STATE OF SOUTH CAROLINA **COUNTY OF ABBEVILLE** **CITY OF ABBEVILLE,** **Plaintiff,** **vs.** **TOWN OF CALHOUN FALLS; TERRICO HOLLAND IN HIS OFFICIAL CAPACITY AS MAYOR OF THE TOWN OF CALHOUN FALLS; AND WENDI W. LEWIS IN HER OFFICIAL CAPACITY AS CLERK/TREASURER OF THE TOWN OF CALHOUN FALLS,** **Defendants.**	)	**IN THE COURT OF COMMON PLEAS** **C.A. No.:2025-CP-01-00036** **RETURN AND RESPONSE IN OPPOSITION TO RULE TO SHOW CAUSE AND FURTHER TEMPORARY RELIEF**

APPEARANCE AND GENERAL RESPONSE

COME NOW the Defendant, the Town of Calhoun Falls ("Respondent"), and respectfully submits this Return and Response in Opposition to Plaintiff's Verified Petition for Rule to Show Cause and for Further Temporary Relief. Respondent appears pursuant to the Rule to Show Cause issued by this Court and responds for the limited purpose of addressing the allegations of contempt and the request for additional equitable relief. In doing so, Respondent expressly preserves all objections as to the scope, propriety, and legal sufficiency of the relief requested.

As set forth more fully below and in the supporting affidavits and memorandum of law filed herewith, Respondent denies that it has willfully violated any order of this Court. To the contrary, the record demonstrates ongoing, good-faith efforts to comply with the Court's directives within the constraints of statutory municipal governance and available financial resources. The extraordinary relief sought by Plaintiff is unsupported by South Carolina law and should be denied.

I. ADDITIONAL FACTS DEMONSTRATING GOOD-FAITH COMPLIANCE

1. Following entry of the Preliminary Injunction, on April 27, 2025, the Town of Calhoun Falls executed an Assignment and Pledge Agreement for the express purpose of ensuring compliance with the Court's Order. Pursuant to that Agreement, Respondent irrevocably assigned and pledged to Plaintiff all revenues due and owing from the Town of McCormick under an existing intergovernmental water agreement and authorized direct remittance of those funds to Plaintiff until the outstanding balance is reduced to zero.

2. The Assignment and Pledge Agreement was duly approved by resolution of the Town Council and constitutes a voluntary, good-faith security mechanism designed to prioritize Plaintiff's claims and ensure ongoing payment without judicial intervention. The pledged revenues represent a significant and reliable revenue stream and remain in effect unless and until modified by written agreement of the parties.

3. Beginning July 10, 2025, the Town initiated a comprehensive Meter Verification and Billing Accuracy Project to improve data integrity, billing accuracy, and revenue assurance within the municipal water system. The project includes field verification of meters, reconciliation of meter and account records, reduction of estimated and manual reads, validation of billing calculations, and the implementation of enhanced reporting and internal controls. The project is being conducted with third-party technical assistance and is subject to ongoing oversight by Town administration and Council.

4. As of January 5, 2026, Terrico Holland is no longer the Mayor of the Town of Calhoun Falls, having been defeated in the most recent municipal election. The Town's compliance efforts described herein are institutional actions undertaken by the municipal government through its governing body and administrative staff and continue under the Town's current leadership. These facts underscore that compliance with the Court's Order is ongoing, structured, and independent of any single officeholder.

5. These measures reflect affirmative, good-faith, and continuing compliance efforts. They are inconsistent with any claim of willful disobedience, asset dissipation, or administrative neglect and demonstrate that Respondent has taken concrete steps to comply with the Court's Order and address operational concerns without the need for judicial escalation.

Against this factual backdrop, Plaintiff cannot satisfy the legal standards required for either a finding of civil contempt or the imposition of further temporary relief. South Carolina law strictly limits contempt to cases of willful disobedience and reserves extraordinary equitable remedies—such as receivership—for circumstances involving necessity, inadequacy of legal remedies, and risk to assets. None of those conditions are present here.

Accordingly, and as set forth below, Plaintiff's Petition should be denied as a matter of law.

II. LEGAL RESPONSE TO RULE TO SHOW CAUSE AND REQUEST FOR FURTHER TEMPORARY RELIEF

A. Plaintiff Bears the Burden to Establish Civil Contempt

Civil contempt is an extraordinary remedy, and the burden rests squarely on the moving party to establish its entitlement to such relief by clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 111–12, 502 S.E.2d 86, 88–89 (1998). To sustain a finding of civil contempt, Plaintiff must prove (1) the existence of a valid and enforceable court order, and (2)

the respondent's willful disobedience of a clear and specific command of that order. *Brasington v. Shannon*, 288 S.C. 183, 185, 341 S.E.2d 130, 131 (1986).

The South Carolina Supreme Court has made clear that the initial burden does not shift unless and until the moving party establishes a prima facie case of contempt. Id. Only after the moving party proves noncompliance with a specific directive of the court does the burden shift to the responding party to demonstrate an inability to comply or other lawful justification. *Means v. Means*, 277 S.C. 428, 430, 288 S.E.2d 811, 812 (1982); *Widman v. Widman*, 348 S.C. 97, 100–01, 557 S.E.2d 693, 695 (Ct. App. 2001).

Critically, contempt cannot be predicated on generalized dissatisfaction, disputed outcomes, or conduct that falls outside the four corners of the order. The order alleged to have been violated must be clear, definite, and specific, such that the party subject to it knows precisely what is required or prohibited. *Hawkins v. Mullins*, 359 S.C. 497, 500–01, 597 S.E.2d 897, 899 (Ct. App. 2004). Where an order is ambiguous, conditional, or permits discretion in performance, contempt is not available. *Id.*; *Lipscomb v. Stonington Dev., LLC*, 398 S.C. 463, 472–73, 730 S.E.2d 320, 325 (Ct. App. 2012).

Here, the operative order is the Court's Order of Preliminary Injunction entered April 21, 2025. That Order requires the Town of Calhoun Falls to pay Plaintiff for "Going-Forward Invoices" submitted after entry of the Order and to make such payments no later than the 10th day of the month in which the invoice is submitted, using System Revenues. The Order further expressly provides that, if System Revenues are insufficient, such revenues must be applied pro rata between Going-Forward Invoices and existing bond debt service obligations.

The Preliminary Injunction does not require payment of arrearages, does not mandate payment from non-system revenues, does not impose escrow or receivership, and does not

require guaranteed or absolute payment irrespective of revenue availability. Accordingly, Plaintiff bears the burden to prove—by clear and convincing evidence—not merely that payments were less than desired, but that Respondent willfully failed to comply with the specific payment framework established by the Court.

Allegations that seek to disregard the Order's express pro rata provisions, to impose obligations not contained within its text, or to recast disputed payment outcomes as contempt fail as a matter of law. Where the moving party cannot establish a willful violation of a clear and specific court directive, the Rule to Show Cause must be discharged without shifting the burden to the respondent. *Brasington*, 288 S.C. at 185, 341 S.E.2d at 131.

Applying these principles here, Plaintiff cannot satisfy its initial burden to establish civil contempt. The April 21, 2025 Preliminary Injunction imposes a defined and conditional payment framework, expressly limiting the Town's obligation to payment of "Going-Forward Invoices" from available System Revenues and authorizing pro rata allocation where such revenues are insufficient. The Order does not require absolute or guaranteed payment, does not mandate payment from non-system funds, and does not prohibit the Town from prioritizing bond debt service as contemplated by the Order itself. Plaintiff's allegations rest not on proof of a willful violation of these express terms, but on dissatisfaction with payment outcomes permitted by the Order's plain language. Where, as here, the governing order authorizes discretion in performance and anticipates revenue limitations, Plaintiff cannot establish—by clear and convincing evidence—that Respondent willfully disobeyed a clear and specific court command. Because Plaintiff fails to make the requisite prima facie showing, the burden never shifts to Respondent, and the Rule to Show Cause must be discharged as a matter of law.

B. Civil Contempt Requires Willful Disobedience; Good-Faith Compliance and Inability to Comply Preclude a Finding of Contempt

South Carolina courts have repeatedly cautioned that civil contempt is not established by mere noncompliance, but only by willful disobedience of a court order. "Contempt results from the willful disobedience of a court order," and before a party may be held in contempt, "the record must clearly and specifically reflect the contemptuous conduct." *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989); *Widman v. Widman*, 348 S.C. 97, 119–20, 557 S.E.2d 693, 705 (Ct. App. 2001).

A willful act is one done "voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82–83, 370 S.E.2d 872, 874 (1988); *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008). Courts consistently warn that where intent is absent, contempt is improper even if compliance was imperfect. *Lipscomb v. Stonington Dev., LLC*, 398 S.C. 463, 472–73, 730 S.E.2d 320, 325 (Ct. App. 2012).

Equally important, South Carolina appellate courts have emphasized that inability to comply—when not self-created—is a complete defense to civil contempt. Once a prima facie case is shown, the respondent may avoid contempt by demonstrating an inability to comply with the order. *Means v. Means*, 277 S.C. 428, 430, 288 S.E.2d 811, 812 (1982); *Brasington v. Shannon*, 288 S.C. 183, 185, 341 S.E.2d 130, 131 (1986). Where a contemnor is "unable, without fault on his part, to obey an order of the court, he is not to be held in contempt." *Smith-Cooper v. Cooper*, 344 S.C. 289, 301, 543 S.E.2d 271, 277 (Ct. App. 2001); *Lipscomb*, 398 S.C. at 473, 730 S.E.2d at 325.

The appellate courts have further cautioned that good-faith efforts to comply defeat a finding of willfulness, even where full compliance is not achieved. In *Lipscomb*, the Court of Appeals reversed a contempt finding where the respondent undertook remedial efforts but was unable to achieve complete compliance, holding that "a good-faith attempt to comply with the court's order, even if unsuccessful, does not warrant a finding of contempt." 398 S.C. at 472–73, 730 S.E.2d at 325. Likewise, courts have rejected contempt where compliance depended on external constraints or lawful limitations rather than intentional defiance. See *Noojin v. Noojin*, 417 S.C. 300, 308, 789 S.E.2d 769, 773 (Ct. App. 2016).

Courts also repeatedly warn against collapsing outcome-based dissatisfaction into a finding of willfulness. Civil contempt is not a strict-liability mechanism, nor may it be used to punish a party for financial hardship, constrained resources, or compliance frameworks expressly contemplated by the governing order. See *S.C. Dep't of Soc. Servs. v. Johnson*, 386 S.C. 426, 435, 688 S.E.2d 588, 592 (Ct. App. 2009) (recognizing inability and lack of willfulness as defenses); *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 612, 567 S.E.2d 514, 522 (Ct. App. 2002) (contempt requires a violation of a specific court command).

Applied here, Plaintiff cannot establish willful disobedience as a matter of law. The April 21, 2025 Preliminary Injunction expressly limits the Town's payment obligations to available System Revenues and affirmatively authorizes pro rata allocation when those revenues are insufficient. The record reflects that the Town has operated within that framework and, far from disregarding the Court's authority, has taken affirmative steps to structure compliance. Most notably, the Town executed an Assignment and Pledge Agreement, approved by Town Council resolution, irrevocably pledging a defined revenue stream for Plaintiff's benefit and authorizing direct remittance until the balance is satisfied. Such conduct is incompatible with the "bad

purpose" or intent to disobey required for civil contempt. At most, Plaintiff alleges dissatisfaction with payment outcomes expressly contemplated by the Court's Order—not intentional defiance of a clear command. Where compliance is conditioned by the Order itself and reinforced by affirmative, institutional compliance measures, South Carolina law forecloses a finding of willfulness, and the Rule to Show Cause must be discharged.

C. Plaintiff's Requested Sanctions Are Punitive, Not Coercive, and Are Therefore Unavailable in a Civil Contempt Proceeding

South Carolina law draws a firm and constitutionally significant distinction between civil contempt, which is coercive or remedial, and criminal contempt, which is punitive. The "major factor" in determining whether contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief sought and the purpose of the sanction imposed. *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998); *Curlee v. Howle*, 277 S.C. 377, 381–82, 287 S.E.2d 915, 917–18 (1982).

The South Carolina Supreme Court has repeatedly emphasized that the purpose of civil contempt is "to coerce the defendant to do the thing required by the order for the benefit of the complainant." *Poston*, 331 S.C. at 111, 502 S.E.2d at 88. Accordingly, any sanction imposed for civil contempt must be conditional and purgeable, such that the contemnor "can end the sentence and discharge himself at any moment by doing what he had previously refused to do." *Id.* at 112, 502 S.E.2d at 89; *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 911 (2004).

Conversely, where the sanction sought is unconditional, definite, or imposed for the purpose of punishment or deterrence, the contempt is criminal in nature and may not be imposed under the guise of civil contempt. *Curlee*, 277 S.C. at 382, 287 S.E.2d at 918; *Ex parte Jackson*, 381 S.C. 253, 258, 672 S.E.2d 585, 587 (Ct. App. 2009). South Carolina courts have expressly

cautioned that imprisonment is punitive—and therefore criminal—where the contemnor lacks the present ability to comply with the court's order or otherwise purge the contempt. *Burch v. Burch*, 2018-UP-323 (S.C. Ct. App. July 18, 2018); *Price v. Turner*, Op. No. 26793, at 6–7 (S.C. Mar. 29, 2010).

Here, Plaintiff seeks incarceration of Terrico Holland until the October and November invoices are paid in full. That request is fundamentally incompatible with civil contempt for multiple, independent reasons. First, Mr. Holland is no longer the Mayor of Calhoun Falls and therefore lacks any present authority to cause municipal payment, allocate system revenues, or direct compliance with the Preliminary Injunction. Where the alleged contemnor lacks the present ability to perform the act demanded, incarceration cannot be coercive and is punitive as a matter of law. *Poston*, 331 S.C. at 112, 502 S.E.2d at 89; *Ex parte Kent*, 379 S.C. 633, 637, 666 S.E.2d 921, 923 (Ct. App. 2008).

Second, Plaintiff's requested sanction is not conditioned on compliance with a specific, lawful purge condition available to Mr. Holland, but instead seeks confinement until money is paid by the Town, an entity over which he no longer exercises control. South Carolina courts have repeatedly warned that civil contempt may not be used to incarcerate an individual to compel performance that is institutionally or legally beyond his control, as such incarceration serves only to punish and vindicate the authority of the court—hallmarks of criminal contempt. *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217; *Hook v. S.C. Dep't of Health & Envtl. Control*, 439 S.C. 52, 61–62, 885 S.E.2d 457, 462 (Ct. App. 2023).

Third, Plaintiff's attempt to pair personal incarceration with a request for receivership or operational takeover further confirms the punitive nature of the relief sought. South Carolina courts caution that civil contempt may not be used as a vehicle to escalate relief beyond

enforcement of the existing order or to impose structural remedies unrelated to coercing compliance by the contemnor. Where, as here, the moving party seeks incarceration of an individual who cannot purge the contempt and simultaneously requests judicial displacement of municipal governance, the proceeding ceases to be remedial and becomes punitive and coercive in the constitutional sense. *Curlee*, 277 S.C. at 381–82, 287 S.E.2d at 917–18; *Poston*, 331 S.C. at 111–12, 502 S.E.2d at 88–89.

In short, Plaintiff's requested sanctions do not seek to coerce compliance by a contemnor capable of purging the contempt, but instead seek punishment for past conduct and leverage for extraordinary equitable relief. South Carolina law forbids such use of civil contempt. Because the relief requested is punitive in nature and cannot be reconciled with the coercive, purgeable framework required for civil contempt, Plaintiff's request for incarceration, receivership, or takeover must be denied as a matter of law.

D. Contempt Cannot Be Used to Expand, Modify, or Supplement the Preliminary Injunction

South Carolina courts have long and consistently held that contempt proceedings are limited to enforcing the clear, definite, and existing commands of a court order and may not be used to expand, modify, or supplement the underlying injunction. Where a party seeks relief beyond the four corners of the order allegedly violated, contempt is unavailable as a matter of law.

The Court of Appeals' decision in *Spartanburg Buddhist Ctr. of S.C. v. Ork* is instructive. There, the court held that a party "cannot willfully violate the provisions of an order that did not yet exist," emphasizing that contempt may not punish conduct outside the scope or effective period of an operative order. 417 S.C. 601, 611, 790 S.E.2d 430, 435 (Ct. App. 2016). The

principle applies with equal force where a party seeks to enforce obligations that were never imposed by the order at all.

The South Carolina Supreme Court has likewise cautioned that contempt is an "extreme measure" that must be exercised with restraint and only where the record is "clear and specific as to the acts or conduct upon which such finding is based." *Bigham v. Bigham*, 264 S.C. 101, 105, 212 S.E.2d 594, 596 (1975). In *Bigham*, the Court reversed where the trial court, through contempt-related proceedings, effectively modified prior orders without a pending modification issue, holding that such action was "patently in error." *Id.* at 106, 212 S.E.2d at 597. The decision makes clear that modification of a court order must be sought through proper procedures—not accomplished indirectly through contempt.

The Court of Appeals has repeatedly reinforced this limitation. In *Burns v. Burns*, the court reiterated that "[o]ne may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do," and that where the commands of an order are uncertain or implied, "a court need go no further in reviewing the evidence in a contempt action." 2023-UP-156, at 7–8 (S.C. Ct. App. Apr. 19, 2023). This principle forecloses any attempt to enforce obligations not expressly imposed by the order itself.

These constraints are deeply rooted in South Carolina jurisprudence. As early as *Columbia Water Power Co. v. City of Columbia*, the Supreme Court held that mistakes, misunderstandings, or conduct not clearly prohibited by an injunction place the matter "beyond the region of contempt," because contempt requires knowledge, clarity, and willful disobedience of the actual order served. 4 S.C. 388, 404–05 (1873). Absent those elements, contempt cannot lie.

Similarly, in *Cheap-O's Truck Stop, Inc. v. Cloyd*, the Court of Appeals reversed a contempt finding where the alleged misconduct violated a private agreement but no specific court order, emphasizing that "the court did not have authority to hold [the party] in contempt" absent violation of a clear judicial command. 350 S.C. 596, 612, 567 S.E.2d 514, 522 (Ct. App. 2002).

Applied here, Plaintiff's request for receivership or operational takeover impermissibly seeks to expand the April 21, 2025 Preliminary Injunction through contempt. That Order imposes a defined payment framework for "Going-Forward Invoices" from available System Revenues and expressly authorizes pro rata allocation when revenues are insufficient. It does not mandate full payment irrespective of revenue availability, does not require escrow, receivership, or third-party control, and does not authorize displacement of municipal governance. Plaintiff's attempt to obtain those remedies through a contempt proceeding—rather than through a properly noticed motion to modify or other independent equitable action—runs directly contrary to controlling South Carolina law. Because contempt may enforce only what the Court actually ordered, and may not be used to impose new obligations or remedies, Plaintiff's request for expanded relief must be denied as a matter of law.

E. Receivership is a Drastic and Disfavored Remedy and is Unavailable Absent Exceptional Circumstances

South Carolina courts have consistently and unequivocally characterized receivership as a drastic, severe, and far-reaching remedy, to be exercised only with great caution and only in exceptional or pressing circumstances. The South Carolina Supreme Court has repeatedly warned that the appointment of a receiver "should be exercised with great caution, lest the injury thereby caused be far greater than the injury sought to be averted." *Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898).

This principle has been reaffirmed across more than a century of South Carolina jurisprudence. As early as *Pelzer v. Hughes*, the Court held that a receiver should not be appointed during the pendency of a case "unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded, and there is danger that the property will be materially injured before the case can be determined." 27 S.C. 408, 412, 3 S.E. 781, 783 (1887). The Supreme Court has repeatedly reiterated that receivership is a remedy "allowed only under pressing circumstances and granted only with reluctance and caution." *Wrenn v. Wrenn*, 228 S.C. 588, 592, 91 S.E.2d 267, 269 (1956); *Vasiliades v. Vasiliades*, 231 S.C. 366, 370, 98 S.E.2d 810, 812 (1957).

Critically, receivership is not available where the moving party has an adequate remedy at law, has failed to exhaust that remedy, or has failed to demonstrate that such remedies are inadequate or useless. In *Montgomery & Crawford, Inc. v. Arcadia Mills*, the Supreme Court held that there was "no cause for receivership" where the parties had an adequate legal remedy and had not shown its inadequacy, further noting that even where the court possessed the power to appoint a receiver, doing so would be improvident on the facts. 173 S.C. 464, 472–73, 176 S.E. 589, 592 (1934). The Court emphasized that the power to appoint a receiver is discretionary and "to be exercised only in a clear case." *Id.*

Modern authority confirms that these principles apply with particular force to pre-judgment receiverships, which are "especially disfavored" and appropriate only "in the rarest of cases." *Welch v. Advance Auto Parts, Inc.*, 445 S.C. 640, 655–56 (2025). In *Welch*, the Supreme Court reaffirmed that a receiver may be appointed before judgment only when there is the strongest reason to believe the plaintiff is entitled to relief and there is a real danger of material injury to the property before the case can be resolved. *Id.* The Court expressly cautioned that it

would not be inclined to affirm a pre-judgment receivership except in the most extraordinary circumstances. *Id.*

South Carolina courts have also distinguished between ordinary or pre-judgment receiverships—which are drastic—and post-judgment or supplementary receiverships, which may be less so. *Fagan v. Timmons*, 217 S.C. 432, 436, 60 S.E.2d 863, 865 (1950); *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984). That distinction underscores the impropriety of appointing a receiver here, where Plaintiff seeks receivership not to satisfy a judgment, but as an extraordinary coercive measure during ongoing litigation.

Measured against these standards, Plaintiff's request for receivership or operational takeover fails as a matter of law. Plaintiff has not alleged fraud, waste, asset dissipation, or imminent danger to property. Nor has Plaintiff shown the inadequacy of legal remedies. To the contrary, Plaintiff already possesses a court-ordered payment framework under the Preliminary Injunction and an additional secured compliance mechanism through the Assignment and Pledge Agreement. The Town is actively operating within that framework and has undertaken ongoing remediation efforts.

Plaintiff's request would require this Court to exercise one of the most drastic equitable powers available—displacing municipal governance and transferring control of public assets—without the "strongest reason," without imminent peril, and without exhaustion or inadequacy of legal remedies. South Carolina law does not permit such relief. Because receivership is a disfavored remedy reserved for exceptional cases, and because none of the required conditions are present here, Plaintiff's request for receivership or takeover must be denied.

F. Plaintiff Cannot Satisfy the Threshold Requirements for Receivership or Further Extraordinary Relief

Even assuming arguendo that Plaintiff could establish nonpayment of certain invoices, South Carolina law makes clear that debt or financial strain—standing alone—does not justify receivership or other extraordinary equitable relief. The Supreme Court has repeatedly emphasized that receivership is not a collection device and may not be invoked where creditors possess adequate legal remedies that have not been exhausted, or where the debtor is acting honestly and responsibly.

In *Montgomery & Crawford, Inc. v. Arcadia Mills*, the Supreme Court expressly held that there was "no cause for receivership" where the creditor had an adequate remedy at law and failed to exhaust it, noting that appointment of a receiver under such circumstances would be "improvident." 173 S.C. 464, 472–73, 176 S.E. 589, 592 (1934). In doing so, the Court approvingly quoted *Southern Trust Co. v. Cudd*, observing the lack of justification for a receiver where judgment and execution remedies were available and emphasizing judicial skepticism toward "the eagerness of the plaintiff for the appointment of a receiver" based solely on unpaid debt. Id. (quoting *Southern Trust*, 166 S.C. 108, 112–13, 164 S.E. 428, 429 (1932)).

The Supreme Court's reasoning in Southern Trust remains instructive. There, the Court described receivership as a "drastic remedy" to be exercised with "caution and circumspection," warning that courts should be "slow to force into receivership one who is doing the best he can to meet his honest obligations, who is dealing fairly with his creditors, and who is not throwing away his money or property." 166 S.C. at 113, 164 S.E. at 429. That principle forecloses receivership where, as here, there are no allegations of fraud, waste, dissipation, or bad faith.

Longstanding South Carolina precedent further confirms that mere indebtedness or insolvency is insufficient. In *Pelzer v. Hughes*, the Court held that unsecured creditors who had not obtained judgment or exhausted legal remedies were not entitled to a receiver absent exceptional circumstances demonstrating danger to the property, explaining that "as a rule, a receiver will not be appointed during the progress of a cause" unless there is both a strong likelihood of entitlement to relief and a real risk of material injury before adjudication. 27 S.C. 408, 412, 3 S.E. 781, 783 (1887). The Court reiterated this rule in *Virginia-Carolina Chemical Co. v. Hunter*, holding that "proof of insolvency and nothing more would not be sufficient" to justify receivership. 84 S.C. 214, 218, 66 S.E. 177, 178 (1909).

Subsequent cases have consistently reaffirmed these limits. See *Whilden v. Chapman*, 80 S.C. 84, 87–88, 61 S.E. 249, 250 (1908); *Harman v. Wagner*, 33 S.C. 487, 490–91, 12 S.E. 98, 99 (1890); *Vasiliades v. Vasiliades*, 231 S.C. 366, 370, 98 S.E.2d 810, 812 (1957). More recently, the Supreme Court reiterated that a receiver should not be appointed absent "the strongest reason to believe that the plaintiff is entitled to the relief demanded" and a danger of material injury to the property. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 305–06, 811 S.E.2d 758, 765 (2018).

Measured against this settled law, Plaintiff's request fails at every threshold. Plaintiff has not obtained a judgment, has not exhausted legal remedies, and has not alleged fraud, waste, misuse of assets, or imminent danger to property. To the contrary, the record reflects structured compliance under a Court-ordered payment framework, the existence of secured revenue through the Assignment and Pledge Agreement, and ongoing operational remediation. Plaintiff's request for receivership or takeover rests solely on alleged nonpayment and financial strain—precisely the circumstances South Carolina courts have held are insufficient as a matter of law.

Because receivership is a drastic remedy reserved for exceptional cases, and because Plaintiff cannot demonstrate the absence of adequate legal remedies, the presence of exceptional circumstances, or any imminent risk to property, the Court should deny Plaintiff's request for receivership, takeover, or any further extraordinary equitable relief.

G. Judicial Restraint and Statutory Municipal Governance Preclude Receivership or Judicial Takeover

Independent of Plaintiff's failure to satisfy the legal standards for contempt or receivership, fundamental principles of judicial restraint and statutory municipal governance compel denial of the extraordinary relief requested. South Carolina courts have long recognized that municipalities are creatures of statute, vested by the General Assembly with authority to govern local affairs, and that courts must not substitute judicial discretion for the discretionary functions of municipal government absent clear statutory or constitutional violation.

The South Carolina Supreme Court has repeatedly emphasized the separation of powers that undergirds this restraint. "The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws." *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 310, 295 S.E.2d 633, 635 (1982). This division of authority limits the judiciary's role and cautions against judicial assumption of functions committed by statute to legislative or executive bodies, including the governance and administration of municipalities.

Consistent with these principles, South Carolina courts have held that where the General Assembly delegates authority to municipal officials, "the extent to which that power shall be exercised rests in the discretion of the municipal authorities," and "as long as it is exercised in good faith and for a municipal purpose, the courts have no ground upon which to interfere."

Lomax v. City of Greenville, 225 S.C. 289, 294, 82 S.E.2d 191, 193 (1954). Courts do not sit as "super-legislatures" to second-guess municipal policy judgments or administrative decisions lawfully committed to elected officials. *Citizens' Bank v. Heyward*, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925).

This restraint is particularly strong in matters involving the operation and management of municipal utilities, which the Supreme Court has recognized as requiring the exercise of sound discretion for the benefit of the municipality and its inhabitants. In *Simons v. City Council of Charleston*, the Court acknowledged the necessity of allowing municipalities latitude in operating public enterprises, observing that courts must recognize "the difficulty of obtaining legislative sanction for every corporate act" and therefore must avoid undue interference with municipal administration. 181 S.C. 353, 360, 187 S.E. 545, 548 (1936).

South Carolina's home-rule framework further reinforces this deference. Article VIII of the South Carolina Constitution mandates that laws concerning local government be liberally construed in favor of municipalities, and statutes such as S.C. Code Ann. §§ 5-7-10 and 5-7-30 grant municipalities broad authority to manage local affairs unless expressly prohibited by state law. Applying this framework, courts employ a limited inquiry: whether the municipality had authority to act, and whether its actions conflict irreconcilably with state law. *Foothills Brewing v. City of Greenville*, 377 S.C. 355, 363–64, 660 S.E.2d 264, 268–69 (2008); *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 397–98, 629 S.E.2d 624, 629–30 (2006). Absent such a conflict, judicial intervention is unwarranted.

These principles counsel particular caution where the relief sought would displace elected officials and substitute judicial control for municipal governance. The Supreme Court has repeatedly warned against equitable remedies that intrude into statutory administration or

supplant political accountability. See *Cole v. Manning*, 240 S.C. 260, 267, 125 S.E.2d 621, 624 (1962) (courts may not substitute judicial discretion for administrative discretion absent arbitrariness or abuse); *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 274–75, 802 S.E.2d 794, 799 (2017) (courts should not interfere with matters committed to other branches or statutory processes).

Here, Plaintiff's request for receivership or judicial takeover would require this Court to intrude directly into the statutory governance of a South Carolina municipality, displacing elected officials and administrative processes established by law. That intrusion is especially unwarranted where, as here, the Town recently underwent a municipal election resulting in a new mayor and two new members of Town Council, all of whom have only recently assumed office. South Carolina's statutory scheme presumes that such officials are afforded a meaningful opportunity to exercise their delegated authority and address inherited operational and financial conditions before judicial displacement is even contemplated.

Nothing in the record suggests that the Town has acted ultra vires, in bad faith, or in irreconcilable conflict with state law. To the contrary, the Town's actions reflect the ongoing exercise of municipal discretion within statutory constraints and under an existing court-ordered compliance framework. Granting receivership or authorizing an operational takeover would therefore not enforce the Court's Order, but would instead supplant municipal governance, override legislative policy choices embodied in South Carolina's home-rule statutes, and concentrate executive authority in the judiciary—precisely the result the separation-of-powers doctrine is designed to prevent.

Judicial restraint thus provides an independent and compelling basis to deny Plaintiff's request for receivership, takeover, or any further extraordinary equitable relief.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff has failed to meet its burden to establish civil contempt, entitlement to incarceration, or any basis for the extraordinary equitable relief requested. The record demonstrates that Respondent has acted in good faith within the framework of the Court's April 21, 2025 Preliminary Injunction, has undertaken affirmative compliance measures, and has operated within the constraints expressly contemplated by the Court's Order and South Carolina law.

Plaintiff's request for incarceration is punitive, not coercive, and is directed at an individual who lacks present authority to effect compliance. Plaintiff's request for receivership or operational takeover impermissibly seeks to expand the scope of the Court's existing Order, displace statutory municipal governance, and invoke one of the most drastic remedies available in equity absent any showing of fraud, waste, asset dissipation, or inadequacy of legal remedies. South Carolina law does not permit such relief.

Accordingly, Respondent respectfully requests that this Honorable Court:

1. Discharge the Rule to Show Cause in its entirety;
2. Deny Plaintiff's request for a finding of civil contempt;
3. Deny Plaintiff's request for incarceration or any punitive sanction against any individual defendant;
4. Deny Plaintiff's request for receivership, operational takeover, or appointment of any third party to assume control of municipal revenues, utilities, or governance; and
5. Grant such other and further relief as the Court deems just and proper.

1/6/2026

Respectfully submitted,

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