For more information, please contact the Secretary of State's Office at 304-558-8000.

Sunday, January 10, 2021 — 9:41 AM



**West Virginia Secretary of State — Online Data Services****Business and Licensing**

Online Data Services Help

**Business Name Registration/Reservation Detail****STATE CERTIFIED TERMITE & PEST LLC**

Name Registration/Reservation Information				
Type	Name	Effective Date	Termination Date	Renewed
NRS   Name Reservation	STATE CERTIFIED TERMITE & PEST LLC	6/18/2020	10/16/2020	No

Applicant Information		
Registrant	Address	Country
JAMES CRAWFORD III	120 N. GEORGE STREET CHARLES TOWN WV 25414	USA

Images				
View	Name	Date Added	Date Effective	Type
View	STATE CERTIFIED TERMITE & PEST LLC	7/27/2020	6/18/2020	R - Reservations & Registrations
View	Name	Date Added	Date Effective	Type

*NOTICE: The West Virginia Secretary of State's Office makes every reasonable effort to ensure the accuracy of information. However, we make no representation or warranty as to the correctness or completeness of the information. If information is missing from this page, it is not in the The West Virginia Secretary of State's database.*

Monday, January 4, 2021 — 10:15 AM

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EXHIBIT #

4





## West Virginia E-Filing Notice

CC-02-2020-C-170

Judge: Steven Redding

**To:** Christian John Riddell  
stedmanriddell@gmail.com

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
Accurate Pest Management, LLC v. Scott W. McDermitt  
CC-02-2020-C-170

The following answer was FILED on 9/22/2021 7:04:32 PM

Notice Date: 9/22/2021 7:04:32 PM

Virginia Sine  
CLERK OF THE CIRCUIT COURT  
Berkeley County  
380 W South Street  
MARTINSBURG, WV 25401

(304) 264-1918  
belinda.parsons@courtswv.gov



# COVER SHEET

E-FILED | 9/22/2021 7:04 PM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

**Accurate Pest Management, LLC v. Scott W. McDermitt**

**First Plaintiff:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**First Defendant:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**Judge:**

Steven Redding

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Tort

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☐ Yes ☒ No

**Case will be ready for trial by:** \_\_\_\_\_

**Mediation Requested:**

☐ Yes ☒ No

**Substantial Hardship Requested:**

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Nicola Smith, 329 S QUEEN ST, MARTINSBURG, WV 25401

## SERVED PARTIES

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**STATE CERTIFIED TERMITE & PEST, LLC.  
JEFFREY SCHULTZ and WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
State Certified Termite & Pest, LLC**

**Plaintiff**

**v.**

**Civil Action No. 20-C-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT**

**Defendant/Counter Plaintiff and Third-Party Plaintiff**

**v.**

**JEFFREY SCHULTZ and WILLIAM R. ROGERS**

**Counter Defendants**

**AND**

**STATE CERTIFIED TERMITE AND PEST, LLC.  
a West Virginia limited liability company,**

**Third-Party Defendant.**

**SECOND AMENDED REPLY OF WILLIAM ROGERS TO DEFENDANT'S SECOND  
AMENDED COUNTERCLAIM**

The Plaintiff, by Counsel, hereby Answers Defendant's Second Amended Counterclaim as follows:

**FIRST DEFENSE**

The Plaintiff asserts the following Affirmative Defenses: assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, unclean hands, statute of frauds, statute of limitations, waiver, offset, recoupment, and any other defenses made known by further discovery or otherwise.

## **SECOND DEFENSE**

William Rogers moves this Court to dismiss Count I of the Defendant's Second Amended Counterclaim for failure to state a claim upon which relief may be granted pursuant to W.Va. R. Civ. P. 12(b)(6).

## **THIRD DEFENSE**

As to the enumerated allegations of Defendant's Counterclaim, Plaintiff responds as follows:

### COUNT I

9. The Plaintiff denies the allegations at paragraph 9 of the Defendant's Counterclaim.
10. Plaintiff denies the allegations at paragraph 10.
11. Plaintiff denies the allegations at paragraph 5 and demands strict proof thereof. Plaintiff infers that Defendant's business cell phone was being tracked because the business received monthly email reports, but denies that this was caused by Plaintiff, and further denies that it was done without Defendant's express or implied consent.
12. Plaintiff denies the allegations at paragraph 12 and demands strict proof thereof. Plaintiff infers that Defendant's business cell phone was being tracked because the business received monthly email reports, but denies that this was done without Defendant's express or implied consent.
13. Plaintiff denies the allegations at paragraph 13 and demands strict proof thereof.
14. Plaintiff denies the allegations at paragraph 14 and demands strict proof thereof.
15. Plaintiff denies the allegations at paragraph 15 and demands strict proof thereof.
16. Plaintiff denies the allegations at paragraph 16 and demands strict proof thereof.

17. Plaintiff denies the allegations at paragraph 17 and demands strict proof thereof.

WHEREFORE, Plaintiff William Rogers, having answered Defendant's Second Amended Counterclaim, demands that it be dismissed, and that he be awarded costs expended, including reasonable attorneys fees and costs.

**PLAINTIFF DEMANDS A TRIAL BY JURY**

**WILLIAM R. ROGERS**  
**By Counsel**

/s/Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

# COVER SHEET

E-FILED | 1/21/2022 3:11 PM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

**Accurate Pest Management, LLC v. Scott W. McDermitt**

**First Plaintiff:** ☒ Business ☐ Individual  
☐ Government ☐ Other

**First Defendant:** ☐ Business ☒ Individual  
☐ Government ☐ Other

**Judge:** Steven Redding

## COMPLAINT INFORMATION

**Case Type:** Civil **Complaint Type:** Tort

**Origin:** ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:** ☒ Yes ☐ No **Case will be ready for trial by:** 3/21/2022

**Mediation Requested:** ☒ Yes ☐ No

**Substantial Hardship Requested:** ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Nicola Smith, 329 S QUEEN ST, MARTINSBURG, WV 25401



## SERVED PARTIES



**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**ANSWER OF WILIAM ROGERS AND JEFFREY SCHULTZ TO THE DEFENDANT'S  
SECOND AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

The Plaintiffs, by Counsel, hereby Answer the Defendant's Second Amended Counterclaim and Third-Party Complaint as follows:

**FIRST DEFENSE**

The Plaintiffs assert the following Affirmative Defenses: assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, unclean hands, statute of frauds, statute of limitations, waiver, offset, recoupment and counterclaim, lack of standing, and any other defenses made known by further discovery or otherwise.

## **SECOND DEFENSE**

As to the enumerated allegations of Defendant's Counterclaim, Plaintiffs respond as follows:

### **COUNT I**

1. Plaintiffs under information and belief admit the allegations at Paragraph 1.
2. Plaintiff William Rogers admits the allegations at Paragraph 2.
3. Plaintiff Jeffrey Schultz admits the allegations at Paragraph 3.
4. Plaintiffs admit the allegations at Paragraph 4.
5. Plaintiffs admit the allegations at Paragraph 5.
6. Plaintiffs admit the allegations at Paragraph 6.
7. Plaintiffs admit the allegations at Paragraph 7.
8. Plaintiff William Rogers admits the allegations at Paragraph 8.
9. Plaintiffs admit the allegations at Paragraph 9 that McDermitt, Rogers and Schultz were members of State Certified Termite & Pest LLC, but is unable to answer whether "and were both the two operating agents of that business."
10. Plaintiffs admit the allegations at Paragraph.
11. Plaintiffs deny the allegations at Paragraph 11 and demand strict proof thereof.
12. Plaintiffs deny the allegations at Paragraph 12 and demand strict proof thereof.
13. P Plaintiffs deny the allegations at Paragraph 13 and demand strict proof thereof.
14. Plaintiffs deny the allegations at Paragraph 14 and demand strict proof thereof.
15. Plaintiffs deny the allegations at Paragraph 15 and demand strict proof thereof.
16. Plaintiffs deny the allegations at Paragraph 16 and demand strict proof thereof.
17. Plaintiffs deny the allegations at Paragraph 17 and demand strict proof thereof.

## **COUNT II**

18. The Plaintiffs incorporate by reference answers to Paragraphs 1-17.
19. Plaintiffs admit the allegations at Paragraph 19.
20. Plaintiffs admit the allegations at Paragraph 20.
21. Upon information and belief, the Plaintiffs admit the allegations at Paragraph 21.
22. Plaintiffs deny the allegations at Paragraph 22 and demand strict proof thereof.
23. Plaintiffs deny the allegations at Paragraph 23 and demand strict proof thereof.
24. Plaintiffs deny the allegations at Paragraph 24 and demand strict proof thereof.
25. Plaintiffs deny the allegations at Paragraph 25 and demand strict proof thereof.
26. Plaintiffs deny the allegations at Paragraph 26 and demand strict proof thereof.
27. Plaintiffs deny the allegations at Paragraph 27 and demand strict proof thereof.
28. Plaintiffs deny the allegations at Paragraph 28 and demand strict proof thereof.
29. Plaintiffs deny the allegations at Paragraph 29 and demand strict proof thereof.
30. Plaintiffs deny the allegations at Paragraph 30 and demand strict proof thereof.
31. Plaintiffs deny the allegations at Paragraph 31 and demand strict proof thereof.
32. Plaintiffs deny the allegations at Paragraph 32 and demand strict proof thereof.
33. Plaintiffs deny the allegations at Paragraph 33 and demand strict proof thereof.

## **COUNT III**

34. The Plaintiffs incorporate by reference answers to Paragraphs 1-33.
35. Plaintiffs deny the allegations at Paragraph 35 and demand strict proof thereof.
36. Plaintiffs deny the allegations at Paragraph 36 and demand strict proof thereof.
37. Plaintiffs deny the allegations at Paragraph 37 and demand strict proof thereof.
38. Plaintiffs deny the allegations at Paragraph 38 and demand strict proof thereof.

39. Plaintiffs deny the allegations at Paragraph 39 and demand strict proof thereof.

**WHEREFORE**, Plaintiffs, having answered the Defendant's Amended Counterclaims, demand that it be dismissed, and that they be awarded costs expended, including reasonable attorneys fees and costs.

**PLAINTIFFS DEMAND A TRIAL BY JURY**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

/s/Christian J. Riddell  
Christian J. Riddell Esq. (WVSB #1222)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

/s/Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Plaintiffs,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Christian J. Riddell, hereby swear that on the 21<sup>st</sup> day of January, 2022, I served a true copy of the ANSWER OF WILIAM ROGERS AND JEFFREY SCHULTZ TO THE DEFENDANT’S SECOND AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT upon counsel for the Defendant by filing the same with the Court via the WV E-file system.

/s/ Christian J. Riddell  
Christian J. Riddell, Esq. State Bar #12202  
The Riddell Law Group  
329 S. Queen Street Martinsburg, WV 25401  
(304) 267-3949

# COVER SHEET

E-FILED | 1/21/2022 3:12 PM  
CC-02-2020-C-170  
Berkeley County Circuit Clerk  
Virginia Sine

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

Accurate Pest Management, LLC v. Scott W. McDermitt

First Plaintiff:

☒ Business ☐ Individual  
☐ Government ☐ Other

First Defendant:

☐ Business ☒ Individual  
☐ Government ☐ Other

Judge:

Steven Redding

## COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Tort

Origin:

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested:

☒ Yes ☐ No

Case will be ready for trial by: 3/21/2022

Mediation Requested:

☒ Yes ☐ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Nicola Smith, 329 S QUEEN ST, MARTINSBURG, WV 25401



## SERVED PARTIES

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Third-Party Defendants,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**ANSWER OF STATE CERTIFIED TERMITE AND PEST TO THE DEFENDANT'S  
THIRD-PARTY COMPLAINT**

Third party Defendant, State Certified Termite and Pest, by Counsel, hereby Answer the Defendant's Second Amended Counterclaim and Third-Party Complaint as follows:

**FIRST DEFENSE**

The Third-Party Defendants assert the following Affirmative Defenses: assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, unclean hands, statute of frauds, statute of limitations, waiver, offset, recoupment and counterclaim, lack of standing, and any other defenses made known by further discovery or otherwise.



### **COUNT III**

34. The statement set forth in Paragraph 34 does not require an answer from the Third Party Defendant.
35. Third-Party Defendants denies the allegations at Paragraph 35 and demand strict proof thereof.
36. Third-Party Defendants denies the allegations at Paragraph 36 and demand strict proof thereof.
37. Third-Party Defendants denies the allegations at Paragraph 37 and demand strict proof thereof.
38. Third-Party Defendants denies the allegations at Paragraph 38 and demand strict proof thereof.
39. Third-Party Defendants denies the allegations at Paragraph 39 and demand strict proof thereof.

**WHEREFORE**, Third-Party Defendants, having answered the Defendant's Amended Counterclaims, demand that it be dismissed, and that they be awarded costs expended, including reasonable attorneys fees and costs.

### **THIRD-PARTY DEFENDANTS DEMAND A TRIAL BY JURY**

**State Certified Termite and Pest LLC**

/s/Christian J. Riddell  
Christian J. Riddell Esq. (WVSB #1222)  
The Riddell Law Group

329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

/s/Nicola D. Smith  
Nicola D. Smith (WVSB## 11251)  
The Riddell Law Group  
329 S. Queen Street  
Martinsburg, WV 25401  
(304)267-3949

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**ACCURATE PEST MANAGEMENT LLC and  
JEFFREY W. SCHULTZ, WILLIAM R. ROGERS,  
Individually and derivatively on behalf of  
ACCURATE PEST MANAGEMENT LLC**

**Third-Party Defendants,**

**v.**

**Civil Action No. CC-02-2020-170  
R. Steven Redding, Judge**

**SCOTT W. MCDERMITT,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, Christian J. Riddell, hereby swear that on the 21<sup>st</sup> day of January, 2022, I served a true copy of the ANSWER OF STATE CERTIFIED TERMITE AND PEST TO THE DEFENDANT'S THIRD-PARTY COMPLAINT upon Counsel for the Defendant by filing the same with the Court via the WV E-file system.

/s/ Christian J. Riddell  
Christian J. Riddell, Esq. State Bar #12202  
The Riddell Law Group  
329 S. Queen Street Martinsburg, WV 25401  
(304) 267-3949

# Case Docket Entries

CC-02-2020-C-170

Court: **Circuit** County: **02 - Berkeley** Created Date: **7/28/2020** Security Level: **Public**  
 Judge: **Steven Redding** Case Type: **Civil** Case Sub-Type: **Tort** Status: **Open**  
 Related Cases:  
 Style: **Accurate Pest Management, LLC v. Scott W. McDermitt**

	Entered Date	Event	Ref. Code	Description
1	7/28/2020 11:20:36 AM	E-Filed		Complaint
	1-1 7/28/2020	Civil Case Information Statement		
	1-2 7/28/2020	Complaint - Complaint		
	1-3 7/28/2020	Supporting Document - Exhibit One		
	1-4 7/28/2020	Supporting Document - Exhibit Two		
	1-5 7/28/2020	Supporting Document - Exhibit Three		
	1-6 7/28/2020	Transmittal		
	1-7 7/28/2020	Summons		
2	7/28/2020 11:20:36 AM	Judge Assigned	J-19002	Steven Redding
3	7/28/2020 11:20:36 AM	Party Added	P-001	Accurate Pest Management, LLC
4	7/28/2020 11:20:36 AM	Party Added	P-002	Jeffery Schultz
5	7/28/2020 11:20:36 AM	Party Added	P-003	William R Rogers
6	7/28/2020 11:20:36 AM	Party Added	D-001	Scott W. McDermitt
7	7/28/2020 11:20:36 AM	Attorney Listed	P-001	A-12202 - Christian John Riddell
8	7/28/2020 11:20:36 AM	Attorney Listed	P-002	A-12202 - Christian John Riddell
9	7/28/2020 11:20:36 AM	Attorney Listed	P-003	A-12202 - Christian John Riddell
10	7/28/2020 11:20:36 AM	Service Requested	D-001	Plaintiff - Private Process Server
11	7/28/2020 11:27:16 AM	E-Filed		Motion - Preliminary Injunction
	11-1 7/28/2020	Motion - Motion for Preliminary Injunction		
	11-2 7/28/2020	Supporting Document - Exhibit 1		
	11-3 7/28/2020	Supporting Document - Exhibit 2		
	11-4 7/28/2020	Supporting Document - Exhibit 3		
	11-5 7/28/2020	Transmittal		
12	7/29/2020 1:51:31 PM	E-Filed		Order - Motion - Order Granting Temporary Preliminary Injunction and Setting Hearing cc: Christian Riddell via e-mail, Scott McDermitt via mail
	12-1 7/29/2020	Order - Order Granting Temporary Preliminary Injunction and Setting Hearing		
	12-2 7/29/2020	Transmittal		
13	7/31/2020 11:10:10 AM	E-Filed		Order - Case - AMENDED ORDER ADJUSTING HEARING TIME AND GRANTING TEMPORARY PRELIMINARY INJUNCTION AND SETTING HEREON THEREON cc: Christian Riddell via e-mail, Scott McDermitt via mail
	13-1 7/31/2020	Order - AMENDED ORDER ADJUSTING HEARING TIME AND GRANTING TEMPORARY PRELIMINARY INJUNCTION AND SETTING HEREON THEREON		
	13-2 7/31/2020	Transmittal		
14	8/3/2020 2:33:04 PM	E-Filed		Service Return - Return
	14-1 8/3/2020	Service Return - return		
	14-2 8/3/2020	Transmittal		
15	8/6/2020 1:18:17 PM	E-Filed		Notice of Appearance - Notice of Appearance
	15-1 8/6/2020	Notice of Appearance - Notice of Appearance		
	15-2 8/6/2020	Transmittal		
16	8/6/2020 1:18:17 PM	Attorney Listed	D-001	A-3277 - Michael L. Seales
17	8/6/2020 1:20:12 PM	E-Filed		Supporting Documents - Notice of Bona Fide Defense
	17-1 8/6/2020	Other - Notice of Bona Fide Defense		
	17-2 8/6/2020	Transmittal		

# Case Docket Entries

CC-02-2020-C-170

Entered Date	Event	Ref. Code	Description
18 8/6/2020 1:21:39 PM	E-Filed		Motion - Continue
18-1 8/6/2020	Motion - Motion to Continue Hearing Scheduled for August 10, 2020		
18-2 8/6/2020	Transmittal		
19 8/7/2020 10:20:23 AM	E-Filed		Order - Motion - Order Granting Motion to Continue Hearing Scheduled for August 10, 2020 and Rescheduling Same cc: Christian Riddell via e-mail, Michael Scales via mail
19-1 8/7/2020	Order - Order Granting Motion to Continue Hearing Scheduled for August 10, 2020 and Rescheduling Same		
19-2 8/7/2020	Transmittal		
20 8/21/2020 9:47:18 AM	E-Docketed		Supporting Documents - Plaintiff's Exhibit #1 - Notice of Dissolution
20-1 8/21/2020	Supporting Document - Plaintiff's Exhibit #1 - Notice of Dissolution		
20-2 8/21/2020	Transmittal		
21 8/26/2020 3:37:13 PM	E-Filed		Answer - Complaint Denied
21-1 8/26/2020	Civil Case Information Statement		
21-2 8/26/2020	Answer - Defendant's Answer to Complaint		
21-3 8/26/2020	Counterclaim - Defendant's Answer to Complaint and Counterclaim		
21-4 8/26/2020	Transmittal		
22 9/15/2020 4:55:16 PM	E-Filed		Motion - Other
22-1 9/15/2020	Motion - Plaintiff's Partial Motion To Dismiss and Memorandum of Law in Support thereof		
22-2 9/15/2020	Transmittal		
23 9/15/2020 5:02:34 PM	E-Filed		Letter to Judge - Answer of the Plaintiffs to Defendant's Counterclaim
23-1 9/15/2020	Letter - Plaintiffs' Answer To Defendant's Counterclaim		
23-2 9/15/2020	Supporting Document - Exhibit A		
23-3 9/15/2020	Transmittal		
24 9/17/2020 4:09:42 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER - cc: Christian Riddell via e-mail, Michael Scales via e-mail
24-1 9/17/2020	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
24-2 9/17/2020	Transmittal		
25 10/1/2020 11:35:22 AM	E-Filed		Motion Response - Response
25-1 10/1/2020	Motion Response - Defendant's Response to Plaintiffs' Partial Motion for Summary Judgment and/or Failure to State a Claim Upon Which Relief May Be Granted and/or Judgment on the Pleadings; and, Defendant's Cross Motion for Leave to File an Amended Counterclaim		
25-2 10/1/2020	Transmittal		
26 10/13/2020 3:29:09 PM	E-Filed		Motion Response - Other
26-1 10/13/2020	Motion Response - Reply To Response		
26-2 10/13/2020	Supporting Document - Affidavit		
26-3 10/13/2020	Transmittal		
27 10/13/2020 5:08:13 PM	E-Filed		Motion Response - Other
27-1 10/13/2020	Motion Response - Amended Reply		
27-2 10/13/2020	Supporting Document - Affidavit		
27-3 10/13/2020	Transmittal		
28 11/2/2020 3:06:34 PM	E-Filed		Certificate of Service - COS-Defendant's First Set of Interrogatories to Plaintiff, William R. Rogers
28-1 11/2/2020	Certificate of Service - COS-Defendant's First Set of Interrogatories to Plaintiff, William R. Rogers		
28-2 11/2/2020	Transmittal		
29 11/2/2020 3:08:03 PM	E-Filed		Certificate of Service - COS-Defendant's First Requests for Production of Documents to Plaintiff, William R. Rogers
29-1 11/2/2020	Certificate of Service - COS-Defendant's First Requests for Production of Documents to Plaintiff, William R. Rogers		
29-2 11/2/2020	Transmittal		

# Case Docket Entries

CC-02-2020-C-170

	Entered Date	Event	Ref. Code	Description
30	11/2/2020 3:09:17 PM	E-Filed		Certificate of Service - COS-Defendant's First Set of Interrogatories to Plaintiff, Accurate Pest Management, LLC a/k/a State Certified Termite & Pest, LLC
	30-1 11/2/2020	Certificate of Service - COS-Defendant's First Set of Interrogatories to Plaintiff, Accurate Pest Management, LLC a/k/a State Certified Termite & Pest, LLC		
	30-2 11/2/2020	Transmittal		
31	11/2/2020 3:10:34 PM	E-Filed		Certificate of Service - COS-Defendant's First Requests for Production of Documents to Plaintiff, Accurate Pest Management, LLC a/k/a State Certified Termite & Pest, LLC
	31-1 11/2/2020	Certificate of Service - COS-Defendant's First Requests for Production of Documents to Plaintiff, Accurate Pest Management, LLC a/k/a State Certified Termite & Pest, LLC		
	31-2 11/2/2020	Transmittal		
32	11/18/2020 12:19:04 PM	E-Filed		Order - Motion - Order Denying Plaintiffs' Partial Motion for Summary Judgment and/or Failure to State a Claim Upon Which Relief May Be Granted and/or Judgment on the Pleadings; and, Granting Defendant's Cross Motion for Leave to File an Amended Counterclaim cc: Michael Scales Christian Riddell Via E-File
	32-1 11/18/2020	Order - Order Denying Plaintiffs' Partial Motion for Summary Judgment and/or Failure to State a Claim Upon Which Relief May Be Granted and/or Judgment on the Pleadings; and, Granting Defendant's Cross Motion for Leave to File an Amended Counterclaim		
	32-2 11/18/2020	Transmittal		
33	11/30/2020 2:32:30 PM	E-Filed		Supporting Documents - Defendant's First Amended Counterclaim
	33-1 11/30/2020	Other - Defendant's First Amended Counterclaim		
	33-2 11/30/2020	Transmittal		
34	12/2/2020 4:51:43 PM	E-Filed		Notice of Appearance - Notice of Appearance for Co-Counsel
	34-1 12/2/2020	Notice of Appearance - Notice of Appearance as Co-Counsel		
	34-2 12/2/2020	Transmittal		
35	12/2/2020 4:51:43 PM	Attorney Listed	P-001	A-11251 - Nicola Dare Smith
36	12/2/2020 4:51:43 PM	Attorney Listed	P-002	A-11251 - Nicola Dare Smith
37	12/2/2020 4:51:43 PM	Attorney Listed	P-003	A-11251 - Nicola Dare Smith
38	12/8/2020 2:57:01 PM	E-Filed		Letter to Judge - Answer to Amended Counterclaim
	38-1 12/8/2020	Letter - Answer to Amended Counterclaim		
	38-2 12/8/2020	Transmittal		
39	12/14/2020 1:16:42 PM	E-Filed		Certificate of Service - Certificate of Service
	39-1 12/14/2020	Certificate of Service - Certificate of Service		
	39-2 12/14/2020	Transmittal		
40	1/14/2021 10:27:47 AM	E-Filed		Motion - Other
	40-1 1/14/2021	Motion - Motion to Quash in Part the Subpoena Duces Tecum; or Alternatively, if Denied, to Redact Personal Information as to Duces Tecum Upon Bank of Charles Town; and for a Protective Order		
	40-2 1/14/2021	Transmittal		
41	1/19/2021 11:12:19 AM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Christian Riddell, Michael Scales, Nicola Smith Via E-File
	41-1 1/19/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
	41-2 1/19/2021	Transmittal		
42	1/29/2021 4:03:36 PM	E-Filed		Motion - Summary Judgment
	42-1 1/29/2021	Motion - Defendant's Motion for Summary Judgment That the Verified Complaint be Dismissed on the Grounds of Fraud and Fraud Upon the Court		
	42-2 1/29/2021	Transmittal		
43	1/29/2021 4:16:10 PM	E-Filed		Motion - Other

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Entered Date	Event	Ref. Code	Description
43-1 1/29/2021	Motion - Defendant's Motion for Leave to File a Second Amended Counterclaim and Third-Party Complaint Against State Certified Termite And Pest LLC		
43-2 1/29/2021	Transmittal		
44 1/29/2021 5:27:51 PM	E-Filed		Certificate of Service - Certificate of Service
44-1 1/29/2021	Certificate of Service - Certificate of Service		
44-2 1/29/2021	Transmittal		
45 2/1/2021 3:52:25 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER
45-1 2/1/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
45-2 2/1/2021	Transmittal		
46 2/1/2021 3:54:38 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER
46-1 2/1/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
46-2 2/1/2021	Transmittal		
47 2/2/2021 4:00:25 PM	E-Filed		Motion Response - Response
47-1 2/2/2021	Motion Response - Response to Motion to Quash		
47-2 2/2/2021	Transmittal		
48 2/8/2021 2:28:07 PM	E-Filed		Certificate of Service - Certificate of Service
48-1 2/8/2021	Certificate of Service - Certificate of Service		
48-2 2/8/2021	Transmittal		
49 2/8/2021 2:29:09 PM	E-Filed		Certificate of Service - Certificate of Service
49-1 2/8/2021	Certificate of Service - Certificate of Service		
49-2 2/8/2021	Transmittal		
50 2/8/2021 2:46:57 PM	E-Filed		Certificate of Service - Certificate of Service
50-1 2/8/2021	Certificate of Service - Certificate of Service		
50-2 2/8/2021	Transmittal		
51 2/8/2021 2:47:41 PM	E-Filed		Certificate of Service - Certificate of Service
51-1 2/8/2021	Certificate of Service - Certificate of Service		
51-2 2/8/2021	Transmittal		
52 2/9/2021 11:48:58 AM	E-Filed		Supporting Documents - Closing Memorandum in Support of Defendant's Motion to Quash
52-1 2/9/2021	Order - Closing Memorandum in Support of Defendant's Motion to Quash		
52-2 2/9/2021	Transmittal		
53 2/9/2021 4:35:59 PM	E-Filed		Motion - Amend
53-1 2/9/2021	Motion - Motion for Leave to File Amended Complaint		
53-2 2/9/2021	Supporting Document - Exhibit 1		
53-3 2/9/2021	Supporting Document - Proposed Amended Complaint		
53-4 2/9/2021	Transmittal		
54 2/10/2021 2:54:08 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Christian Riddell, Michael Scales, Nicola Smith Via E-File
54-1 2/10/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
54-2 2/10/2021	Transmittal		
55 2/11/2021 3:34:32 PM	E-Filed		Certificate of Service - Supplemental Response Verification with Certificate of Service
55-1 2/11/2021	Certificate of Service - Supplemental Response Verification with Certificate of Service		
55-2 2/11/2021	Transmittal		
56 2/16/2021 12:21:43 PM	E-Filed		Order - Case - Order from August 20, 2020 Initial Hearing cc: Christian Riddell, Michael Scales, Nicola Smith Via E-File
56-1 2/16/2021	Order - Order from August 20, 2020 Initial Hearing		
56-2 2/16/2021	Transmittal		
57 2/16/2021 9:24:11 PM	E-Filed		Motion Response - Response
57-1 2/16/2021	Supporting Document - Appendix A		



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Entered Date	Event	Ref. Code	Description
57-2 2/16/2021	Supporting Document - Affidavit of William Rogers		
57-3 2/16/2021	Supporting Document - Exhibit A		
57-4 2/16/2021	Motion Response - Brief in Opposition to the Defendant's Motion for Summary Judgment and to Amend Counterclaim, and in Support of Plaintiff's Motion to Amend the Complaint		
57-5 2/16/2021	Supporting Document - Bank Check		
57-6 2/16/2021	Supporting Document - Phone Bill		
57-7 2/16/2021	Supporting Document - July 7 Email		
57-8 2/16/2021	Supporting Document - July 23 Email		
57-9 2/16/2021	Supporting Document - Tax Payment Receipt		
57-10 2/16/2021	Supporting Document - Bank Statement		
57-11 2/16/2021	Supporting Document - Certificate of Service		
57-12 2/16/2021	Transmittal		
58 2/17/2021 3:00:02 PM	E-Filed		Order - Motion - DISCOVERY COMMISSIONER REFERENCE ORDER cc: Christian Riddell, Michael Scales, Nicola Smith Via E-File, Patrick Henry III Via E-Mail
58-1 2/17/2021	Order - DISCOVERY COMMISSIONER REFERENCE ORDER		
58-2 2/17/2021	Transmittal		
59 2/17/2021 3:46:31 PM	Party Added	U-001	Patrick Henry III
60 2/17/2021 3:46:50 PM	Attorney Listed	U-001	A-1683 - Patrick G. Henry, III
61 2/18/2021 2:38:49 PM	E-Filed		Supporting Documents - Supplemental Affidavit of William Rogers
61-1 2/18/2021	Supporting Document - Supplemental Affidavit of William Rogers to Plaintiffs' Brief in Opposition to the Defendant's Motion for Summary Judgment and to Amend Counterclaim and in Support of the Plaintiff's Motion to Amend Complaint to Name Proper Party-Plaintiff		
61-2 2/18/2021	Transmittal		
62 2/18/2021 2:46:47 PM	E-Filed		Certificate of Service - Certificate of Service for Supplemental Affidavit of William Rogers to Plaintiffs' Brief Opposing Defendant's Motion for Summary Judgment
62-1 2/18/2021	Certificate of Service - Supplemental Affidavit of William Rogers supporting Plaintiffs' Brief Opposing Defendant's Motion to Dismiss and to File an Amended Complaint, and in Favor of Plaintiff's Motion to Amend to Name Proper Party-Plaintiff		
62-2 2/18/2021	Transmittal		
63 2/24/2021 1:52:37 PM	E-Filed		Supporting Documents - Notice of Discovery Hearing
63-1 2/24/2021	Other - Notice of Discovery Hearing		
63-2 2/24/2021	Transmittal		
64 2/25/2021 10:40:01 AM	E-Filed		Supporting Documents - Defendant's Closing Memorandum in Support of His Motion for Summary Judgment That the Verified Complaint be Dismissed on the Grounds of Fraud and Fraud Upon the Court
64-1 2/25/2021	Other - Defendant's Closing Memorandum in Support of His Motion for Summary Judgment That the Verified Complaint be Dismissed on the Grounds of Fraud and Fraud Upon the Court		
64-2 2/25/2021	Transmittal		
65 2/25/2021 10:41:45 AM	E-Filed		Motion Response - Other
65-1 2/25/2021	Motion Response - Defendant's Objections to Plaintiffs' Motion for Leave to File an Amended Complaint		
65-2 2/25/2021	Transmittal		
66 3/9/2021 6:23:01 PM	E-Filed		Motion Response - Response
66-1 3/9/2021	Motion Response - Plaintiff's Reply in Response to Defendant's Objection to Plaintiff's Motion to Amend the Complaint		
66-2 3/9/2021	Supporting Document - West Virginia Code §31B-4-409		
66-3 3/9/2021	Transmittal		
67 3/9/2021 6:25:43 PM	E-Filed		Certificate of Service - Certificate of Service of Plaintiffs' Reply to Defendant's Objection to Plaintiffs' Motion to Amend the Complaint



## Case Docket Entries

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Entered Date	Event	Ref. Code	Description
67-1 3/9/2021	Certificate of Service - Certificate of Service for Plaintiffs' Reply to Defendant's Objection to Plaintiff's Motion Amend		
67-2 3/9/2021	Transmittal		
68 3/10/2021 9:52:50 AM	E-Filed		Certificate of Service - COS for Defendant's Responses to the First Combined Set of Admission Requests, Interrogatories and Production Requests of William Rogers
68-1 3/10/2021	Certificate of Service - COS for Defendant's Responses to the First Combined Set of Admission Requests, Interrogatories and Production Requests of William Rogers		
68-2 3/10/2021	Transmittal		
69 3/10/2021 9:53:54 AM	E-Filed		Certificate of Service - COS for Defendant's Responses to the First Combined Set of Interrogatories and Production Requests of Jeffrey Schultz
69-1 3/10/2021	Certificate of Service - COS for Defendant's Responses to the First Combined Set of Interrogatories and Production Requests of Jeffrey Schultz		
69-2 3/10/2021	Transmittal		
70 3/15/2021 11:17:17 AM	E-Filed		Notice of Appearance - Notice of Appearance as Co-Counsel
70-1 3/15/2021	Notice of Appearance - Notice of Appearance as Co-Counsel		
70-2 3/15/2021	Transmittal		
71 3/23/2021 2:04:28 PM	E-Filed		Supporting Documents - Recommended Order and Report of Discovery Commissioner
71-1 3/23/2021	Supporting Document - Recommended Order and Report of Discovery Commissioner with attached proposed Protective Order		
71-2 3/23/2021	Transmittal		
72 3/25/2021 10:49:34 AM	E-Filed		Letter to Judge - Letter to Judge
72-1 3/25/2021	Letter - Letter to Judge Redding		
72-2 3/25/2021	Transmittal		
73 3/26/2021 4:26:20 PM	E-Filed		Certificate of Service - Certificate of Service
73-1 3/26/2021	Certificate of Service - Certificate of Service		
73-2 3/26/2021	Transmittal		
74 3/26/2021 4:27:22 PM	E-Filed		Certificate of Service - Certificate of Service
74-1 3/26/2021	Certificate of Service - Certificate of Service		
74-2 3/26/2021	Transmittal		
75 3/26/2021 4:33:14 PM	E-Filed		Motion - Other
75-1 3/26/2021	Motion - EXCEPTIONS, OBJECTION AND REQUEST FOR AMENDMENT OF RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER		
75-2 3/26/2021	Transmittal		
76 3/30/2021 12:19:15 PM	E-Filed		Supporting Documents - Revised Recommended Order and Report of Discovery Commissioner with attached proposed Protective Order
76-1 3/30/2021	Supporting Document - Revised Recommended Order and Report of Discovery Commissioner with attached proposed Protective Order		
76-2 3/30/2021	Transmittal		
77 4/23/2021 9:04:34 AM	E-Filed		Supporting Documents - COS-Defendant's Responses to Second Combined Set of Admissions, Interrogatories and Requests for Production of William Rogers
77-1 4/23/2021	Other - COS-Defendant's Responses to Second Combined Set of Admissions, Interrogatories and Requests for Production of William Rogers		
77-2 4/23/2021	Transmittal		
78 4/29/2021 3:51:26 PM	E-Filed		Order - Case - ORDER ADOPTING REVISED RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER cc: Christian Riddell, Michael Scales, Nicola Smith, Patrick Henry III Via e-file and attested copies via First-Class Mail 4/30/2021

## Case Docket Entries

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Entered Date	Event	Ref. Code	Description
78-1 4/29/2021	Order - ORDER ADOPTING REVISED RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER		
78-2 4/29/2021	Supporting Document - REVISED RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER E-FILED MARCH 30, 2021		
78-3 4/29/2021	Supporting Document - PROTECTIVE ORDER		
78-4 4/29/2021	Transmittal		
79 4/29/2021 3:53:18 PM	E-Filed		Order - Case - PROTECTIVE ORDER cc: Michael Scales Christian Riddell, Nicola Smith Via E-File, Charles Dunba Via 1st Class Mail
79-1 4/29/2021	Order - PROTECTIVE ORDER		
79-2 4/29/2021	Transmittal		
80 5/6/2021 3:53:22 PM	E-Filed		Motion - Compel
80-1 5/6/2021	Motion - MOTION OF THE PLAINTIFFS TO COMPEL THE DEFENDANT TO ANSWER THE FIRST SET OF DISCOVERY REQUESTS BY WILLIAM R. ROGERS AND JEFFREY SCHULTZ		
80-2 5/6/2021	Supporting Document - Exhibit A		
80-3 5/6/2021	Supporting Document - Exhibit B		
80-4 5/6/2021	Supporting Document - Exhibit C		
80-5 5/6/2021	Transmittal		
81 5/6/2021 4:11:00 PM	E-Filed		Certificate of Service - Certificate of Service
81-1 5/6/2021	Certificate of Service - Certificate of Service		
81-2 5/6/2021	Transmittal		
82 5/6/2021 4:19:23 PM	E-Filed		Letter to Judge - Letter to Judge
82-1 5/6/2021	Letter - Letter to Judge		
82-2 5/6/2021	Supporting Document - Certificate of Good Faith		
82-3 5/6/2021	Transmittal		
83 5/7/2021 1:16:46 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Christian Riddell, Michael Scales, Nicola Smith, Patrick Henry III Via e-file and attested copies via First-Class Mail, 5/7/2021
83-1 5/7/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
83-2 5/7/2021	Transmittal		
84 5/24/2021 8:31:39 AM	E-Filed		Motion Response - Response
84-1 5/24/2021	Motion Response - Defendant's Response and Objections to Plaintiffs' Motion to Compel Discovery by William R. Rogers and Jeffery W. Schultz		
84-2 5/24/2021	Transmittal		
85 5/24/2021 8:45:15 AM	E-Filed		Certificate of Service - COS for Delivery of Defendant's Bank Documents (as Redacted) Received From Bank of Charles Town
85-1 5/24/2021	Certificate of Service - COS for Delivery of Defendant's Bank Documents (as Redacted) Received From Bank of Charles Town		
85-2 5/24/2021	Transmittal		
86 5/28/2021 2:54:32 PM	E-Filed		Motion - Extension of Time
86-1 5/28/2021	Motion - Motion for Extension of Time		
86-2 5/28/2021	Transmittal		
87 6/2/2021 9:42:28 AM	E-Filed		Order - Motion - ORDER GRANTING BRIEF EXTENSION OF TIME FOR RESPONSIVE PLEADING cc: Christian Riddell, Michael Scales, Nicola Smith, Patrick Henry III via e-File, 6/2/2021
87-1 6/2/2021	Order - ORDER GRANTING BRIEF EXTENSION OF TIME FOR RESPONSIVE PLEADING		
87-2 6/2/2021	Transmittal		
88 6/8/2021 8:53:43 PM	E-Filed		Supporting Documents - BRIEF IN SUPPORT OF THE MOTION OF THE PLAINTIFFS cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell Via E-File
88-1 6/8/2021	Supporting Document - Reply Brief in Support of the Motion of the Plaintiffs to Compel the Defendant to Answer the First Set of Discovery Requests by William R. Rogers and Jeffery W. Schultz		

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Entered Date	Event	Ref. Code	Description
88-2 6/8/2021	Exhibit - Exhibit 1		
88-3 6/8/2021	Exhibit - Exhibit 2		
88-4 6/8/2021	Exhibit - Exhibit 3		
88-5 6/8/2021	Transmittal		
89 6/8/2021 8:55:06 PM	E-Filed		Certificate of Service - Certificate of Service
89-1 6/8/2021	Certificate of Service - Certificate of Service		
89-2 6/8/2021	Transmittal		
90 6/15/2021 3:59:41 PM	E-Filed		Order - Case - RENEWED DISCOVERY COMMISSIONER REFERENCE ORDER
90-1 6/15/2021	Order - RENEWED DISCOVERY COMMISSIONER REFERENCE ORDER		
90-2 6/15/2021	Transmittal		
91 6/22/2021 11:08:43 AM	E-Filed		Letter to Judge - Letter to Judge Redding
91-1 6/22/2021	Letter - Letter to Judge Redding		
91-2 6/22/2021	Transmittal		
92 6/23/2021 2:25:24 PM	E-Filed		Supporting Documents - Notice of Discovery Hearing
92-1 6/23/2021	Other - Notice of Discovery Hearing		
92-2 6/23/2021	Transmittal		
93 6/24/2021 12:46:02 PM	E-Filed		Supporting Documents - Notice of Rescheduled Discovery Hearing
93-1 6/24/2021	Other - Notice of Rescheduled Discovery Hearing		
93-2 6/24/2021	Transmittal		
94 7/27/2021 3:09:12 PM	E-Filed		Letter to Judge - Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on July 20, 2021
94-1 7/27/2021	Letter - Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on July 20, 2021		
94-2 7/27/2021	Transmittal		
95 8/4/2021 1:03:04 PM	E-Filed		Supporting Documents - Defendant's Objection to Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on July 20, 2021
95-1 8/4/2021	Other - Defendant's Objections to Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on July 20, 2021		
95-2 8/4/2021	Transmittal		
96 8/9/2021 12:03:03 PM	E-Filed		Letter to Judge - Revised Recommended Order and Report of Discovery Commissioner
96-1 8/9/2021	Letter - Revised Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on July 20, 2021		
96-2 8/9/2021	Transmittal		
97 8/25/2021 11:20:50 AM	E-Filed		Order - Case - ORDER ADOPTING REVISED RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER E-FILED AUGUST 9, 2021 cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell Via E-File
97-1 8/25/2021	Order - ORDER ADOPTING REVISED RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER E-FILED AUGUST 9, 2021		
97-2 8/25/2021	Transmittal		
98 8/25/2021 2:48:38 PM	E-Filed		Letter to Judge - Letter to Judge Redding from M. Scales
98-1 8/25/2021	Letter - Letter to Judge Redding from M. Scales		
98-2 8/25/2021	Transmittal		
99 8/26/2021 11:44:50 AM	E-Filed		Motion - Compel
99-1 8/26/2021	Motion - Defendant's Motion to Compel Discovery From Plaintiffs		
99-2 8/26/2021	Transmittal		
100 8/26/2021 3:03:53 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell Via E-File
100-1 8/26/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		

# Case Docket Entries

CC-02-2020-C-170

Entered Date	Event	Ref. Code	Description
100-2 8/26/2021	Transmittal		
101 9/3/2021 4:50:34 PM	E-Filed		Order - Case - ORDER DENYING MOTION cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell via e-File, 9/7/2021
101-1 9/3/2021	Order - ORDER DENYING MOTION		
101-2 9/3/2021	Transmittal		
102 9/3/2021 5:01:15 PM	E-Filed		Order - Case - ORDER GRANTING PLAINTIFFS LEAVE TO FILE AN AMENDED COMPLAINT cc: Michael Scales, Nicola Smith, Christian Riddell via e-File, 9/7/2021
102-1 9/3/2021	Order - ORDER GRANTING PLAINTIFFS LEAVE TO FILE AN AMENDED COMPLAINT		
102-2 9/3/2021	Transmittal		
103 9/3/2021 5:03:24 PM	E-Filed		Order - Case - ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT AGAINST STATE CERTIFIED TERMITE AND PEST LLC cc: Michael Scales, Nicola Smith, Christian Riddell via e-File, 9/7/2021
103-1 9/3/2021	Order - ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT AGAINST STATE CERTIFIED TERMITE AND PEST LLC		
103-2 9/3/2021	Transmittal		
104 9/7/2021 11:23:12 AM	E-Filed		Third Party Complaint - Defendant's Second Amended Counterclaim and Third Party Complaint
104-1 9/7/2021	Civil Case Information Statement		
104-2 9/7/2021	Third Party Complaint - Defendant's Second Amended Counterclaim and Third Party Complaint		
104-3 9/7/2021	Transmittal		
104-4 9/7/2021	Summons		
105 9/7/2021 11:23:12 AM	Party Added	T-001	State Certified Termite And Pest LLC
106 9/7/2021 11:23:12 AM	Service Requested	T-001	Secretary of State - Certified - Including Copy Fee
107 9/7/2021 12:02:15 PM	E-Docketed		Supporting Documents - Summons Issued and Mailed CMRR to WV Secretary of State 9/7/2021 (State Certified Termite and Pest LLC)
107-1 9/7/2021	Supporting Document - Summons Issued and Mailed CMRR to WV Secretary of State 9/7/2021 (State Certified Termite and Pest LLC)		
107-2 9/7/2021	Transmittal		
108 9/10/2021 2:17:37 PM	E-Filed		Motion Response - Response
108-1 9/10/2021	Motion Response - Plaintiffs' Response to the Defendants Motion to Compel		
108-2 9/10/2021	Transmittal		
109 9/13/2021 11:22:59 AM	E-Filed		Certificate of Service - COS for Defendant's First Supplemental Responses to the First Combined Set of Admission Requests, Interrogatories and Production Requests of William Rogers
109-1 9/13/2021	Certificate of Service - COS for Defendant's First Supplemental Responses to the First Combined Set of Admission Requests, Interrogatories and Production Requests of William Rogers		
109-2 9/13/2021	Transmittal		
110 9/13/2021 11:24:26 AM	E-Filed		Certificate of Service - COS for Defendant's First Supplemental Responses to the First Combined Set of Interrogatories and Production Requests of Jeffrey Schultz
110-1 9/13/2021	Certificate of Service - COS for Defendant's First Supplemental Responses to the First Combined Set of Interrogatories and Production Requests of Jeffrey Schultz		
110-2 9/13/2021	Transmittal		
111 9/16/2021 1:32:57 PM	E-Docketed		Supporting Documents - Letter from WV SOS Accepting Service - 1 Summons and Amended Complaint
111-1 9/16/2021	Supporting Document - Letter from WV SOS Accepting Service - 1 Summons and Amended Complaint		
111-2 9/16/2021	Transmittal		



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Entered Date	Event	Ref. Code	Description
112 9/17/2021 1:31:13 PM	E-Docketed		Supporting Documents - Green Card Returned/WV SOS - Signed by Krista Bryant
112-1 9/17/2021	Supporting Document - Green Card Returned/WV SOS - Signed by Krista Bryant		
112-2 9/17/2021	Transmittal		
113 9/20/2021 10:57:05 AM	E-Filed		Supporting Documents - Defendant's Closing Memorandum in Support of Defendant's Motion to Compel Discovery From Plaintiffs
113-1 9/20/2021	Other - Defendant's Closing Memorandum in Support of Defendant's Motion to Compel Discovery From Plaintiffs		
113-2 9/20/2021	Transmittal		
114 9/22/2021 7:04:37 PM	E-Filed		Answer - Complaint Denied
114-1 9/22/2021	Civil Case Information Statement		
114-2 9/22/2021	Answer - William Rogers' Answer to Second Amended Counterclaim		
114-3 9/22/2021	Transmittal		
115 9/22/2021 7:06:57 PM	E-Filed		Certificate of Service - CERTIFICATE OF SERVICE
115-1 9/22/2021	Certificate of Service - CERTIFICATE OF SERVICE FOR SECOND AMENDED REPLY OF WILLIAM ROGERS		
115-2 9/22/2021	Transmittal		
116 9/23/2021 12:19:55 AM	E-Filed		Motion - Motion to Dismiss
116-1 9/23/2021	Motion - Motion to Dismiss Counts II and III of Defendants Second Amended Counterclaim		
116-2 9/23/2021	Transmittal		
117 9/23/2021 12:27:41 AM	E-Filed		Supporting Documents - Memorandum in Support of Plaintiff's Motion to Dismiss Counts II and III of Defendant's Second Amended Counterclaim
117-1 9/23/2021	Supporting Document - Supporting Memorandum		
117-2 9/23/2021	Transmittal		
118 9/23/2021 12:29:31 AM	E-Filed		Certificate of Service - Certificate of Service - Plaintiffs Motion to Dismiss Counts II and III of the Defendants Second Amended Counterclaim
118-1 9/23/2021	Certificate of Service - Certificate of Service		
118-2 9/23/2021	Transmittal		
119 9/23/2021 1:48:03 PM	E-Filed		Order - Motion - SECOND RENEWED DISCOVERY COMMISSIONER REFERENCE ORDER cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell via e-File, 9/23/2021
119-1 9/23/2021	Order - SECOND RENEWED DISCOVERY COMMISSIONER REFERENCE ORDER		
119-2 9/23/2021	Transmittal		
120 9/23/2021 1:57:29 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell via e-File; State Certified Termite and Pest LLC via first-class mail, 9/23/2021
120-1 9/23/2021	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
120-2 9/23/2021	Transmittal		
121 9/23/2021 2:28:30 PM	E-Filed		Order - Case - ORDER SETTING SCHEDULING CONFERENCE cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell Via E-file
121-1 9/23/2021	Order - ORDER SETTING SCHEDULING CONFERENCE		
121-2 9/23/2021	Transmittal		
122 9/29/2021 8:21:29 AM	E-Filed		Motion - Continue
122-1 9/29/2021	Motion - Defendant/Counter Plaintiff, Scott W. McDermitt's Motion to Continue Scheduling Conference Scheduled for October 12, 2021		
122-2 9/29/2021	Transmittal		
123 9/30/2021 12:29:57 PM	E-Filed		Supporting Documents - Notice of Discovery Hearing
123-1 9/30/2021	Other - Notice of Discovery Hearing		
123-2 9/30/2021	Transmittal		

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Entered Date	Event	Ref. Code	Description
124 10/1/2021 1:40:03 PM	E-Docketed		Supporting Documents - SOS Inv. # 555387 Paid in September Month End Closing
124-1 10/1/2021	Supporting Document - SOS Inv. # 555387 Paid in September Month End Closing		
124-2 10/1/2021	Transmittal		
125 10/4/2021 2:36:14 PM	E-Filed		Order - Motion - Order Granting Defendant/Counter Plaintiff, Scott W. McDermitt's Unopposed Motion to Continue the Scheduling Conference Scheduled for October 12, 2021 cc: Michael Scales, Nicola Smith, Christian Riddell Via E-file
125-1 10/4/2021	Order - Order Granting Defendant/Counter Plaintiff, Scott W. McDermitt's Unopposed Motion to Continue the Scheduling Conference Scheduled for October 12, 2021		
125-2 10/4/2021	Transmittal		
126 10/8/2021 8:02:48 AM	E-Filed		Motion Response - Response
126-1 10/8/2021	Motion Response - Defendant/Counter Plaintiff, Scott W. McDermitt's Response Memorandum in Opposition to Plaintiff/Counter Defendants, William Rogers and Jeffrey Schultz's Motion to Dismiss Counts II and III of Defendant's Second Amended Counterclaim		
126-2 10/8/2021	Transmittal		
127 10/18/2021 12:48:20 PM	E-Filed		Motion - Motion to Dismiss
127-1 10/18/2021	Motion - Motion to Dismiss of State Certified Termite and Pest LLC		
127-2 10/18/2021	Transmittal		
128 10/18/2021 12:48:20 PM	Attorney Listed	T-001	A-11251 - Nicola Dare Smith
129 10/18/2021 12:54:42 PM	E-Filed		Certificate of Service - Motion to Dismiss of State Certified Termite and Pest
129-1 10/18/2021	Certificate of Service - Certificate of Service		
129-2 10/18/2021	Transmittal		
130 10/18/2021 7:34:40 PM	E-Filed		Motion Response - Response
130-1 10/18/2021	Motion Response - Plaintiffs' Reply to Response Brief of Defendant Opposing Plaintiffs' Motion to Dismiss		
130-2 10/18/2021	Transmittal		
131 10/18/2021 7:39:02 PM	E-Filed		Certificate of Service - Certificate of Service of Reply to Response of Defendant to Plaintiffs' Motion to Dismiss
131-1 10/18/2021	Certificate of Service - Certificate of Service		
131-2 10/18/2021	Transmittal		
132 10/25/2021 4:52:05 PM	E-Docketed		Supporting Documents - Returned Certified Mail/State Certified Termite and Pest LLC - Unclaimed
132-1 10/25/2021	Supporting Document - Returned Certified Mail/State Certified Termite and Pest LLC - Unclaimed		
132-2 10/25/2021	Transmittal		
133 10/29/2021 3:32:43 PM	E-Filed		Motion - Other
133-1 10/29/2021	Motion - Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Motion to Disqualify Plaintiffs/Counter Defendants and Third Party Defendant's Counsel for Conflict of Interest and to Appoint an Independent Special Receiver to Wind Up and Liquidate Plaintiff, State Certified Termite & Pest, LLC		
133-2 10/29/2021	Transmittal		
134 10/29/2021 3:34:39 PM	E-Filed		Supporting Documents - Notice of Filing Foreign Law
134-1 10/29/2021	Other - Notice of Filing Foreign Law		
134-2 10/29/2021	Transmittal		
135 11/2/2021 2:33:22 PM	E-Filed		Motion Response - Response
135-1 11/2/2021	Motion Response - Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Response and Objections to Motion of Third Party Defendant to Dismiss the Second Amended Counterclaim and Third Party Complaint		
135-2 11/2/2021	Transmittal		
136 11/9/2021 2:29:38 PM	E-Filed		Motion Response - Response
136-1 11/9/2021	Motion Response - Response to Scott McDermitt's Motion to Disqualify Counsel		
136-2 11/9/2021	Supporting Document - Proposed Order to Plaintiffs' Motions to Dismiss Counts II and III of the Defendant's Second Amended Counterclaim		
136-3 11/9/2021	Transmittal		

## Case Docket Entries

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	Entered Date	Event	Ref. Code	Description
137	11/9/2021 2:35:11 PM	E-Filed		Certificate of Service - Certificate of Service for Plaintiffs' Response to Scott McDermitt's Motion to Disqualify Counsel
	137-1 11/9/2021	Certificate of Service - Certificate of Service		
	137-2 11/9/2021	Transmittal		
138	11/17/2021 8:56:33 AM	E-Filed		Motion Response - Other
	138-1 11/17/2021	Motion Response - Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Closing Memorandum in Support of His Motion to Disqualify Plaintiffs' Counsel		
	138-2 11/17/2021	Transmittal		
139	12/2/2021 10:48:41 AM	E-Filed		Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's First Set of Interrogatories and First Requests for Production of Documents to Third Party Defendant, State Certified Termite And Pest, LLC
	139-1 12/2/2021	Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's First Set of Interrogatories and First Requests for Production of Documents to Third Party Defendant, State Certified Termite And Pest, LLC		
	139-2 12/2/2021	Transmittal		
140	12/2/2021 10:50:10 AM	E-Filed		Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Second Set of Interrogatories and Second Requests for Production of Documents to Plaintiff, State Certified Termite & Pest, LLC
	140-1 12/2/2021	Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Second Set of Interrogatories and Second Requests for Production of Documents to Plaintiff, State Certified Termite & Pest, LLC		
	140-2 12/2/2021	Transmittal		
141	12/2/2021 10:52:00 AM	E-Filed		Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Second Set of Interrogatories and Second Requests for Production of Documents to Plaintiff/Counter Defendant, William R. Rogers
	141-1 12/2/2021	Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's Second Set of Interrogatories and Second Requests for Production of Documents to Plaintiff/Counter Defendant, William R. Rogers		
	141-2 12/2/2021	Transmittal		
142	12/2/2021 10:53:29 AM	E-Filed		Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's First Set of Interrogatories and First Requests for Production of Documents to Plaintiff/Counter Defendant, Jeffrey Schultz
	142-1 12/2/2021	Certificate of Service - COS for Defendant/Counter Plaintiff and Third Party Plaintiff, Scott W. McDermitt's First Set of Interrogatories and First Requests for Production of Documents to Plaintiff/Counter Defendant, Jeffrey Schultz		
	142-2 12/2/2021	Transmittal		
143	1/5/2022 4:02:55 PM	E-Filed		Motion - Other
	143-1 1/5/2022	Motion - MOTION FOR HEARING ON PREVIOUSLY FILED MOTIONS AND SCHEDULING CONFERENCE		
	143-2 1/5/2022	Transmittal		
144	1/12/2022 12:28:03 PM	E-Filed		Letter to Judge - Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on October 25, 2021
	144-1 1/12/2022	Letter - Recommended Order and Report of Discovery Commissioner Pursuant to Hearing Had on October 25, 2021		
	144-2 1/12/2022	Transmittal		
145	1/13/2022 3:27:48 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
	145-1 1/13/2022	Subpoena		
	145-2 1/13/2022	Production/Inspection of Items - Exhibit		
	145-3 1/13/2022	Transmittal		

# Case Docket Entries

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Entered Date	Event	Ref. Code	Description
146 1/13/2022 3:27:48 PM	Party Added	W-001	167th TFR Federal Credit Union
147 1/13/2022 3:27:57 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
147-1 1/13/2022	Subpoena		
147-2 1/13/2022	Production/Inspection of Items - Exhibit		
147-3 1/13/2022	Transmittal		
148 1/13/2022 3:27:57 PM	Party Added	W-002	Mountain Heritage Federal Credit Union
149 1/13/2022 3:28:08 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
149-1 1/13/2022	Subpoena		
149-2 1/13/2022	Production/Inspection of Items - Exhibit		
149-3 1/13/2022	Transmittal		
150 1/13/2022 3:28:08 PM	Party Added	W-003	Woodforest National Bank
151 1/13/2022 3:28:23 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
151-1 1/13/2022	Subpoena		
151-2 1/13/2022	Production/Inspection of Items - Exhibit		
151-3 1/13/2022	Transmittal		
152 1/13/2022 3:28:23 PM	Party Added	W-004	First United Bank and Trust
153 1/13/2022 3:28:29 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
153-1 1/13/2022	Subpoena		
153-2 1/13/2022	Production/Inspection of Items - Exhibit		
153-3 1/13/2022	Transmittal		
154 1/13/2022 3:28:29 PM	Party Added	W-005	Eastern Panhandle Federal Credit Union
155 1/13/2022 3:28:47 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
155-1 1/13/2022	Subpoena		
155-2 1/13/2022	Production/Inspection of Items - Exhibit		
155-3 1/13/2022	Transmittal		
156 1/13/2022 3:28:47 PM	Party Added	W-006	Summit Community Bank
157 1/13/2022 3:28:59 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
157-1 1/13/2022	Subpoena		
157-2 1/13/2022	Production/Inspection of Items - Exhibit		
157-3 1/13/2022	Transmittal		
158 1/13/2022 3:28:59 PM	Party Added	W-007	United Bank
159 1/13/2022 3:32:29 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
159-1 1/13/2022	Subpoena		
159-2 1/13/2022	Production/Inspection of Items - see attached		
159-3 1/13/2022	Transmittal		
160 1/13/2022 3:32:29 PM	Party Added	W-008	Trust (BB&T)
161 1/13/2022 3:32:40 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
161-1 1/13/2022	Subpoena		
161-2 1/13/2022	Production/Inspection of Items - Exhibit		
161-3 1/13/2022	Transmittal		
162 1/13/2022 3:32:40 PM	Party Added	W-009	CNB Bank
163 1/13/2022 3:32:52 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
163-1 1/13/2022	Subpoena		
163-2 1/13/2022	Production/Inspection of Items - Exhibit		
163-3 1/13/2022	Transmittal		
164 1/13/2022 3:32:52 PM	Party Added	W-010	Jefferson Security Bank
165 1/13/2022 3:33:04 PM	E-Filed		Subpoena - Rejected - Subpoena Duces Tecum
165-1 1/13/2022	Subpoena		
165-2 1/13/2022	Production/Inspection of Items - Exhibit		
165-3 1/13/2022	Transmittal		
166 1/13/2022 3:33:04 PM	Party Added	W-011	City National Bank



## Case Docket Entries

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Entered Date	Event	Ref. Code	Description
167 1/13/2022 3:53:04 PM	E-Filed		Order - Case - ORDER DENYING PLAINTIFFS' MOTION TO DISMISS COUNTS II AND III OF THE SECOND AMENDED COUNTERCLAIM cc: Patrick Henry, Michael Scales, Nicola Smith, Christian Riddell via e-File; Hoyer, Hoyer & Smith PLLC via first-class mail, 01/14/2022
167-1 1/13/2022	Order - ORDER DENYING PLAINTIFFS' MOTION TO DISMISS COUNTS II AND III OF THE SECOND AMENDED COUNTERCLAIM		
167-2 1/13/2022	Transmittal		
168 1/14/2022 8:55:54 AM	E-Filed		Subpoena - Subpoena Duces Tecum
168-1 1/13/2022	Subpoena		
168-2 1/13/2022	Production/Inspection of Items - Exhibit		
168-3 1/13/2022	Transmittal		
168-4 1/13/2022	Summons		
169 1/14/2022 8:55:54 AM	Party Added	W-012	167th TFR Federal Credit Union
170 1/14/2022 8:55:54 AM	Service Requested	W-012	Plaintiff - Private Process Server
171 1/14/2022 8:56:05 AM	E-Filed		Subpoena - Subpoena Duces Tecum
171-1 1/13/2022	Subpoena		
171-2 1/13/2022	Production/Inspection of Items - Exhibit		
171-3 1/13/2022	Transmittal		
171-4 1/13/2022	Summons		
172 1/14/2022 8:56:05 AM	Party Added	W-013	Mountain Heritage Federal Credit Union
173 1/14/2022 8:56:05 AM	Service Requested	W-013	Plaintiff - Private Process Server
174 1/14/2022 8:56:10 AM	E-Filed		Subpoena - Subpoena Duces Tecum
174-1 1/13/2022	Subpoena		
174-2 1/13/2022	Production/Inspection of Items - Exhibit		
174-3 1/13/2022	Transmittal		
174-4 1/13/2022	Summons		
175 1/14/2022 8:56:10 AM	Party Added	W-014	Woodforest National Bank
176 1/14/2022 8:56:10 AM	Service Requested	W-014	Plaintiff - Private Process Server
177 1/14/2022 8:56:16 AM	E-Filed		Subpoena - Subpoena Duces Tecum
177-1 1/13/2022	Subpoena		
177-2 1/13/2022	Production/Inspection of Items - Exhibit		
177-3 1/13/2022	Transmittal		
177-4 1/13/2022	Summons		
178 1/14/2022 8:56:16 AM	Party Added	W-015	First United Bank and Trust
179 1/14/2022 8:56:16 AM	Service Requested	W-015	Plaintiff - Private Process Server
180 1/14/2022 8:56:41 AM	E-Filed		Subpoena - Subpoena Duces Tecum
180-1 1/13/2022	Subpoena		
180-2 1/13/2022	Production/Inspection of Items - Exhibit		
180-3 1/13/2022	Transmittal		
180-4 1/13/2022	Summons		
181 1/14/2022 8:56:41 AM	Party Added	W-016	Eastern Panhandle Federal Credit Union
182 1/14/2022 8:56:41 AM	Service Requested	W-016	Plaintiff - Private Process Server
183 1/14/2022 8:56:42 AM	E-Filed		Subpoena - Subpoena Duces Tecum
183-1 1/13/2022	Subpoena		
183-2 1/13/2022	Production/Inspection of Items - Exhibit		
183-3 1/13/2022	Transmittal		
183-4 1/13/2022	Summons		
184 1/14/2022 8:56:42 AM	Party Added	W-017	Summit Community Bank
185 1/14/2022 8:56:42 AM	Service Requested	W-017	Plaintiff - Private Process Server
186 1/14/2022 8:56:48 AM	E-Filed		Subpoena - Subpoena Duces Tecum
186-1 1/13/2022	Subpoena		

## Case Docket Entries

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Entered Date	Event	Ref. Code	Description
186-2 1/13/2022	Production/Inspection of Items - Exhibit		
186-3 1/13/2022	Transmittal		
186-4 1/13/2022	Summons		
187 1/14/2022 8:56:48 AM	Party Added	W-018	United Bank
188 1/14/2022 8:56:48 AM	Service Requested	W-018	Plaintiff - Private Process Server
189 1/14/2022 8:56:48 AM	E-Filed		Subpoena - Subpoena Duces Tecum
189-1 1/13/2022	Subpoena		
189-2 1/13/2022	Production/Inspection of Items - Exhibit		
189-3 1/13/2022	Transmittal		
189-4 1/13/2022	Summons		
190 1/14/2022 8:56:48 AM	Party Added	W-019	Truist (BB&T)
191 1/14/2022 8:56:48 AM	Service Requested	W-019	Plaintiff - Private Process Server
192 1/14/2022 8:56:49 AM	E-Filed		Subpoena - Subpoena Duces Tecum
192-1 1/13/2022	Subpoena		
192-2 1/13/2022	Production/Inspection of Items - Exhibit		
192-3 1/13/2022	Transmittal		
192-4 1/13/2022	Summons		
193 1/14/2022 8:56:49 AM	Party Added	W-020	CNB Bank
194 1/14/2022 8:56:49 AM	Service Requested	W-020	Plaintiff - Private Process Server
195 1/14/2022 8:56:59 AM	E-Filed		Subpoena - Subpoena Duces Tecum
195-1 1/13/2022	Subpoena		
195-2 1/13/2022	Production/Inspection of Items - Exhibit		
195-3 1/13/2022	Transmittal		
195-4 1/13/2022	Summons		
196 1/14/2022 8:56:59 AM	Party Added	W-021	City National Bank
197 1/14/2022 8:56:59 AM	Service Requested	W-021	Plaintiff - Private Process Server
198 1/14/2022 8:57:04 AM	E-Filed		Subpoena - Subpoena Duces Tecum
198-1 1/14/2022	Subpoena		
198-2 1/14/2022	Production/Inspection of Items - Exhibit		
198-3 1/14/2022	Transmittal		
198-4 1/14/2022	Summons		
199 1/14/2022 8:57:04 AM	Party Added	W-022	Jefferson Security Bank
200 1/14/2022 8:57:04 AM	Service Requested	W-022	Plaintiff - Private Process Server
201 1/14/2022 4:44:47 PM	E-Filed		Order - Motion - ORDER DENYING MOTION TO DISMISS THIRD PARTY COMPLAINT cc: Michael Scales, Christian Riddell, Nicola Smith via e-File; Hoyer, Hoyer & Smith, PLLC via first-class mail, 01/18/2022
201-1 1/14/2022	Order - ORDER DENYING MOTION TO DISMISS THIRD PARTY COMPLAINT		
201-2 1/14/2022	Transmittal		
202 1/14/2022 4:55:47 PM	E-Filed		Order - Case - ORDER SETTING HEARING ON MOTION TO DISQUALIFY COUNSEL AND TO CONDUCT SCHEDULING CONFERENCE cc: Michael Scales, Christian Riddell, Nicola Smith, Patrick Henry via e-File, 01/18/2022
202-1 1/14/2022	Order - ORDER SETTING HEARING ON MOTION TO DISQUALIFY COUNSEL AND TO CONDUCT SCHEDULING CONFERENCE		
202-2 1/14/2022	Transmittal		
203 1/18/2022 1:59:32 PM	E-Filed		Certificate of Service - Certificate of Service
203-1 1/18/2022	Certificate of Service - Certificate of Service		
203-2 1/18/2022	Transmittal		
204 1/20/2022 3:51:17 PM	E-Filed		Service Return - Service Return
204-1 1/20/2022	Service Return - Service Return		
204-2 1/20/2022	Transmittal		

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	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
205	1/20/2022 3:52:02 PM	E-Filed		Service Return - Service Return
	205-1 1/20/2022	Service Return - Service Return		
	205-2 1/20/2022	Transmittal		
206	1/20/2022 3:52:42 PM	E-Filed		Service Return - Service Return
	206-1 1/20/2022	Service Return - Service Return		
	206-2 1/20/2022	Transmittal		
207	1/20/2022 3:53:49 PM	E-Filed		Service Return - Service Return
	207-1 1/20/2022	Service Return - Service Return		
	207-2 1/20/2022	Transmittal		
208	1/20/2022 3:54:29 PM	E-Filed		Service Return - Service Return
	208-1 1/20/2022	Service Return - Service Return		
	208-2 1/20/2022	Transmittal		
209	1/20/2022 3:55:33 PM	E-Filed		Service Return - Service Return
	209-1 1/20/2022	Service Return - Service Return		
	209-2 1/20/2022	Transmittal		
210	1/20/2022 3:56:03 PM	E-Filed		Motion - Quash
	210-1 1/20/2022	Motion - Defendant's Motion for a Partial Quashing of the Subpoenas Duces Tecum Upon Lending Institutions and for Expedited Relief		
	210-2 1/20/2022	Transmittal		
211	1/20/2022 3:56:21 PM	E-Filed		Service Return - Service Return
	211-1 1/20/2022	Service Return - Service Return		
	211-2 1/20/2022	Transmittal		
212	1/20/2022 3:57:21 PM	E-Filed		Service Return - Service Return
	212-1 1/20/2022	Service Return - Service Return		
	212-2 1/20/2022	Transmittal		
213	1/20/2022 3:58:07 PM	E-Filed		Service Return - Service Return
	213-1 1/20/2022	Service Return - Service Return		
	213-2 1/20/2022	Transmittal		
214	1/20/2022 3:58:48 PM	E-Filed		Service Return - Service Return
	214-1 1/20/2022	Service Return - Service Return		
	214-2 1/20/2022	Transmittal		
215	1/20/2022 3:59:34 PM	-----		Reason for Deletion: Per attorney
	215-1 1/20/2022	----- Reason for Deletion: Per attorney		
	215-2 1/20/2022	----- Reason for Deletion: Per attorney		
216	1/20/2022 4:13:49 PM	E-Filed		Supporting Documents - Service Return
	216-1 1/20/2022	Service Return - Service Return		
	216-2 1/20/2022	Transmittal		
217	1/20/2022 5:42:01 PM	E-Filed		Motion Response - Response
	217-1 1/20/2022	Motion Response - Plaintiff's Response to Motion To Quash Subpoenas		
	217-2 1/20/2022	Transmittal		
218	1/21/2022 2:45:52 PM	E-Filed		Certificate of Service - Amended Certificate of Service
	218-1 1/21/2022	Certificate of Service - Amended Certificate of Service		
	218-2 1/21/2022	Supporting Document - Exhibit A		
	218-3 1/21/2022	Transmittal		
219	1/21/2022 2:22:26 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
	219-1 1/21/2022	Subpoena		
	219-2 1/21/2022	Production/Inspection of Items - Exhibit		
	219-3 1/21/2022	Transmittal		
	219-4 1/21/2022	Summons		
220	1/21/2022 2:22:26 PM	Service Requested	W-012	Plaintiff - Private Process Server
221	1/21/2022 2:22:32 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
	221-1 1/21/2022	Subpoena		
	221-2 1/21/2022	Production/Inspection of Items - Exhibit		

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Entered Date	Event	Ref. Code	Description
221-3 1/21/2022	Transmittal		
221-4 1/21/2022	Summons		
222 1/21/2022 2:22:32 PM	Service Requested	W-022	Plaintiff - Private Process Server
223 1/21/2022 2:22:38 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
223-1 1/21/2022	Subpoena		
223-2 1/21/2022	Production/Inspection of Items - Exhibit		
223-3 1/21/2022	Transmittal		
223-4 1/21/2022	Summons		
224 1/21/2022 2:22:38 PM	Service Requested	W-021	Plaintiff - Private Process Server
225 1/21/2022 2:22:44 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
225-1 1/21/2022	Subpoena		
225-2 1/21/2022	Production/Inspection of Items - Exhibit		
225-3 1/21/2022	Transmittal		
225-4 1/21/2022	Summons		
226 1/21/2022 2:22:44 PM	Service Requested	W-020	Plaintiff - Private Process Server
227 1/21/2022 2:22:46 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
227-1 1/21/2022	Subpoena		
227-2 1/21/2022	Production/Inspection of Items - Exhibit		
227-3 1/21/2022	Transmittal		
227-4 1/21/2022	Summons		
228 1/21/2022 2:22:46 PM	Service Requested	W-019	Plaintiff - Private Process Server
229 1/21/2022 2:22:50 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
229-1 1/21/2022	Subpoena		
229-2 1/21/2022	Production/Inspection of Items - Exhibit		
229-3 1/21/2022	Transmittal		
229-4 1/21/2022	Summons		
230 1/21/2022 2:22:50 PM	Service Requested	W-018	Plaintiff - Private Process Server
231 1/21/2022 2:22:53 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
231-1 1/21/2022	Subpoena		
231-2 1/21/2022	Production/Inspection of Items - Exhibit		
231-3 1/21/2022	Transmittal		
231-4 1/21/2022	Summons		
232 1/21/2022 2:22:53 PM	Service Requested	W-017	Plaintiff - Private Process Server
233 1/21/2022 2:22:57 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
233-1 1/21/2022	Subpoena		
233-2 1/21/2022	Production/Inspection of Items - Exhibit		
233-3 1/21/2022	Transmittal		
233-4 1/21/2022	Summons		
234 1/21/2022 2:22:57 PM	Service Requested	W-016	Plaintiff - Private Process Server
235 1/21/2022 2:22:59 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
235-1 1/21/2022	Subpoena		
235-2 1/21/2022	Production/Inspection of Items - Exhibit		
235-3 1/21/2022	Transmittal		
235-4 1/21/2022	Summons		
236 1/21/2022 2:22:59 PM	Service Requested	W-015	Plaintiff - Private Process Server
237 1/21/2022 2:23:04 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum
237-1 1/21/2022	Subpoena		
237-2 1/21/2022	Production/Inspection of Items - Exhibit		
237-3 1/21/2022	Transmittal		
237-4 1/21/2022	Summons		
238 1/21/2022 2:23:04 PM	Service Requested	W-014	Plaintiff - Private Process Server
239 1/21/2022 2:23:07 PM	E-Filed		Subpoena - Amended Subpoena Duces Tecum

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Entered Date	Event	Ref. Code	Description
239-1 1/21/2022	Subpoena		
239-2 1/21/2022	Production/Inspection of Items - Exhibit		
239-3 1/21/2022	Transmittal		
239-4 1/21/2022	Summons		
240 1/21/2022 2:23:07 PM	Service Requested	W-013	Plaintiff - Private Process Server
241 1/21/2022 3:11:05 PM	E-Filed		Answer - Complaint Denied
241-1 1/21/2022	Civil Case Information Statement		
241-2 1/21/2022	Answer - ANSWER OF STATE CERTIFIED TERMITE AND PEST TO THE DEFENDANT'S THIRD-PARTY COMPLAINT		
241-3 1/21/2022	Transmittal		
242 1/21/2022 3:12:55 PM	E-Filed		Answer - Complaint Denied
242-1 1/21/2022	Civil Case Information Statement		
242-2 1/21/2022	Answer - ANSWER OF STATE CERTIFIED TERMITE AND PEST TO THE DEFENDANT'S THIRD-PARTY COMPLAINT		
242-3 1/21/2022	Transmittal		
243 1/24/2022 10:09:54 AM	E-Filed		Subpoena - Amended Subpoena Attachment
243-1 1/24/2022	Subpoena		
243-2 1/24/2022	Production/Inspection of Items - Exhibit		
243-3 1/24/2022	Transmittal		
243-4 1/24/2022	Summons		
244 1/24/2022 10:09:54 AM	Service Requested	W-019	Plaintiff - Private Process Server
245 1/24/2022 10:09:55 AM	E-Filed		Subpoena - Amended Subpoena Attachment
245-1 1/24/2022	Subpoena		
245-2 1/24/2022	Production/Inspection of Items - Exhibit		
245-3 1/24/2022	Transmittal		
245-4 1/24/2022	Summons		
246 1/24/2022 10:09:55 AM	Service Requested	W-018	Plaintiff - Private Process Server
247 1/24/2022 10:10:00 AM	E-Filed		Subpoena - Amended Subpoena Attachment
247-1 1/24/2022	Subpoena		
247-2 1/24/2022	Production/Inspection of Items - Exhibit		
247-3 1/24/2022	Transmittal		
247-4 1/24/2022	Summons		
248 1/24/2022 10:10:00 AM	Service Requested	W-017	Plaintiff - Private Process Server
249 1/24/2022 10:10:03 AM	E-Filed		Subpoena - Amended Subpoena Attachment
249-1 1/24/2022	Subpoena		
249-2 1/24/2022	Production/Inspection of Items - Exhibit		
249-3 1/24/2022	Transmittal		
249-4 1/24/2022	Summons		
250 1/24/2022 10:10:03 AM	Service Requested	W-016	Plaintiff - Private Process Server
251 1/24/2022 10:10:08 AM	E-Filed		Subpoena - Amended Subpoena Attachment
251-1 1/24/2022	Subpoena		
251-2 1/24/2022	Production/Inspection of Items - Exhibit		
251-3 1/24/2022	Transmittal		
251-4 1/24/2022	Summons		
252 1/24/2022 10:10:08 AM	Service Requested	W-015	Plaintiff - Private Process Server
253 1/24/2022 10:10:11 AM	E-Filed		Subpoena - Amended Subpoena Attachment
253-1 1/24/2022	Subpoena		
253-2 1/24/2022	Production/Inspection of Items - Exhibit		
253-3 1/24/2022	Transmittal		
253-4 1/24/2022	Summons		
254 1/24/2022 10:10:11 AM	Service Requested	W-014	Plaintiff - Private Process Server
255 1/24/2022 10:10:17 AM	E-Filed		Subpoena - Amended Subpoena Attachment
255-1 1/24/2022	Subpoena		



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Entered Date	Event	Ref. Code	Description
255-2 1/24/2022	Production/Inspection of Items - Exhibit		
255-3 1/24/2022	Transmittal		
255-4 1/24/2022	Summons		
256 1/24/2022 10:10:17 AM	Service Requested	W-013	Plaintiff - Private Process Server
257 1/24/2022 10:10:17 AM	E-Filed		Subpoena - Second Amended Subpoena Duces Tecum
257-1 1/24/2022	Subpoena		
257-2 1/24/2022	Production/Inspection of Items - Exhibit		
257-3 1/24/2022	Transmittal		
257-4 1/24/2022	Summons		
258 1/24/2022 10:10:17 AM	Service Requested	W-012	Plaintiff - Private Process Server
259 1/24/2022 10:25:01 AM	E-Filed		Subpoena - Amended Subpoena Attachment
259-1 1/24/2022	Subpoena		
259-2 1/24/2022	Production/Inspection of Items - Exhibit		
259-3 1/24/2022	Transmittal		
259-4 1/24/2022	Summons		
260 1/24/2022 10:25:01 AM	Service Requested	W-022	Plaintiff - Private Process Server
261 1/24/2022 10:25:02 AM	E-Filed		Subpoena - Amended Subpoena Attachment
261-1 1/24/2022	Subpoena		
261-2 1/24/2022	Production/Inspection of Items - Exhibit		
261-3 1/24/2022	Transmittal		
261-4 1/24/2022	Summons		
262 1/24/2022 10:25:02 AM	Service Requested	W-021	Plaintiff - Private Process Server
263 1/24/2022 10:25:02 AM	E-Filed		Subpoena - Amended Subpoena Attachment
263-1 1/24/2022	Subpoena		
263-2 1/24/2022	Production/Inspection of Items - Exhibit		
263-3 1/24/2022	Transmittal		
263-4 1/24/2022	Summons		
264 1/24/2022 10:25:02 AM	Service Requested	W-020	Plaintiff - Private Process Server
265 1/24/2022 3:02:14 PM	E-Filed		Motion - Other
265-1 1/24/2022	Motion - Defendant's Motion for Clarification of the Decision of Patrick G. Henry, III E-filed on August 9, 2021		
265-2 1/24/2022	Transmittal		
266 1/24/2022 3:49:53 PM	E-Filed		Service Return - Service Return
266-1 1/24/2022	Service Return - Service Return		
266-2 1/24/2022	Transmittal		
267 1/24/2022 3:50:47 PM	E-Filed		Service Return - Service Return
267-1 1/24/2022	Service Return - Service Return		
267-2 1/24/2022	Transmittal		
268 1/24/2022 3:51:34 PM	E-Filed		Service Return - Service Return
268-1 1/24/2022	Service Return - Service Return		
268-2 1/24/2022	Transmittal		
269 1/24/2022 3:52:26 PM	E-Filed		Service Return - Service Return
269-1 1/24/2022	Service Return - Service Return		
269-2 1/24/2022	Transmittal		
270 1/24/2022 3:53:10 PM	E-Filed		Service Return - Service Return
270-1 1/24/2022	Service Return - Service Return		
270-2 1/24/2022	Transmittal		
271 1/24/2022 3:53:57 PM	E-Filed		Service Return - Service Return
271-1 1/24/2022	Service Return - Service Return		
271-2 1/24/2022	Transmittal		
272 1/24/2022 3:54:38 PM	E-Filed		Service Return - Service Return
272-1 1/24/2022	Service Return - Service Return		
272-2 1/24/2022	Transmittal		

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	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
273	1/24/2022 3:55:24 PM	E-Filed		Service Return - Service Return
	273-1 1/24/2022	Service Return - Service Return		
	273-2 1/24/2022	Transmittal		
274	1/24/2022 3:56:20 PM	E-Filed		Service Return - Service Return
	274-1 1/24/2022	Service Return - Service Return		
	274-2 1/24/2022	Transmittal		
275	1/24/2022 3:57:07 PM	E-Filed		Service Return - Service Return
	275-1 1/24/2022	Service Return - Service Return		
	275-2 1/24/2022	Transmittal		
276	1/24/2022 3:57:53 PM	E-Filed		Service Return - Service Return
	276-1 1/24/2022	Service Return - Service Return		
	276-2 1/24/2022	Transmittal		
277	1/27/2022 1:22:32 PM	E-Filed		Order - Case - ORDER ADOPTING RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER cc: Christian Riddell, Nicola Smith, Michael Scales, Patrick Henry III Via E-File 1/27/2022
	277-1 1/27/2022	Order - ORDER ADOPTING RECOMMENDED ORDER AND REPORT OF DISCOVERY COMMISSIONER		
	277-2 1/27/2022	Transmittal		
278	1/31/2022 7:05:11 PM	E-Filed		Motion Response - Supplement
	278-1 1/31/2022	Motion Response - Supplemental Brief Opposing Defendant Scott McDermitt's Motion to Disqualify Counsel		
	278-2 1/31/2022	Transmittal		
279	1/31/2022 7:08:36 PM	E-Filed		Certificate of Service - Certificate of Service
	279-1 1/31/2022	Certificate of Service - Certificate of Service of Plaintiff's Supplemental Brief in Opposition to Defendant's Motion to Disqualify Counsel		
	279-2 1/31/2022	Transmittal		
280	2/4/2022 8:21:06 AM	E-Filed		Supporting Documents - Defendant's Supplemental Memorandum in Support of Defendant's Motion to Disqualify Plaintiffs' Counsel and for the Court to Appoint an Independent Special Receiver to Wind Up and Liquidate the Assets of the Old LLC
	280-1 2/4/2022	Other - Defendant's Supplemental Memorandum in Support of Defendant's Motion to Disqualify Plaintiffs' Counsel and for the Court to Appoint an Independent Special Receiver to Wind Up and Liquidate the Assets of the Old LLC		
	280-2 2/4/2022	Transmittal		
281	2/4/2022 8:22:18 AM	E-Filed		Letter to Judge - Letter to Judge Redding from M. Scales
	281-1 2/4/2022	Letter - Letter to Judge Redding from M. Scales		
	281-2 2/4/2022	Transmittal		
282	2/4/2022 5:16:55 PM	E-Filed		Motion - Other
	282-1 2/4/2022	Motion - Motion for Hearing on Motion To Disqualify Counsel and For Special Receiver		
	282-2 2/4/2022	Transmittal		
283	2/7/2022 10:26:59 AM	E-Filed		Motion Response - Response
	283-1 2/7/2022	Motion Response - Defendant's Objections to Plaintiffs' Motion for Additional Oral Argument on Previously Filed Motions by Defendant		
	283-2 2/7/2022	Transmittal		
284	2/9/2022 3:28:16 PM	E-Filed		Motion - Compel
	284-1 2/9/2022	Motion - Defendant/Counter Plaintiff and Third Party Plaintiff's Motion to Compel Discovery From Plaintiffs/Counter Defendants and Third Party Defendant		
	284-2 2/9/2022	Transmittal		
285	2/10/2022 2:41:24 PM	E-Filed		Order - Motion - TRIAL COURT RULE 22 SCHEDULING ORDER cc: Christian Riddell, Nicola Smith, Michael Scales, Patrick Henry via e-File 2/10/2022
	285-1 2/10/2022	Order - TRIAL COURT RULE 22 SCHEDULING ORDER		
	285-2 2/10/2022	Transmittal		