

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

WILLIAM H. SEALS, JR., CIRCUIT COURT JUDGE
Circuit Court Case No. 2022-CP-26-01323

RECEIVED
May 05 2023
SC Court of Appeals

Appellate Case No. 2023-000192

HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21
The Harrelson Group, Kevin Mills, individually, Mills, LLC, and Greg
Harrelson, individually, Respondents,

v.

Joel D. Barber, individually and as licensed realtor, Barber Real Estate, Inc.,
Nicholas Fitzpatrick, as licensed realty, Darcy Varney, individually, and as
broker-in-charge, eXp Realty, LLC, James Ray Lunsford, individually and as
broker-in-charge, and NorthGroup Real Estate, Inc., Defendants,

Of Whom Joel D. Barber is the Appellant.

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RETURN TO APPELLANT'S VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	CASE NO.: 2022-CP-26-
)	
HSS BAREFOOT, LLC, d/b/a CENTURY 21)	
BAREFOOT; R&G CORP, d/b/a CENTURY 21)	
THE HARRELSON GROUP, and KEVIN MILLS,)	
individually,)	
	)	MOTION FOR A TEMPORARY
Plaintiffs,	)	RESTRAINING ORDER AND
	)	TEMPORARY INJUNCTION
v.)	
)	
JOEL D. BARBER, individually and as licensed)	
realtor, DARCY VARNEY, individually and as)	
broker in charge, and EXP REALTY, LLC,)	
)	
Defendants.)	

The Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, individually, (collectively referred to as "Plaintiffs") by and through their undersigned counsel, hereby move this Honorable Court for a temporary restraining order pursuant to SCRCP 65(a) and (b). In support thereof, Plaintiffs aver the following:

1. Plaintiffs refer this Court to the allegations set forth in the Verified Complaint filed herewith.
2. Defendant, Joel D. Barber, is a citizen and resident of Horry County, South Carolina, and a licensed real estate sales person pursuant to SC License No. 67425.
3. Defendant, Darcy Varney, is a citizen and resident of Horry County, South Carolina, and a licensed broker in charge pursuant to SC License No. 106486.

4. Defendant, EXP Realty, LLC, is a South Carolina limited liability company doing business in Horry County, South Carolina, and the realty company that Joel D. Barber and Darcy Varney do business as.

5. Jurisdiction and venue are proper with this Court.

6. From March 14, 2007 to February 7, 2022 Defendant, Joel D. Barber, was an independent contractor with Margaret McBride, broker in charge, and Century 21 The Harrelson Group, real estate company.

7. Pursuant to the Independent Contractor and Broker Agreement, a copy of which is attached hereto as EXHIBIT A, (hereinafter referred to as the “Independent Contractor Agreement”), the parties agreed, *inter alia*, as follows:

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to handling of “leads” and prospects assigned to him/her and as to the conduct of Independent Contractor’s services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM’s, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

8. During the course of the Independent Contractor Agreement, Defendant, Joel D. Barber, breached the Independent Contractor Agreement by interfering with the assignment of particular prospects and leads to other brokers or sales agents with the intent of terminating the

Independent Contractor Agreement and taking such prospects and leads assigned to other brokers or sales agents of Plaintiffs for his own personal benefit and the benefit of competing third-parties, including Defendants, EXP Realty, LLC and Darcy Varney.

9. Following the termination of the Independent Contractor Agreement, Defendant, Joel D. Barber, further breached the Independent Contractor Agreement by using, for his own advantage, and for the advantage of competing third-parties, listings, prospects, leads, marketing materials, contact lists, and information gained for and from the files and business of Plaintiffs.

10. Specifically, upon information and belief, Defendant, Joel D. Barber, has taken the following actions in breach of the Independent Contractor Agreement, in violation of his duties and obligations by contract, by statute, and by common law, and without authorization or consent of Plaintiffs:

- a. Entered and exited the business office of the Plaintiffs after hours and accessed secured areas of the business office to which Defendant, Joel D. Barber, was not authorized to access;
- b. Accessed servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in, account, and password information not belonging to Defendant, Joel D. Barber, and to which Defendant, Joel D. Barber, is not authorized to have access to or use;
- c. Accessed, viewed, downloaded, printed, altered, and deleted certain electronic information, including but not limited to proprietary and competition sensitive information, on servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in and password information not belonging to Defendant, Joel D. Barber, and

to which Defendant, Joel D. Barber, is not authorized to have access to or use;

- d. Used certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in and password information not belonging to Defendant, Joel D. Barber, and to which Defendant, Joel D. Barber, is not authorized to have access to or use, for the benefit of Defendant, Joel D. Barber, as a competitor, and other competitors, Defendants, Darcy Varney and EXP Realty, LLC;
- e. Attempted to sell certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in and password information not belonging to Defendant, Joel D. Barber, and to which Defendant, Joel D. Barber, is not authorized to have access to or use, to other competitors, for the benefit of Defendants, Joel D. Barber, Darcy Varney and EXP Realty, LLC;
- f. Deleted client contact information, including clients, prospects and “leads” of Plaintiffs, obtained from certain electronic information obtained from servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in and password information not belonging to Defendant, Joel D. Barber, and to which Defendant, Joel D.

Barber, is not authorized to have access to or use, to other competitors without the Plaintiffs or consumers consent;

- g. Contacted consumers, including clients, prospects and “leads” of Plaintiffs, obtained from contact information contained in certain electronic information obtained from servers and computers connected to the internet belonging to Plaintiffs, without authorization, and using log-in and password information not belonging to Defendant, Joel D. Barber, and to which Defendant, Joel D. Barber, is not authorized to have access to or use, to other competitors without the Plaintiffs or consumers consent;
- h. Retained commissions not due Defendants and owed to Plaintiffs;
- i. Retained listings not belonging to Defendants and the sole property of Plaintiffs;
- j. Used confidential and proprietary information gained for and from the files or business of Plaintiffs for the benefit of Defendant, Joel D. Barber, as a competitor, as well as Defendants, Darcy Varney and EXP Realty, LLC as competitors, and other third-party competitors.

In support of this motion, Plaintiffs crave reference to the Verified Complaint, the Affidavit of Greg Harrelson, the Affidavit of Kevin Mills, and other memorandum and/or affidavit to be presented to the court prior to or at the time of the hearing of this motion.

WHEREFORE, the Plaintiffs move for a temporary restraining order and temporary injunction to prevent the harm set forth in the Verified Complaint.

Dated: March 2, 2022

BURR & FORMAN LLP

By s/Amanda A. Bailey
Amanda A. Bailey SC Bar #71085
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Telephone: (843) 444-1107
Attorneys for Plaintiffs

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EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

Margaret McBride, hereinafter referred to as "BROKER", and Joel Barber
hereinafter referred to as "INDEPENDENT CONTRACTOR" in consideration of the mutual covenants and promises herein contained, agree as follows:

1. Broker warrants that Broker is licensed and authorized to act as a Real Estate Broker in the State of South Carolina. Independent Contractor warrants that he/she is licensed and authorized to act as a Real Estate Sales Agent in the State of South Carolina. Each agrees during the term hereof at his/her own expense to keep his/her license in full force and effect, and to pay all fees equivalent to local, state, and national boards/associations of REALTORS® and taxes due to the state, county, municipality or other governmental entity arising out of his/her activities as Broker or Independent Contractor, and neither shall be liable for the fees or taxes of the other. Failure on the part of either party hereto to keep in effect his/her said license shall automatically terminate this contract.
2. It is agreed that Broker is duly qualified to and does procure the listing of real estate for sale, lease or rental, and prospective purchasers, lessees, and renters therefore, and has and enjoys the goodwill of and a reputation for fair dealing with the public and also has and maintains an office, properly equipped with furnishings and staff, suitable to serving the public as a Real Estate Broker, and the parties hereto deem it to be to their mutual advantage to enter into this contract.
3. It is agreed that Independent Contractor has the competence and ability to perform the functions for which he/she is licensed with respect to the sale, lease, or rental of real estate.
4. Broker agrees to furnish Independent Contractor a facility to conduct business at Broker's office now located at 4999 Carolina Forest Blvd, Ste 18, Myrtle Beach, SC 29579, and to take calls for Independent Contractor pertaining to the services referred to herein. It is understood that if Broker advertises the Independent Contractor will, at Broker's discretion, be mentioned by name in such advertising when appropriate.
5. Broker agrees to make available to Independent Contractor all current listings of the office, except such as Broker may find expedient to place exclusively in the temporary possession of some other broker or sales agent, and Broker agrees to assist Independent Contractor in his/her work by advice and full cooperation in every way practicable. Independent Contractor will have the benefit of the cooperation of Broker in connection with transactions being handled by Independent Contractor.
6. Independent Contractor agrees to work diligently to exert his/her best efforts to sell, lease, or rent any and all real estate listed with Broker and available to Independent Contractor under the terms of Paragraph 5 above, to solicit additional listings and customers in the name of Broker, and otherwise to promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest advantage possible consistent with his/her professional obligations.
7. Commissions shall be charged for any service performed hereunder pursuant to office policy, except that Broker shall advise in advance of any special division relating to any particular transaction which he/she undertakes to handle. When Independent Contractor shall perform any service hereunder, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Independent Contractor in which division Independent Contractor shall receive a proportionate share as set out in office policy and Broker shall receive the balance. In the event of special arrangements with any client of Broker or Independent Contractor on property listed with Broker or controlled by Independent Contractor in which a special division of commission is indicated, such division shall be as agreed upon by Broker and Independent Contractor.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

In the event that two or more sales agents participate in such service, or claim to have done so, the amount of the commission over that accruing to Broker shall be divided between the participating sales agents according to agreement between them, or, in the absence of agreement, by arbitration. In no case shall Broker be personally liable to Independent Contractor, nor shall Independent Contractor be personally liable to Broker, for any commission prior to its receipt, but when the commission shall have been collected from the parties for whom the service was performed, Broker, in the event such commissions are paid to Broker, shall pay over to Independent Contractor, Independent Contractor's proportionate share according to the terms of this contract.

8. The division and distribution of the earned commissions as set out in Paragraph 7 hereof, which may be paid to or collected by either Broker or Independent Contractor shall take place as soon as practicable after collection of such commissions from the party or parties for whom the services may have been performed.

9. Broker shall not be liable to Independent Contractor for any expense incurred by the latter, nor shall Independent Contractor be liable to Broker for office help or expense insofar as Broker has herein agreed to provide the same. Expenses for attorney's fees, costs, documentary stamps, abstracts and the like which may, by reason of some necessity, be payable from commissions, or the attempt to collect a commission, shall be paid by the parties in the same proportion as provided for in the division of commissions. Independent Contractor agrees to furnish transportation and business liability insurance, at his/her own expense, and provide Broker evidence of coverage as co-insured. Independent Contractor agrees to pay at his/her own expense entertainment costs, club dues, and other expenses incident to the conduct of his/her services as a real estate sales agent, and to pay any and all state and city business occupation tax available to the portion of any commission received by him/her.

10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this contract.

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to the handling of "leads" and prospects assigned to him/her and as to the conduct of Independent Contractor's services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM's, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

13. Independent Contractor agrees to hold Broker harmless in the event Broker is required to respond in damages by reason of any misrepresentations, promises or untrue statements made by Independent Contractor during the life of this contract and during the course of negotiations with and as an inducement to any party to a real estate transaction handled by Independent Contractor.

14. It is understood that, during the existence of this contract, Broker shall have the right to instruct Independent Contractor as to the services he/she is to perform but shall not have the right to instruct Independent Contractor as to the manner in which they are to be performed, and that the relationship of Independent Contractor to Broker is that of an independent contractor, but not as an employee.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

15. Joel Barber a duly licensed real estate sales agent, understands that he/she is an Independent Contractor and not an employee of the Broker nor Century 21 The Harrelson Group, real estate company for income and employment tax purposes. Under Section 3508 of the Internal Revenue Code, "qualified real estate agents," of which Joel Barber is one, are responsible for meeting all Federal Income and Employment tax obligations. **INDEPENDENT CONTRACTOR, UNEQUIVOCALLY UNDERSTANDS THAT NEITHER THE BROKER, NOR THE REAL ESTATE COMPANY WILL DEDUCT THESE TAXES AND THE FAILURE BY INDEPENDENT CONTRACTOR TO MEET THESE OBLIGATIONS WILL RESULT IN NO LIABILITY TO THE BROKER NOR TO THE REAL ESTATE COMPANY.**

NOTHING IN THIS CONTRACT SHALL BE IN ANY WAY CONSTRUED TO CONSTITUTE INDEPENDENT CONTRACTOR AS THE EMPLOYEE OF THE BROKER. NONE OF THE BENEFITS PROVIDED BY THE BROKER TO EMPLOYEES, IF ANY, ARE PROVIDED TO THE INDEPENDENT CONTRACTOR BY THE BROKER. INDEPENDENT CONTRACTOR WAIVES ALL CLAIMS AGAINST BROKER FOR EMPLOYER'S LIABILITY COMPENSATION FOR PERSONAL INJURY, UNEMPLOYMENT COMPENSATION OR OTHERWISE UNDER THE WORKMEN'S COMPENSATION LAWS OF SOUTH CAROLINA. INDEPENDENT CONTRACTOR UNDERSTANDS THAT IN NO WAY WILL BROKER BE LIABLE FOR ANY INJURY OR LOSS SUSTAINED BY THE INDEPENDENT CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

FIRM NAME Century 21 The Harrelson Group

Margaret McBride dotloop verified
03/14/17 8:23 AM EDT
E9SJ-DRXZ-TDDW-ZJQA

Broker Date

Witness

Date

Joel Barber dotloop verified
03/14/17 11:15 AM EDT
ZOZT-DR4W-XLFY-MPXU

Independent Contractor Date

Witness

Date

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CASE NO.: 2022-CP-26-

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,) AFFIDAVIT OF GREG HARRELSON
Plaintiffs,)
v.)
JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)
Defendants.)

I, Greg Harrelson, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am a member of HSS Barefoot, LLC d/b/a Century 21 Barefoot, and a member and employee of R&G Corp d/b/a Century 21 The Harrelson Group (hereinafter collectively referred to as the "Companies").
3. I am a records custodian for HSS Barefoot, LLC d/b/a Century 21 Barefoot, and a member and employee of R&G Corp d/b/a Century 21 The Harrelson Group and am qualified to search for, produce, and authenticate the business records of the Companies.
4. I hereby certify and declare that the attached records are true copies of all original records maintained by the Companies and that the records were:
 - a. made at or near the time of the occurrence of the matters set forth therein and from information transmitted by a person having knowledge of those matters;

- b. kept in the ordinary course of the regularly conducted activity of the business of the Companies; and
- c. it is the Companies' regular practice to keep and maintain these records in the course of the regular conducted activity of the Companies.

5. Joel Barber was an independent contractor with Century 21 The Harrelson Group, by and through broker in charge Margaret McBride, from March 14, 2017 through February 7, 2022. Attached as **Exhibit A** is a true and accurate copy of the Independent Contractor and Broker Agreement.

6. R&G Corp d/b/a Century 21 The Harrelson Group employs Stacy Weaver as an Executive Assistant/Licensed Realtor/Relocation Director.

7. As an employee of R&G Corp d/b/a Century 21 The Harrelson Group, Stacy Weaver maintains a personal computer for business use that is protected from public or third-party access by individualized log in/password protection.

8. As an employee of R&G Corp d/b/a Century 21 The Harrelson Group, Stacy Weaver maintains an office within the business location R&G Corp d/b/a Century 21, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577. The business location of R&G Corp d/b/a Century 21 is located and restricted from public or other unauthorized access outside of business hours. Further, the office of Stacy Weaver within the business location of R&G Corp d/b/a Century 21 has restricted access and is locked at all times when not in use by Stacy Weaver or outside of business hours.

9. Upon information and belief Joel Barber gained unauthorized access to Stacy Weaver's computer and stole personal passwords for my on-line databases containing proprietary

information, including prospects and leads, and took this information for his own use and altered the information in my databases to interfere with my use of the information.

10. The personal computer used by Stacy Weaver is maintained in her office within the the business location R&G Corp d/b/a Century 21, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577.

11. As an employee of R&G Corp d/b/a Century 21 The Harrelson Group, Stacy Weaver provides services to, among other entities, R&G Corp d/b/a Century 21 The Harrelson Group and HSS Barefoot, LLC d/b/a Century 21 Barefoot.

12. R&G Corp d/b/a Century 21 The Harrelson Group maintains information developed, created, or discovered by R&G Corp d/b/a Century 21 The Harrelson Group, or which became known by, or was conveyed to the R&G Corp d/b/a Century 21 The Harrelson Group, which has commercial value in the Company's business. This "Proprietary Information" includes, but not be limited to, any non-public database, domain names, trade secrets, copyrights, ideas, techniques, know-how, inventions (whether patentable or not), and/or any other information of any type relating to intellectual property, and the information concerning the R&G Corp d/b/a Century 21 The Harrelson Group's actual or anticipated business, research or development, or which is received in confidence by or for the R&G Corp d/b/a Century 21 The Harrelson Group from any other person.

13. After the termination of Joel Barber's independent contractor agreement on February 7, 2022, I discovered information from the business records of R&G Corp d/b/a Century 21 The Harrelson Group that reflect Joel Barber was accessing the business location of R&G Corp d/b/a Century 21, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577 without authorization after hours, accessing the locked office of Stacy Weaver within the business location

of R&G Corp d/b/a Century 21 without authorization, without a key, and after hours, accessing the password protected personal computer of Stacy Weaver without authorization and after hours, and accessing the password protected online non-public database of R&G Corp d/b/a Century 21 The Harrelson Group.

14. R&G Corp d/b/a Century 21 The Harrelson Group maintains a Ring© Camera System at the business location R&G Corp d/b/a Century 21, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577.

15. I have reviewed camera footage from Ring© Camera System and observed Joel Barber accessing the business location without authorization, including after hours. Specifically:

- a. December 11, 2021 –
 - i. After 10:30 PM Defendant is seen entering and exiting building
- b. January 8, 2022 --
 - i. Between 3:30 AM and 5:00 AM Defendant is seen entering and exiting the building
- c. January 15, 2022 --
 - i. Between 2:00 AM and 3:00 AM Defendant is seen entering and exiting the building
- d. January 22, 2022 --
 - i. Between 1:30 AM and 3:30 AM Defendant is seen entering and exiting the building
- e. January 29, 2022 --
 - i. Between 4:00 AM and 5:30 AM Defendant is seen entering and exiting the building

f. February 7, 2022 --

i. Between 3:00 AM and 4:30 AM Defendant is seen entering and exiting the building

16. Upon information and belief, Joel Barber also accessed the business location without authorization, including after hours, at various other times too and not observed on the Ring© Camera, and accessed the locked office of Stacy Weaver without a key, perhaps using a credit card to break the lock.

17. During the time periods that Joel Barber also accessed the business location without authorization, including after hours, Stacy Weaver was not present.

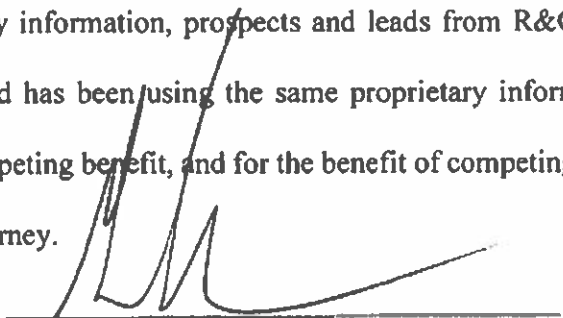
18. I have reviewed computer and online account log-in information at or during the time periods that Joel Barber is observed to have gained unauthorized access to the building and office and confirm that the password protected personal computer of Stacy Weaver was accessed, without authorization, and the password protected online accounts maintaining the R&G Corp d/b/a Century 21 The Harrelson Group non-public database were accessed, modified, deleted, and/or transferred to persons/accounts without authorization and for the competing benefit of Joel Barber.

19. Following the termination of Joel Barber's independent contractor agreement, I have been contacted by third-parties who purchased and/or are attempting to sell, for profit, the non-public database maintained by the R&G Corp d/b/a Century 21 The Harrelson Group on behalf of Joel Barber.

20. Following the termination of Joel Barber's independent contractor agreement, I have observed Joel Barber listing properties for sale using information that could only be obtained

from the non-public database of the R&G Corp d/b/a Century 21 The Harrelson Group and using the photographs owned by R&G Corp d/b/a Century 21 The Harrelson Group.

21. Based on the unauthorized access to the building and the unauthorized access to the personal computer and online accounts of R&G Corp d/b/a Century 21 The Harrelson Group, Joel Barber, upon information and belief, stole proprietary information, prospects, and leads, while at the same time deleting the same proprietary information, prospects and leads from R&G Corp d/b/a Century 21 The Harrelson Group, and has been using the same proprietary information, prospects and leads for his personal and competing benefit, and for the benefit of competing third-parties, including EXP Realty and Darcy Varney.


GREG HARRELSON

Sworn to and subscribed before me,
this ~~21~~ day of ~~February~~, 2022.
March



Notary Public
My Commission Expires: April 16, 2029

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

Margaret McBride, hereinafter referred to as "BROKER", and Joel Barber
hereinafter referred to as "INDEPENDENT CONTRACTOR" in consideration of the mutual covenants and promises herein contained, agree as follows:

1. Broker warrants that Broker is licensed and authorized to act as a Real Estate Broker in the State of South Carolina. Independent Contractor warrants that he/she is licensed and authorized to act as a Real Estate Sales Agent in the State of South Carolina. Each agrees during the term hereof at his/her own expense to keep his/her license in full force and effect, and to pay all fees equivalent to local, state, and national boards/associations of REALTORS® and taxes due the state, county, municipality or other governmental entity arising out of his/her activities as Broker or Independent Contractor, and neither shall be liable for the fees or taxes of the other. Failure on the part of either party hereto to keep in effect his/her said license shall automatically terminate this contract.
2. It is agreed that Broker is duly qualified to and does procure the listing of real estate for sale, lease or rental, and prospective purchasers, lessees, and renters therefore, and has and enjoys the goodwill of and a reputation for fair dealing with the public and also has and maintains an office, properly equipped with furnishings and staff, suitable to serving the public as a Real Estate Broker, and the parties hereto deem it to be to their mutual advantage to enter into this contract.
3. It is agreed that Independent Contractor has the competence and ability to perform the functions for which he/she is licensed with respect to the sale, lease, or rental of real estate.
4. Broker agrees to furnish Independent Contractor a facility to conduct business at Broker's office now located at 4999 Carolina Forest Blvd, Ste 18, Myrtle Beach, SC 29579, and to take calls for Independent Contractor pertaining to the services referred to herein. It is understood that if Broker advertises the Independent Contractor will, at Broker's discretion, be mentioned by name in such advertising when appropriate.
5. Broker agrees to make available to Independent Contractor all current listings of the office, except such as Broker may find expedient to place exclusively in the temporary possession of some other broker or sales agent, and Broker agrees to assist Independent Contractor in his/her work by advice and full cooperation in every way practicable. Independent Contractor will have the benefit of the cooperation of Broker in connection with transactions being handled by Independent Contractor.
6. Independent Contractor agrees to work diligently to exert his/her best efforts to sell, lease, or rent any and all real estate listed with Broker and available to Independent Contractor under the terms of Paragraph 5 above, to solicit additional listings and customers in the name of Broker, and otherwise to promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest advantage possible consistent with his/her professional obligations.
7. Commissions shall be charged for any service performed hereunder pursuant to office policy, except that Broker shall advise in advance of any special division relating to any particular transaction which he/she undertakes to handle. When Independent Contractor shall perform any service hereunder, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Independent Contractor in which division Independent Contractor shall receive a proportionate share as set out in office policy and Broker shall receive the balance. In the event of special arrangements with any client of Broker or Independent Contractor on property listed with Broker or controlled by Independent Contractor in which a special division of commission is indicated, such division shall be as agreed upon by Broker and Independent Contractor.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

In the event that two or more sales agents participate in such service, or claim to have done so, the amount of the commission over that accruing to Broker shall be divided between the participating sales agents according to agreement between them, or, in the absence of agreement, by arbitration. In no case shall Broker be personally liable to Independent Contractor, nor shall Independent Contractor be personally liable to Broker, for any commission prior to its receipt, but when the commission shall have been collected from the parties for whom the service was performed, Broker, in the event such commissions are paid to Broker, shall pay over to Independent Contractor, Independent Contractor's proportionate share according to the terms of this contract.

8. The division and distribution of the earned commissions as set out in Paragraph 7 hereof, which may be paid to or collected by either Broker or Independent Contractor shall take place as soon as practicable after collection of such commissions from the party or parties for whom the services may have been performed.

9. Broker shall not be liable to Independent Contractor for any expense incurred by the latter, nor shall Independent Contractor be liable to Broker for office help or expense insofar as Broker has herein agreed to provide the same. Expenses for attorney's fees, costs, documentary stamps, abstracts and the like which may, by reason of some necessity, be payable from commissions, or the attempt to collect a commission, shall be paid by the parties in the same proportion as provided for in the division of commissions. Independent Contractor agrees to furnish transportation and business liability insurance, at his/her own expense, and provide Broker evidence of coverage as co-insured. Independent Contractor agrees to pay at his/her own expense entertainment costs, club dues, and other expenses incident to the conduct of his/her services as a real estate sales agent, and to pay any and all state and city business occupation tax available to the portion of any commission received by him/her.

10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this contract.

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to the handling of "leads" and prospects assigned to him/her and as to the conduct of Independent Contractor's services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM's, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

13. Independent Contractor agrees to hold Broker harmless in the event Broker is required to respond in damages by reason of any misrepresentations, promises or untrue statements made by Independent Contractor during the life of this contract and during the course of negotiations with and as an inducement to any party to a real estate transaction handled by Independent Contractor.

14. It is understood that, during the existence of this contract, Broker shall have the right to instruct Independent Contractor as to the services he/she is to perform but shall not have the right to instruct Independent Contractor as to the manner in which they are to be performed, and that the relationship of Independent Contractor to Broker is that of an independent contractor, but not as an employee.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

15. Joel Barber a duly licensed real estate sales agent, understands that he/she is an Independent Contractor and not an employee of the Broker nor Century 21 The Harrelson Group, real estate company for income and employment tax purposes. Under Section 3508 of the Internal Revenue Code, "qualified real estate agents," of which Joel Barber is one, are responsible for meeting all Federal Income and Employment tax obligations. **INDEPENDENT CONTRACTOR, UNEQUIVOCALLY UNDERSTANDS THAT NEITHER THE BROKER, NOR THE REAL ESTATE COMPANY WILL DEDUCT THESE TAXES AND THE FAILURE BY INDEPENDENT CONTRACTOR TO MEET THESE OBLIGATIONS WILL RESULT IN NO LIABILITY TO THE BROKER NOR TO THE REAL ESTATE COMPANY.**

NOTHING IN THIS CONTRACT SHALL BE IN ANY WAY CONSTRUED TO CONSTITUTE INDEPENDENT CONTRACTOR AS THE EMPLOYEE OF THE BROKER. NONE OF THE BENEFITS PROVIDED BY THE BROKER TO EMPLOYEES, IF ANY, ARE PROVIDED TO THE INDEPENDENT CONTRACTOR BY THE BROKER. INDEPENDENT CONTRACTOR WAIVES ALL CLAIMS AGAINST BROKER FOR EMPLOYER'S LIABILITY COMPENSATION FOR PERSONAL INJURY, UNEMPLOYMENT COMPENSATION OR OTHERWISE UNDER THE WORKMEN'S COMPENSATION LAWS OF SOUTH CAROLINA. INDEPENDENT CONTRACTOR UNDERSTANDS THAT IN NO WAY WILL BROKER BE LIABLE FOR ANY INJURY OR LOSS SUSTAINED BY THE INDEPENDENT CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

FIRM NAME Century 21 The Harrelson Group

Margaret McBride dotloop verified
03/14/17 8:23 AM EDT
c95-0R0Z-TD0W-2QA

Witness Date

Broker Date

Joel Barber dotloop verified
03/14/17 11:15 AM EDT
20ZT-DR4W-XLFY MPKU

Witness Date

Independent Contractor Date

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

Margaret McBride , hereinafter referred to as "**BROKER**", and Joel Barber
hereinafter referred to as "**INDEPENDENT CONTRACTOR**" in consideration of the mutual covenants and promises herein contained, agree as follows:

1. Broker warrants that Broker is licensed and authorized to act as a Real Estate Broker in the State of South Carolina. Independent Contractor warrants that he/she is licensed and authorized to act as a Real Estate Sales Agent in the State of South Carolina. Each agrees during the term hereof at his/her own expense to keep his/her license in full force and effect, and to pay all fees equivalent to local, state, and national boards/associations of REALTORS® and taxes due to the state, county, municipality or other governmental entity arising out of his/her activities as Broker or Independent Contractor, and neither shall be liable for the fees or taxes of the other. Failure on the part of either party hereto to keep in effect his/her said license shall automatically terminate this contract.

2. It is agreed that Broker is duly qualified to and does procure the listing of real estate for sale, lease or rental, and prospective purchasers, lessees, and renters therefore, and has and enjoys the goodwill of and a reputation for fair dealing with the public and also has and maintains an office, properly equipped with furnishings and staff, suitable to serving the public as a Real Estate Broker, and the parties hereto deem it to be to their mutual advantage to enter into this contract.

3. It is agreed that Independent Contractor has the competence and ability to perform the functions for which he/she is licensed with respect to the sale, lease, or rental of real estate.

4. Broker agrees to furnish Independent Contractor a facility to conduct business at Broker's office now located at 4999 Carolina Forest Blvd, Ste 18 , Myrtle Beach, SC 29579 , and to take calls for Independent Contractor pertaining to the services referred to herein. It is understood that if Broker advertises the Independent Contractor will, at Broker's discretion, be mentioned by name in such advertising when appropriate.

5. Broker agrees to make available to Independent Contractor all current listings of the office, except such as Broker may find expedient to place exclusively in the temporary possession of some other broker or sales agent, and Broker agrees to assist Independent Contractor in his/her work by advice and full cooperation in every way practicable. Independent Contractor will have the benefit of the cooperation of Broker in connection with transactions being handled by Independent Contractor.

6. Independent Contractor agrees to work diligently to exert his/her best efforts to sell, lease, or rent any and all real estate listed with Broker and available to Independent Contractor under the terms of Paragraph 5 above, to solicit additional listings and customers in the name of Broker, and otherwise to promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest advantage possible consistent with his/her professional obligations.

7. Commissions shall be charged for any service performed hereunder pursuant to office policy, except that Broker shall advise in advance of any special division relating to any particular transaction which he/she undertakes to handle. When Independent Contractor shall perform any service hereunder, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Independent Contractor in which division Independent Contractor shall receive a proportionate share as set out in office policy and Broker shall receive the balance. In the event of special arrangements with any client of Broker or Independent Contractor on property listed with Broker or controlled by Independent Contractor in which a special division of commission is indicated, such division shall be as agreed upon by Broker and Independent Contractor.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

In the event that two or more sales agents participate in such service, or claim to have done so, the amount of the commission over that accruing to Broker shall be divided between the participating sales agents according to agreement between them, or, in the absence of agreement, by arbitration. In no case shall Broker be personally liable to Independent Contractor, nor shall Independent Contractor be personally liable to Broker, for any commission prior to its receipt, but when the commission shall have been collected from the parties for whom the service was performed, Broker, in the event such commissions are paid to Broker, shall pay over to Independent Contractor, Independent Contractor's proportionate share according to the terms of this contract.

8. The division and distribution of the earned commissions as set out in Paragraph 7 hereof, which may be paid to or collected by either Broker or Independent Contractor shall take place as soon as practicable after collection of such commissions from the party or parties for whom the services may have been performed.

9. Broker shall not be liable to Independent Contractor for any expense incurred by the latter, nor shall Independent Contractor be liable to Broker for office help or expense insofar as Broker has herein agreed to provide the same. Expenses for attorney's fees, costs, documentary stamps, abstracts and the like which may, by reason of some necessity, be payable from commissions, or the attempt to collect a commission, shall be paid by the parties in the same proportion as provided for in the division of commissions. Independent Contractor agrees to furnish transportation and business liability insurance, at his/her own expense, and provide Broker evidence of coverage as co-insured. Independent Contractor agrees to pay at his/her own expense entertainment costs, club dues, and other expenses incident to the conduct of his/her services as a real estate sales agent, and to pay any and all state and city business occupation tax available to the portion of any commission received by him/her.

10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this contract.

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to the handling of "leads" and prospects assigned to him/her and as to the conduct of Independent Contractor's services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM's, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

13. Independent Contractor agrees to hold Broker harmless in the event Broker is required to respond in damages by reason of any misrepresentations, promises or untrue statements made by Independent Contractor during the life of this contract and during the course of negotiations with and as an inducement to any party to a real estate transaction handled by Independent Contractor.

14. It is understood that, during the existence of this contract, Broker shall have the right to instruct Independent Contractor as to the services he/she is to perform but shall not have the right to instruct Independent Contractor as to the manner in which they are to be performed, and that the relationship of Independent Contractor to Broker is that of an independent contractor, but not as an employee.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

15. Joel Barber a duly licensed real estate sales agent, understands that he/she is an Independent Contractor and not an employee of the Broker nor Century 21 The Harrelson Group, real estate company for income and employment tax purposes. Under Section 3508 of the Internal Revenue Code, "qualified real estate agents," of which Joel Barber is one, are responsible for meeting all Federal Income and Employment tax obligations. **INDEPENDENT CONTRACTOR, UNEQUIVOCALLY UNDERSTANDS THAT NEITHER THE BROKER, NOR THE REAL ESTATE COMPANY WILL DEDUCT THESE TAXES AND THE FAILURE BY INDEPENDENT CONTRACTOR TO MEET THESE OBLIGATIONS WILL RESULT IN NO LIABILITY TO THE BROKER NOR TO THE REAL ESTATE COMPANY.**

NOTHING IN THIS CONTRACT SHALL BE IN ANY WAY CONSTRUED TO CONSTITUTE INDEPENDENT CONTRACTOR AS THE EMPLOYEE OF THE BROKER. NONE OF THE BENEFITS PROVIDED BY THE BROKER TO EMPLOYEES, IF ANY, ARE PROVIDED TO THE INDEPENDENT CONTRACTOR BY THE BROKER. INDEPENDENT CONTRACTOR WAIVES ALL CLAIMS AGAINST BROKER FOR EMPLOYER'S LIABILITY COMPENSATION FOR PERSONAL INJURY, UNEMPLOYMENT COMPENSATION OR OTHERWISE UNDER THE WORKMEN'S COMPENSATION LAWS OF SOUTH CAROLINA. INDEPENDENT CONTRACTOR UNDERSTANDS THAT IN NO WAY WILL BROKER BE LIABLE FOR ANY INJURY OR LOSS SUSTAINED BY THE INDEPENDENT CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

FIRM NAME Century 21 The Harrelson Group

Margaret McBride dotloop verified
03/14/17 8:23 AM EDT
E9SJ-DRXZ-TDDW-ZJQA

Witness Date

Broker Date

Joel Barber dotloop verified
03/14/17 11:15 AM EDT
Z0ZT-DR4W-XLPY-MPXU

Witness Date

Independent Contractor Date

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

SSTATE OF SOUTH CAROLINA) **IN THE COURT OF COMMON PLEAS**
)
COUNTY OF HORRY) **CASE NO.: 2022-CP-26-**

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

AFFIDAVIT OF KEVIN MILLS

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

I, Kevin Mills, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am a member of Mills, LLC and a licensed real estate salesperson and independent contractor with HSS Barefoot, LLC d/b/a Century 21 Barefoot, by and through the broker-in-charge Margaret McBride.
3. I am a records custodian for Mills, LLC, and am qualified to search for, produce and authenticate the business records of Mills, LLC.
4. Mills, LLC employs Montana Hartsock as an executive assistant and real estate agent.
5. As an employee of Mills, LLC, Montana Hartsock maintains a personal computer for business use that is protected from public or third-party access by individualized log in/password protection.

6. As an employee of Mills, LLC, Montana Hartsock maintains an office within the business location HSS Barefoot, LLC d/b/a Century 21 Barefoot, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577. The business location of HSS Barefoot, LLC d/b/a Century 21 Barefoot is located and restricted from public or other unauthorized access outside of business hours. Further, the office of Montana Hartsock within the business location of HSS Barefoot, LLC d/b/a Century 21 Barefoot has restricted access and is locked at all times when not in use by Montana Hartsock or outside of business hours.

7. The personal computer used by Montana Hartsock is maintained in her office within HSS Barefoot, LLC d/b/a Century 21 Barefoot.

8. I and Mills, LLC maintains information developed, created, or discovered by myself or Mills, LLC, or which became known by, or was conveyed to myself of Mills, LLC, which has commercial value in my business. This "Proprietary Information" includes, but not be limited to, any non-public databases, client or prospect lists, logs, calendars, domain names, trade secrets, copyrights, ideas, techniques, know-how, inventions (whether patentable or not), and/or any other information of any type relating to intellectual property, and the information concerning my and Mills, LLC actual or anticipated business, research or development, or which is received in confidence by or for myself and Mills, LLC from any other person.

9. I have reviewed camera footage from Ring® Camera System maintained at the HSS Barefoot, LLC d/b/a Century 21 Barefoot business location and observed Joel Barber accessing the business location without authorization, including after hours. Specifically:

a. December 11, 2021 –

i. After 10:30 PM Defendant is seen entering and exiting building

b. January 8, 2022 --

i. Between 3:30 AM and 5:00 AM Defendant is seen entering and exiting the building

c. January 15, 2022 --

i. Between 2:00 AM and 3:00 AM – Defendant is seen entering and exiting the building

d. January 22, 2022 --

i. Between 1:30 AM and 3:30 AM Defendant is seen entering and exiting the building

e. January 29, 2022 --

i. Between 4:00 AM and 5:30 AM Defendant is seen entering and exiting the building

f. February 7, 2022 --

i. Between 3:00 AM and 4:30 AM Defendant is seen entering and exiting the building

10. Upon information and belief, Joel Barber also accessed the business location without authorization, including after hours, at various other times too and not observed on the Ring© Camera, and accessed the locked office of Montana Hartsock without authorization.

11. During the time periods that Joel Barber also accessed the business location without authorization, including after hours, Montana Hartsock was not present.

12. I have reviewed the computer and online account log-in information at or during the time periods of that Joel Barber is observed to have gained unauthorized access to the building and office and confirm that the password protected personal computer of Montana Hartsock was accessed, without authorization, and the password protected online accounts maintaining my and

Mills, LLC's non-public database were accessed, modified, deleted, and/or transferred to persons/accounts without authorization and for the competing benefit of Joel Barber.

13. One example of Joel Barber utilizing information maintained in my non-public database without authorization is attached hereto as **Exhibit A** (redacted to protect privacy) wherein Joel Barber emailed a competing realtor, Ryan Picthall, proprietary documents owned by me and Mills, LLC and taken without my authorization by Joel Barber, containing stolen leads. Upon information and belief, Joel Barber and Ryan Picthall agreed to split profits 50/50 commission on any resulting sale from these stolen leads.

14. On February 7, 2022, I filed the attached incident report, a true and accurate copy of which is attached as **Exhibit B**.

15. Following February 7, 2022, I learned that prospects and leads, as well as corresponding information and documents formatted and prepared for my benefit, all maintained in my non-public data base, were downloaded from the computer and online account log-in information referenced above was transferred by Joel Barber to third-parties without authorization and for his competing benefit and profit.

16. Following February 7, 2022, prospects and leads that had previously been located in my non-public data base, no longer appeared on my non-public data base, including specific prospects and leads that have contacted me and told me that Joel Barber is now contacting them.

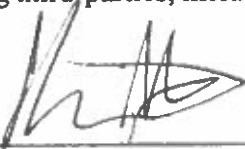
17. Following February 7, 2022, prospects and leads that had previously been located in my non-public data base, no longer appeared on my non-public data base, and Joel Barber has publically listed and/or closed deals with these prospects and leads.

18. Following February 7, 2022, operational procedures, hiring documents, dialogues, training documents, and marketing plans used by me or Mills, LLC that had previously been

located in a non-public office on a non-public computer, and developed, created, or discovered by myself or Mills, LLC, were used by Joel Barber to publically list and/or close deals with these prospects and leads taken from me.


19. Joel Barber is in direct competition with me and Mills, LLC as a real estate sales person by and through his new real estate company EXP Realty, LLC and Darcy Varney.

20. Based on the unauthorized access to the building and the unauthorized access to the personal computer and online accounts of myself and Mills, LLC, Joel Barber, upon information and belief, stole proprietary information, prospects, and leads, as well as, operational procedures, hiring documents, dialogues, training documents, and marketing plans, while at the same time deleting the some proprietary information, prospects and leads from myself and Mills, LLC, and has been using the same proprietary information, prospects and leads for his personal and competing, benefit and for the benefit of competing third-parties, including EXP Realty and Darcy Varney.



KEVIN MILLS

Sworn to and subscribed before me,
this 2nd day of ~~February~~, 2022.
March



Notary Public
My Commission Expires April 16, 2029

EXHIBIT A

Gmail - Fwd: leads



Kevin Mills Team <kevinmills@myrtlebeach.com>

Fwd: leads

Ryan Picthall <ryansellsmyrtlebeach@gmail.com>
To: Montana - Kevin Mills Team <kevinmills@myrtlebeach.com>

Tue, Feb 8, 2022 at 11:06 PM

Your Trusted Realtor
Ryan Picthall
Century 21 "The Harrelson Group"
(843) 222-6793
ryansellsmyrtlebeach@gmail.com



Click Here for a free digital copy of my Real Estate book

----- Forwarded message -----

From: Ryan Picthall, Realtor <ryansellsmyrtlebeach@gmail.com>
Date Sent: Feb 8, 2022 at 11:06 PM
Subject: leads
To: Ryan Picthall, Realtor <ryansellsmyrtlebeach@gmail.com>

for your probate pillar, ...I have old but lets start with these

----- Forwarded message -----

Estate of:	Subj Property address:	Executor's Info:	2 nd Executor's Info:	Attorney's Info:
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Gmail - Ford: leads

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Joel Barber

Realtor
 Century 21 The Harrison Group
 Cell- 843-655-2979
<https://linktr.ee/joelbarberteam>
 What is my property worth?
 Find the perfect property



HOW I SELL PROPERTIES — [CLICK HERE TO SEE HOW I HELP SELLERS SELL](#)

JOEL BARBER HOME BUYING EXPERIENCE — [CLICK HERE TO SEE HOW I HELP BUYERS PURCHASE](#)

"Impossible only means that we haven't found the solution yet."

Gmail - Fwd: perhaps more warm probate leads



Kevin Mills Team <kevinmillsteam@gmail.com>

Fwd: perhaps more warm probate leads

Ryan Pichall <ryansellsmyrtlebeach@gmail.com>
To: Montana - Kevin Mills Team <kevinmillsteam@gmail.com>

Tue, Feb 8, 2022 at 11:00 PM

Your Trusted Realtor,
Ryan Pichall
Century 21 "The Harrelson Group"
(843) 222-8793
ryansellsmyrtlebeach@gmail.com



Click Here for a free digital copy of my Real Estate book

----- Forwarded message -----
~~From: Joel Barber <jbarber.realtor@gmail.com>~~
~~Date: Sunday, 2022 at 3:34 PM~~
~~Subject: perhaps more warm, probate leads~~
~~To: Ryan Pichall, Realtor <ryansellsmyrtlebeach@gmail.com>~~

~~automated do not call from ic, etc~~

--

Joel Barber

Realtor
Century 21 The Harrelson Group
Cell- 843-655-2979
<https://linktr.ee/joelbarberteam>
What is my property worth?
Find the perfect property.



Gmail - Fwd: perhaps more warm probate leads

2/11/22, 7:54 AM
ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323



HOW I SELL PROPERTIES - — CLICK HERE TO SEE HOW I HELP SELLERS SELL

JOEL BARBER HOME BUYING EXPERIENCE — CLICK HERE TO SEE HOW I HELP BUYERS PURCHASE

“Impossible only means that we haven’t found the solution yet.”

 probate hot excel.xlsx
11K

EXHIBIT B

AGENCY I.D.
SC0260400

INCIDENT REPORT

CASE NUMBER

2022011795

NCIC

INQ. ENTO.

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. 23H - All Other Larceny				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	05		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE			
4757 HWY 17 BYP				29577					

INCIDENT DATE	24 HR CLOCK	TO	DATE	24 HR CLOCK	DISPATCH DATE	DISPATCH TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.			
02/07/2022	03:00		02/07/2022	04:05	02/07/2022	10:15	10:27	11:43				
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
Mills, Kevin						X S O U	W	M	30	N		
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.				
2005 Ladybank Dr				Myrtle Beach		SC						

VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
Palmetto First Mortgage						J S O U						
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.				
4757 Us Highway 17 Byp				Myrtle Beach		SC						

VEHICLE INJURY (VCT. 1) YES NO EXPLAIN

VICTIM (NO. 1) USING ALCOHOL YES NO UNK DRUGS YES NO UNK TYPE

COMPLAINT OF ANY NON-VISIBLE INJURIES YES NO

TWO-MAN VEH ONE-MAN VEH DETECTIVE/SPLASMT OTHER ALONE ASSISTED

J - This Jurisdiction S - State O - Out of State U - Unknown

SUSPECT NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	
BARBER, JOEL					M		N						
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.													
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.					
						SC							
SUBJECT (NO. 1) USING ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>				ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		DATE/TIME OF OFFENSE			DATE/TIME OF ARREST				
DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/> TYPE				TOTAL # ARRESTED 0		2/7/2022 3:00:00 AM							

On February 7th 2022 1 Pfc Knapp responded to the area of 4757 Highway 17 Bypass in the Myrtle Beach section of Horry County in reference to a past theft complaint.

Upon arrival R/O spoke to the complainant (entity 1) who advised that between 3:00 and 4:15 in the morning the suspect had drove up in his silver Audi with SC tag [REDACTED]. The suspect entered the building and approximately 5 minutes later the suspect exits. The complainant advised that they believe the suspect has stolen customer data, account information such as passwords and account numbers. The complainant advised that this is not the first time the suspect has done something like this. The complainant was able to provide screenshots which show that a flashdrive was recently ejected. The screen shots also show that passwords for accounts were searched for. The screen shots also show the suspect looked up how to clear login information. The complainant advised that as of right now no monetary value loss client information. The complainant advised he will notify R/O if he observes any suspicious activity on his accounts.

TYPE (GROUP)		77	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
STOLEN		1	Horry			
DAMAGED					TOTAL VALUE	
BURNED						
RECOVERED						
SEIZED						

SUBJECT IDENTIFIED		SUBJECT LOCATED		<input type="checkbox"/> ACTIVE <input checked="" type="checkbox"/> ADM. CLOSED		<input type="checkbox"/> ARRESTED UNDER 18		<input type="checkbox"/> EX-CLEAR UNDER 18	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> UNFOUNDED		<input type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1 <input type="checkbox"/> OFFENDER DEATH 2 <input type="checkbox"/> NO PROSECUTION 3 <input type="checkbox"/> EXTRADITION DENIED 4 <input type="checkbox"/> VICTIM DECLINES COOPERATION 5 <input type="checkbox"/> JUVENILE - NO CUSTODY									
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER		
Knapp, Michael		02/07/2022	631						
FOLLOWUP INVESTIGATION		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		OFFICER					

R/O made contact with the suspect who advised post miranda that he did enter the building and the office but denies taking any account information. The suspect advised that he was looking for ideas to better improve his "team". R/O asked the suspect what he meant by that he said just ideas. R/O asked if he taken any pictures of personal information which he denied. R/O asked if he could show his photos which the suspect refused. R/O asked the suspect for the flashdrive he used which the suspect did give R/O. R/O handed the drive to the complainant who advised that the drive is not the correct one he used or that the suspect wiped it due to nothing being on it.

The suspect was escorted off the property and placed on trespass notice

EXHIBIT A



Kevin Mills Team <kevinmills@gmail.com>

Fwd: leads

Ryan Picthall <ryansellsmyrtlebeach@gmail.com>
To: Montana - Kevin Mills Team <kevinmills@gmail.com>

Tue, Feb 8, 2022 at 11:06 PM

Your Trusted Realtor:
Ryan Picthall
Century 21 "The Harrelson Group"
(843) 222-6793
ryansellsmyrtlebeach@gmail.com



Click Here for a free digital copy of my Real Estate book

Forwarded message

From: Barbara Barber, Realtor <barbarabarber@gmail.com>
Date: 2/11/22 3:02 PM
Subject: leads

To: Ryan Picthall, Realtor <ryansellsmyrtlebeach@gmail.com>

for your probate pillar. ...I have old but lets start with these

Not for share

Estate of:	Subj Property address:	Executor's Info:	2 nd Executor's Info:	Attorney's Info:
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2/11/22, 7:53 AM
ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323



Joel Barber

Realtor
 Century 21 The Harelson Group
 Cell- 843-655-2979
<https://linktr.ee/joelbarberteam>
 What is my property worth?
 Find the perfect property



HOW I SELL PROPERTIES - [CLICK HERE TO SEE HOW I HELP SELLERS SELL](#)

JOEL BARBER HOME BUYING EXPERIENCE - [CLICK HERE TO SEE HOW I HELP BUYERS PURCHASE](#)

"Impossible only means that we haven't found the solution yet."

ELECTRONICALLY FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323



Kevin Mills Team <kevinmillsteam@gmail.com>

Fwd: perhaps more warm probate leads

Ryan Picthall <ryansellsmyrtlebeach@gmail.com>
To: Montana - Kevin Mills Team <kevinmillsteam@gmail.com>

Tue, Feb 8, 2022 at 11:00 PM

Your Trusted Realtor,
Ryan Picthall
Century 21 "The Harrelson Group"
(843) 222-6793
ryansellsmyrtlebeach@gmail.com



Click Here for a free digital copy of my Real Estate book

----- Forwarded message -----
From: Joel Barber <jbarber.realtor@gmail.com>
Date: Sunday, 30/2/2022 at 3:34 PM
Subject: Perhaps more warm probate leads
To: Ryan Picthall, Realtor <ryansellsmyrtlebeach@gmail.com>

~~do not share, do not call from tc, etc~~

Joel Barber

Realtor
Century 21 The Harrelson Group
Cell- 843-655-2979
<https://linktr.ee/joelbarberteam>
What is my property worth?
Find the perfect property.





HOW I SELL PROPERTIES - — CLICK HERE TO SEE HOW I HELP SELLERS SELL

JOEL BARBER HOME BUYING EXPERIENCE — CLICK HERE TO SEE HOW I HELP BUYERS PURCHASE

“Impossible only means that we haven’t found the solution yet.”

 probate hot excel.xlsx
11K

EXHIBIT B

AGENCY I.D.
SC0260400

INCIDENT REPORT

CASE NUMBER

2 0 2 2 0 1 1 7 9 5

NCIC

INQ. ENT.

EVENT

VICTIM NO. 1

SUBJECT NO. 1

NARRATIVE

FILED - 2022 Mar 02 3:02 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

INCIDENT TYPE I. 23H - All Other Larceny				COMPLETED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	FORCED ENTRY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	PREMISE TYPE 05	UNITS ENTERED	TYPE VICTIM <input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial <input type="checkbox"/> Government <input type="checkbox"/> Relig. Org. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 4757 HWY 17 BYP				ZIP CODE 29577		WEAPON TYPE			

INCIDENT DATE 02/07/2022	24 HR CLOCK 03:00	TO	DATE 02/07/2022	24 HR CLOCK 04:05	DISPATCH DATE/TIME 24 HR. CLOCK DISP. DATE 02/07/2022	DISP. TIME 10:15	TIME ARRIVED 10:27	DEPART. TIME 11:43	LOCATION NO
-----------------------------	----------------------	----	--------------------	----------------------	-------------------------------------------------------------	---------------------	-----------------------	-----------------------	-------------

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) Mills, Kevin		RELATIONSHIP TO SUBJECT	RESIDENT <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U	RACE W	SEX M	AGE 30	ETH. N	DAYTIME PHONE	EVENING PHONE
ADDRESS 2005 Ladybank Dr		CITY Myrtle Beach	STATE SC	ZIP CODE	LOCATION NO.				

VICTIM'S NAME (LAST, FIRST, MIDDLE) Palmetto First Mortgage		RELATIONSHIP TO SUBJECT	RESIDENT <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
ADDRESS 4757 Us Highway 17 Byp		CITY Myrtle Beach	STATE SC	ZIP CODE	LOCATION NO				

VISIBLE INJURY (VICT. 1) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>																	
VICTIM (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>		DRUGS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>		TYPE:															
TWO-MAN VEH <input type="checkbox"/>		ONE-MAN VEH <input type="checkbox"/>		CATEGORIVE/SPLASMT. <input type="checkbox"/>		OTHER <input type="checkbox"/>		A. ONE <input type="checkbox"/>		ASSISTED <input type="checkbox"/>		J - This Jurisdiction		S - State		O - Out of State		U - Unknown	
<input checked="" type="checkbox"/> SUSPECT		NAME (LAST, FIRST, MIDDLE) BARBER, JOEL		RACE	SEX M	AGE	ETH. N	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES							
<input type="checkbox"/> RUNAWAY		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING PHYSICAL PECULIARITIES, ETC.																	
<input type="checkbox"/> WANTED		ADDRESS		CITY	STATE SC	ZIP CODE	LOCATION NO												
<input type="checkbox"/> ARREST		SUBJECT (NO. 1) USING: ALCOHOL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>		ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>		DATE/TIME OF OFFENSE 2/7/2022 3:00:00 AM		DATE/TIME OF ARREST											
<input type="checkbox"/> JAIL		DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK <input type="checkbox"/>		TOTAL # ARRESTED 0															
<input type="checkbox"/> SUMMONS																			

On February 7th 2022 I Pfc Knapp responded to the area of 4757 Highway 17 Bypass in the Myrtle Beach section of Horry County in reference to a past theft complaint.

Upon arrival R/O spoke to the complainant (entity 1) who advised that between 3:00 and 4:15 in the morning the suspect had drove up in his silver Audi with SC tag [REDACTED]. The suspect entered the building and approximately 5 minutes later the suspect exits. The complainant advised that they believe the suspect has stolen customer data, account information such as passwords and account numbers. The complainant advised that this is not the first time the suspect has done something like this. The complainant was able to provide screenshots which show that a flashdrive was recently ejected. The screen shots also show that passwords for accounts were searched for. The screen shots also show the suspect looked up how to clear login information. The complainant advised that as of right now no monetary value loss beside client information. The complainant advised he will notify R/O if he observes any suspicious activity on his accounts.

PROPERTY EST.	TYPE (GROUP)	77	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY Horry		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
	STOLEN	1	TOTAL VALUE			
	DAMAGED					
	BURNED					
	RECOVERED					
SEIZED						

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> ACTIVE <input checked="" type="checkbox"/> ADM. CLOSED		<input type="checkbox"/> ARRESTED UNDER 18		<input type="checkbox"/> EX-CLEAR UNDER 18	
REASON FOR EXCEPTIONAL CLEARANCE: 1 <input type="checkbox"/> OFFENDER DEATH		2 <input type="checkbox"/> NO PROSECUTION		3 <input type="checkbox"/> EXTRADITION DENIED		4 <input type="checkbox"/> VICTIM DECLINES COOPERATION		5 <input type="checkbox"/> JUVENILE - NO CUSTODY	
REPORTING OFFICER(S) Knapp, Michael		DATE 02/07/2022	UNIT NUMBER 632	APPROVING OFFICER		DATE	UNIT NUMBER		
FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		OFFICER							

R/O made contact with the suspect who advised post miranda that he did enter the building and the office but denies taking any account information. The suspect advised that he was looking for ideas to better improve his "team". R/O asked the suspect what he meant by that he said just ideas. R/O asked if he taken any pictures of personal information which he denied. R/O asked if he could show his photos which the suspect refused. R/O asked the suspect for the flashdrive he used which the suspect did give R/O. R/O handed the drive to the complainant who advised that the drive is not the correct one he used or that the suspect wiped it due to nothing being on it.

The suspect was escorted off the property and placed on trespass notice

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

AFFIDAVIT OF STACEY WEAVER

I, Stacey Weaver, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am employed by R&G Corp, d/b/a Century 21 The Harrelson Group as an Executive Assistant/Licensed Realtor/Relocation Director and have been employed in this capacity from June 2009 to present.
3. As an employee of R&G Corp d/b/a Century 21 The Harrelson Group, I use and maintain a MacMini computer for business use that is protected from public or third-party access by individualized log in/password protection and keyed locked door.
4. As an employee of R&G Corp d/b/a Century 21 The Harrelson Group, I use and maintain an office within the business location R&G Corp d/b/a Century 21 The Harrelson Group, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577. My office has restricted access and is locked at all times when not used by me or outside of business hours. The only people that have a key to the office is myself, Greg Harrelson, and our bookkeeper, Beth Sementelli.

5. My MacMini desktop computer is maintained in my office within the business location R&G Corp d/b/a Century 21 The Harrelson Group. When I am not present, my MacMini computer is locked and password protected and my office within R&G Corp d/b/a Century 21 The Harrelson Group is locked with a locking door knob.

6. On my MacMini computer, I maintain proprietary, confidential and personal information developed, created, or discovered by Greg Harrelson or R&G Corp d/b/a Century 21 The Harrelson Group, which has commercial value to Greg Harrelson or R&G Corp d/b/a Century 21 The Harrelson Group. This "Proprietary Information" includes, but not be limited to, website log-ins and passwords, communications, any non-public databases, client or prospect lists, logs, calendars, domain names, trade secrets, copyrights, ideas, techniques, know-how, inventions (whether patentable or not), and/or any other information of any type relating to intellectual property, and the information concerning Greg Harrelson or R&G Corp d/b/a Century 21 The Harrelson Group's actual or anticipated business, research or development, or which is received in confidence by or for Greg Harrelson or R&G Corp d/b/a Century 21 The Harrelson Group from any other person.

7. On or about February 7, 2022, I have reviewed camera footage from Ring[®] Camera System maintained at the R&G Corp, d/b/a Century 21 The Harrelson Group business location and observed footage of Joel Barber's vehicle and Joel Barber accessing the business location without authorization, including after hours. Specifically:

a. January 22, 2022 --

i. Between 1:30 AM and 3:30 AM Defendant is seen entering and exiting the building

b. January 29, 2022 --

i. Between 4:00 AM and 5:30 AM Defendant is seen entering and exiting the building

c. And one other date that I do not recall specifically.

8. I was not present at the office during these dates and times, and to my knowledge neither was Greg Harrelson nor Beth Sementelli.

9. On February 9, 2022, I reviewed history on my MacMini and determined that someone other than myself logged into the MacMini using the user name "Guest" on January 22, 2022 at 2:52 a.m. and 3:12 a.m., and January 29, 2022 at 5:08 a.m. A copy of the screenshot of console program I ran on February 9, 2022 to review the history of my log in access is attached as EXHIBIT A.

10. Around that same time, I observed damage to my door and lock to my office. A copy of the damage is depicted in the photos attached as EXHIBIT B.

11. I was not present and did not access or unlock my office or my MacMini computer on January 22, 2022 at 2:52 a.m. and 3:12 a.m., and January 29, 2022 at 5:08 a.m., or otherwise access my MacMini computer as "Guest".

12. Upon information and belief, Joel Barber gained unauthorized access to my MacMini using "Guest" log-in credentials, which provides a user limited functionality on the MacMini, on January 22, 2022 at 2:52 a.m. and 3:12 a.m., and January 29, 2022 at 5:08 a.m.

13. While the "Guest" log-in provides limited access, a user logged-in as "Guest" on my MacMini may still have access to a file or files I maintain for Greg Harrelson containing his usernames and log-in information for leads and client databases, as well as other proprietary information.

14. The Guest log-in, always on behind locked door, guest does not require password, allows access to external hard drive, and two files on external hard drive.

15. I did not approve, authorize or permit anyone other than myself and Greg Harrelson to access, view, modify or download the any data on the MacMini or access my locked office and did not provide anyone access to my iMac desktop computer, my password to access my MacMini computer, nor access to my locked office, or access to the various password protected websites and accounts of Greg Harrelson.

16. Since February 7, 2022, I have had communications with clients of R&G Corp d/b/a Century 21 Harrelson Group in which the clients have described communications with Joel Barber after February 7, 2022 or in which the clients/leads have stated that Joel Barber represented himself as an agent of Century 21 Harrelson Group.

Stacy weaver
STACY WEAVER

Sworn to and subscribed before me,
this 15th day of March, 2022.

Christine Badami
Notary Public
My Commission Expires: 4/16/2029

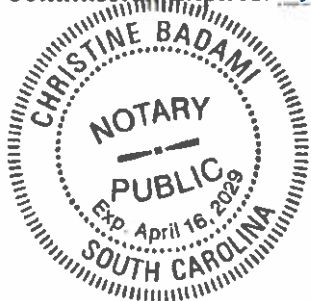


EXHIBIT A

Logins Fri Jan 28 09:13:49 on console

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Wed Feb 9 10:21 still logged

Sat Jan 29 05:08 - 05:11 (00:03)

Fri Jan 28 09:13 still logged

Fri Jan 28 09:10

Thu Jan 27 09:19 - 09:10 (23:15)

Thu Jan 27 09:15

Sat Jan 22 03:12 - 03:19 (00:06)

Sat Jan 22 02:52 - 03:11 (00:19)

Wed Jan 12 08:28 - 08:28 (14:23)

Wed Jan 12 09:25

Mon Jan 10 09:01 - 09:01 (2:00)

Mon Jan 10 08:59

Wed Jan 6 13:48 - 08:58 (4:18)

Wed Jan 5 13:46

Mon Dec 19 10:09 - 08:58 (23:03)

Mon Dec 19 10:06

Mon Nov 22 17:37 - 08:58 (20:16)

Mon Nov 22 17:34

Mon Oct 25 09:12 - 08:58 (28:09)

Mon Oct 25 09:11

EXHIBIT B







Sent from my iPhone

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

)
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

) AFFIDAVIT OF MONTANA HARTSOCK

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

I, Montana Hartsock, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am an employed by Mills, LLC as an executive assistant to Kevin Mills and real estate agent and have been employed in this capacity from June 2017 to the present.
3. Kevin Mills is an independent contractor real estate agent with HSS Barefoot, LLC, Century 21 Barefoot, by and through Margaret McBride as broker in charge.
4. As an employee of Mills, LLC, I use and maintain an iMac desktop computer for business use that is protected from public or third-party access by individualized log in/password protection.
5. As an employee of Mills, LLC, I maintain an office within the business location HSS Barefoot, LLC d/b/a Century 21 Barefoot, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577. My office has restricted access and is locked at all times when not in use by me or

outside of business hours. Other than me, the only people that have a key to my office are Kevin Mills and Emily Littrell. My business hours are Monday through Friday, 8:00 a.m. to 4:00 p.m.

6. My iMac desktop computer is maintained in my office within the business location of HSS Barefoot, LLC d/b/a Century 21 Barefoot. When I am not present, my iMac desktop computer is locked and password protected and my office within HSS Barefoot, LLC d/b/a Century 21 Barefoot is locked with a locking door knob.

7. On my iMac desktop computer, I maintain proprietary, confidential and personal information developed, created, or discovered by Kevin Mills or Mills, LLC, which has commercial value to Kevin Mills and Mills, LLC. This "Proprietary Information" includes, but not be limited to, website log-ins and passwords, communications, any non-public databases, client or prospect lists, logs, calendars, domain names, trade secrets, copyrights, ideas, techniques, know-how, inventions (whether patentable or not), and/or any other information of any type relating to intellectual property, and the information concerning Mills, LLC actual or anticipated business, research or development, or which is received in confidence by or for Mills, LLC from any other person.

8. On or about February 7, 2022, I have reviewed camera footage from Ring[®] Camera System maintained at the HSS Barefoot, LLC d/b/a Century 21 Barefoot business location and observed footage of Joel Barber's vehicle and Joel Barber accessing the business location without authorization, including after hours. Specifically:

- a. January 8, 2022 --
 - i. Between 3:30 AM and 5:00 AM Defendant is seen entering and exiting the building
- b. January 15, 2022 --

- i. Between 2:00 AM and 3:00 AM – Defendant is seen entering and exiting the building
- c. January 22, 2022 --
 - i. Between 1:30 AM and 3:30 AM Defendant is seen entering and exiting the building
- d. January 29, 2022 --
 - i. Between 4:00 AM and 5:30 AM Defendant is seen entering and exiting the building
- e. February 7, 2022 --
 - i. Between 3:00 AM and 4:30 AM Defendant is seen entering and exiting the building

9. I was not present at the office during these dates and time and I would not have been present during these dates and times as they are outside of my business hours.

10. Upon information and belief, Joel Barber also accessed the business location without authorization, including after hours, at various other times too and not observed on the Ring© Camera, and accessed the locked office of Montana Hartsock without authorization.

11. During the time periods that Joel Barber also accessed the business location without authorization, including after hours, I was not present and did not provide Joel Barber authorization to access my office or iMac desktop computer.

12. At no time did I provide Joel Barber authorization to use my iMac desktop computer, my password to access my iMac desktop computer, nor access to my locked office.

13. On the morning of February 7, 2022, I unlocked and entered my office within HSS Barefoot, LLC d/b/a Century 21 Barefoot and logged on to my iMac desktop computer at approximately 8:00 a.m.

14. When I entered my office, I noted that the computer and chargers were out of place and in an unusual position.

15. Upon logging into my iMac desktop computer, I immediately noticed unusual activity. Specifically, a display message appeared stating "Disk not ejected properly" at 4:01 a.m. on February 7, 2022, indicating that a thumb drive or other USB drive was removed from my computer at 4:01 a.m. on February 7, 2022, when I was not present and did not provide any person with authorization to use my computer. A screen shot of the message displayed on my computer on February 7, 2022 at approximately 8:00 a.m. is attached as **Exhibit A**.

16. I immediately brought this unusual activity to the attention of Kevin Mills.

17. Thereafter, I searched the "Earlier Today" history tab on my iMac desktop computer and discovered additional unusual activity taking place on my iMac desktop computer, indicating that someone searched and accessed various Google documents, spreadsheets, calendars, and Gmail from my computer prior to my arrival at the office. A screen shot of the "Earlier Today" history displayed on my computer on February 7, 2022 at approximately 8:00 a.m. is attached as **Exhibit B**.

18. The various Google documents, spreadsheets, calendars, and Gmail reflected as searched and accessed on my computer required logging into the kevinmillsc21@gmail.com Google account using Kevin Mills' user name and password, which I maintain for work purposes. Only Kevin Mills and I have access to the kevinmillsc21@gmail.com Google account and

credentials. Kevin Mills' Gmail account contained a list of passwords necessary for access to his other web-based databases.

19. A screen shot of the kevinmillsc21@gmail.com Google account Google calendar reveals that numerous calendar entries were deleted on February 7, 2022. I did not delete these calendar entries and did not authorize the deletion of these calendar entries. A screen shot of the calendar deletions displayed on my computer on February 7, 2022 at approximately 8:00 a.m. is attached as **Exhibit C**.

20. Thereafter, I further reviewed my iMac desktop computer activity and discovered significant unusual activity taking place on my iMac desktop computer at dates and times that I was not present at the office or utilizing the iMac desktop computer, as follows:

- a. December 11, 2021 (Saturday, office is closed) –
 - i. 10:45 p.m. to 11:18 p.m., history reflects access to private and proprietary lead or client lists labeled Horry County Probate, and the kevinmillsc21@gmail.com Google documents, Google calendar, and Gmail
- b. January 8, 2022 (Saturday, office is closed)-
 - i. 4:24 am to 4:47 am; history reflects access to private and proprietary lead or client lists labeled Horry County Probate, and the the kevinmillsc21@gmail.com Google documents, Google calendar, and Gmail
- c. January 15, 2022 (Saturday, office is closed)-
 - i. 2:52 am to 4:20 am; history reflects access to private and proprietary lead or client lists labeled Horry County Probate, and the the

kevinmillsc21@gmail.com Google documents, calendar, and Gmail; Real Geeks database using Kevin Mills' login information; and export of at least one Horry County Probate Document (specifically, one sent from Arielle Walters to myself on 1/13/22 via email)

d. January 22, 2022 (Saturday, office is closed)-

i. 2:06 am to 2:42 am; history reflects access to private and proprietary lead or client lists labeled Horry County Probate, and the kevinmillsc21@gmail.com Google documents, calendar, and Gmail; Real Geeks database using Kevin Mills' login information; export of Kevin Mills' Real Geeks database, access and search for passwords, which includes personal and business bank account information.

e. January 29, 2022 (Saturday, office is closed)-

i. 4:33 am to 4:57 am history reflects access to the kevinmillsc21@gmail.com Google documents, calendar, and Gmail;

21. I did not approve, authorize or permit anyone other than myself and Kevin Mills to access, view, modify or download the above referenced data related to the proprietary business of Kevin Mills and Mills, LLC and did not provide anyone access to my iMac desktop computer, my password to access my iMac desktop computer, nor access to my locked office, or access to the various password protected websites and accounts, such as Google and Real Geeks.


MONTANA HARTSOCK

Sworn to and subscribed before me,
this 15th day of March, 2022.



Notary Public
My Commission Expires: 4/16/2029

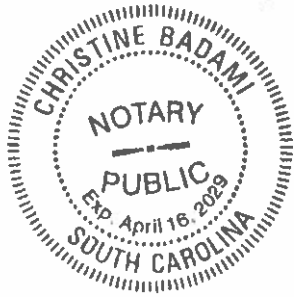
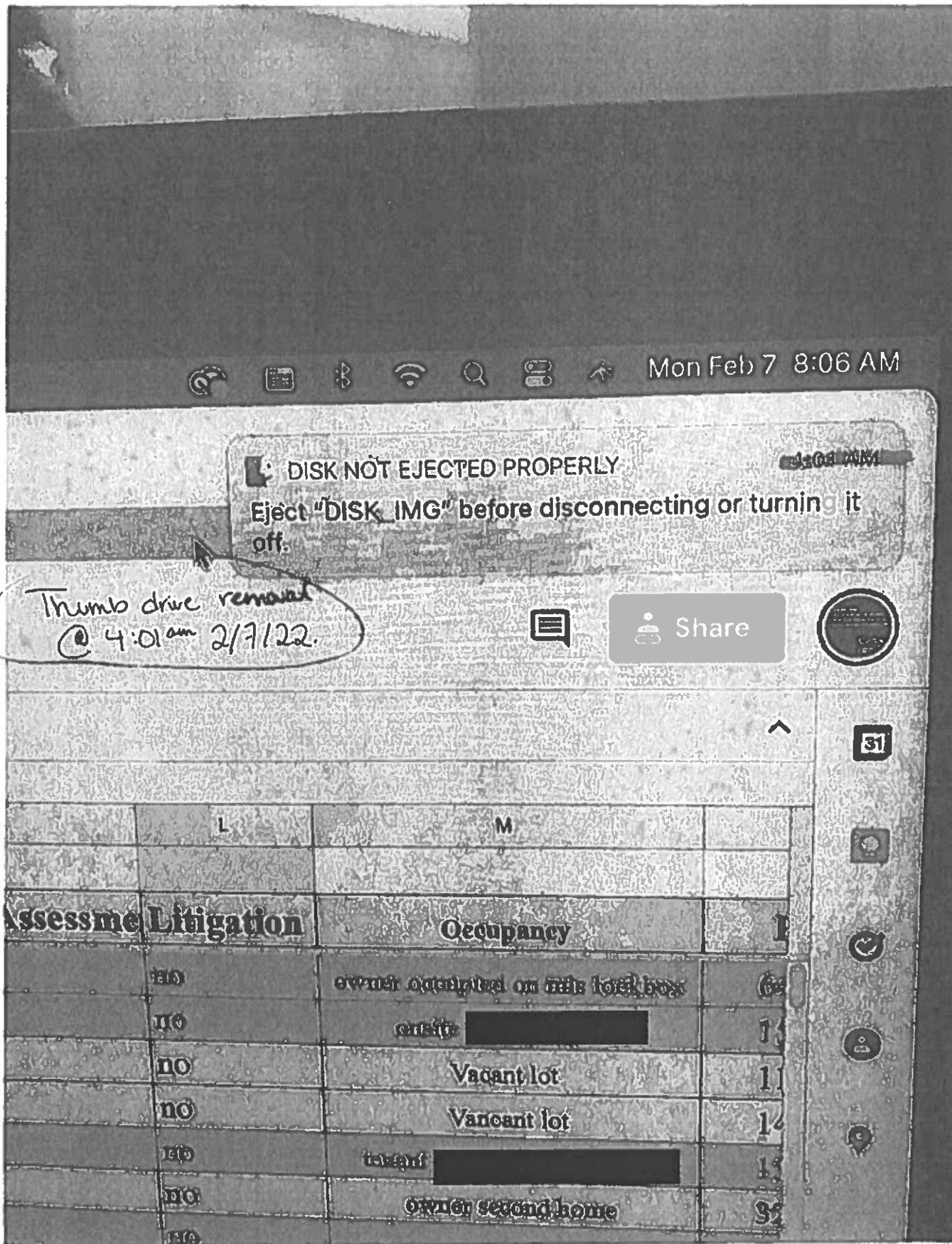


EXHIBIT A



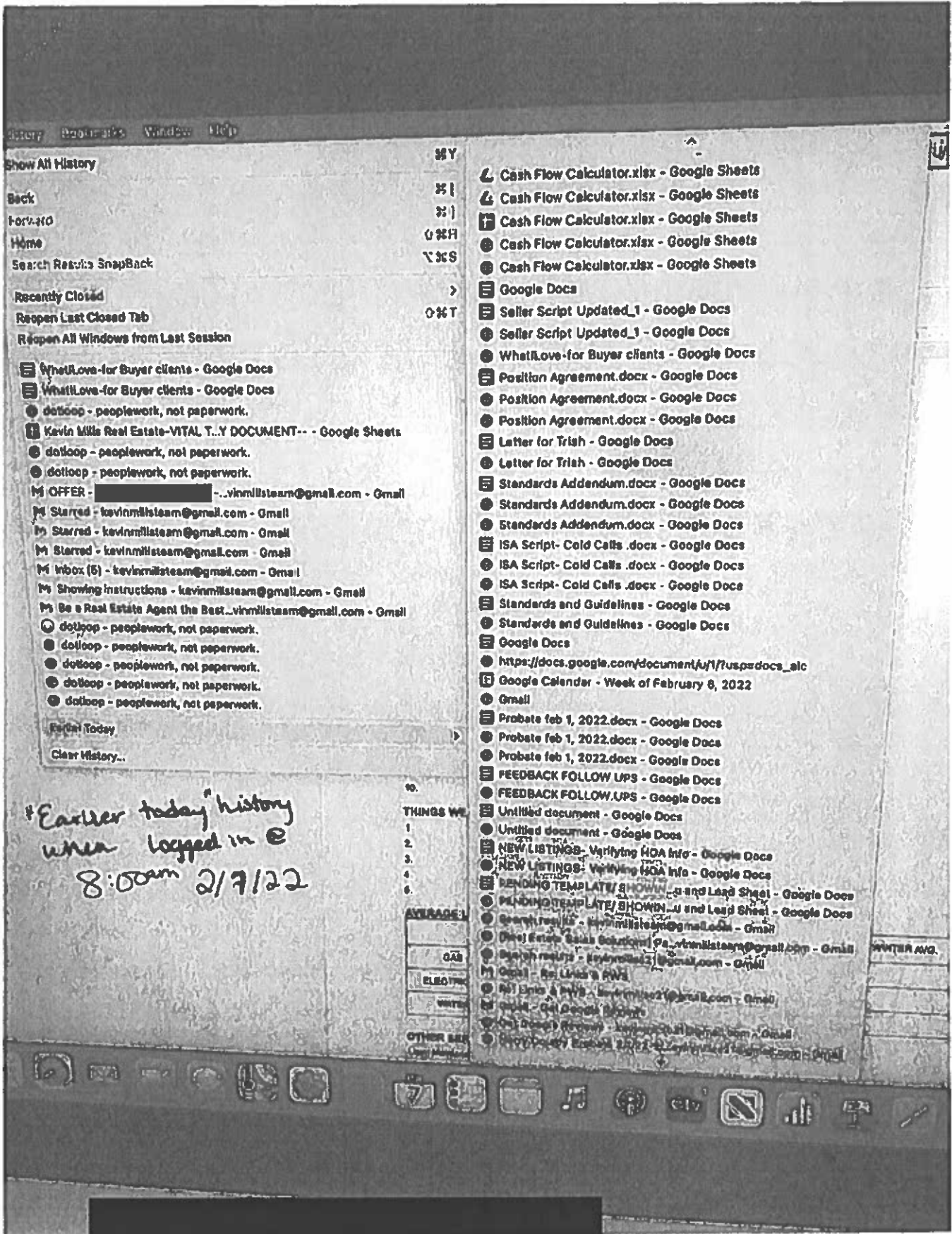
Thumb drive removal
@ 4:01 am 2/7/22.

DISK NOT EJECTED PROPERLY
Eject "DISK_IMG" before disconnecting or turning it off.

31

Assessment	Litigation	Occupancy	
no		owner occupied on this lot box	69
no		owner [redacted]	13
no		Vacant lot	11
no		Vacant lot	14
no		tenant [redacted]	13
no		owner second home	32
no			

EXHIBIT B



#Earlier today history when logged in @ 8:00am 2/7/22

10. THINGS WE
1
2
3
4
6
AVERAGE 1
GAS
ELECTRIC
WATER
OTHER SERVICES

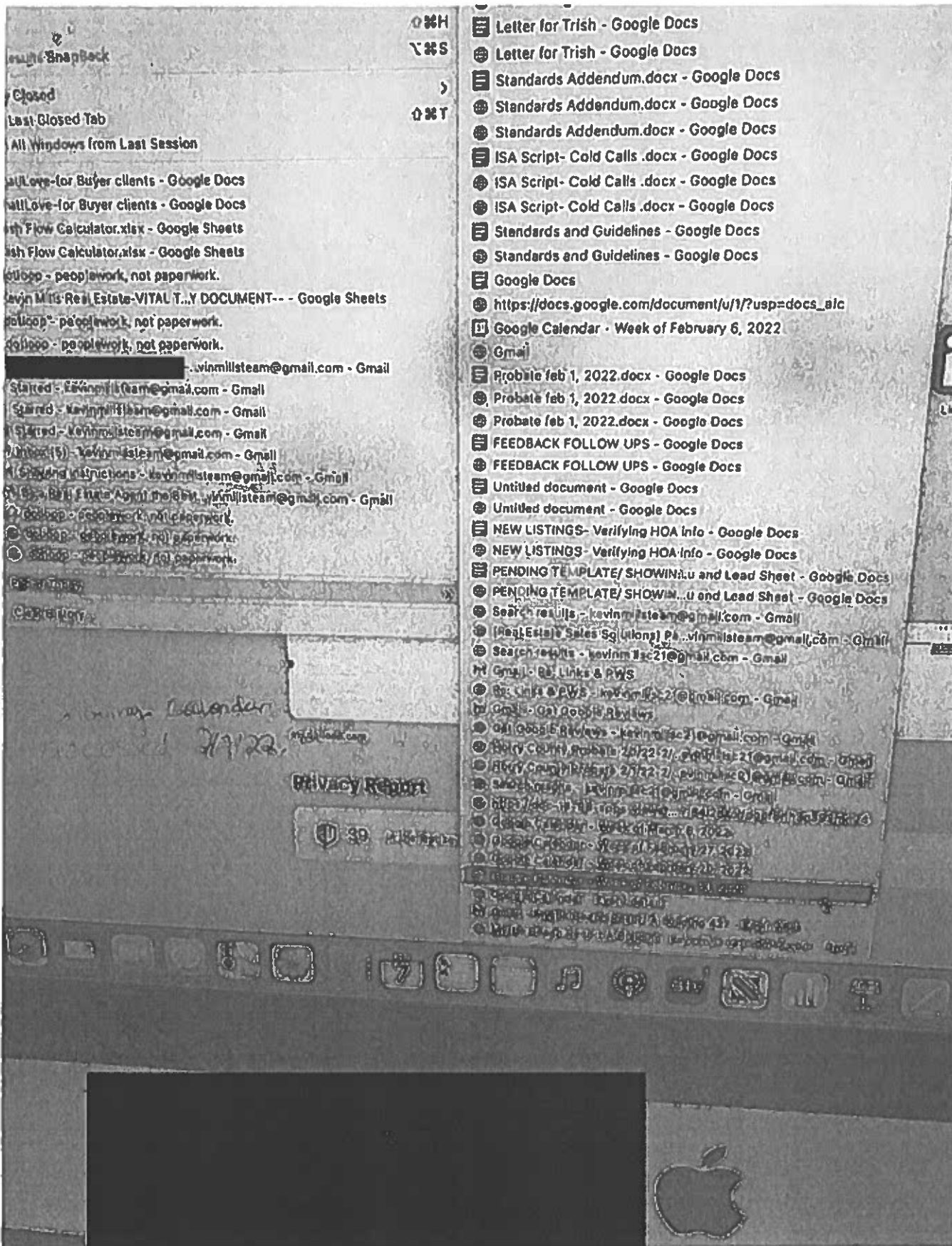


EXHIBIT C

calendar.google.com

Purchase Offer for 204 Harbor Oaks Dr... | Inbar (6) - lewinhke21@gmail.com

Showing Calendar deletions on 2/17/22

DATE	TIME	TITLE	ORGANIZER	DELETION DATE
Mon, Feb 21	All day	PAST CLIENT - 30 DAY LISTING CALL TO GET IT BACK ACTIVE	Me	Mon, Feb 7
Wed, Feb 16	All day	D... - spoke to 1 month ago, needed to talk to wife and probate court	Me	Mon, Feb 7
Mon, Feb 14	All day	C... list other house	Me	Mon, Feb 7
Wed, Feb 9	All day	S...	Me	Mon, Feb 7
Tue, Feb 8	All day	T...	Me	Mon, Feb 7
Tue, Feb 8	All day	Real Geeks	Me	Mon, Feb 7
Mon, Feb 7	All day	S...	Me	Mon, Feb 7
Sun, Feb 6	All day	R...	Me	Mon, Feb 7
Tue, Feb 8	All day	...	Me	Mon, Feb 7
Wed, Feb 16	All day	S...	Me	Mon, Feb 7
Sat, Feb 5	All day	SPR APPT WILD WING	Me	Sun, Feb 6
Sun, Feb 6	All day	TRADITIONAL MONTANA BOOKING NEED TO MOVE	Me	Sun, Feb 6
Sat, Feb 5	All day	Open house - [illegible]	Me	Sun, Feb 6
Sat, Feb 5	All day	Open app. old house	Me	Sun, Feb 6
Sat, Feb 5	All day	Open... AND RESEARCH TOPIC	Me	Sun, Feb 6

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

AFFIDAVIT OF JIMMY RECINOS

I, Jimmy Recinos, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am an independent contractor real estate agent with R&G Corp d/b/a Century 21

The Harrelson Group, by and through its broker-in-charge Margaret McBride. I work as a listing agent and assistant to Greg Harrelson.

3. In my capacity as an independent contractor with R&G Corp d/b/a Century 21 The Harrelson Group and assistant to Greg Harrelson, I have a password restricted personal account and use password restricted administrator access to the consumer relationship management (CRM) technology, Homebot.

4. Homebot is a website based CRM dashboard where the R&G Corp d/b/a Century 21 The Harrelson Group administrator account manages and transfers leads and property owner information to its' independent contractor agents. The permissions under the administrator

account allow access to the R&G Corp d/b/a Century 21 The Harrelson Group dashboard as well as access to each individual independent contractor agent's dashboard.

5. As an independent contractor, I also have an individual Homebot account where I can manage the leads transferred to me; however, I do not have the permissions to transfer leads and cannot transfer leads to or from my individual Homebot account.

6. Around mid to late 2021, I began noticing that I was losing valuable leads from my individual Homebot account and did not understand or have an explanation.

7. After Joel Barber was no longer an agent with R&G Corp d/b/a Century 21 The Harrelson Group, it started to make sense. I checked Joel Barber's individual Homebot dashboard and located numerous leads, including approximately 3 leads that I had created with my specific notes, referencing the property owner contact information, and date and time that the lead was created, transferred in to Joel Barber's individual Homebot account.

8. I was able to identify these leads as having been transferred because the notes that I created transferred with the lead to Joel Barber's individual Homebot account.

9. Neither I, nor Greg Harrelson, transferred the leads using the administrator access from my individual account to Joel Barber's individual Homebot account.


JIMMY RECINOS

Sworn to and subscribed before me,
this 22 day of March, 2022.


Notary Public
My Commission Expires: 10-26-2029

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
Individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

AFFIDAVIT OF CLARK WALTON

I, Clark Walton, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years old and competent to testify.
2. I am the principal forensics and cyber security expert for Reliance Forensics, LLC

based in Charlotte, North Carolina.

3. I have an undergraduate degree from the University of North Carolina at Chapel Hill in Mathematical Sciences (Computer Science Option), and a law degree from Georgetown University Law Center.

4. I was formerly employed as a cyber-threat analyst and technical project manager for the Central Intelligence Agency from 2000 through 2005. I was previously an Adjunct Professor at the Charlotte School of Law in Charlotte, NC, where I taught courses in Evidence and Cyber Crime. I have served as an adviser in the UNC Charlotte Department of Criminology and have taught computer forensics coursework at Champlain College based in Burlington, Vermont, as well as to U.S. military special operations assets and federal law enforcement.

Several times per year (in a non-pandemic setting), as a contracted instructor of Cellebrite USA, Inc., I teach digital forensics to state and tribal court judges at the National Computer Forensics Institute, just outside of Birmingham, Alabama. I have supervised or conducted forensic investigations in well over 1,000 separate legal matters.

5. I am also a licensed North Carolina attorney in good standing, and am board certified by the North Carolina State Bar as a specialist in Privacy and Information Security Law. I have substantial electronic discovery and evidentiary experience in both government and private practice, and I hold four current industry certifications in computer and mobile device forensics. I am a licensed private investigator in the State of South Carolina. My qualifications are more fully described on my CV attached hereto as **Exhibit A**.

6. On or about February 14, 2022, I was retained by and through Burr & Forman LLP to image and preserve data contained on the devices listed below, in each case, upon information and belief, either owned by or in the custody or control of HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, Individually (hereinafter collectively referred to as the "Devices"):

- a. One (1) External Passport Hard Drive ("Hard Drive");
- b. One (1) Apple Mac Mini ("Mac Mini"); and
- c. One (1) Apple iMac ("iMac").

7. Using commonly accepted digital forensic tools and practices, Reliance subsequently created forensic images (or as applicable the best forensic extractions available), in "expert witness" format, of the Hard Drive, iMac, and Mac Mini. These images represent true and correct copies of the data contained on each such Device.

8. After imaging and preserving data on the Devices as described above, in the course of Reliance's retention by Burr & Forman, LLP, I processed the data in a forensic tool called Magnet AXIOM. Magnet AXIOM's processing in no way changes the original data, but parses out information that would otherwise be extremely time consuming to parse by hand. It also indexes the data on the Device images for searching. Magnet AXIOM is a commonly accepted tool for such purpose in the digital forensic industry, and its functionality for all purposes related to this Affidavit has been previously verified by Reliance Forensics.

9. After processing, I conducted searching and reporting on each of the Device images. Each of these searches was conducted using generally accepted forensic tools and methodologies.

10. With respect to each of the Devices, I note the following information from the extractions related to after business hours user and file activities:

a. Hard Drive

- i. The File List for the Hard Drive indicates a number of files last modified on January 29, 2022 at 5:10 a.m. (all times herein are in US Eastern Standard time unless otherwise noted) and the "My Passport for Mac" activity represents the potential presence of an external hard drive:

79	78 Passwords for Greg.xlsx	xlsx	26,715	1/29/2022 5:10	12/9/2021 14:55	12/9/2021 14:55	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac\Passwords for Greg.xlsx		
80	79 My Passport for Mac		122	1/29/2022 5:10	9/14/2012 20:57	12/9/2021 14:56	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac		
81	80 2021 Lead Site Passwords.xlsx	xlsx	11,180	1/29/2022 5:10	12/9/2021 14:54	12/9/2021 14:54	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac\2021 Lead Site Passwords.xlsx		

- ii. The File List for the Hard Drive indicates a number of files last modified on January 22, 2022 at 3:10 a.m. and 3:20 a.m.:

86	85 0.indexUpdates	indexUpda	12	1/22/2022 3:20	1/22/2022 3:20	1/22/2022 3:20	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac\Spotlight-V100\Store-V2\0A299CE		
87	86 0.directoryStoreFile.shadow	shadow	1,152	1/22/2022 3:20	1/22/2022 3:20	1/22/2022 3:20	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac\Spotlight-V100\Store-V2\0A299CE		
88	87 retire.12960	12960	0	1/22/2022 3:10	1/22/2022 3:10	1/22/2022 3:10	CENTURY 21 PASSPORT\1 Apple_HFS_Untitled_1\My Passport for Mac\Spotlight-V100\Store-V2\0A299CE		

b. Mac Mini

- i. The Login History for the Mac Mini reflects two usernames "Guest" and "stacyweaver". The username "Guest" was used on January 22, 2022

45	https://calendar.google.com/calendar/u/0/r/search?q=stanislau	1/15/2022 3:34:37 AM
46	https://calendar.google.com/calendar/u/0/r/search?q=stanislau	1/15/2022 3:34:37 AM
47	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1721592856042462277&siml=msg-f3a1721592856042462277	1/15/2022 3:29:58 AM
48	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1721592856042462277&siml=msg-f3a1721592856042462277	1/15/2022 3:29:58 AM
49	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1721592856042462277&siml=msg-f3a1721592856042462277	1/15/2022 3:29:58 AM
50	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1721592856042462277&siml=msg-f3a1721592856042462277	1/15/2022 3:29:58 AM
51	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719666334350572458&siml=msg-f3a1719666334350572458	1/15/2022 3:29:50 AM
52	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719666334350572458&siml=msg-f3a1719666334350572458	1/15/2022 3:29:50 AM
53	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719666334350572458&siml=msg-f3a1719666334350572458	1/15/2022 3:29:50 AM
54	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719666334350572458&siml=msg-f3a1719666334350572458	1/15/2022 3:29:50 AM
55	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719150990354530286&siml=msg-f3a1719150990354530286	1/15/2022 3:29:39 AM
56	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719150990354530286&siml=msg-f3a1719150990354530286	1/15/2022 3:29:39 AM
57	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719150990354530286&siml=msg-f3a1719150990354530286	1/15/2022 3:29:39 AM
58	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permmsgid=msg-f3a1719150990354530286&siml=msg-f3a1719150990354530286	1/15/2022 3:29:39 AM
59	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permthid=thread-f3a1701914405584711525&siml=msg-f3a1701914405584711525&siml=msg-f3a17019150990354530286&siml=msg-f3a17019150990354530286&siml=sir	1/15/2022 3:28:42 AM
60	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permthid=thread-f3a1701914405584711525&siml=msg-f3a1701914405584711525&siml=msg-f3a17019150990354530286&siml=sir	1/15/2022 3:28:42 AM
61	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permthid=thread-f3a1701914405584711525&siml=msg-f3a1701914405584711525&siml=msg-f3a17019150990354530286&siml=sir	1/15/2022 3:28:42 AM
62	https://mail.google.com/mail/u/0/?ik=80d2df1aea&view=pt&search=all&permthid=thread-f3a1701914405584711525&siml=msg-f3a1701914405584711525&siml=msg-f3a17019150990354530286&siml=sir	1/15/2022 3:28:42 AM
63	https://calendar.google.com/calendar/u/0/r/search?q=charles&tab=rc	1/8/2022 4:47:13 AM
64	https://calendar.google.com/calendar/u/0/r/search?q=charles&tab=rc	1/8/2022 4:47:13 AM
65	https://calendar.google.com/calendar/u/0/r/search?q=cindy&tab=rc	1/8/2022 4:46:51 AM
66	https://calendar.google.com/calendar/u/0/r/search?q=cindy&tab=rc	1/8/2022 4:46:51 AM
67	https://calendar.google.com/calendar/u/0/r/search?q=helms&tab=rc	1/8/2022 4:46:38 AM
68	https://calendar.google.com/calendar/u/0/r/search?q=helms&tab=rc	1/8/2022 4:46:38 AM
69	https://calendar.google.com/calendar/u/0/r/search?q=amber&tab=rc	1/8/2022 4:46:17 AM
70	https://calendar.google.com/calendar/u/0/r/search?q=amber&tab=rc	1/8/2022 4:46:17 AM
71	https://calendar.google.com/calendar/u/0/r/search?q=amber&tab=rc	1/8/2022 4:46:07 AM
72	https://calendar.google.com/calendar/u/0/r/search?q=franken&tab=rc	1/8/2022 4:46:01 AM
73	https://calendar.google.com/calendar/u/0/r/search?q=franken&tab=rc	1/8/2022 4:46:01 AM
74	https://calendar.google.com/calendar/u/0/r/search?q=franken&tab=rc	1/8/2022 4:46:01 AM
75	https://calendar.google.com/calendar/u/0/r/search?q=hardee&tab=rc	1/8/2022 4:45:45 AM
76	https://calendar.google.com/calendar/u/0/r/search?q=hardee&tab=rc	1/8/2022 4:45:25 AM
77	https://calendar.google.com/calendar/u/0/r/search?q=riotto&tab=rc	1/8/2022 4:45:10 AM
78	https://calendar.google.com/calendar/u/0/r/search?q=riotto&tab=rc	1/8/2022 4:45:10 AM
79	https://calendar.google.com/calendar/u/0/r/search?q=drawdy&tab=rc	1/8/2022 4:44:59 AM
80	https://calendar.google.com/calendar/u/0/r/search?q=drawdy&tab=rc	1/8/2022 4:44:59 AM
81	https://www.google.com/search?q=leads.realgeeks&rlz=1CSCHFA_enUS954US954&oq=leads&aqs=chrome..69l57j35l39j0l433j0l433i512j0l51212j46l199l433l465i512j0l512l3.5771j0j7&sourceid=chrome&ie=1/8/2022 4:24:33 AM	1/8/2022 4:24:33 AM
82	https://www.google.com/search?q=leads.realgeeks&rlz=1CSCHFA_enUS954US954&oq=leads&aqs=chrome..69l57j35l39j0l433j0l433i512j0l51212j46l199l433l465i512j0l512l3.5771j0j7&sourceid=chrome&ie=1/8/2022 4:24:33 AM	1/8/2022 4:24:33 AM
83	https://www.google.com/search?q=leads.realgeeks&rlz=1CSCHFA_enUS954US954&oq=leads&aqs=chrome..69l57j35l39j0l433j0l433i512j0l51212j46l199l433l465i512j0l512l3.5771j0j7&sourceid=chrome&ie=1/8/2022 4:24:33 AM	1/8/2022 4:24:33 AM
84	https://www.google.com/search?q=leads.realgeeks&rlz=1CSCHFA_enUS954US954&oq=leads&aqs=chrome..69l57j35l39j0l433j0l433i512j0l51212j46l199l433l465i512j0l512l3.5771j0j7&sourceid=chrome&ie=1/8/2022 4:24:32 AM	1/8/2022 4:24:32 AM
85	https://www.google.com/search?q=leads.realgeeks&rlz=1CSCHFA_enUS954US954&oq=leads&aqs=chrome..69l57j35l39j0l433j0l433i512j0l51212j46l199l433l465i512j0l512l3.5771j0j7&sourceid=chrome&ie=1/8/2022 4:24:32 AM	1/8/2022 4:24:32 AM
86	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:04:37 PM
87	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:04:37 PM
88	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:04:16 PM
89	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:04:03 PM
90	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:03:50 PM
91	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:03:39 PM
92	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:03:29 PM
93	https://docs.google.com/document/u/0/?q=probate	12/11/2021 11:03:10 PM

iii. Facebook URLs

2	http://facebook.com/STEVIBLAIR.MORRIS	12/12/2021 1:37:56 AM	Looking at Facebook profile with profile id: STEVIBLAIR.MORRIS	Apple Contacts - macOS
3	http://facebook.com/SYDNEY.LAUREN.750	12/12/2021 1:37:56 AM	Looking at Facebook profile with profile id: SYDNEY.LAUREN.750	Apple Contacts - macOS
4	http://facebook.com/SHERRIE.GASQUE	12/12/2021 1:37:56 AM	Looking at Facebook profile with profile id: SHERRIE.GASQUE	Apple Contacts - macOS

iv. Encrypted Files

15	12	913601	Encrypted Container	1/29/2022 4:55:51 AM	1/29/2022 4:55:51 AM
16	13	4714517	Encrypted Container	1/29/2022 4:55:51 AM	1/29/2022 4:55:51 AM
17	25	1220189	Encrypted Container	1/22/2022 2:39:47 AM	1/22/2022 2:39:47 AM

v. Cloud Service URLs

2	https://drive.google.com/drive/search?q=aberdeen	1/29/2022 4:55:36 AM	Chrome Keyword Search Terms
3	https://drive.google.com/drive/search?q=aberdeen	1/29/2022 4:55:36 AM	Chrome Web History
4	https://drive.google.com/drive/search?q=aberdeen	1/29/2022 4:55:36 AM	Chrome Web Visits
5	https://drive.google.com/drive/my-drive	1/29/2022 4:55:06 AM	Chrome Web History
6	https://drive.google.com/drive/	1/29/2022 4:55:06 AM	Chrome Web History
7	https://drive.google.com/drive/?ogsrc=32&tab=mo	1/29/2022 4:55:06 AM	Chrome Web Visits
8	https://drive.google.com/drive/	1/29/2022 4:55:06 AM	Chrome Web Visits
9	https://drive.google.com/drive/my-drive	1/29/2022 4:55:06 AM	Chrome Web Visits
10	https://drive.google.com/drive/?ogsrc=32&tab=mo	1/29/2022 4:55:06 AM	Chrome Web Visits
11	https://drive.google.com/?ogsrc=32&tab=mo&authuser=0	1/29/2022 4:55:05 AM	Chrome Web History
12	https://drive.google.com/?ogsrc=32&tab=mo&authuser=0	1/29/2022 4:55:05 AM	Chrome Web History
13	https://drive.google.com/drive/?ogsrc=32&tab=mo	1/29/2022 4:55:05 AM	Chrome Web Visits
14	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=aku1d6b22c1e6&continue=https://	1/29/2022 4:49:40 AM	Chrome Web History
15	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=aku1d6b22c1e6&continue=https://	1/29/2022 4:49:40 AM	Chrome Web Visits
16	https://drive.google.com/drive/my-drive	1/15/2022 3:13:16 AM	Chrome Web Visits
17	https://drive.google.com/?ogsrc=32&tab=mo&authuser=0	1/15/2022 3:13:15 AM	Chrome Web Visits
18	https://drive.google.com/drive/?ogsrc=32&tab=mo	1/15/2022 3:13:15 AM	Chrome Web Visits
19	https://drive.google.com/drive/?ogsrc=32&tab=mo	1/15/2022 3:13:15 AM	Chrome Web Visits
20	https://drive.google.com/drive/	1/15/2022 3:13:15 AM	Chrome Web Visits
21	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=ns4lq8lo4tbru&continue=https://	4/18/2022 4:41:39 AM	Chrome Web History
22	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=ns4lq8lo4tbru&continue=https://	4/18/2022 4:41:39 AM	Chrome Web Visits
23	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=uvo8mo9n1rg5u&continue=https://	12/11/2021 11:16:21 PM	Chrome Web History
24	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=uvo8mo9n1rg5u&continue=https://	12/11/2021 11:16:21 PM	Chrome Web Visits
25	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=0ap18imihmv62&continue=https://	12/11/2021 11:11:19 PM	Chrome Web History
26	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=0ap18imihmv62&continue=https://	12/11/2021 11:11:19 PM	Chrome Web Visits
27	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=esosidgmmo3e0&continue=https://	12/11/2021 11:06:19 PM	Chrome Web History
28	https://drive.google.com/viewerng/noncesigner?ou=00763072881967776969&nonce=esosidgmmo3e0&continue=https://	12/11/2021 11:06:19 PM	Chrome Web Visits

vi. Chome Web Visits. See attached **Exhibit B**.

vii. Chrome Web History. See attached **Exhibit C**.

viii. Chrome Short Cuts.

2	https://gmail.com	https://gmail.com/	gmail.com	2/7/2022 3:21:57 AM	Inbox (13) - kevinmills21@gmail.com - Gmail	2
3	https://leads.realgeeks.com	https://leads.realgeeks.com/	leads	1/22/2022 2:05:52 AM	Real Geeks - Sign In	2
4	https://gmail.com	https://gmail.com/	gm	1/22/2022 2:04:56 AM	Inbox (15) - kevinmills21@gmail.com - Gmail	3
5	gmail.com	http://gmail.com/	gmail.com	1/15/2022 3:14:40 AM		4
6	leads.realgeeks.com	http://leads.realgeeks.com/	leads.re	1/8/2022 4:24:50 AM		1
7	leads.realgeeks	https://www.google.com/search?q=leads.realgeeks&rlz=1C5CHFA_enUS954US954&oq=leads	leads	1/8/2022 4:24:32 AM		1

ix. Chrome Keyword Search Terms

2	aberdeen	https://drive.google.com/drive/search?q=aberdeen	1/29/2022 4:55:36 AM
3	leads.realgeeks	https://www.google.com/search?q=leads.realgeeks&rlz=1C5CHFA_enUS954US954&oq=leads&aqs=chrome.1.69157j35i39j0i433j0i433i512j0i512l2j46i19911/8/2022 4:24:33 AM	

x. Chrome FavIcons. See attached **Exhibit D**.

xi. Chrome Downloads:

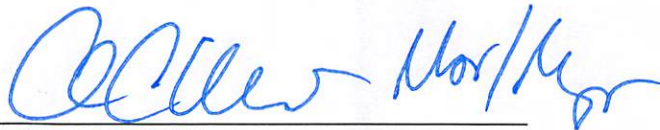
2	https://docs.google.com/document/u/0/export?format=docx&id=1kbpM3yia2n_3QrJR2QfZ8t/	/Users/kevinmills/Downloads/Probate Jan 13,2022 (1).docx	1/15/2022 3:32:49 AM	1/15/2022 3:32:49 AM
3	about:blank	/Users/kevinmills/Downloads/Arrowhead 1_10.csv	1/15/2022 3:15:13 AM	1/15/2022 3:15:14 AM

xii. Chrome Autofill:

2	email	1/22/2022 2:06:33 AM	1/22/2022 2:06:33 AM	janette.themillsgroup@gmail.com	1	MacQDataCollection_2022-02-17_14-42-23.101\Files\User Files\Volumes\Macintosh HD
3	identifier	12/11/2021 10:46:28 PM	12/11/2021 10:46:28 PM	kevinmills21@gmail.com	1	MacQDataCollection_2022-02-17_14-42-23.101\Files\User Files\Volumes\Macintosh HD
4	identifier	5/20/2021 8:27:20 AM	12/11/2021 10:45:35 PM	kevinmills@gmail.com	3	MacQDataCollection_2022-02-17_14-42-23.101\Files\User Files\Volumes\Macintosh HD

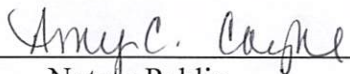
[REMAINDER OF PAGE INTENTIONALLY BLANK]

FURTHER AFFIANT SAYETH NAUGHT.



CLARK WALTON

Sworn to and subscribed before me,
this 24th day of March, 2022.



Notary Public

My Commission Expires: 5/24/2024

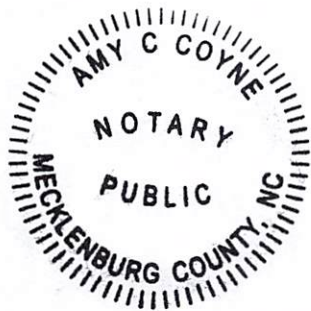


EXHIBIT A

Clark C. Walton

5950 Fairview Road, Charlotte, NC 28210

Phone: (980) 335-0710 E-mail: clark@relianceforensics.com

Experience

Reliance Forensics, LLC, Charlotte, NC

Managing Director, November 2013 to present.

- Engaged in expert and consultant capacities to perform digital forensic collection, analysis and reporting on evidence in a variety of contexts, including business and employee disputes, intellectual property matters, domestic matters, criminal investigations, and internal corporate investigations.

Live sworn testimony:

- *State of North Carolina v. Ordway*, Meck. Co., NC District Court 4130, Aug 24, 2015. Qualified as mobile device forensic expert.
- *Charles Dyer v. Raymond James et al*, FINRA Panel, Case No. 14002268, Dec. 14, 2015. Qualified as computer forensic expert.
- *State of North Carolina v. Charles Saine*, Meck. Co. NC Superior Court, Criminal Division, 14 CRS 202428-29, 456, 458-62, March 1, 2016. Qualified as mobile device forensic expert.
- *Judith G. Smith v. David M. Smith*, Meck. Co., NC District Court, 15-CVD-21964, July 6, 2016 (Sanctions), and August 15, 2016 (Atty. Fees). Qualified as digital forensic expert.
- [*Matter Under Seal*], U.S. District Court for the Western District of North Carolina, before Judge Graham Mullen, May and June 2017. Qualified as digital forensic expert in source code copyright infringement matter.
- *Legacy Data Access, LLC v. MediQuant, Inc.*, U.S. District Court for the Western District of North Carolina, deposition taken June 30, 2017. Trial concluded July 27, 2017 before Judge Frank Whitney. Qualified as digital forensic expert in trade secret theft and spoliation matter.
- *Long Bros. of Summerfield, Inc. v. Hilco Transport, Inc.*, Forsyth Co. NC Superior Court, 15 CVS 7727, August 30-31, 2017. Qualified as digital forensic expert.
- *Computer Design and Integration, LLC and CDI Southeast, LLC v. David Brown, Marcus Jacoby and Rove, LLC*, Meck Co., NC Superior Court, Civil Division, 16-CVS-11847. Deposition taken October 11, 2017. Computer forensic matter.
- *Jazz Dasean Samuel v. Amanda Janet Graham*, Meck. Co., NC District Court, 18-CVD-2938, 18-CVD-2966, April 12, 2018. Qualified as digital forensic expert.
- *Nicole Biffle and Sara Lunders v. Gregory J. Biffle*, Meck. Co., NC Superior Court, Civil Division, 17-CVS-12215. Deposed and testified in jury trial, August 2018. Qualified as digital forensic expert.
- *Wellin v. Wellin, et al*, U.S. District Court for the District of South Carolina, Civil Actions 2:13-cv-01831-DCN, 2:13-cv-03595-DCN, 2:14-cv-04067-DCN. Deposition taken August 17, 2018. Mobile device forensic matter.
- *SSG Baltimore LLC et al v. Emil Gerardi, Noble8, LLC and Annie Payne*, American Arbitration Association Case No. 1-18-0000-8097, Baltimore, Maryland, September 11, 2018 (testimony via video conference). Qualified as digital forensic expert.
- *State of North Carolina v. Kevin Olsen*, Meck. Co. NC Superior Court, Criminal Division, 17 CRS 206644-48, September 27, 2018. Qualified as digital forensic expert.
- *Dephinitive Systems, LLC v. Glenn Bouch*, American Arbitration Association Case No. 01-16-0004-0983, Charlotte, NC, December 12, 2018. Fact witness regarding examination of digital evidence.
- *3D Systems Corp. v. Paul A. Miller, UnionTech, Inc., and RP Sales America, Inc.*, U.S. District Court for the Southern District of Indiana, Civil Action 1:17-cv-3252-RLY-MJD. Deposition taken December 13, 2018. Designated as digital forensic and cyber security expert.
- *Calvin Norton v. Jeffrey Rosier*, U.S. District Court for the Eastern District of North Carolina, Civil Action 7:14-CV-260-FL. Trial testimony February 13, 2019. Testified to mobile device evidence.

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- *Estate of Scheer v. Nirlep A. Patel, M.D., et al*, SC Court of Common Pleas, Fifteenth Judicial Circuit, Civil Action No. 2017-CP-26-1571. Deposition taken April 9, 2019. Designated as mobile device forensic expert.
- *Luan Parker v. John G. Parker*, Meck. Co., NC District Court, 16-CVD-14194. Testified November 13, 2017 (motion to compel), April 24, 2019 (sanctions hearing) and August 20, 2019 (trial). Qualified as mobile device forensic expert.
- *LaSalle v. Monro Muffler Brake, Inc., and SC Dept. of Transportation*, SC Court of Common Pleas, County of Berkeley, Civil Action No. CP-08-3046. Deposition taken October 2, 2019. Trial testimony October 16, 2019. Qualified as mobile device forensic expert.
- *DiPrima v. Vann*, Union Co., NC District Court (Civil), 19 CVD 3342. Hearing testimony January 31, 2020. Qualified as digital forensic expert.
- *Nephron Pharmaceuticals Corp. v. Jennifer Shelly Hulsey et al*, U.S. District Court for the Middle District of Florida, Civil Action 6:18-cv-01573-GAP-KRS. Deposition as 30(b)(6) witness for Plaintiff Nephron Pharmaceuticals as to digital evidence taken on February 28, 2020.
- *Estate of Newcombe v. Cumberland County Hospital System, Inc. and Abhik K. Biswas, M.D.*, Cumberland Co., NC Superior Court (Civil), 19 CVS 7894. Deposition taken Oct. 6, 2020. Designated as mobile device forensic expert.
- *John Barnes, et al v. The Building Center, et al*, Meck. Co. NC Superior Court, Civil Division, 19-CVS-13562. Deposition taken January 14, 2021. Designated as digital forensic expert.
- *Lauro Dominici v. Biesse America, Inc.*, Civil Arbitration before Raymond Owens in Mecklenburg County, NC. Sworn testimony in arbitration on April 21, 2021. Qualified as digital forensic expert.
- *Amy Delene Kean v. Warren Kean*, Iredell Co. NC District Court, Civil Division, 18-CVD-2233. Hearing testimony separately on June 9 and June 11, 2021. Qualified as digital forensic expert.
- *Eastern Band of Cherokee Indians v. Benjamin Cody Long*, The Cherokee Court (Cherokee, NC), Eastern Band of Cherokee Indians, 20 CR 0465. Trial testimony week of October 11, 2021. Qualified as digital forensic expert.
- *John Ford and Christopher Kisgen, et al. v. Carl Jurgens and Kathie Russell, et al.*, Wake Co. NC Superior Court, Civil Division, 20-CVS-4896. Deposition taken December 7, 2021. Designated as digital forensic expert.

Alexander Ricks PLLC, Charlotte, NC

Counsel, October 2012 to February 2019.

- Managed digital evidence in respect of complex commercial litigation; researched laws. Analyzed evidence and interviewed witnesses in forensics-related matters; commercial litigation.

North Carolina Department of Justice, Attorney General's Office, Charlotte, NC

Senior Civil Enforcement Attorney/Assistant Attorney General, March 2011 to October 2012.

- Special Assistant U.S. Attorney (SAUSA) in W.D.N.C. National Advocacy Center training in deposing, examining and cross-examining expert witnesses.

State of North Carolina, 26th Prosecutorial District, Charlotte, NC

Assistant District Attorney, May 2009 to March 2011.

- Over 150 bench trials, 4 jury trials. Interviewed over 1,000 witnesses as a prosecutor and worked closely with law enforcement. Member, US Secret Service Electronic Crimes Task Force.

Mayer Brown LLP, Charlotte, NC

Associate Attorney, July 2006 to May 2009.

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Nelson, Mullins, Riley and Scarborough, LLP, Charlotte, NC
Associate Attorney, September 2005 to July 2006.

Central Intelligence Agency, McLean, Virginia
Project Manager and Intelligence Analyst, Information Operations Center, August 2000 to March 2005.

- Cyber threat subject matter expert. Experience in malicious code analysis and reverse engineering.
- Graduate of 6-month “CAP” career intelligence analysis course.
- Approximately 90 hours of formal telecommunications training and coursework.

The White House, Washington, DC
Vice President’s Homeland Security Staff, Intern, September to December 2003.

Federal Bureau of Investigation, Washington, DC
Honors Intern, Criminal Investigative Division, June to August 1999.

Education

Georgetown University Law Center, Washington, DC
Juris Doctor, May 2005. Dean’s List.

University of North Carolina, Chapel Hill, NC
B.S., Mathematical Science (Computer Science Option), December 1999. Dean’s List.

Teaching Experience

National Computer Forensics Institute, Hoover, AL
Instructor (contracted), Computer Forensics for Judges, April 2016 to present (2-3 courses per year).

- Includes training on computer forensics, mobile forensics, cellular technology and cyber security. Presented legal coursework to Advanced Mobile Examiner class, June 2017.

Charlotte School of Law, Charlotte, NC
Adjunct Associate Professor, Cyber Crime, January 2012 to December 2015. Evidence, Fall 2012.

Champlain College, Burlington, VT
Online Adjunct Instructor, Computer Forensics and Digital Investigations, August 2014 to February 2015.

University of North Carolina at Charlotte, Charlotte, NC
Associate Graduate Faculty (Adjunct Thesis Adviser), 2013 to 2016.

- Graduate thesis panelist for Austin P. Acheson, “*Frisking the Smartphone: A Law Enforcement Guide for Warrantless Post-Detention Smartphone Searches*”, defended and approved August 2013.

Central Piedmont Community College, Charlotte, NC
Paralegal Program Instructor, Civil Litigation, January 2010 to December 2011.

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Professional Licenses/Training and Honors

EnCase® Certified Examiner (EnCE®), License 15-1114-6471.
Cellebrite Certified Mobile Examiner (CCME, capstone certification).
Cellebrite Advanced Smartphone Analysis (CASA).
Cellebrite (formerly BlackBag) Advanced Apple Forensics (CAAF).
Cellebrite Certified Physical Analyst.
Cellebrite Certified Logical Operator.
Admitted to the North Carolina State Bar, 2005 (current and in good standing).
• **Board Certified Specialist in Privacy and Information Security Law**, December 2020.
Certified Information Privacy Professional/United States (CIPP/US, October 2020).
Private Investigator, State of South Carolina, License PDC 3131.
North Carolina Super Lawyers Rising Star, Business Litigation, 2014-2018.
ABA National Outstanding Young Lawyer, 2012-13.
North Carolina Bar Association Pro Bono Younger Lawyer of the Year, 2009-2010.
Mayer Brown LLP Transactional Pro Bono Matter of the Year, 2008.
Mecklenburg County Bar Young Lawyer of the Year, 2008-09.
Central Intelligence Agency Exceptional Performance Award, 2001.

Professional Organizations

North Carolina State Bar Privacy and Data Security Specialization Committee,
• Advisory Board Member, 2017-present.
International Association of Privacy Professionals (2020-present).
American Bar Association, 2003 to present.
• **Advisory Committee on Law and National Security**, 2011 to 2014.
• House of Delegates Technology Committee, 2004-2005.
• House of Delegates, 2003-2005 and 2014-2018.
North Carolina Bar Association, 2006 to present.
• Young Lawyers Division Chair, 2013-2014.
• Technology Committee, 2016-2017.
Mecklenburg County Bar Board of Directors, Charlotte, NC, 2011 to 2014.
Mecklenburg County Bar Delegate to ABA House of Delegates, 2014 to 2019.

Lectures and Publications

Co-author, "The Impact of Technology on National Security Law", a chapter in *National Security Law: Fifty Years of Transformation from the Past to the Future*, ABA Publishing, November 2012.

Presenter, "The Download on the Federal Computer Fraud and Abuse Act", NC Bar Association CLE, Cary, NC, June 2013.

Contributing author, *The ABA Cybersecurity Handbook*, Chapter 4(III), "Considerations for the Government Lawyer", ABA Publishing, July 2013.

Panelist, "Cyber Surveillance", Charlotte Talks, 90.7 WFAE, National Public Radio, Charlotte, NC, September 16, 2013.

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Panelist, “The Tension between National Security and Personal Privacy”, UNC-Charlotte Constitution Day, Charlotte, NC, September 17, 2013.

Co-presenter, “Legal Authority for Government Surveillance”, CLE for the Mecklenburg County, NC Bar, Charles R. Jonas Federal Courthouse, Charlotte, NC, October 8, 2013.

Presenter, “Digital Forensics in Litigation”, NC CLE, Bobbitt Chapter, Inns of Court, Charlotte, NC, January 22, 2014, and again for the Triangle eDiscovery Group, Raleigh, NC, February 25, 2014.

Author, “Mobile Device Forensics: Pulling Back the Digital Curtain”, The True Bill, Newsletter of the NC Bar Association Criminal Justice Section, May 2014, available at <http://criminaljustice.ncbar.org/newsletters/the-true-bill-may-2014/mobile-device-forensics-pulling-backthe-digital-curtain>.

Presenter, “Computer and Mobile Device Forensics in Litigation”, NC Bar Association CLE, Wilmington, NC, June 20, 2014.

Panelist, “Careful Where You Click: Avoiding Scams and Staying Safe Online”, Annual Meeting of the NC Bar Association, Wilmington, NC, June 21, 2014.

Author, “Digital Forensics: In 1,000 Words or Less”, Mecklenburg Bar News, newsletter of the Mecklenburg County, NC Bar, p. 4, August 2014, available at http://www.meckbar.org/docs/Newsletter/Aug.2014/August2014_index.html.

Presenter, “Digital Forensics: The Evidence Left Behind”, Charlotte Regional Technology Executives Council (CRTEC), Charlotte, NC, September 9, 2014.

Presenter, “Digital Forensics for Lawyers: What’s in your E-Wallet?”, NC Bar Association webinar, Section of Law and Practice Management, September 18, 2014.

Panelist, “Mobile Device Security”, NC Technology Association (NCTA) Joint Meeting, Research Triangle Park, NC, September 23, 2014.

Presenter, “Mobile Device Forensics”, Information Systems Security Association (ISSA), Raleigh Chapter, November 6, 2014.

Panelist, “High Tech Ethics”, NC Bar Association CLE, Cary, NC, February 20, 2015.

Presenter, “Mobile Device Forensics in Litigation”, NC Bar Association CLE, Cary, NC, February 27, 2015.

Presenter, “New Frontiers: Emerging Issues in Estate Planning”, Presentation on digital forensics and assets, NC Bar Association CLE, Cary, NC, April 28, 2015.

Keynote Speaker, “Digital Forensics: The Evidence Left Behind”, International Function Point Users Group (IFPUG) Annual Conference, Charlotte, NC, April 30, 2015.

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Presenter, “Digital Forensics in Litigation”, Mecklenburg County Bar CLE, Charlotte, NC, May 14, 2015.

Panelist, “Trends in Mobile Forensics: Midyear Review”, Mobile Forensics World, Myrtle Beach, SC, June 2, 2015.

Presenter, “Search and Seizure of Digital Evidence: Updates on the Legal Framework”, Mobile Forensics World, Myrtle Beach, SC, June 2, 2015.

Contract Trainer, Advanced Mission Systems. Authored and taught full day tactical forensics course to U.S. military operators. Camp Dawson, West Virginia, August 14, 2015.

Presenter, “Digital Forensics: Hot Topics in Labor/Employment Law”, NC/SC Labor/Employment Law Annual Conference hosted by the South Carolina Bar, Wild Dunes Resort, Isle of Palms, SC, October 23, 2015.

Speaker/Presenter, “Digital Forensics in Litigation”, Women in eDiscovery luncheon, Raleigh, NC, October 27, 2015.

Panelist, “Unlocking the Mysteries of Cyber Liability”, Lawyers Mutual Insurance, Charlotte, NC and Greensboro, NC (five panels over two days), November 3-4, 2015.

Speaker/Presenter, “Digital Forensics in Litigation”, Metrolina Paralegals Association CLE, Charlotte, NC, February 25, 2016.

Speaker, “Cyber Threats for Business Professionals”, Queens University Executive MBA Program, Charlotte, NC, April 8, 2016.

Contract Trainer, Cellebrite, Inc., “Introduction to Mobile Device Forensics for Prosecutors/Government Attorneys”, hosted by U.S.S.S. Electronic Crimes Task Force (ECTF), Pinellas County Sheriff’s Office, Tampa, FL, April 21-22, 2016.

Speaker/Presenter, “Digital Forensics in Litigation”, NC Bar Association Paralegal Division Annual Meeting, Greensboro, NC, May 6, 2016.

Presenter, “Into the Breach: Legal and Other Obligations in Responding to a Data Compromise”, Mobile Forensics World, Myrtle Beach, SC, June 8, 2016.

Presenter, “Into the Breach: Legal and Other Obligations in Responding to a Data Compromise”, Information Systems Security Association (ISSA), Raleigh Chapter, July 7, 2016.

Panelist, “Using Technology Responsibly: An Interactive Discussion”, North Carolina Bar Association Professionalism Committee CLE, Cary, NC, December 9, 2016.

Panelist, “Cyber Safeguards and Procedures”, Lawyers Mutual Insurance of North Carolina CLE, Concord, NC, November 17, 2016, Cary, NC (two presentations), January 13, 2017, and Wrightsville Beach, NC, February 10, 2017.

Clark C. Walton

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Presenter, “Preparing to Testify to Digital Evidence in Court”, Techno Security Conference, Myrtle Beach, SC, June 5, 2017.

Contract Trainer, Cellebrite, Inc., “Digital Forensics for Legal Professionals”, hosted by Minnesota Bureau of Criminal Apprehension, St. Paul, MN, June 21-22, 2017.

Panelist, “Ensuring the Admissibility of Cloud Evidence”, Techno Security Conference, Myrtle Beach, SC, June 4, 2018.

Panelist, “Data in Business Litigation”, presented at Parker, Poe Adams & Bernstein, Charlotte, NC office on February 21, 2019. Presented again to the Bobbitt Chapter of the Inns of Court, Charlotte, NC, on March 13, 2019. NC State Bar “technology” CLE credit.

Lecture, “Take Control of Your Digital Footprint”, Center for Professional and Applied Ethics of the University of North Carolina Charlotte, April 17, 2019.

Presenter, “Digital Forensics: The Examiner’s ‘Top 10’ for Family Law Attorneys”, NC Bar Association Family Law Section Annual Meeting CLE, Asheville, NC, May 3, 2019.

Presenter, “Basics of Forensically Sound Digital Investigations”, Charlotte Chapter of the Association of Certified Fraud Examiners, Continuing Professional Education, Charlotte, NC, May 8, 2019.

Presenter (Cellebrite Contract Trainer), “Corporate Digital Forensic Investigations: From Acquisition to Testimony”, Techno Security Conference, Myrtle Beach, SC, June 3, 2019.

Presenter, “Data Security and Collections: Forensics, Privacy Considerations and Liability Issues”, NC Bar-approved CLE for clients of Ford Harrison LLP, Charlotte, NC, December 6, 2019.

Panelist, “Digital Privacy Round Table”, Business North Carolina virtual panel hosted/sponsored by Brooks Pierce, LLP and the N.C. Technology Association, October 6, 2020.

Presenter, “Networks and Investigations: Selected Topics for Counsel”, North Carolina Technology CLE presented virtually/via Zoom to approximately 70 NC-licensed attorneys, hosted by Ketan Soni, Esq., February 11, 2021.

Co-Presenter with Womble Bond Dickinson, “Alice in WeChatland: Into the Compliance and Discovery Rabbit Hole of Messaging Apps”, Association of Corporate Counsel, Charlotte, NC Chapter Technology CLE (presented virtually), April 15, 2021.

Co-Presenter, “Expert Witnesses in the North Carolina Business Court”, Mecklenburg County Bar 9th Annual North Carolina Business Court, CLE, Charlotte, NC, October 22, 2021.

EXHIBIT B

EXHIBIT C

EXHIBIT D

Table with multiple columns containing alphanumeric strings and file names, likely a case log or record list. The entries follow a repeating pattern of alphanumeric strings followed by a file name in quotes.

Table with multiple columns containing alphanumeric strings and file names, continuing the log or record list from the previous section. The structure is consistent with the first table.

Table with multiple columns containing alphanumeric strings and file names, continuing the log or record list. The entries appear to be more varied in format compared to the previous sections.

Table with multiple columns containing alphanumeric strings and file names, continuing the log or record list. The pattern of entries remains consistent with the rest of the document.

Table with multiple columns containing alphanumeric strings and file names, continuing the log or record list. The entries are densely packed and follow the established format.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

AFFIDAVIT OF LINDSAY COLBERT

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

I, Lindsay Colbert, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. I am employed by R&G Corp, d/b/a Century 21 The Harrelson Group as an office administrator and have been employed in this capacity from January 2016 to the present.
3. As office administrator, part of my responsibility is to manage the R&G Corp, Century 21 The Harrelson Group and HSS Barefoot, LLC, d/b/a Century 21 Barefoot's customer relationship management (CRM) technology, which is a competitive and proprietary database maintained on a username and password protected website through Real Geeks.
4. With the R&G Corp, Century 21 Harrelson Group and HSS Barefoot, LLC, d/b/a Century 21 Barefoot's CRM ("Harrelson/Barefoot CRM"), Century 21 Harrelson Group receives and maintains customer leads, which includes contact and other real estate related information, and assigns such customer leads to its' independent contractor real estate agents.

5. The Harrelson/Barefoot CRM is a large database of over 200,000 customer and real estate related leads which is restricted in access to myself and Greg Harrelson, as administrators, through secured usernames and passwords. This database and each of the leads in the database, whether assigned to an agent or not, belong to R&G Corp, Century 21 The Harrelson Group and HSS Barefoot, LLC, d/b/a Century 21 Barefoot. Greg Harrelson and myself are the only administrators for the Harrelson/Barefoot CRM and only administrators have the credentials to access, create, modify, and edit workflows in the Harrelson/Barefoot CRM.

6. Each Century 21 Harrelson Group independent contractor real estate agent has limited access to the CRM ("Agent's CRM"), secured through their own username and password, to which Greg Harrelson or myself, as administrator, assign leads to them from the Harrelson/Barefoot CRM.

7. In addition to leads assigned from the Harrelson/Barefoot CRM, the Agent's CRMs also likely contain other leads belonging the agent, which the agent cultivates individually. The leads in the Agent's CRM, which are not assigned from the Harrelson Group CRM, belong to the independent contractor real estate agent.

8. Beginning in July 2021, I began noticing glitches in the Harrelson/Barefoot CRM whereby workflows were being created, modified, and/or edited without Greg Harrelson or my authorization.

9. In August 2021, I contacted the Harrelson/Barefoot CRM technology support regarding a workflow that was communicated to leads contained in the Harrelson/Barefoot CRM, which neither Greg Harrelson or myself authorized. Upon researching, it was determined that those leads received workflow communications signed by Joel Barber. The Harrelson/Barefoot

CRM technology support was unable to identify how these workflows were created without authorization by Greg Harrelson or myself and unable to resolve the glitch.

10. Thereafter, both Greg Harrelson and myself changed and updated our administrator credentials and log-in information multiple times in an attempt to resolve the glitch.


11. The glitch continued to occur randomly thereafter and I again contacted the Harrelson/Barefoot CRM technology support on November 2, 2021. I discovered that Joel Barber was able to view, create, and edit workflows even though he did not have permission under account permissions and is not an administrator. As a result of further trouble shooting, the Harrelson/Barefoot CRM technology support forced a log out of Joel Barber's system and cleared his cache (i.e. deleting the information automatically stored in a device or temporary computer memory) believing that Joel Barber's browser cached (i.e. temporarily stored data) the information for access to the workflow system, to which he was not authorized, is not an administrator, and did not have account permissions. It was unknown at the time if this glitch was as a result of intentional or unintentional user error by Joel Barber or a system glitch.

12. After forcing a log out and clearing the cache on Joel Barber's system, Joel Barber was again able to access and edit a workflow to which he was not authorized, is not an administrator, and did not have account permissions. I again notified Harrelson/Barefoot CRM technology support and specifically instructed Joel Barber to stop creating any new workflows.

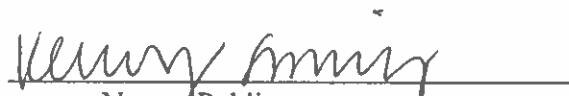
13. Neither Greg Harrelson or I created or authorized the new workflows signed by Joel Barber created between July 2021 to November 2021 through the Harrelson/Barefoot CRM. The only way that the new workflows could be created and signed by Joel Barber is for someone to have signed into the Harrelson/Barefoot CRM using unauthorized administrator credentials, or

using my or Greg Harrelson's passwords, which were not shared and permitted to be used by anyone else.

14. Joel Barber did not have authorization or permissions to access the Harrelson/Barefoot CRM, to use administrative functions, to access, edit, modify workflows, or assign or reassign leads.


LINDSAY COLBERT

Sworn to and subscribed before me,
this 25th day of March, 2022.


Notary Public
My Commission Expires: 12/17/2029

KELSEY SWINEY
Notary Public - State of South Carolina
My Commission Expires December 17, 2029

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,) **SECOND AFFIDAVIT OF KEVIN MILLS**

Plaintiffs,

v.

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.

I, Kevin Mills, attest under penalties of perjury, as follows:

1. I own and maintain an iMac computer, which is a computer used for my and Mills, LLC's business purposes by Montana Hartsock, an employee of Mills, LLC (the "iMac"). The iMac was sent to Clark Walton on February 14, 2022 to image and preserve.

2. I have reviewed the Ring camera footage for the following dates and times and recognize both Joel Barber and his vehicle on the footage after business hours on 12/11/22, 1/8/22, 1/15/22, 1/22/22, 1/29/22, and 2/7/22.

3. I have reviewed the Chrome activity as well as the data and documents accessed on the iMac after business hours on 12/11/22, 1/8/22, 1/15/22, 1/22/22, 1/29/22, and 2/7/22.

4. During the times in which Joel Barber and his vehicle were depicted on the Ring camera footage, the iMac was located in a locked office and password protected and the office and iMac were accessed without my or Montana Hartsock's permission or authorization.

5. During the times in which Joel Barber and his vehicle were depicted on the Ring camera footage, the iMac was accessed without my or Montana Hartsock's permission and authorization and my password protected websites, such as my Google and Gmail accounts and my Real Geeks accounts, were accessed, searched, viewed, modified, and downloaded without my permission or authorization.

6. My Google and Gmail accounts contain not only my personal, private and confidential information, such as bank account and other financial information, but also contain business Proprietary Information and Confidential Information, as well as confidential information of third-parties like potential buyers or sellers of real estate, such as telephone numbers, addresses, and potential financial information.

7. Prior to the times in which Joel Barber and his vehicle were depicted on the Ring camera footage, the iMac also shows that my Gmail account attachments were modified after hours around 1:12 a.m to 1:13 a.m. and without my authorization on October 16, 2021. These Gmail account attachments that were modified after hours contain not only my personal, private and confidential information, such as bank account, tax returns, and other financial information, but also contain business Proprietary Information and Confidential Information, as well as confidential information of third-parties like potential buyers or sellers of real estate, such as telephone numbers, addresses, and potential financial information.

8. I did not discover that the iMac was accessed without authorization or that my password protected websites, such as my Google and Gmail accounts and my Real Geeks accounts, were accessed, searched, viewed, modified, and downloaded without my permission or authorization until February 7, 2022.

9. After February 7, 2022, I discovered that password protected websites, such as my Google and Gmail accounts and my Real Geeks accounts, which contain my entire lead, prospect, client and customer database, as well as all of my company's operating documents and procedures, was accessed, searched, viewed, modified, and downloaded without my permission or authorization.

10. After February 7, 2022, I discovered that an InfusionSoft export of 358 clients, together with their contact information and property information, was downloaded without my permission or authorization.

11. After February 2, 2022 I discovered that my links and passwords folders, which contained all of my business log-ins and passwords was assessed. Upon information and belief, Joel Barber used my Google log-in and password, as well as the log-in and passwords for my website databases on his personal devices to access my accounts on occasions other than on 12/11/22, 1/8/22, 1/15/22, 1/22/22, 1/29/22, and 2/7/22.

12. The website databases for which Joel Barber accessed, viewed, and used my credentials for by gaining unauthorized access to Montana Hartsock's office and iMac in June 2021 and perhaps earlier, include, but are not limited to, the following:

- a. Real Geeks - Real Geeks is a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number. I have a personal log in for Real Geeks that allows me to view and manage my individual agent leads.
- b. Homebot – Homebot is a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address,

phone number and/or property address, and potential or actual buyer's name, email address and/or phone number. I have a personal log in for Homebot that allows me to view and manage my individual agent leads.

- c. InfusionSoft – InfusionSoft a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number. I have a personal log-in for InfusionSoft that allows me to view and manage my individual agent leads.
- d. Homelight.com and Homelight.com/simplesale – Homelight.com is website based referral service that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number. I have personal log in credentials for Homelight.com that allows me to view and manage my personal referrals.
- e. Fastexpert.com – Fastexpert.com is a website based referral service that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number. I have personal log in credentials for Fastexpert.com that allows me to view and manage my personal referrals.

13. After February 7, 2022, I discovered that the third-party leads, prospects, clients, and customers identified on my database were contacted by Joel Barber, without my permission or authorization, and upon information and belief, without the third-party's permission or

authorization. These include some of the leads that I discovered were deleted from my Google calendar, including but not limited to Vincent Bufano.

14. Some of my clients/customers or prospects for which I had meetings/appointments scheduled on my calendar prior to February 7, 2022, and which meetings/appointments were modified or deleted by Joel Barber on or prior to February 7, 2022, were contacted directly by Joel Barber and/or thereafter listed by Joel Barber.

15. After February 7, 2022, I discovered that my proprietary marketing documents, operations manuals, training materials, videos and processes were access accessed, searched, viewed, modified, and downloaded without my permission or authorization by Joel Barber, allowing him to replicate my exact business and undermine my ongoing business operations, good will, and agent and prospect relationships.

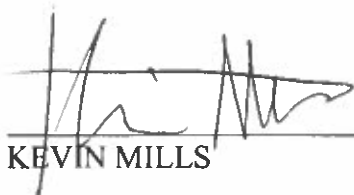
16. As a result of Joel Barber contacting third-party leads, prospects, clients, and customers identified on my database, without my permission or authorization, I have suffered injury to my reputation and good will with my existing clients and with prospective clients, recruiting and development of my real estate team and my real estate team's business, as well as injury to my ongoing business operations through unfair competition, which cannot be fully compensated with money damages.

17. I respectfully request this court enjoin Joel Barber from using, selling, or publishing any data or information contained or maintained on Kevin Mills' Google account, including but not limited to any Google Lists, Google Sheets, Google Calendar, Gmail, or the like, or any of website databases under Kevin Mills' individual credentials from June 2021 to the present.

18. I respectfully request this court enjoin Joel Barber from contacting by telephone, text, electronic messaging, mail, or email, or the like, any prospect, lead, customer, client or

individual using information contained or maintained on Kevin Mills' Google account, including but not limited to any Google Lists, Google Calendar, Gmail, or the like, or any of website databases under Kevin Mills' individual credentials from June 2021 to the present.

19. I respectfully request this court order Joel Barber to preserve, identify, and submit all electronic communication devices or file storage devices and platforms used or accessed by Joel Barber from June 2021 to the present for an expedited inspection, including but not limited to any (1) electronic communication equipment, including any computer, desktop, laptop, tablet, personal digital assistant, cellular telephone, or the like; (2) storage drive, including USB drives, Flash drives, external hard drives, or the like; or (3) cloud based storage accounts, including Dropbox, Amazon Drive, OneDrive, Box, Wrap-up, Egnyte, IDrive, MEGA, iCloud, or the like.



KEVIN MILLS

Sworn to and subscribed before me,
this 29th day of March, 2022.



Notary Public

My Commission Expires: 4/16/2029

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HSS BAREFOOT, LLC, d/b/a CENTURY 21 BAREFOOT; R&G CORP, d/b/a CENTURY 21 THE HARRELSON GROUP, and KEVIN MILLS, individually,

Plaintiffs,

v.

JOEL D. BARBER, individually and as licensed realtor, DARCY VARNEY, individually and as broker in charge, and EXP REALTY, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022-CP-26-01323

AFFIDAVIT OF VINCENT BUFANO

I, VINCENT BUFANO, attest under penalties of perjury, as follows:

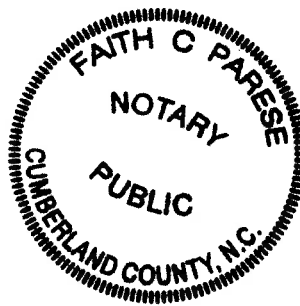
1. I live in Fayetteville, North Carolina, and am over 18 years of age.
2. Prior to February 2022, I had been in contact with Kevin Mills regarding potentially listing my home for sale. I had a good relationship with Kevin Mills and looked forward to working with him when I was ready to list.
3. I was looking forward to hearing from Kevin Mills again during February 2022 to list my property for sale, but did not hear from Kevin when I expected him to reach out.
4. Instead, I was contacted several times by Joel Barber from early February 2022 to late February 2022, repeatedly by email and in at least 10 telephone calls.
5. Joel Barber said that he was part of Kevin Mills' real estate team, was an extension of Kevin Mills, and was with Century 21 Barefoot Realty.
6. I did communicate with Joel thinking he was an extension of Kevin Mills.
7. Based on the communications from Joel Barber, I felt deceived and required explanation and assurance from Kevin Mills related to our relationship and my working with him and Century 21 Barefoot.

VINCENT BUFANO

Sworn to and subscribed before me, this 29 day of March, 2022.

Faith C. Parese
Faith C. Parese
Notary Public

My Commission Expires: 8/16/2024



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

**SECOND AFFIDAVIT OF GREG
HARRELSON**

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

I, Greg Harrelson, attest under penalties of perjury, as follows:

1. I am an adult over the age of 18 years residing in Horry County, South Carolina.
2. The Independent Contractor Agreement with Joel Barber incorporates by reference the Agent Manual and Company Office Policy Manual for Century 21 The Harrelson Group, which Joel Barber had notice of and consented to, includes the following terms and provisions:

SECTION I - OFFICE PROCEDURES

OFFICE HOURS

Century 21 The Harrelson Group – 9 to 5:00 Monday through Friday, Saturday 9:00 to 5:00 and Sunday 10:00 to 5:00

Century 21 Expert Advisors – 9:00 to 5:00 Monday through Friday, Closed Saturday and Sunday

Century 21 Barefoot Realty - 9:00 to 5:00 Monday through Friday, Saturday, 10:00 to 5:00, Sunday 1:00 to 5:00

Century 21 McAlpine and Associates – 8:30 to 5:00 Monday through Friday, Saturday 10 to 5 and Sunday - closed

HOLIDAYS AND HOLIDAY HOURS

The companies close for the following holidays: New Year's Day, Easter Sunday, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day.

Non-Competition Agreement. It is expressly understood and agreed that upon the termination or expiration of this agreement, the Associate will not contact the Companies databases or use the Companies sales strategies or marketing materials that were introduced during the Associates period of agreement with the Company, as a consultant, agent, independent contractor or otherwise, whether directly or indirectly. It is understood the Company has the rights to all Zillow, Real Satisfied, Realtor.com, Truila and all testimonies and reviews acquired during the Associate's period of agreement with the Company.

In the event the Associate shall breach any of the terms of this Agreement, in addition to any and all other remedies available to the Company shall be entitled to recover from the Associate all costs and expenses, including court costs and reasonable attorney fees and any other amounts incurred by the

Company in the collection of any amounts due to the Company or incurred by the Company to enforce terms outlined in this manual.

CONFIDENTIALITY

All records of this office, as well as conversations between Associates, Broker and Associates, and Associates and parties to the transaction, are considered confidential and shall not be disseminated. No files shall be removed from this office without the permission of the Broker and no other information obtained while working for this company shall be used to the detriment of the Broker.

Associates acknowledge that the Company has developed valuable goodwill and presently enjoys a good reputation in its area of industry. Associates further expressly recognizes and agrees that the items referred to below are secret, proprietary, and confidential to the Company and constitute the Company's trade secrets and confidential information. The term "Confidential Information" shall mean all information that Company has furnished or is furnishing to an Associate, whether furnished before or after the date of this Agreement, whether tangible or intangible and in whatever form or medium provided, as well as all information generated by Associates or by its representatives, that contains, reflects, or is derived from the furnished information. Furthermore, Confidential Information specifically includes: (a) all information as to past, present, and prospective customers and/or clients of the Company, including all records regarding products and services furnished to them by the Company; (b) all information as to past, present, and prospective Associates of the Company; (c) all information regarding Company employees and independent contractors; and, (d) the past, present, and prospective systems, records, financial information, methods, procedures, and techniques of the Company, including all aspects of its business, such as designing, manufacturing, installing, maintaining, promoting, marketing, pricing, advertising, and selling any products and services of the Company, and further including all aspects of the management, organization, and administration involved in the operations of the Company's business, whether provided to associates by the Company or developed or created by Associate or under Associate direction in pursuit of Associates engagement duties.

Associate expressly recognizes and agrees that if the Confidential Information should become known by a competitor of the Company or others outside the Company, such knowledge would result in substantial hardship, loss, damage, and injury to the Company. Associate understands that in Associate's capacity with the Company, the Associate will be exposed and have access to the Confidential Information of the Company and will become fully familiar with all aspects of the Company's business.

Nondisclosure of Confidential Information. Associate agrees that Associate will not, during the term of the Associates' relationship or any time thereafter directly or indirectly disclose the Company's Confidential Information to any entity or any person who is not an Associate or employee of the Company unless authorized by the president of the Company.

Return of Confidential Information and Other Property. On termination of the Associate's relationship with the Company, Associate will return to the Company all property of any nature pertaining to the Company's Confidential Information, whether provided to Associate by the Company or developed or created by Associate or under Associate's direction in pursuit of Associate's duties pursuant hereto. Associate agrees that all such property will remain the exclusive property of the Company, and Associate agrees that none of it will be copied, reproduced, or removed from the premises of the Company except in the ordinary course of the Company's business and in furtherance of the Company's interests.

CLIENT CONFIDENTIALITY

All records of this office, as well as conversations between Associated Licensees, the BIC or parties to the transaction, are considered confidential and shall not be disseminated.

No files shall be removed from this office without the permission of the BIC and no other information obtained while working for this company shall be used to the detriment of the BIC

All Associated Licensees shall also be obligated to honor the confidential information of any client or non-client party to any transaction, as designated in writing on a Disclosure of Real Estate Brokerage Relationships form or other document and as outlined by law.

ACCESS TO COMPUTER EQUIPMENT AND RELATED SYSTEMS

The Company computer equipment and related systems are provided only for the use of employees or Associated Licensees and only for legitimate business purposes. Unauthorized access to and use of such equipment and systems constitutes a breach of data security and a misappropriation of the Company assets and resources.

3. A copy of Joel Barber's Acknowledgment and Agreement to the Agent Manual and Company Office Policy Manual is attached hereto as **Exhibit A**.

4. I have reviewed the Ring camera footage for the following dates and times and recognize both Joel Barber and his vehicle on the footage after business hours on 12/11/22, 1/8/22, 1/15/22, 1/22/22, 1/29/22, and 2/7/22.

5. I have reviewed the activity as well as the data and documents accessed on the Mac Mini after business hours on 12/11/22, 1/8/22, 1/15/22, 1/22/22, 1/29/22, and 2/7/22.

6. During the times in which Joel Barber and his vehicle were depicted on the Ring camera footage, the Mac Mini was located in a locked office and password protected and the office and Mac Mini were accessed without my or Stacy Weaver's permission or authorization.

7. During the times in which Joel Barber and his vehicle were depicted on the Ring camera footage, the Hard Drive was connected to the Mac Mini. If someone was permitted to have access to the locked office and permitted to use the Mac Mini in the locked office, "Guest" credentials could be used on the Mac Mini with limited functionality and could allow access to the Hard Drive and all of my passwords.

8. Neither Stacy Weaver nor I provided Joel Barber permission to enter the locked office of permission to use the Mac Mini in the locked office.

9. The Hard Drive and home screen assessed by "Guest" log in contained Greg Harrelson's passwords for the administrator of the Harrelson/Barefoot CRM, including website databases, such as Real Geeks and Homebot.

10. In addition to the Harrelson/Barefoot CRM, based on the data I have reviewed since February 7, 2022, Joel Barber accessed my personal or administrator login ids and passwords, i.e. my credentials, by gaining unauthorized access to Stacy Weaver's office and Mac Mini, in June 2021 and perhaps earlier, and was accessing the website databases without my authorization or permission.

11. The website databases for which Joel Barber accessed, viewed, and used my credentials for by gaining unauthorized access to Stacy Weaver's office and Mac Mini in June 2021 and perhaps earlier, include, but are not limited to, the following:

- a. Real Geeks - Real Geeks is a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have administrator credentials for Real Geeks that allows me to view and manage individual agent leads and company leads, and transfer leads among company agents.
- b. Homebot – Homebot is a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have administrator credentials for Homebot that allows me to view and manage individual agent leads and company leads, and transfer leads among company agents.
- c. InfusionSoft – InfusionSoft a website based CRM database that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have administrator credentials for InfusionSoft that allows me to view and manage individual agent leads and company leads, and transfer leads among company agents.
- d. Homelight.com and Homelight.com/simplesale – Homelight.com is website based referral service that contains prospect and lead contact information including

potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for Homelight.com.

- e. Fastexpert.com – Fastexpert.com is a website based referral service that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for Fastexpert.com.
- f. Effectiveagents.com – Effectiveagents.com is a website based referral service that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for Effectiveagents.com.
- g. Upnest.com – Upnest.com is a website based referral service that contains prospect and lead contact information including potential or actual seller's name, email address, phone number and/or property address, and potential or actual buyer's name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for Effectiveagents.com.

- h. Glenbeck.com – Glenbeck.com is a website based referral service that contains prospect and lead contact information including potential or actual seller’s name, email address, phone number and/or property address, and potential or actual buyer’s name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for Glenbeck.com.
- i. Pipedrive – Pipedrive is a website based CRM that contains prospect and lead contact information including potential or actual seller’s name, email address, phone number and/or property address, and potential or actual buyer’s name, email address and/or phone number, as well as other valuable information such as the urgency of the need. I have personal log in credentials for pipedrive.com.

12. At no time did I provide Joel Barber with the log in or passwords for the administrator of the Harrelson/Barefoot CRM, and other website databases, such as Real Geeks and Homebot, and others listed above.

13. At no time did I create or authorize new workflows signed by Joel Barber and created between July 2021 and November 2021 using my administrator credentials for the Harrelson/Barefoot CRM.

14. At no time did I authorize the transfer of leads from other agents to Joel Barber’s individual Homebot account using my administrator credentials for the Harrelson/Barefoot CRM.

15. I discovered that the Harrelson/Barefoot CRM and other website databases, such as Real Geeks and Homebot, were being accessed, searched, viewed, modified, and downloaded using administrator credentials without my permission or authorization on or after February 7, 2022.

16. The Harrelson/Barefoot CRM and the other website databases, such as Real Geeks and Homebot, and others listed above, have tremendous value to my company and myself because I have spent, in many cases, many years and money developing personal and business relationships with agents and prospects.

17. The Harrelson/Barefoot CRM and the other website databases, such as Real Geeks and Homebot, and others listed above, can be used and have been used by Joel Barber to do damage to my personal and company business relationships with agents and prospects; however, it is of minimal positive value to a third-party because that third-party does not have the existing personal and company business relationships.

18. The value of this information to a third-party is, at most, through selling the information on the databases for a referral fee, typically 25% of the commission earned, which is only paid at the time a prospect closes on a sale, or attempting to contact individuals on these databases and become the agent for the prospects, which would result in a commission at closing.

19. The estimated positive value of this list to a third-party is approximate \$1,250 per month paid at the time a sale closes; however, the damage that a third-party can do to my and my company's relationships and good will by interfering and using the Confidential and Proprietary Information is far greater.

20. After February 7, 2022, I discovered that the third-party leads, prospects, clients, and customers identified on Harrelson/Barefoot CRM and other website databases, such as Real Geeks and Homebot, were contacted by Joel Barber, without my or Century 21 The Harrelson Group's permission or authorization, and upon information and belief, without the third-party's permission or authorization.

21. As a result of Joel Barber contacting third-party leads, prospects, clients, and customers identified on Harrelson/Barefoot CRM and other website databases, such as Real Geeks and Homebot, without my or Century 21 The Harrelson Group's permission or authorization, Century 21 The Harrelson Group and Century 21 Barefoot have suffered injury to its reputation and good will with existing independent contractors, prospective independent contractors, existing clients and with prospective clients, as well as injury to its my ongoing business operations through unfair competition, which cannot be fully compensated with money damages.

22. I respectfully request this court enjoin Joel Barber from using, selling, or publishing any data or information contained or maintained on any of website databases under Greg Harrelson's individual or administrator credentials from June 2021 to the present.

23. I respectfully request this court enjoin Joel Barber from contacting by telephone, mail, or email, any prospect, lead, customer, client or individual using information contained or maintained on any of website databases under Greg Harrelson's individual or administrator credentials from June 2021 to the present.

24. I respectfully request this court order Joel Barber to preserve, identify, and submit all electronic communication devices or file storage devices and platforms used or accessed by Joel Barber from June 2021 to the present for inspection, including but not limited to any (1) electronic communication equipment, including any computer, desktop, laptop, tablet, personal digital assistant, cellular telephone, or the like; (2) storage drive, including USB drives, Flash drives, external hard drives, or the like; or (3) cloud based storage accounts, including Dropbox, Amazon Drive, OneDrive, Box, Wrap-up, Egnyte, IDrive, MEGA, iCloud, or the like.


GREG HARRELSON

Sworn to and subscribed before me,
this 29th day of March, 2022.

Donna F. Baxley
Notary Public
My Commission Expires: 4-2-2024

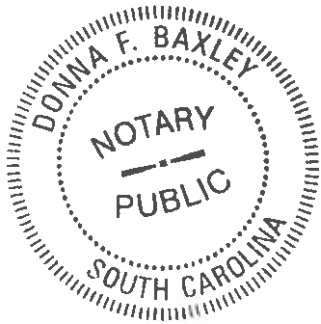


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT

The Undersigned Associated Licensee or employee of Century 21 The Harrelson Group and/or Century 21 Barefoot Realty (hereafter referred to as "the Company") hereby acknowledges receipt of a copy of the Company Office Policy Manual. As used in this policy manual, the word "Company" means the Company and its Associated Licensees and "Office" means a specific Company office location and its Associated Licensees.

As a condition of his/her association or employment with the Company, the Associated Licensee or employee agrees to abide by the terms of this Policy Manual as presently adopted and as amended in the future by publication from management and at management's discretion. This Policy Manual supersedes, replaces, and makes null and void any and all Policy Manuals previously issued, distributed, or communicated by the Company to its Associated Licensees or employees.

This Policy Manual and the policies herein do not create a contract of employment, express or implied, between the Company and its Associated Licensees or employees. All Associated Licensees or employees of the Company are Associated Licensees or employees at will. Although the Company hopes that the relationship with its Associated Licensees and employees will be a long and enjoyable one, the relationship may be terminated by either party at any time, with or without cause.

<i>Joel Barber</i>	dotloop verified 03/14/17 11:15 AM EDT 1A6B-UDQI-ZRY0-NQFS
--------------------	------------------------------------------------------------------

Name

Date

ACKNOWLEDGMENT AND AGREEMENT

The undersigned agent or employee of this company acknowledges receipt of a copy of the company Agent Manual.

As a condition of his/her association or employment with this company the agent or employee agrees to abide by the terms of this Manual as presently adopted and as amended in the future by publication from management of any changes.

This handbook, and the policies CONTAINED in it, does not create a contract of employment, express or implied, between CENTURY 21 THE HARRELSON GROUP AND CENTURY 21 BAREFOOT REALTY and its INDEPENDENT CONTRACTORS. All INDEPENDENT CONTRACTORS of CENTURY 21 THE HARRELSON GROUP AND CENTURY 21 BAREFOOT REALTY are INDEPENDENT CONTRACTORS at will. Although we hope that your employment relationship with CENTURY 21 THE HARRELSON GROUP AND CENTURY 21 BAREFOOT REALTY will be a long and enjoyable one, either you or the company may terminate the relationship at any time, with or without cause or notice.

Joel Barber dotloop verified
03/14/17 11:15 AM EDT
TGX2-ISBN-B5GU-N908

Agent or Employee

Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-01323
)	
HSS BAREFOOT, LLC d/b/a CENTURY 21)	
BAREFOOT, R&G CORP d/b/a CENTURY 21)	
THE HARRELSON GROUP, and KEVIN MILLS,)	
Individually,)	
)	
Plaintiffs,)	
	)	MEMORANDUM IN SUPPORT
v.)	
)	
JOEL D. BARBER, individually and as licensed)	
realtor, DARCY VARNEY, individually and as)	
broker in charge, and EXP REALTY, LLC,)	
)	
Defendants.)	

NOW COME the Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, Individually, by and through undersigned counsel, hereby submit this Memorandum in support of their Motion for Temporary Restraining Order and Temporary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure.

BACKGROUND

HSS Barefoot, LLC d/b/a Century 21 Barefoot (“C21 Barefoot”) and R&G Corp d/b/a Century 21 The Harrelson Group (“C21 Harrelson”) (collectively, “Plaintiffs”) are real estate companies in the greater Myrtle Beach area. Given their line of business, C21 Harrelson maintains certain proprietary information, including non-public databases, domain names, trade secrets, copyrights, ideas, techniques, and other information regarding C21 Harrelson’s actual or anticipated business and business development. Harrelson Aff., ¶ 12. The same holds true for C21 Barefoot. Mills Aff., ¶ 8. This proprietary information is critical to the development of client relationships, including leads on possible home buyers and sellers.

In March 2017, Defendant Joel Barber (“Barber”) entered into an Independent Contractor and Broker Agreement with C21 Harrelson. Compl., ¶ 16. In relevant part, the terms and conditions of the Independent Contract and Broker Agreement provide:

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to handling of “leads” and prospects assigned to him/her and as to the conduct of Independent Contractor’s services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM’s, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

Compl. ¶ 32.

This agreement terminated on February 7, 2022, when C21 Harrelson discovered Barber entered into the C21 Harrelson and C21 Barefoot office building outside of business hours and without authorization. Compl. ¶ 19. C21 Harrelson maintains a Ring© Camera System, which observed Barber accessing the office without authorization during the following times:

- a. December 11, 2021 –
 - i. After 10:30 PM Defendant is seen entering and exiting building
- b. January 8, 2022 --
 - i. Between 3:30 AM and 5:00 AM Defendant is seen entering and exiting the building

- c. January 15, 2022 --
 - i. Between 2:00 AM and 3:00 AM Defendant is seen entering and exiting the building
- d. January 22, 2022 --
 - i. Between 1:30 AM and 3:30 AM Defendant is seen entering and exiting the building
- e. January 29, 2022 --
 - i. Between 4:00 AM and 5:30 AM Defendant is seen entering and exiting the building
- f. February 7, 2022 --
 - i. Between 3:00 AM and 4:30 AM Defendant is seen entering and exiting the building

Harrelson Aff., ¶ 15, Mills Aff., ¶ 9. During these incursions, Barber accessed the locked offices and password-protected computers of Stacy Weaver (“Weaver”), a C21 Harrelson employee, and Montana Hartsock (“Hartsock”), an employee of Mills, LLC, while Weaver and Hartsock were not present. Compl. ¶ 20; Harrelson Aff. ¶ 16-18; Mills Aff. ¶ 10-12.

Both Weaver and Hartsock lock their respective offices when they are absent, and Barber does not have access to either office. Weaver Aff., ¶ 5, Hartsock Aff., ¶ 5. During these times when Barber entered the building without authorization, and likely at earlier dates and times as well, he took, without permission or authority, files or copies of files from Weaver’s computer containing login and password information for Harrelson’s databases, which contain proprietary information—especially prospective clients and leads owned and maintained by Plaintiffs. Compl. ¶ 23. He did the same and more from Hartsock’s computer, going so far as to delete prospective clients, client lists, and contact information. Compl. ¶ 24. In addition, Barber altered

or manipulated the electronic data from Hartsock's computer, resulting in copying, changing, and deleting marketing information, intellectual property, listings, listing information, and photographs owned by C21 Harrelson, C21 Barefoot, and Mills. Compl. ¶ 25-26.

Prospects and leads that were in Mills' non-public database(s) disappeared, and Mills was informed by several of these prospective clients that Barber began contacting them after February 7, 2022. Mills Aff., ¶ 16. Barber outright publicly listed and closed deals with other leads. Mills Aff., ¶ 17.

Barber, by and through his principle Defendants, EXP Realty, LLC ("EXP Realty") and broker-in-charge Darcy Varney ("Varney"), offered to sell the databases in exchange for a 25 percent referral fee of any commissions generated from the leads and prospective clients in the database. Compl. ¶ 27. Barber also sought to use the data, intellectual property, and proprietary information from Hartsock's computer for his, EXP Realty's, or Varney's listings or sales. Compl. ¶ 28.

Third parties then began contacting C21 Harrelson who had either purchased or were attempting to sell this non-public proprietary information maintained by C21 Harrelson. Harrelson Aff., ¶ 19. Additionally, Barber has listed properties for sale using information that would only have been accessible through Plaintiffs' non-public database. Harrelson Aff., ¶ 20.

Plaintiffs' prospects have represented that they had conversations with Barber after he was no longer associated with C21 Harrelson. Weaver Aff., ¶ 16; Mills Aff., ¶ 16.

STANDARD OF REVIEW

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Greenville Bistro, LLC v. Greenville Cty.*, 435 S.C. 146, 160, 866 S.E.2d 562, 569 (2021) (quoting *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004)). "The facts alleged must be

sufficient to support a temporary injunction and the injunction must be reasonably necessary to protect the rights of the moving party.” *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007).

ARGUMENT

Under South Carolina law, a party seeking a temporary injunctive relief must show (1) it will suffer irreparable harm without the injunction; (2) a likelihood of success on the merits; and (3) no adequate remedy at law. *Greenville Bistro*, 435 S.C. at 160, 866 S.E.2d at 569.

I. C21 BAREFOOT, C21 HARRELSON, AND MILLS HAVE EACH DEMONSTRATED THAT THEY WILL SUFFER IRREPARABLE HARM WITHOUT INJUNCTIVE RELIEF.

C21 Barefoot, C21 Harrelson, and Mills submit that, in the absence of injunctive relief here, they will suffer irreparable harm in the form of lost prospective clients, lost business leads, and damaged relationships caused by the conduct of Barber, EXP Realty and Varney.

The South Carolina Trade Secrets Act, S.C. Code § 39-8-10 *et seq.*, defines a trade secret as:

- (a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:
 - (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and
 - (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code § 39-8-20(5). The Supreme Court of South Carolina has indicated that trade secrets warranting protection justify the grant of injunctive relief. *E.g., Wilson v. Gandis*, 430 S.C. 282, 290, 844 S.E.2d 631, 636 (2020); *see also* S.C. Code § 39-8-50(A). In fact, the Trade Secrets Act, recognizing that the misappropriation of trade secrets inherently creates a risk of irreparable harm, recognizes that a litigant may recover not only damages, but may also obtain injunctive

relief. *Compare* S.C. Code § 39-8-40 with S.C. Code § 39-8-50(A); *see also* *Wilson*, 430 S.C. at 290, 844 S.E.2d at 636.

While it is true that revenues generated from home sales can be quantified as money damages, what's at stake for the Plaintiffs far exceeds just the sale of certain real estate. Barber's use and abuse of trade secrets held by C21 Barefoot, C21 Harrelson, and Mills directly, threaten how the plaintiffs' business operations are run, their reputation and good will. The prospective client leads that Mills and Harrelson have developed for years, as have the other employees of C21 Barefoot and C21 Harrelson, are directly threatened by the conduct of Barber, Varney, and EXP Realty. Barber has already demonstrated his intent by using his current real estate company, EXP Realty, and broker-in-charge to sell these leads for a referral fee to sell the proprietary, non-public databases created and protected by C21 Barefoot and C21 Harrelson.

II. C21 BAREFOOT, C21 HARRELSON, AND MILLS HAVE DEMONSTRATED, BASED ON THE PLEADINGS, VERIFICATION, AND AFFIDAVITS FILED IN THIS MATTER, A LIKELIHOOD OF SUCCESS ON THE MERITS FOR EACH OF THEIR ASSERTED CLAIMS.

A. Breach of Contract and Breach of Contract Accompanied By Fraudulent Act.

"The required elements of a contract are an offer, acceptance, and valuable consideration." *Armstrong v. Collins*, 366 S.C 204, 222, 621 S.E.2d 368, 377 (Ct. App. 2005).

"The elements for breach of contract are the existence of the contract, its breach, and damages caused by such breach." *Road, LLC v. Beaufort Cty.*, 433 S.C. 164, 175, 857 S.E.2d 371, 376 (Ct. App. 2021) (quotation omitted).

Breach of contract accompanied by a fraudulent act requires, in addition to the breach, fraudulent intent relating to the breach of contract, and a fraudulent act accompanying the breach. *Ladson v. Harvest Hope Food Bank*, No. 2012-UP-292, 2012 WL 10841817, at *1 (S.C. Ct. App. May 16, 2012) (unpublished) (citing *Armstrong*, 366 S.C. at 223, 621 S.E.2d at 377).

Here, the plaintiffs have demonstrated the existence of a contract, specifically, the Independent Contractor and Broker Agreement between Barber and C21 Harrelson. Harrelson Aff., Ex. A. Plaintiffs have alleged that Barber breached Paragraphs 11 and 12 of the contract, specifically by taking proprietary information and data belonging to Plaintiffs, contacting prospective clients and clients of C21 Barefoot and C21 Harrelson and generally interfering with leads that were properly the proprietary information of the Plaintiffs. Compl. ¶ 32-34; Harrelson Aff., ¶ 19-20 (commenting on being contacted by third parties that purchased or are attempting to sell non-public proprietary information and observing that Barber listed properties for sale using Plaintiffs' proprietary information). As a result of Barber's conduct, C21 Harrelson has sustained damages in the form of lost business leads and client relationships, which Barber has misappropriated for his benefit and the benefit of EXP Realty and Darcy Varney. Harrelson Aff., ¶ 21; Compl. ¶ 35.

In addition to their breach of contract claim, Plaintiffs have also offered evidence tending to show fraudulent intent on the part of Barber as well as a fraudulent act accompanying the breach of contract. Barber fraudulently intended to take prospective clients and business leads from C21 Harrelson to a competing real estate company and a broker for his own competing personal or pecuniary benefit. Compl. ¶ 38. Moreover, Barber agreed to split the profits on any resulting sale. Mills Aff., ¶ 13. Beyond these fraudulent acts, Ring© Camera System surveillance observed Barber sneaking into the office no fewer than six times during late 2021 and early 2022 at very late or very early times. Harrelson Aff., ¶ 15. While there, he accessed the locked offices of Stacy Weaver and Montana Hartsock, as well as their computers without authorization to obtain the proprietary information at issue in this suit. Harrelson Aff., ¶ 16-18, Mills Aff., ¶ 10-12.

B. Trespass.

“A trespass is any interference with one’s right to the exclusive, peaceable possession of his property.” *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013) (quotation omitted). Here, Plaintiffs have shown a likelihood of success on the merits for their trespass claim by, *inter alia*, pointing to the Ring© Camera System surveillance that observed Barber sneaking into the office, and other physical evidence reflects that he was accessing locked offices and computers without authorization. Harrelson Aff., ¶ 15-18, Mills Aff., ¶ 10-12. Barber did not have authorization to be in the locked offices at those times in question, thereby creating an interference with Plaintiffs’ exclusive possession of the property—both physical property, as well as digital property. Harrelson Aff., ¶ 15-18, Mills Aff., ¶ 10-12.

C. Conversion.

“Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights.” *Hawkins v. City of Greenville*, 58 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App.2004) (quoting *Crane v. Citicorp Nat’l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993)). Other jurisdictions recognize that conversion also applies to property, including electronic property, that is quasi-tangible, or that may be represented by tangible items. *E.g.*, *Terarecon, Inc. v. Fovia, Inc.*, No. C 05-4407 CW, 2006 WL 1867734, at *9 (N.D. Cal. July 6, 2006); *Thyrroff v. Nationwide Mut. Ins. Co.*, 8 N.Y.3d 283, 291 832 N.Y.S.2d 873, 878 (2007); *Shmueli v. Corcoran Grp.*, 802 N.Y.S.2d 871, 873 (Sup. Ct. 2005) (“The first cause of action asserts that a computerized list prepared by plaintiff and maintained on the computer furnished to her by defendants, was converted. The issue of whether a computerized list can be converted, is a new one in our law. The court holds that the cause of action for conversion will lie.”).

As evidenced at length, Barber, without having authorization, and using computers without authorization, acquired dominion and control over proprietary information and non-public databases that are the property of C21 Harrelson, C21 Barefoot, and/or Mills, and has been using it to the exclusion of Plaintiffs—most egregiously, by (1) deleting it from Plaintiffs’ possession and (2) trying to sell it to other third parties for a profit (whether for himself, EXP Realty, or Darcy Varney). Of course, the sale of this information is to the exclusion of Plaintiffs’ rights in the property, as the property’s value is derived from not being generally known to the public or other third parties.

D. Violation of the South Carolina Computer Crime Act, S.C. Code § 16-16-10 *et seq.* and Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*

The South Carolina Computer Crime Act, S.C. Code § 16-16-10, provides that:

It is unlawful for a person to wilfully, knowingly, maliciously, and without authorization or for an unauthorized purpose to:

(a) directly or indirectly access or cause to be accessed a computer, computer system or computer network for the purpose of:

(i) devising or executing a scheme or artifice to defraud;

(ii) obtaining money, property, or services by means of false or fraudulent pretenses, representations, promises; or

(iii) committing any other crime.

(b) alter, damage, destroy, or modify a computer, computer system, computer network, computer software, computer program, or data contained in that computer, computer system, computer program, or computer network or introduce a computer contaminant into that computer, computer system, computer program, or computer network.

S.C. Code § 16-16-20(1).

Similarly, the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, prohibits anyone intentionally accessing a computer without or exceeding authorization and obtaining information or anything of value from any “protected” computer. 18 U.S.C. § 1030(a)(2), (4).

In this case, Plaintiffs have provided evidence in the form of sworn affidavits evidencing the fact that Barber accessed computers without authorization and modified, deleted, or

transferred information on non-public databases. Harrelson Aff., ¶ 18; Mills Aff. ¶ 12. In addition, Plaintiffs have offered evidence that Barber took information from these computers and has attempted to obtain a profit from this information, whether for himself individually or on behalf of EXP Realty and/or Darcy Varney. Recinos Aff., ¶ 7-8; Colbert Aff., ¶ 9-14; Harrelson Aff., ¶ 19-20. Thus, under the South Carolina Computer Crime Act, Plaintiffs have shown Barber wilfully and knowingly accessed computers without authorization for the purpose of obtaining proprietary information and property (in the form of non-public databases and client leads), in addition to the fact that the overwhelming evidence shows Barber altered or modified computer programs, especially in the form of removing files onto an external hard drive during the times he accessed the building. *See* Walton Aff., ¶ 10. Likewise, under the Computer Fraud and Abuse Act, Plaintiffs have shown that Barber accessed their computers without authorization to obtain items of value (which he successfully took). Thus, Plaintiffs have shown a likelihood of success on the merits for their cause of action under the S.C. Computer Crime Act and the Computer Fraud and Abuse Act.

E. Violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 *et seq.*

The South Carolina Unfair Trade Practices Act makes it unlawful for anyone to use “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” S.C. Code § 39-5-20(a). “To recover an in action under SCUTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the plaintiff suffered actual, ascertainable damages as a result of the conduct; and (3) the unfair or deceptive act affected public interest.” *T-Zone Health, Inc. v. SouthStar Cap., LLC*, No. 2:20-CV-02519-DCN, 2021 WL 3913551, at *3 (D.S.C. Sept. 1, 2021).

The facts here, as shown by affidavit, show a strong likelihood of success on Plaintiffs' SCUTPA claim. Barber was engaged in several unfair and deceptive acts, including his several intrusions onto office property, Harrelson Aff., ¶ 15, accessing locked offices without a key, Harrelson Aff., ¶ 16, Mills Aff., ¶ 10, accessing, modifying, and deleting protected information on password-protected computers, Harrelson Aff., ¶ 18, Mills Aff., ¶ 12, and attempting to sell proprietary, non-public information at a profit, Harrelson Aff., ¶ 19-20. Plaintiffs are losing money due to the lost leads and listings that Barber appropriated for himself and for the benefit of competing agents and companies including EXP Realty and Darcy Varney, Recinos Aff., ¶ 7, Weaver Aff., ¶ 16, Mills Aff., ¶ 18-20. Finally, the actions of Barber, EXP Realty, and Varney have been repeated and are capable of repetition, thereby having an adverse impact on the public interest. Compl. ¶ 62; Mills Aff., ¶ 19; Recinos Aff., ¶ 7-8; *see also Big Red Box, LLC v. Square, Inc.*, No. CV 3:18-758-SAL-SVH, 2020 WL 465928, at *15 (D.S.C. Jan. 22, 2020), *report and recommendation approved in part sub nom. Big Red Box, LLC v. Tye Grisel*, No. 3:18-CV-00758-JMC, 2020 WL 5545283 (D.S.C. Sept. 16, 2020) ("Under South Carolina law, unfair or deceptive acts have an adverse impact upon the [public] if those acts have the potential for repetition." (quoting *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574, 581 (D.S.C. 2003))).

III. THERE IS NO ADEQUATE REMEDY AT LAW.

Plaintiffs submit that there is no adequate remedy at law to compensate for the continuing harm being inflicted by the Defendants. Barber's use and abuse of trade secrets held by C21 Barefoot, C21 Harrelson, and Mills directly threaten how the Plaintiffs' business operations are run. The prospective client leads that Mills and Harrelson have developed for years, as have the other employees of C21 Barefoot and C21 Harrelson, are directly threatened by the conduct of Barber, Varney, and EXP Realty. These relationships are not simply rebuilt as though they are a

construction project, and sales are not recovered in the future. Plaintiffs need the Court's intervention to ensure that these relationships and business leads remain their property, and are not used by any competing persons or entities, including Joel Barber and his new competing real estate company, EXP Realty, and broker-in-charge, Darcy Varney.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant their Motion for Temporary Restraining Order and Injunction. Specifically, Plaintiffs request an Order from this Court enjoining any of the Defendants from using any information of the Plaintiffs including, but not limited to, non-public databases, client information, prospective client information, leads, marketing material, operations materials, manuals, or the like. Plaintiffs also request expedited inspection and identification of all electronic devices and electronic storage accessed or used by Joel Barber, his agents, principals, affiliates, employees, or Barber Real Estate, Inc. from June 1, 2021 to the present, and such further relief as this Court may deem just and proper.

Dated: March 30, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-01323
)	
HSS BAREFOOT, LLC, d/b/a CENTURY 21)	
BAREFOOT; R&G CORP, d/b/a CENTURY 21)	
THE HARRELSON GROUP, and KEVIN MILLS,)	
individually,	)	ORDER GRANTING TEMPORARY
	)	INJUNCTION
)	
Plaintiffs,)	
)	
v.)	
)	
JOEL D. BARBER, individually and as licensed)	
realtor, DARCY VARNEY, individually and as)	
broker in charge, and EXP REALTY, LLC,)	
)	
Defendants.)	

This matter came before the Court pursuant to Rule 65(a) and (b) of the South Carolina Rules of Civil Procedure upon Motion of Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, Individually, by and through their undersigned counsel, for a Temporary Restraining Order and Temporary Injunction.

Amanda A. Bailey, Esquire, appeared on behalf of the Plaintiffs. Jason Daigle, Esquire, appeared on behalf of the Defendant, Joel D. Barber. Lawrence Hershon, Esquire, appeared on behalf of the Defendants, Darcy Varney and EXP Realty, LLC.

For the reasons set forth below, I grant Plaintiffs’ Motion for Temporary Injunction.

PROCEDURAL HISTORY

1. Plaintiffs filed the above captioned Summons and Verified Complaint on March 2, 2022, together with the Motion for Temporary Restraining Order and Temporary Injunction, Affidavit of Kevin Mills, and Affidavit of Greg Harrelson.

2. Defendants, Joel Barber, Darcy Varney, and EXP Realty, LLC, were served with the Summons and Verified Complaint, and the Motion and Affidavits filed on March 2, 2022, on March 3, 2022.

3. The Notice of Hearing on the Motion for Temporary Restraining Order and Temporary Injunction, scheduled for March 31, 2022 at 10:00 a.m., was served on Defendants, Darcy Varney, and EXP Realty, LLC, on March 8, 2022.

4. Jason Daigle, Esquire, accepted service, on behalf of Joel Barber, of the Notice of Hearing on the Motion for Temporary Restraining Order and Temporary Injunction, scheduled for March 31, 2022 at 10:00 a.m., on March 14, 2022.

5. In support of the Motion, and in addition to the Verified Complaint and Affidavit of Kevin Mills, and Affidavit on Greg Harrelson filed on March 2, 2022, Plaintiffs submitted the following documents and testimony to the Court at or prior to the hearing: Affidavit of Jimmy Recinos, Affidavit of Montana Hartsock, Affidavit of Stacy Weaver, Affidavit of Clark Walton, Affidavit of Lindsay Colbert, Second Affidavit of Kevin Mills, Second Affidavit of Greg Harrelson, Affidavit of Vincent Bufano, Memorandum in Support, and Supplemental Memorandum in Support.

6. In opposition to the Motion, Defendants, EXP Realty, LLC and Darcy Varney, filed the Affidavit of Darcy Varney.

7. At the time of this motion, no other filings on behalf of Defendants have been filed and responsive pleadings are not yet due.

DISCUSSION¹

8. “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

9. The plaintiff’s complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007).

10. Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 160, 866 S.E.2d 562, 569-570 (2021).

11. “Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50–51, 674 S.E.2d 505, 508–09 (Ct. App. 2009)

12. The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. *Id.*

13. The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right. *Id.*

¹ Any findings herein are based on the allegations in the pleadings and affidavits submitted to-date and without prejudice to the rights of either party pending a final hearing on the merits. *See e.g., Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (“A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.”).

14. “Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Id.*

15. In consideration of the rules of this Court, South Carolina Rules of Civil Procedure, Rule 65(a) and (6), and the case law and other precedent related to the issuance of temporary injunctive relief, I find that Plaintiffs have presented evidence that more than sufficiently establishes that: (1) they would suffer irreparable harm if the injunction is not granted; (2) they will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 160, 866 S.E.2d 562, 569-570 (2021).

16. Plaintiff has made a *prima facie* showing that Defendant, Joel Barber, was an independent contractor real estate licensee of the real estate brokerage firm R&G Corp, d/b/a Century 21 The Harrelson Group, by and through Margaret McBride, as broker-in-charge, from March 14, 2017 to February 7, 2022 pursuant to a written Independent Contractor and Broker Agreement.

17. Plaintiff has made a *prima facie* showing that during the term and in the course and scope of the Independent Contractor and Broker Agreement, Contractor Joel Barber gained access to, was assigned, was introduced to, or subscribed to: prospects and leads, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, files, or other proprietary business information of R&G Corp, d/b/a Century 21 The Harrelson Group.

18. Plaintiff has made a *prima facie* showing that among other agreements, Joel Barber agreed not to use this information to his own advantage, or the advantage of any competing person or corporation after the termination of the Independent Contractor and Broker Agreement.

19. Plaintiff has made a *prima facie* showing that during the term of the Independent Contractor and Broker Agreement, Joel Barber, improperly and without authorization, accessed the locked office and password protected computer used by Montana Hartsock, belonging to Kevin Mills and his company Mills, LLC, HSS Barefoot, LLC, d/b/a Century 21 Barefoot, as well as the locked office and password protected computer used by Stacy Weaver, belonging to Greg Harrelson, individually and/or R&G Corp, d/b/a Century 21 The Harrelson Group.

20. Plaintiff has made a *prima facie* showing that during the term of the Independent Contractor and Broker Agreement, Joel Barber, improperly and without authorization, accessed all website and CRM software and cloudware passwords and log in information for Greg Harrelson, individually, many of which Greg Harrelson held administrator credentials and was utilized by Greg Harrelson, individually, and for his business activities with other third-party entities.

21. Plaintiff has made a *prima facie* showing that during the term of the Independent Contractor and Broker Joel Barber, improperly and without authorization, accessed all website and CRM software and cloudware passwords and log in information for Kevin Mills, individually, including his Google account used for business purposes and personal financial, banking and tax purposes.

22. As a result of the evidence set forth by Plaintiffs, I find Plaintiffs will suffer irreparable harm, will likely succeed on the merits of their case, and will have no adequate remedy

at law should Defendants be permitted to access or use the real or personal property of Plaintiffs, or the information and data of Plaintiffs.

23. I find Joel Barber, individually and as a licensed realtor, and all others acting on his behalf or in active concert or participation with him:

- a. shall be enjoined from to entering or accessing the business property of the Plaintiffs, including but not limited to located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577;
- b. shall be enjoined from to entering, accessing, or using the personal property of the Plaintiffs;
- c. shall be enjoined from using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.
- d. shall be enjoined from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;
- e. shall be enjoined from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited

to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

24. EXP Realty, LLC and Darcy Varney, individually and as broker in charge, represent, by affidavit and through counsel in open court, that they have no access to and no knowledge of any of Plaintiffs' information or data that is the subject of this motion and injunction.

25. As a result, EXP Realty, LLC and Darcy Varney, individually and as broker in charge, are not subject to any harm or prejudice if bound by the relief granted herein, and thus, the terms of this restraining order shall apply to all Defendants.

26. Nothing in this order prevents EXP Realty, LLC and Darcy Varney, individually and as broker in charge, from using other available real estate sources to access the type of information or to communicate with leads, clients, prospects, customers; provided, however, they are enjoined from accessing or using information derived from Plaintiffs.

27. Pursuant to Rule 65(c), SCRPC, I find security by the Plaintiffs in the amount of \$100,000.00 proper for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. This amount shall be immediately posted with the Horry County Clerk of Court by cash, check, or bond as a condition of this Order taking effect.

28. This Court retains jurisdiction of this matter only as it concerns the enforcement of this temporary injunction. Relief may also be sought from the Chief Administrative Judge from the Court of Common Pleas during the pendency of this action.

29. This temporary injunction shall remain in effect pending the trial of this case unless otherwise modified or terminated by Court order.

Therefore, it is ORDERED that the Plaintiffs' Motion for Temporary Injunction granted as set forth herein.

IT IS SO ORDERED.

April 4, 2022
Conway, South Carolina

The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al

Case Number: 2022CP2601323

Type: Order/Temporary Injunction

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2022-04-07 10:16:43 page 9 of 9

ELECTRONICALLY FILED - 2022 Apr 08 11:59 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

HSS Barrett LLC

Vs.

Joel D Barber.

HORRY COUNTY
OFFICE OF CLERK OF COURT
RENEE N. ELVIS
TRUST FUND ACCT.

No. 0294

DATE 4/8, 2022

RECEIVED OF Burr ? For man

One Hundred thousand ? no \$ 100,000.00

CASE NO. 2022CP2601323

TRUST NO. _____

Renee N Elvis
Clerk of Court for Horry County, S.C.

PHOTO COPY SUPPLY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

AMENDED SUMMONS

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the Plaintiffs' attorneys, Amanda A. Bailey, Burr & Forman LLP, Post Office Box 336, Myrtle Beach, South Carolina 29578-0336, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint. Your Answer must be in

writing and signed by you or by your attorney and you must state your address or address of your attorney, if signed by your attorney.

Dated: May 5, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Email: abailey@burr.com
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
Individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

SUMMONS

TO: THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the Plaintiffs' attorneys, Amanda A. Bailey, Burr & Forman LLP, Post Office Box 336, Myrtle Beach, South Carolina 29578-0336, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Amended Complaint and judgment by default will be rendered against you for the relief demanded in the Amended Complaint. Your Answer must be in writing and signed by you or by your attorney and you must state your address or address of your attorney, if signed by your attorney.

Signature on following page.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185
2411 N. Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Email: abailey@burr.com

Attorneys for Plaintiffs

ELECTRONICALLY FILED - 2022 May 04 4:58 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

AMENDED COMPLAINT

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

The Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, Kevin Mills, individually, Mills, LLC, and Greg Harrelson, individually (collectively referred to as “Plaintiffs”) by and through their undersigned counsel, complaining of Defendants, Joel D. Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, a licensed realtor, Darcy Varney, individually and as broker-in-charge, eXp Realty, LLC, James Ray Lunsford, as broker-in-charge, and NorthGroup Real Estate, Inc., above named, would respectfully show and allege unto this Honorable Court as follows:

1. The Plaintiff, HSS Barefoot, LLC d/b/a Century 21 Barefoot, is a South Carolina Limited Liability Company (hereinafter “C21 Barefoot”) doing business in Horry County, South Carolina.

2. The Plaintiff, R&G Corp d/b/a Century 21 The Harrelson Group, is a South Carolina Limited Liability Company (hereinafter “C21 Harrelson”) doing business in Horry County, South Carolina.

3. The Plaintiff, Kevin Mills, individually, is a citizen and resident of Horry County, South Carolina, and currently and at all relevant times was an independent contractor with C21 Barefoot, by and through Margaret McBride as broker-in-charge.

4. The Plaintiff, Mills, LLC, is a Limited Liability Company doing business in Horry County, South Carolina, whose principal is Kevin Mills.

5. The Plaintiff, Greg Harrelson, individually, is a citizen and resident of Horry County, South Carolina, and currently is an employee of C21 Harrelson, and a licensed realtor with Century 21 Harrelson.

6. Defendant, Joel D. Barber (hereinafter “Defendant Barber”), individually, is, upon information and belief, a citizen and resident of Horry County, South Carolina.

7. Defendant Barber is and was at all relevant times a licensed real estate salesperson with the South Carolina Real Estate Commission, License Number 67426.

8. Defendant Barber was an independent contractor with C21 Harrison, by and through Margaret McBride as broker-in-charge, from March 14, 2017 through February 7, 2022.

9. Defendant Barber was, upon information and belief, an independent contractor with eXp Realty, LLC, from approximately February 7, 2022 to approximately April 4, 2022.

10. Barber Real Estate, Inc. is, upon information and belief, a South Carolina corporation doing business in Horry County, South Carolina, whose principal is Joel Barber.

11. Defendant, Nicholas Fitzpatrick (hereinafter “Defendant Fitzpatrick”), individually, is, upon information and belief, a citizen and resident of Horry County, South Carolina.

12. Defendant Fitzpatrick is currently a licensed real estate Broker with the South Carolina Real Estate Commission, License Number 128053.

13. Defendant Fitzpatrick was, upon information and belief, a real estate assistant employed with or an agent of Barber Real Estate, Inc. and/or Joel D. Barber, while Barber was an independent contractor for C21 Harrelson for a time period through February 7, 2022. Thereafter, Defendant Fitzpatrick continued as an employee or agent of Barber Real Estate or Barber thereafter, and is acting on his behalf or in active concert or participation with Barber.

14. Defendant, Darcy Varney (hereinafter “Defendant Varney”), is and was at all relevant times a licensed broker-in-charge with the South Carolina Real Estate Commission, License Number 106486.

15. Defendant Varney is and was at all relevant times the broker-in-charge for Defendant, eXp Realty, LLC.

16. Defendant Darcy Varney, individually, is upon information and belief, a citizen and resident of Horry County, South Carolina.

17. Defendant, eXp Realty, LLC (hereinafter “Defendant eXp”) is, upon information and belief, a South Carolina Limited Liability Company doing business in Horry County, South Carolina.

18. Defendant eXp is and was at all relevant times a licensed real estate office with the South Carolina Real Estate Commission, License Number 25443.

19. Defendant, James Ray Lunsford (hereinafter “Defendant Lunsford”), is and was at all relevant times a licensed broker-in-charge with the South Carolina Real Estate Commission, License Number 103958.

20. Defendant Lunsford is and was at all relevant times the broker-in-charge for Defendant NorthGroup Real Estate, Inc.

21. Defendant Lunsford, individually, is upon information and belief, a citizen and resident of Supply, North Carolina.

22. Defendant NorthGroup Real Estate, Inc. (hereinafter “Defendant NorthGroup”) is, upon information and belief, a North Carolina Corporation authorized to do business in Horry County, South Carolina.

23. Defendant NorthGroup is and was at all relevant times a licensed real estate office with the South Carolina Real Estate Commission, License Number 25222.

24. Plaintiff filed for a temporary injunction as against Joel Barber, Darcy Varney, and eXp Realty by motion filed on March 3, 2022.

25. A hearing was held on the motion for temporary injunction on March 31, 2022.

26. After the hearing and verbal ruling on the motion to temporary injunction on March 31, 2022 but before the written order was entered and bond posted on April 8, 2022, Defendant Barber, Defendant Barber Real Estate, and Defendant Fitzpatrick switched real estate firms and now are, upon information and belief, an independent contractor with Defendant NorthGroup, by and through broker-in-charge James Ray Lunsford, from approximately April 4, 2022 to the present.

27. Defendant Fitzpatrick was served with a copy of the Order Granting Temporary Injunction and bond receipt on April 15, 2022.

28. Defendants Lunsford and NorthGroup were served with a copy of the Order Granting Temporary Injunction and bond receipt on April 14, 2022.

29. All Defendants have been and/or are acting on behalf of Defendant Barber or in active concert or participation with Defendant Barber.

30. This is a dispute involving causes of actions arising in Horry County, South Carolina.

31. The Parties and the subject matter of this action are properly before this Court.

FACTUAL ALLEGATIONS

32. The Plaintiff reiterates each and every allegation set forth above as if fully incorporated herein.

33. On March 14, 2017, Defendant Barber entered into an Independent Contractor and Broker Agreement with C21 Harrison, by and through Margaret McBride as broker-in-charge. A true and accurate copy of which is attached hereto as **EXHIBIT A**.

34. Defendant Barber was an independent contractor with Century 21 Harrelson, by and through broker-in-charge Margaret McBride, from March 14, 2017 through February 7, 2022.

35. The Independent Contractor and Broker Agreement between C21 Harrison, by and through broker-in-charge Margaret McBride, and Defendant Barber terminated on February 7, 2022.

36. On February 7, 2022, C21 Harrelson discovered that Defendant Barber had previously entered into the C21 Harrelson and C21 Barefoot office building, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577, outside business hours and without authorization, and gained unauthorized access to electronic data, including proprietary information such as prospects,

client lists, calendar entries, call notes, contacts and contact information, belonging to C21 Harrelson, C21 Barefoot, and/or Kevin Mills.

37. Specifically, C21 Harrelson learned that, upon information and belief, Defendant Barber had been entering the office building in the middle of the night, or very early hours of the morning, and gaining unauthorized entry into a locked office and password protected computer utilized by Stacy Weaver, an employee of C21 Harrelson and/or a locked office and password protected computer utilized by Montana Hartsock, an employee of Mills, LLC.

38. Defendant Barber, at all times, knew or should have known that he did not have authorization to access or enter the office building in the middle of the night, or very early hours of the morning.

39. Defendant Barber, at all times, knew or should have known, that he did not have authorization to enter into a locked office and password protected computer utilized by Stacy Weaver, an employee of C21 Harrelson and/or a locked office and password protected computer utilized by Montana Hartsock, an employee of Mills, LLC.

40. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set forth above, Defendant Barber took, without permission or authority, files or copies of files from Stacy Weaver's computer, specifically containing the login and password information for Greg Harrelson's online databases, which contain proprietary information, including client prospects and leads owned and maintained by Greg Harrelson, as an employee of C21 Harrelson.

41. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set forth above, Defendant Barber altered and manipulated electronic data, including copying, changing or deleting

calendar entries for Kevin Mills from Montana Hartsock's computer, copying, changing or deleting, prospects, client lists, call notes, contacts and contact information owned and maintained by Kevin Mills.

42. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set forth above, Defendant Barber altered and manipulated electronic data from Montana Hartsock's computer, including, copying, changing or deleting, marketing material and resources, or other intellectual or personal property owned and maintained by Kevin Mills.

43. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set forth above, Defendant Barber altered and manipulated electronic data from Montana Hartsock's computer, including copying, changing or deleting listings or listing information and photographs, or other intellectual or personal property, owned by C21 Harrelson or C21 Barefoot or Harrelson.

44. Upon information and belief, Defendant Barber took the databases or information contained on the databases belonging to Greg Harrelson, as an employee of C21 Harrelson, using, without authorization, the login and password information from Stacy Weaver's computer files, for his own benefit and did sell or attempted to sell by and through eXp Realty and Varney such database or information contained thereon in exchange for a 25% referral fee of any commission generated from the leads and prospects within the database, and to the detriment of C21 Harrelson and C21 Barefoot.

45. Upon information and belief, Defendant Barber took the databases, proprietary information, and personal and intellectual property contained on the databases belonging to Kevin Mills, using information he acquired from the unauthorized access of Montana Hartsock's office

and computer, for his own benefit and have used or attempted to use the electronic data, personal and intellectual property of Kevin Mills for Defendants' Barber, Defendant eXp Realty, Defendant Varney, Defendant NorthGroup and/or Defendant Lunsford's listings or sales, and/or to the detriment of C21 Harrelson, C21 Barefoot, and Kevin Mills.

46. Upon information and belief, Defendant Barber's actions, both before February 7, 2022, and after were with the knowledge and assistance of Defendant Fitzpatrick, who has aided and abetted the breaches and tortious actions of Defendant Barber and has received financial benefit from the breaches and tortious actions of Defendant Barber.

47. Upon information and belief, with full knowledge of Defendant Barber's contractual obligations, including those set forth in the Independent Contractor Agreement, as well as the Agent Manual and Company Office Policy Manual for Century 21 The Harrelson Group, at least after February 7, 2022, Defendant Varney and eXp Realty aided and abetted the breaches and tortious actions of Defendant Barber and has received financial benefit from the breaches and tortious actions of Defendant Barber.

48. Upon information and belief, with full knowledge of Defendant Barber's contractual obligations, including those set forth in the Independent Contractor Agreement, as well as the Agent Manual and Company Office Policy Manual for Century 21 The Harrelson Group, at least after April 4, 2022, Defendants Lunsford and NorthGroup Realty aided and abetted the breaches and tortious actions of Defendant Barber and has received financial benefit from the breaches and tortious actions of Defendant Barber.

49. Defendant Barbers actions were in violation of his Independent Contractor Agreement, as well as the Agent Manual and Company Office Policy Manual for Century 21 The Harrelson Group.

FIRST CAUSE OF ACTION
(Breach of Contract)

50. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

51. The Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, as well as other contractual documents, create valid and binding contract between Defendant Barber and C21 Harrelson, effective March 14, 2017 through February 7, 2022.

52. C21 Harrelson has performed its duties and obligations under the Independent Contractor and Broker Agreement and other contractual documents.

53. Defendant Barber breached Paragraphs 11 and 12 of the Independent Contact and Broker Agreement, which state as follows:

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to handling of "leads" and prospects assigned to him/her and as to the conduct of Independent Contractor's services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM's, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

54. Defendant Barber materially breached the Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, as well as other contractual documents, failing to maintain confidentiality, nondisclosure of Confidential Information, and the Return of Confidential Information and Other Property.

55. Defendant Barber materially breached the Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, as well as other contractual documents, by interfering with the assignment of prospects and leads by C21 Harrelson to other brokers or sales agents and by contacting prospects and leads after any assignment of such prospects and leads to Defendant Barber terminated.

56. Defendant Barber materially breached the Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, as well as other contractual documents, by using for his own advantage and the advantage of competing persons and entities, including eXp Realty and Varney, databases, prospects, and leads, and other marketing materials and listings belonging to C21 Harrelson and information gained from or from files or business of C21 Harrelson and not generally known.

57. As a result of Defendant Barber's material breaches of the Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, and other contractual documents, Margaret McBride as broker-in-charge and C21 Harrelson has been and continues to suffer ongoing damage. While Margaret McBride as broker-in-charge and C21 Harrelson's damages include actual, compensatory and monetary damages, Margaret McBride as broker-in-charge and C21 Harrelson are also entitled to equitable relief, including a temporary restraining order, temporary injunction, and permanent injunctive relief ordering Defendant Barber to return all proprietary information and discontinue utilizing any information gained from C21

Harrelson or listings, marketing material, property, or intellectual property belonging to C21 Harrelson, and requiring strict compliance with Paragraphs 11 and 12 of the Independent Contractor and Broker Agreement as well as the Agent Manual and Company Office Policy Manual, and other contractual documents.

SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

58. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

59. Defendant Barber breached the Independent Contractor and Broker Agreement, as well as the Agent Manual and Company Office Policy Manual, and other contractual documents, with Margaret McBride as broker-in-charge and C21 Harrelson.

60. By interfering with the assignment of prospects and leads to other brokers or sales agents, Defendant Barber fraudulently intended to take such prospects and leads from Margaret McBride as broker-in-charge and C21 Harrelson and to a competing real estate company and broker for his own personal benefit and to the detriment of Margaret McBride as broker-in-charge, C21 Harrelson, and for the benefit of Defendant Fitzpatrick, Defendant eXp Realty, Defendant Varney, Defendant NorthGroup, and/or Defendant Lunsford.

61. Specifically, Defendant Barber intended to take commissions that would otherwise be due C21 Harrelson, C21 Barefoot, Mills and/or Harrelson for his own personal benefit and the benefit of Fitzpatrick, eXp Realty and Varney, by taking prospects and leads and marketing material not owned or developed by him.

62. As a result of Defendant Barber's fraudulent breach of the Plaintiffs, Plaintiffs have been damaged and are entitled to actual and punitive damages.

THIRD CAUSE OF ACTION
(Restraining Order/Injunctive Relief)

63. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

64. Defendants have used and continue to use information, property, marketing materials, listings, and databases belonging to C21 Harrelson in violation of the Independent Contractor and Broker Agreement, as well as information, property, marketing material, listing, and databases belonging to C21 Barefoot and Kevin Mills, wrongfully obtained without authorization, for Defendants' unfair advantage and competitive benefit in the sale and marketing of real estate.

65. As a result of Defendants' unfair and deceptive actions and continued actions in violation of the Independent Contractor and Broker Agreement, Plaintiffs have continuing and ongoing damages; however, Plaintiffs also have no adequate remedy at law if an injunction is not granted inasmuch as monetary damages cannot adequately and fully compensate Plaintiffs for the loss they have suffered and will continue to suffer if the Defendants' violations of the Independent Contractor and Broker Agreement and property rights of C21 Barefoot, C21 Harrelson, and Kevin Mills are allowed to continue.

66. The balance of the equities are in favor of Plaintiffs.

67. Plaintiffs are entitled to an order granting a temporary, preliminary and permanent injunction directing the Defendants cease violations of the Independent Contractor and Broker Agreement and cease violation of the property rights of Plaintiffs enjoining Defendants from, as follows:

- a. Entering or accessing the business office of the Plaintiffs;

- b. Accessing databases, systems, CRM's, software or cloudware, servers and computers connected to the internet, or copies of any information derived therefrom, belonging to Plaintiffs, and using log-in, account, and password information belonging to or derived from any of the Plaintiffs;
- c. Using, accessing, viewing, downloading, printing, altering, and deleting any electronic information, including but not limited to proprietary and competition sensitive information, on systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;
- d. Using certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;
- e. Selling or attempting to sell certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;
- f. Contacting consumers, including clients, prospects and "leads" of Plaintiffs, obtained from contact information contained in certain electronic information obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs and without the Plaintiffs' or consumers' consent;

- g. Listing or selling property for listings belonging to or derived from Plaintiffs;
- h. Retaining commissions or referral fees owed to Plaintiffs;
- i. Retaining listings belonging to or derived from Plaintiffs and not belonging to Defendants;
- j. Using confidential and proprietary information gained for and derived from the files or business of Plaintiffs;
- k. All such relief granted in the Temporary Restraining Order entered April 8, 2022; and
- l. And such other and further equitable relief as may be just and proper.

FOURTH CAUSE OF ACTION
(Trespass)

68. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

69. Plaintiffs have possession and a right to possession of the building located at 4757 Highway 17 Bypass, Myrtle Beach, South Carolina 29577 and the offices therein.

70. Defendant Barber voluntarily and intentionally entered the building and offices of C21 Harrelson, C21 Barefoot, and Kevin Mills without authorization or permission of Plaintiffs, after having actual knowledge not to enter the locked offices.

71. As a result of Defendant Barber's trespass, Plaintiffs are entitled to actual damages, punitive damages, and the injunctive relief sought herein.

FIFTH CAUSE OF ACTION
(Conversion)

72. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

73. Plaintiffs had ownership of and a right to possess and use the computers, files, databases, personal property and intellectual property described herein.

74. Defendants converted the computers, files, databases, personal property and intellectual property described herein without Plaintiffs' authorization or permission and for their own benefit and for competitive advantage while depriving Plaintiffs of the use of the same and in a manner inconsistent with the property rights of Plaintiffs.

75. As a result of the conversion by Defendants of the Plaintiffs' computers, files, databases, personal property and intellectual property described herein, Plaintiffs have been damaged.

SIXTH CAUSE OF ACTION
(Violation of the South Carolina Computer Crimes Act, S.C. Code Ann. 16-16-10, et seq. and Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.)

76. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

77. S.C. Code Ann. 16-16-20(4) of the South Carolina Computer Crimes Act makes it a crime to willfully, knowingly, and without authorization, or for an unauthorized purpose, engage in computer hacking.

78. Under the Federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq., it is illegal to access certain servers and "protected computers" without authorization or exceeding one's authorization.

79. Hacking is the intentional use of a computer, computer system, or a computer network in a manner that exceeds any right or permission granted by the appropriate principal of the computer, computer system, or computer network.

80. Defendant Barber hacked into the computers, servers, protected computers and databases belonging to the Plaintiffs by using the same without authorization and/or by gaining access to the same by wrongfully and without authorization, by copying files from password protected computers to which Defendant Barber should not have had the passwords and/or did not have authorization to use the passwords. Said computers, servers, protected computers and databases are maintained in locked offices to which Defendant Barber should not have had the key and/or did not have authorization to use the key or otherwise access.

81. As a result of Defendant Barber's engagement in computer hacking and violation of the Computer Fraud and Abuse Act, Plaintiffs have been damaged and entitled to actual, statutory, and punitive damages and attorney's fees, together with the injunctive relief sought herein.

SEVENTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act, S.C. Code
Ann. 39-5-10, et seq.)

82. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

83. Defendants, by and through the unauthorized access and use of property belonging to Plaintiffs, and as set forth herein as well as by and through Defendant Joel Barber's deceptive practices in violation of regulations related to timely notifying the licensing department of changes in real estate company affiliation and/or of truthfully communicating to consumers regarding real

estate company affiliation, have engaged in unfair or unlawful methods of competition and unfair and deceptive acts in the conduct of trade and/or commerce.

84. Defendants' willful and knowing unfair and unlawful and deceptive trade practices have been repeated and are capable and likely to be repeated and/or otherwise have an adverse impact on the public interest.

85. As a result and proximate cause of Defendants' unfair and unlawful and deceptive trade practices, Plaintiffs have been damaged and entitled to actual and statutory damages and attorney's fees.

EIGHTH CAUSE OF ACTION
(Intentional Interference with Existing and Prospective Contractual Relationships)

86. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

87. Defendants intentionally interfered with the existing and prospective contractual relationships of Plaintiffs with third-parties, including but not limited to Defendant Barber's contractual obligations, including those set forth in the Independent Contractor Agreement, as well as the Agent Manual and Company Office Policy Manual for Century 21 The Harrelson Group, and listing agreements or marketing agreements.

88. Defendants had and have actual knowledge and/or should have known of the existing and prospective contractual relationships of Plaintiffs with third-parties.

89. Defendants intentionally, and without justification, interfered with the existing and prospective contractual relationship of Plaintiffs with third parties and procured the breach of said relationships.

90. As a result of Defendants' intentional interference with the existing and prospective contractual relationships, Plaintiffs have been damaged, including actual damages and lost profit damages, and punitive damages.

NINTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

91. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

92. The Defendants have or will wrongfully benefit from Barber's computer hacking, conversion, fraudulent activity, breaches of contract and tortious activity in taking and accessing confidential data to which he was not entitled by obtaining contact lists, leads, listing agreements, sales, commissions, fees, as well as other proprietary information belonging to the Plaintiffs, which is to the detriment of Plaintiffs.

93. Defendants are retaining these benefits under conditions that are unjust without paying Plaintiffs for the value of the benefit and/or holding all benefits in constructive trust for the benefit of Plaintiffs.

94. As a result, Plaintiffs are entitled to an award for the reasonable value benefit to which Defendants have been unjustly enriched and/or an order imposing a constructive trust on contact lists, leads, listing agreements, sales, commissions, fees, as well as other proprietary information belonging to the Plaintiffs, for the benefit of Plaintiffs.

TENTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

95. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

96. The Defendants have maintained and continue to maintain an illicit design and agreement to cooperate with one another in order to cause special damage and special harm to Plaintiff.

97. The Defendants have taken action in the furtherance of the illicit design and agreement, which includes but is not limited to aiding and abetting Barber's actions in taking and accessing confidential data to which he was not entitled and using for his and Defendants' benefit and functioning as an imposter of Plaintiffs using Plaintiffs' name and/or goodwill.

98. As a result of Defendants illicit design and agreement, Plaintiffs have suffered damages and special damages including but not limited to loss of business opportunities, profits and goodwill.

WHEREFORE, Plaintiffs pray for the following relief:

- A. For a judgment in favor of Plaintiffs for actual, compensatory, lost profit, and punitive damages;
- B. For a judgment in favor of Plaintiffs for statutory damages, including treble damages;
- C. For equitable and preliminary, temporary, and permanent injunctive relief;
- D. For attorneys' fees, costs, prejudgment interest;
- D. For all consequential, actual, and special damages arising from or related to Defendants' conduct; and
- E. For such further equitable relief as may be determined by this Court.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185
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Post Office Box 336
Myrtle Beach, SC 29578-0336
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Email: abailey@burr.com
Attorneys for Plaintiffs

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

ELECTRONICALLY FILED - 2022 May 04 4:58 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

Margaret McBride , hereinafter referred to as "**BROKER**", and Joel Barber
hereinafter referred to as "**INDEPENDENT CONTRACTOR**" in consideration of the mutual covenants and promises herein contained, agree as follows:

1. Broker warrants that Broker is licensed and authorized to act as a Real Estate Broker in the State of South Carolina. Independent Contractor warrants that he/she is licensed and authorized to act as a Real Estate Sales Agent in the State of South Carolina. Each agrees during the term hereof at his/her own expense to keep his/her license in full force and effect, and to pay all fees equivalent to local, state, and national boards/associations of REALTORS® and taxes due the state, county, municipality or other governmental entity arising out of his/her activities as Broker or Independent Contractor, and neither shall be liable for the fees or taxes of the other. Failure on the part of either party hereto to keep in effect his/her said license shall automatically terminate this contract.

2. It is agreed that Broker is duly qualified to and does procure the listing of real estate for sale, lease or rental, and prospective purchasers, lessees, and renters therefore, and has and enjoys the goodwill of and a reputation for fair dealing with the public and also has and maintains an office, properly equipped with furnishings and staff, suitable to serving the public as a Real Estate Broker, and the parties hereto deem it to be to their mutual advantage to enter into this contract.

3. It is agreed that Independent Contractor has the competence and ability to perform the functions for which he/she is licensed with respect to the sale, lease, or rental of real estate.

4. Broker agrees to furnish Independent Contractor a facility to conduct business at Broker's office now located at 4999 Carolina Forest Blvd. Ste 18 , Myrtle Beach, SC 29579 , and to take calls for Independent Contractor pertaining to the services referred to herein. It is understood that if Broker advertises the Independent Contractor will, at Broker's discretion, be mentioned by name in such advertising when appropriate.

5. Broker agrees to make available to Independent Contractor all current listings of the office, except such as Broker may find expedient to place exclusively in the temporary possession of some other broker or sales agent, and Broker agrees to assist Independent Contractor in his/her work by advice and full cooperation in every way practicable. Independent Contractor will have the benefit of the cooperation of Broker in connection with transactions being handled by Independent Contractor.

6. Independent Contractor agrees to work diligently to exert his/her best efforts to sell, lease, or rent any and all real estate listed with Broker and available to Independent Contractor under the terms of Paragraph 5 above, to solicit additional listings and customers in the name of Broker, and otherwise to promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest advantage possible consistent with his/her professional obligations.

7. Commissions shall be charged for any service performed hereunder pursuant to office policy, except that Broker shall advise in advance of any special division relating to any particular transaction which he/she undertakes to handle. When Independent Contractor shall perform any service hereunder, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Independent Contractor in which division Independent Contractor shall receive a proportionate share as set out in office policy and Broker shall receive the balance. In the event of special arrangements with any client of Broker or Independent Contractor on property listed with Broker or controlled by Independent Contractor in which a special division of commission is indicated, such division shall be as agreed upon by Broker and Independent Contractor.



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

In the event that two or more sales agents participate in such service, or claim to have done so, the amount of the commission over that accruing to Broker shall be divided between the participating sales agents according to agreement between them, or, in the absence of agreement, by arbitration. In no case shall Broker be personally liable to Independent Contractor, nor shall Independent Contractor be personally liable to Broker, for any commission prior to its receipt, but when the commission shall have been collected from the parties for whom the service was performed, Broker, in the event such commissions are paid to Broker, shall pay over to Independent Contractor, Independent Contractor's proportionate share according to the terms of this contract.

8. The division and distribution of the earned commissions as set out in Paragraph 7 hereof, which may be paid to or collected by either Broker or Independent Contractor shall take place as soon as practicable after collection of such commissions from the party or parties for whom the services may have been performed.

9. Broker shall not be liable to Independent Contractor for any expense incurred by the latter, nor shall Independent Contractor be liable to Broker for office help or expense insofar as Broker has herein agreed to provide the same. Expenses for attorney's fees, costs, documentary stamps, abstracts and the like which may, by reason of some necessity, be payable from commissions, or the attempt to collect a commission, shall be paid by the parties in the same proportion as provided for in the division of commissions. Independent Contractor agrees to furnish transportation and business liability insurance, at his/her own expense, and provide Broker evidence of coverage as co-insured. Independent Contractor agrees to pay at his/her own expense entertainment costs, club dues, and other expenses incident to the conduct of his/her services as a real estate sales agent, and to pay any and all state and city business occupation tax available to the portion of any commission received by him/her.

10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this contract.

11. For orderly conduct of the business, Broker reserves the right to assign particular prospects of the office to an Independent Contractor associated with Broker and such Independent Contractor shall have the exclusive right together with Broker, to contact such prospects so long as such assignment is in effect; Independent Contractor agrees not to interfere with such assignment to other brokers or sales agents with Broker and Independent Contractor. Independent Contractor shall have entire discretion as to the handling of "leads" and prospects assigned to him/her and as to the conduct of Independent Contractor's services as sales agent hereunder, and as to the means of securing listings, handling prospects, and consummating negotiations.

12. Independent Contractor shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any competing person or corporation, any marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters or subscribe to any systems, CRM's, software or cloudware that they were introduced to and/or subscribed to during this business relationship and any information gained for or from files or business of Broker and not generally known. Independent Contractor understands and agrees that all listings are the sole property of the Broker at all times.

13. Independent Contractor agrees to hold Broker harmless in the event Broker is required to respond in damages by reason of any misrepresentations, promises or untrue statements made by Independent Contractor during the life of this contract and during the course of negotiations with and as an inducement to any party to a real estate transaction handled by Independent Contractor.

14. It is understood that, during the existence of this contract, Broker shall have the right to instruct Independent Contractor as to the services he/she is to perform but shall not have the right to instruct Independent Contractor as to the manner in which they are to be performed, and that the relationship of Independent Contractor to Broker is that of an independent contractor, but not as an employee.


03/14/17
11:15 AM EDT
dotloop verified

INDEPENDENT CONTRACTOR


03/14/17
8:23 AM EDT
dotloop verified

BROKER HAVE READ THIS PAGE

15. Joel Barber a duly licensed real estate sales agent, understands that he/she is an Independent Contractor and not an employee of the Broker nor Century 21 The Harrelson Group, real estate company for income and employment tax purposes. Under Section 3508 of the Internal Revenue Code, "qualified real estate agents," of which Joel Barber is one, are responsible for meeting all Federal Income and Employment tax obligations. **INDEPENDENT CONTRACTOR**, UNEQUIVOCALLY UNDERSTANDS THAT NEITHER THE BROKER, NOR THE REAL ESTATE COMPANY WILL DEDUCT THESE TAXES AND THE FAILURE BY **INDEPENDENT CONTRACTOR** TO MEET THESE OBLIGATIONS WILL RESULT IN NO LIABILITY TO THE BROKER NOR TO THE REAL ESTATE COMPANY.

NOTHING IN THIS CONTRACT SHALL BE IN ANY WAY CONSTRUED TO CONSTITUTE INDEPENDENT CONTRACTOR AS THE EMPLOYEE OF THE BROKER. NONE OF THE BENEFITS PROVIDED BY THE BROKER TO EMPLOYEES, IF ANY, ARE PROVIDED TO THE INDEPENDENT CONTRACTOR BY THE BROKER. INDEPENDENT CONTRACTOR WAIVES ALL CLAIMS AGAINST BROKER FOR EMPLOYER'S LIABILITY COMPENSATION FOR PERSONAL INJURY, UNEMPLOYMENT COMPENSATION OR OTHERWISE UNDER THE WORKMEN'S COMPENSATION LAWS OF SOUTH CAROLINA. INDEPENDENT CONTRACTOR UNDERSTANDS THAT IN NO WAY WILL BROKER BE LIABLE FOR ANY INJURY OR LOSS SUSTAINED BY THE INDEPENDENT CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

FIRM NAME Century 21 The Harrelson Group

Margaret McBride dotloop verified
03/14/17 8:23 AM EDT
E9SJ-DRXZ-TDDW-ZJQA

Date Broker Date

Witness

Joel Barber dotloop verified
03/14/17 11:15 AM EDT
Z0ZT-DR4W-XLFY-MPXU

Date Independent Contractor Date

Witness

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY)
21 THE HARRELSON GROUP, and KEVIN)
MILLS, Individually,)
)
Plaintiffs,)

**STIPULATED
CONFIDENTIALITY AND
PROTECTIVE ORDER**

vs.)

)
JOEL D. BARBER, individually and as)
licensed realtor, DARCY VARNEY,)
individually and as)
broker in charge, and EXP REALTY, LLC.,)
)
Defendants.)

WHEREAS, it appears that certain documents and the information contained therein, which may be subject to discovery in this proceeding either in subpoenas, demands for the production of documents, or otherwise, may contain trade secrets, proprietary data, sensitive or confidential information, information otherwise generally unavailable to the public, or which may be privileged under state or federal statutes, court rules, case decisions and/or common law; and

WHEREAS, the parties are interested in permitting discovery to proceed without delay occasioned by possible disputes regarding the confidential nature of certain information.

NOW, THEREFORE, the parties in this case, have stipulated through their attorneys of record, and IT IS HEREBY ORDERED THAT:

1. Any party, or a third-party subject to a subpoena in this matter, may designate documents, information, or testimony produced or disclosed by it, as confidential information protected by this Stipulated Confidentiality and Protective Order (“Order”). Nothing herein, however,

shall restrict the use or disclosure of documents or information obtained independently of discovery proceedings herein.

2. Documents or other physical information shall be designated confidential information by marking it before or at the time of production or copying with the legend “Confidential.”

3. If confidential information is the subject of any deposition testimony or is attached to or otherwise included with a deposition transcript, those portions of the deposition transcript itself shall be deemed confidential information and shall be so designated by placing on the cover the legend “Confidential.”

4. Any summaries or notes prepared from any document marked “Confidential” are subject to the provisions of this Protective Order.

5. None of the parties to this Order shall be obligated to challenge the propriety of the confidential nature of any document, answer to interrogatory or other information and a failure to do so shall not preclude any subsequent objection to such designation or motion to seek permission to disclose such document or answer to interrogatory or the information contained thereon to persons not referred to in this Order, or from otherwise seeking to modify the provisions of this Order.

6. Entry of this Order and compliance with its terms does not constitute an admission that any document does in fact contain a trade secret, proprietary data or other confidential information. Any party may challenge the designation of any document as “Confidential” or “Attorney’s Eyes Only” by first conferring with counsel for producing party. If an informal agreement cannot be reached concerning the designation of the document as “Confidential” or “Attorney’s Eyes Only,” the challenging party may, by motion, and with notice to counsel for the other party, seek a judicial determination from the court then presiding over this case regarding the

designation of any document or information as “Confidential” or “Attorney’s Eyes Only” under the terms of this Order.

7. Nothing herein shall be deemed to constitute a waiver of any applicable privilege.

8. Inadvertent production of any document or information without a designation of “Confidential” will not be deemed to waive a claim by the producing party as to the document or information’s confidential nature or estop the producing party from designating said document or information as Confidential at a later date. Disclosure of said document or information by the recipient prior to such later designation shall not be deemed a violation of the provisions of this Stipulated Confidentiality and Protective Order.

9. Except with the prior written consent of the producing party or upon prior order of this Court obtained after sufficient notice to all counsel, or as provided in Paragraph 8 of this Stipulated Confidentiality and Protective Order, confidential information shall not be disclosed to any person other than:

- (a) Counsel for the parties in this litigation;
- (b) Secretaries, legal assistants, and other employees or agents of such counsel assigned to assist such counsel in this litigation;
- (c) Deposition reporters engaged for any deposition at which confidential information or documents are produced;
- (d) Prospective expert witnesses engaged by counsel to assist such counsel in this litigation.
- (e) Such officers, directors or employees of the parties as their counsel, in good faith, requires to provide assistance in the conduct of this action; and

(f) Any witness or prospective witness in this action, but only for purposes of testimony or preparation of testimony in this case, including deposition and affidavit testimony, and subject to the restrictions set forth in this Order. Before the disclosure of confidential information to any witness or prospective witness in this case, each such individual witness shall sign the acknowledgment in the form attached hereto as Exhibit A, which acknowledgment shall be retained by counsel for the disclosing party. No copies of confidential information shall be given to such witness or potential witness for them to retain, unless agreed to in writing by the parties in advance. At any time within sixty days of the conclusion of this action or any appeal therefrom whether by settlement, dismissal, or final judgment, or when the time for all appeals has expired, whichever is longer, any party may request of any other party in writing a copy of any or all of such acknowledgments. The party to whom the request is directed shall provide copies of such acknowledgments to the requesting party within fifteen business days of the receipt of the request.

10. Confidential information marked “Attorneys’ Eyes Only” will be subject to all of the terms and conditions of this Order, however, it will be disclosed and disseminated only to the persons designated in paragraphs 9(a), (b) and (c) above and experts under the provisions of paragraph 9(d) above. Confidential information marked “Attorneys’ Eyes Only” shall not be shown to or revealed in any form the parties unless agreed to in writing in advance by the parties or ordered by the Court.

11. Any person who is given access to confidential information pursuant to subparagraphs 9 (c)-(f) above shall, prior thereto, be provided with a copy of this Stipulated Confidentiality and Protective Order and shall execute the acknowledgment form attached hereto as Exhibit “A.”. Counsel for all parties shall be provided, upon request, with a copy of each such signed

acknowledgment when any such persons are designated as witnesses for trial or upon the final resolution of this action, whichever first occurs.

12. Persons receiving confidential information pursuant to the terms of this Order shall not reveal or discuss such information to or with any person who is not entitled to receive such information, as set forth in Paragraph 9 above, and shall not use such information for any purpose other than for the prosecution or defense of this action.

13. This Stipulated Confidentiality and Protective Order shall not prevent any document or testimony designated as “confidential” from being used by the Court or counsel of record at any hearing in this litigation or from being offered or received as evidence at trial. Counsel agree to discuss upon completion of discovery and prior to trial potential methods for utilizing confidential information at trial. Counsel for either party may seek rulings from the trial judge to resolve such confidentiality issues prior to commencement of the trial.

In the event that any party to this Agreement determines to lodge or file with this Court (a) any confidential information or information derived therefrom or (b) any papers containing or making reference to such information, such documents shall be filed under seal pursuant to SCRCP Rule 41.1(b).

Documents and testimony filed under seal shall be made available only to the Court and persons authorized by this Stipulated Confidentiality and Protective Order.

14. Entering into, agreeing to, and/or complying with the terms of this Stipulated Confidentiality and Protective Order shall not prejudice in any way the right of a party to this Agreement: (a) to seek a judicial determination of whether particular discovery material should be produced or, if produced, whether it should be subject to the terms of this Stipulated Confidentiality and Protective Order; (b) to interpose an objection to a request for discovery on any ground; (c) to

seek protection greater than that contained herein; or (d) to seek relief on notice from any provision of this Stipulated Confidentiality and Protective Order, either generally or as to any particular discovery material.

15. The production of all documents marked as “Confidential” under this Stipulated Confidentiality and Protective Order shall not constitute a waiver by the producing party of its right to refuse to produce such documents on any grounds in any other litigation.

16. The provisions of this Stipulated Confidentiality and Protective Order shall remain in full force and effect after the termination of this action.

17. Upon termination of this action, all documents designated by either party as “Confidential” and all copies thereof shall, at the written request of counsel for the producing party, be returned to counsel for the producing party; the written request shall be made no later than ninety (90) days after entry of final termination of this action; and all such documents shall be returned within sixty (60) days following receipt of the written request. Counsel for the parties shall also destroy all summaries, analyses, or abstracts of confidential documents made by, at the direction of, or with the consent of counsel, or, alternatively, retain such documents in a manner so as to prevent their disclosure to unauthorized persons.

18. If for any reason this Stipulated Confidentiality and Protective Order is not entered as an Order of the Court, the terms of this Order shall, nevertheless, remain binding upon the parties hereto.

AND IT IS SO ORDERED!

Dated:
Conway, South Carolina

Chief Administrative Judge
Court of Common Pleas
Fifteenth Judicial Circuit

APPROVED:

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*Attorneys for Defendants, Darcy Varney and
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Myrtle Beach, SC 29577

Attorneys for Plaintiffs

Dated: May 10, 2022



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al

Case Number: 2022CP2601323

Type: Order/Protective Order

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2022-05-16 08:47:03 page 8 of 8

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)
)
Plaintiffs,)

**PLAINTIFFS’ MOTION FOR CONTEMPT
AND SANCTIONS AGAINST
DEFENDANT, JOEL BARBER**

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)
)
Defendants.)

NOW COME THE PLAINTIFFS, HSS Barefoot, LLC, d/b/a Century 21 Barefoot (“C21 Barefoot”), R&G Corp, d/b/a Century 21 The Harrelson Group (“C21 Harrelson”), Kevin Mills, individually (“Mr. Mills”), Mills, LLC (“Mills, LLC”), and Greg Harrelson, individually (“Mr. Harrelson”) (collectively, “Plaintiffs”), by and through their undersigned counsel, and hereby seek an Order of this Honorable Court holding the Defendant, Joel Barber (“Defendant” or “Mr. Barber”), in contempt of court due to his numerous, intentional failures to comply with the Order entered on April 8, 2022 enjoining Mr. Barber from, *inter alia*:

[c.] . . . using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies,

reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

d. . . . from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;

e. . . . from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

See Order Granting Temporary Injunction, Apr. 8, 2022, ¶ 23(c)-(e).

Instead of complying with the Court’s Order, Mr. Barber chose to disregard the Court’s mandate and proceed along the same path of deception he embarked leading up to this lawsuit. The facts supportive of holding Mr. Barber in contempt of court and awarding sanctions are set forth below and in any additional memoranda or arguments to be presented to the Court, and as set forth in the accompanying affidavits:

1. Homebot is a database or portal whereby real estate agents can input client and prospective lead information and communicate. It functions as follows:
 - a. A real estate company will create a user profile for employees and/or independent contractors affiliated with the company.
 - b. The agent obtains client or lead contact information from each client or lead.
 - c. The contact information is then uploaded into Homebot by Homebot staff.
 - d. Once the client or lead information is uploaded into Homebot, the real estate agent has access to contact those individual(s) through the Homebot database.
 - e. Although Homebot generates emails, when clients or prospective leads receive emails from Homebot, they receive the email “from” their individual agent.

See Third Affidavit of Greg Harrelson (“Harrelson Affidavit”), ¶ 2-4; Affidavit of Susan Brown (“Brown Affidavit”), ¶ 5.

2. Homebot is not designed to upload client contact information *en masse* or through a file or spreadsheet upload. Harrelson Affidavit, ¶ 5; *see also* Homebot_00802-803.¹

3. While Mr. Barber was affiliated with C21 Harrelson, he was provided a Century 21 Harrelson user profile for Real Geeks and Homebot. That profile was terminated on February 7, 2022 when Mr. Barber’s relationship was terminated with C21 Harrelson. Harrelson Affidavit, ¶ 6-7.

4. The website databases used by C21 Harrelson (including Real Geeks and Homebot), and the information contained therein, was and is confidential information belonging to C21 Harrelson and C21 Barefoot, not to Mr. Barber or any other individual agent. Mr. Barber should not have had any client or prospective lead contact information, a Real Geeks account, or a Homebot account, as such information belonged to C21 Harrelson and should have been returned to C21 Harrelson pursuant to the terms of Mr. Barber’s Independent Contractor Agreement. Harrelson Affidavit, ¶ 8-9.

5. Prior to the hearing on Plaintiff’s Motion for Temporary Restraining Order and Temporary Injunction, Mr. Barber contacted various clients and leads that were clients or otherwise affiliated with C21 Harrelson through Homebot and/or its related applications. *See* Brown Affidavit, ¶ 3.

6. Specifically, Ms. Susan Brown (“Ms. Brown”), a licensed real estate agent with C21 Harrelson, received an email on March 30, 2022 from “Joel Barber—Realtor,”

¹ Document production received from Homebot is currently marked as “Attorneys’ Eyes Only.” Plaintiffs seek to file these documents under seal and/or seek relief from the Confidentiality Order for purposes of using these documents in support of their motion for contempt. In any event, such relief will be sought by way of separate motion.

hello@homebotapp.com, at her personal Gmail address, s—p@gmail.com. The email included a link stating, “Your new home value estimate is ready.” The address included in the subject line of that email is a property Ms. Brown owns and purchased through C21 Harelson. Brown Affidavit, ¶ 3.

7. Ms. Brown had never provided Mr. Barber her personal Gmail address, phone number, or other contact information. The only real estate company to have her personal contact information is C21 Harrelson. Brown Affidavit, ¶¶ 6, 10.

8. On April 8, 2022, the Honorable Steven H. John granted Plaintiffs’ Motion for Temporary Restraining Order and Temporary Injunction pursuant to Rule 65(b), SCRCRCP.

9. That order enjoined Mr. Barber from, among other things:

[c.] . . . using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

d. . . . from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;

e. . . . from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

See Order Granting Temporary Injunction, Apr. 8, 2022, ¶ 23(c)-(e).

10. Plaintiffs posted the required security under Rule 65(c), which the Court set at \$100,000.00.

11. After the Temporary Injunction entered in this case, Ms. Brown continued to receive emails from Mr. Barber through Homebot to her personal Gmail address, the most recent of which occurred on July 16, 2022.

12. Similarly, Mr. Rob Safa (“Mr. Safa”) received correspondence from Mr. Barber, through the email address joel@livinginmb.com, on May 18, 2022. The email went to Mr. Safa’s personal Gmail address, r—a@gmail.com. Affidavit of Rob Safa (“Safa Affidavit”), ¶ 5.

13. Mr. Safa’s real estate agent is his brother, Abe Safa, and Abe Safa’s team at C21 Harrelson; Mr. Safa does not conduct and has never conducted business with Mr. Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc., nor has he provided any of these individuals or entities with his personal contact information. Safa Affidavit, ¶¶ 3-4, 6-7, 11.

14. The only real estate professionals that Mr. Safa has provided his personal contact information to are C21 Harrelson through its agents, Mr. Abe Safa, Ms. Brown, and Mr. Bryan Yagar. Safa Affidavit, ¶ 6.

15. Mr. Safa and Ms. Brown received marketing or other commercial communications from Mr. Barber through Homebot or another account, at their personal email addresses which were Confidential Information held by C21 Harrelson and/or C21 Barefoot and not otherwise provided to any defendants in this case, *after* the Temporary Injunction issued explicitly prohibiting such conduct by Mr. Barber.

16. Further, it is apparent based on other document production that Mr. Safa and Ms. Brown are not the only leads, clients, prospects, and customers that Barber gained access to by being an independent contractor and working with any of the Plaintiffs, who continue to be contacted by Mr. Barber even after the entry of the April 8, 2022 Restraining Order.

In light of Mr. Barber's repeated, willful violations of the Order, Plaintiffs move this Court to: (1) find Mr. Barber in contempt of court; (2) order Defendant Mr. Barber to bring himself and anyone acting on his behalf or for his benefit including, but not limited to, any named Defendants in this suit, into immediate compliance with the Court's April 8 Order; and (3) order sanctions against Mr. Barber as the Court sees fit including, but not limited to, the following remedies: (a) award attorneys' fees and costs; and (b) order such other relief as this Court deems just and proper.

Dated: July 25, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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Email: abailey@burr.com
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

THIRD AFFIDAVIT OF GREG HARRELSON

I, Greg Harrelson, attest under penalties of perjury, as follows:

1. I have administrator credentials for the Century 21 Harrelson/Barefoot CRM tools, including website databases, such as Real Geeks and Homebot.

2. As administrator for the Century 21 Harrelson/Barefoot CRM tools, I own and allow independent contractor agents to use the Century 21 Harrelson/Barefoot CRM tools, including but not limited to Real Geeks and Homebot services, while associated with our company.

3. As an administrator, once I create user profiles for an independent contract agent associated with Century 21 Harrelson/Barefoot, the agent can input client or lead contact information. In addition, as administrator, I can view and manage individual agent leads and company leads, and transfer company leads among company agents.

4. The way Real Geeks and Homebot functions allows for agents, as users, to input client or lead contact information as the agent acquires this from each client or lead.

5. Homebot is not designed for agent upload of client contact information *en masse* or through file/spreadsheet upload. If someone wanted to upload an existing database or spreadsheet of client or lead contact information to Homebot, it would require assistance from the Homebot support services or staff.

6. While Joel Barber was an independent contractor agent associated with Century 21 Harrelson he was allowed to use and provided a Century 21 Harrelson user profile for Real Geeks and Homebot.

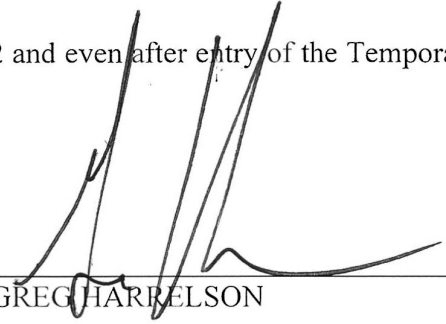
7. When Joel Barber's agency relationship with Century 21 Harrelson was terminated on February 7, 2022, Joel Barber's access to his Century 21 Harrelson user profile for Real Geeks and Homebot was terminated as well.

8. The Century 21 Harrelson/Barefoot CRM tools, including website databases such as Real Geeks and Homebot, and the data contained therein, are Confidential Information and belong to Century 21 Harrelson/Barefoot, not Joel Barber, or any individual agent.

9. At the end of Joel Barber's agency relationship with Century 21 Harrelson, Joel Barber should not have had any client or lead contact database or spreadsheets, a Real Geeks account, a Homebot account, or data from the Century 21 Harrelson/Barefoot CRM tools, as such information, databases, and accounts would have belonged to Century 21 Harrelson, would have been Century 21 Harrelson Confidential Information, and should have been returned to Century 21 Harrelson pursuant to the terms of Barber's Independent Contractor Agreement.


10. I discovered that third-party leads, prospects, clients and customers identified on the Century 21 Harrelson/Barefoot CRM tools have been and continue to be contacted by Joel Barber, without my or Century 21 The Harrelson Group's permission and authorization and without the third-party's permission or authorization since February 7, 2022, and that such

contact has continued even after the hearing on the Motion for Temporary Restraining Order and Temporary Injunction on March 31, 2022 and even after entry of the Temporary Restraining Order on April 8, 2022.



GREG HARRELSON

Sworn to and subscribed before me,
this 25th day of July, 2022.



Notary Public of South Carolina
My Commission Expires: 8/14/2030



Brittany L. Gore
NOTARY PUBLIC
State of South Carolina
My Commission Expires
August 14, 2030

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

COUNTY OF HORRY

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

Plaintiffs,

AFFIDAVIT OF SUSAN BROWN

v.

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.

I, SUSAN BROWN, attest under penalties of perjury, as follows:

1. I live in Horry County, South Carolina, and am over 18 years of age.
2. I am a licensed real estate agent, and I have been an agent at Century 21, The Harrelson Group (“the Harrelson Group”) since the Spring of 2019.
3. On March 30, 2022 at 12:31 p.m., I received an email from “Joel Barber—Realtor,” hello@homebotapp.com, with the subject “Here’s your first Homebot Digest for 7XX Edgecreek Drive.” This email was sent to my personal Gmail address: s—p@gmail.com. See Exhibit A. The email included a link stating, “Your new home value estimate is ready.” The address included in the subject line of that email is a property I own and purchased through the Harrelson Group.
4. This Gmail address is a personal email address I rarely provide to anyone other than friends or family.

5. Homebot is a customer relationship management platform that the Harrelson Group makes available to its agents to email information from realtors to clients. Through the system, each individual realtor adds client contact information to the realtor's account, which is provided for by the Harrelson Group administrator. Although Homebot generates the emails, when clients receive emails from Homebot, they receive an email "from" their individual realtor.

6. When I first began as an agent with the Harrelson Group, I entered my personal Gmail address referenced above into the Harrelson Group's database through Real Geeks. I did this in order to familiarize myself with the product and to learn more about what my clients would be viewing and receiving when I added clients into the system. At no time did I ever provide my Gmail address to Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc.

7. I have never provided Joel Barber the above-referenced Gmail address, my phone number, address, other email addresses, or any other form of contact information. The only real estate company to have this personal Gmail address is the Harrelson Group, when I entered my information into the company's Real Geeks' database.

8. My contact information, specifically, my personal Gmail address listed above, is not available to the public. Joel Barber accessing and using the Harrelson Group's database is the only way I can think of that he could have obtained this information.


9. The email I received from Joel Barber on March 30, 2022 was not the first or the last email I received from him. After February 7, 2022, I have received at least three other emails from Joel Barber to my personal Gmail address referenced above through Homebot, the most recent of these emails being July 16, 2022. Prior to February 7, 2022, specifically around

December 2020, I also received a few Homebot emails from Joel Barber, as an agent with Century 21 The Harrelson Group, regarding property valuation.

10. Although I have met Joel Barber, I have never exchanged contact information with him, I do not "follow" him nor he me on any social media platforms, and I have never emailed Joel Barber. The same is true of Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc.


SUSAN BROWN

Sworn to and subscribed before me,
this 25th day of July, 2022.


Notary Public
My Commission Expires: 9/16/29

Taylor K. Voegel
tvoegel@burr.com
Direct Dial: (843) 443-3007

Burr & Forman LLP
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 336
Myrtle Beach, SC 29578

Office (843) 444-1107
Fax (843) 444-4729

BURR.COM

October 27, 2022

Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

Re: **HSS Barefoot, LLC, d/b/a Century 21 Barefoot, et. al v. Joel D. Barber, et al.**
2022-CP-26-01323

Dear Madam:

Please see the enclosed exhibits:

1. Rob Safa Affidavit_ Exhibit A
2. Susan Brown Affidavit_ Exhibit A

These exhibits were inadvertently excluded from the filing of Rob Safa's and Susan Brown's affidavits, both of which were filed in the above-referenced case on July 25, 2022. Please add "Rob Safa Affidavit_ Exhibit A" to Rob Safa's affidavit filed on July 25, 2022. Please add "Susan Brown Affidavit_ Exhibit A" to Susan Brown's affidavit, filed on July 25, 2022.

Should you need any further information, please do not hesitate to contact me.

Respectfully,

BURR & FORMAN LLP



Taylor K. Voegel

TKV
Enclosures



From: **Joel Barber- Realtor** <hello@homebotapp.com>
Date: Wed, Mar 30, 2022 at 12:31 PM
Subject: Here's your first Homebot Digest for **7 [REDACTED] Edgecreek Dr**
To: <[s\[REDACTED\]p@gmail.com](mailto:s[REDACTED]p@gmail.com)>



MARCH HOMEBOT

7 [REDACTED] EDGECREEK DR

Your new home value
estimate is ready.

See your value



Joel Barber- Realtor • Real Estate Agent
(843) 655-2979 • joel@LivinginMB.com

[Website](#)

Joel Barber, Realtor

Joel Barber

[2411 N Oak Street, Suite 208, Myrtle Beach, SC
29577](#)

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[Unsubscribe](#)

Joel Barber, Realtor

• Phone: +18436552979

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All programs are subject to borrower and property qualifications. Rates, terms and conditions are subject to change without notice. Equal Housing Opportunity.



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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

AFFIDAVIT OF ROB SAFA

I, ROB SAFA, attest under penalties of perjury, as follows:

1. I live in Horry County, South Carolina, and am over 18 years of age.
2. I own a ladies' accessories boutique.
3. I have used Century 21, The Harrelson Group ("the Harrelson Group") for real estate transactions. Specifically, Abe Safa, my brother, and his team at the Harrelson Group are my real estate agents.
4. I have never conducted business with Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc.
5. On May 18, 2022 at 12:21 p.m., I received an email from Joel Barber, joel@livinginmb.com, with the subject "JOEL'S JOURNAL | YOUR MYRTLE BEACH AREA

NEWSLETTER.” This email was sent to my personal Gmail address: r—a@gmail.com. See Exhibit A. The email included an excerpt from Joel Barber providing a “Myrtle Beach Market Update,” “The Listing of the Week,” “Community Spotlight,” and “Resources for Your Journey.”

6. I have never provided my email address to Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc. The only real estate professionals that I have provided my Gmail address are associated with the Harrelson Group: Abe Safa; Greg Harrelson; Susan Brown; and Bryan Yagar.

7. I have never provided Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc. my Gmail address, phone number, address, other email addresses, or any other form of contact information.

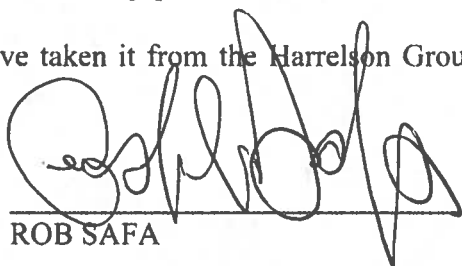
8. My contact information, and specifically, my personal Gmail address, are not made available to the public.

9. I have never subscribed to emails or marketing material from Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc. The only emails I receive from realty companies are those emails sent from Abe Safa.

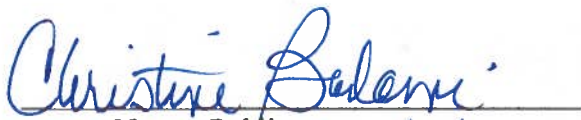
10. When I received “Joel’s Journal” email on May 18, 2022, I forwarded the email to Abe Safa because I wanted to know why this stranger was emailing me, since my real estate agent is Abe Safa and his team, specifically, Susan Brown and Greg Harrelson, at the Harrelson

Group—which does not include Joel Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc.

11. Although I have met Joel Barber once or twice, I have never exchanged contact information with him, I do not “follow” him nor he me on any social media platforms, and I have never emailed Joel Barber. The same is true of Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc. I can think of no way Joel Barber should have obtained my personal Gmail address, which I do not make publically available, other than to have taken it from the Harrelson Group, Abe Safa, or Susan Brown.


ROB SAFA

Sworn to and subscribed before me,
this 22 day of July, 2022.


Notary Public
My Commission Expires: 7/16/29

Taylor K. Voegel
tvoegel@burr.com
Direct Dial: (843) 443-3007

Burr & Forman LLP
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 336
Myrtle Beach, SC 29578

Office (843) 444-1107
Fax (843) 444-4729

BURR.COM

October 27, 2022

Horry County Clerk of Court
P.O. Box 677
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Re: **HSS Barefoot, LLC, d/b/a Century 21 Barefoot, et. al v. Joel D. Barber, et al.**
2022-CP-26-01323

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These exhibits were inadvertently excluded from the filing of Rob Safa's and Susan Brown's affidavits, both of which were filed in the above-referenced case on July 25, 2022. Please add "Rob Safa Affidavit_ Exhibit A" to Rob Safa's affidavit filed on July 25, 2022. Please add "Susan Brown Affidavit_ Exhibit A" to Susan Brown's affidavit, filed on July 25, 2022.

Should you need any further information, please do not hesitate to contact me.

Respectfully,

BURR & FORMAN LLP



Taylor K. Voegel

TKV
Enclosures

From: Joel Barber <joel@livinginmb.com>
Date: May 18, 2022 at 12:21:05 PM EDT
To: [r\[REDACTED\]a@gmail.com](mailto:r[REDACTED]a@gmail.com)
Subject: JOEL'S JOURNAL | YOUR MYRTLE BEACH AREA NEWSLETTER
Reply-To: reply+YzEzMTQ5MS11MTE4NzI3OC1hMjU1Ny1jci01MGM0MzQ1Mw==@kvcore.com



MYRTLE BEACH MARKET UPDATE

Hey guys, Joel Here!

In the video above I give you a quick run-down of how the market has changed lately!

If you are buying or selling, understanding the current market situation is going to be a game changer for any decisions you make regarding real estate.

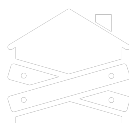
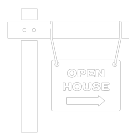
And remember...

If you are interested in taking those first steps towards buying or selling, you can always schedule a 15 minute no pressure call to talk about your situation and get your questions answered.

I look forward to hearing from you!

- Joel B

15 MINUTE MEETING WITH JOEL



- THE LISTING OF THE WEEK -





This home has LOCATION LOCATION LOCATION!!!! 1 Mile to the beach!!!

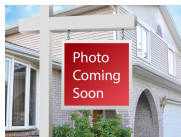
My favorite feature of this home is how it was designed to complement the lifestyle of living on the beach.

The Home was designed with an open layout great for entertaining and colors to make you feel like you are truly getting that beach style dream home that you have always wanted.

If you want more information or would like to see the home for yourself, click any of the options below to learn more!

[View Listing](#)

[Schedule a Showing](#)



COMMUNITY SPOTLIGHT: *New Directions - Myrtle Beach Speedway*



The recent Myrtle Beach Speedway sale is the end of an era for many in the Carolina Forest area of the city. The racetrack, which opened in 1958 and held races until August, is set to be redeveloped as a mix of commercial storefronts and residential units.

The preliminary plan calls for the development of 45 acres on the site, 43 for housing and 2 for commercial. Speedway owner Bill Lutz finalized the property's sale in April for \$7.85 million to a South Carolina LLC, Speedway Villas Holdings, which formed in March.

The new owner's early plan calls for 400 multifamily homes in addition to commercial elements.

The speedway was a Myrtle Beach landmark, a family-friendly venue that hosted early NASCAR Cup series races and NASCAR's former Busch Series. A notable name once called the racetrack home early in his career: Dale Earnhardt, Jr.

Many who live near the venue say they never minded the noise, and the thought of a brand-new development doesn't make some happy. It attracted visitors and residents alike from all walks of life, one said. It was, as another put it, a simple pleasure.

DONATE TO HELP NEW HORIZONS MISSION TO SUPPORT THE HOMELESS

RESOURCES FOR YOUR JOURNEY

DO YOU KNOW YOUR HOME'S TRUE VALUE?

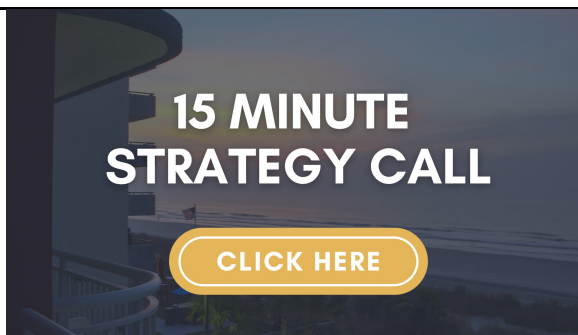
[CLICK HERE](#)

HOME PRICES HAVE CHANGED DRAMATICALLY...

But how much has it actually affected you and your home? Each neighborhood can be a night and day difference in price adjustments due to many factors. Make sure you are up to date on your home's real worth in today's market!

WANNA KNOW THE SECRETS OF THE TRADE?

Whether looking to buy or sell, or just want to learn some awesome information about the area, check out our blog if you have a second to see a variety of information about homeownership, tips and tricks, and all things Myrtle Beach!



REGARDLESS OF YOUR SITUATION I CAN HELP!

We have been helping people just like you since 2007, I've seen it all. If you think that homeownership is out of reach for you or that selling your home would be too difficult, book a call with me and let me help you clear the way!



CALL JOEL

TEXT JOEL

EMAIL JOEL

As always, it is a pleasure serving Myrtle Beach and its wonderful community! Free to reach out anytime, we are always here to help! Other than that, have a wonderful and blessed day.

- Joel Barber | REALTOR®



Joel Barber

Realtor

Myrtle Beach and Surrounding Area

LivinginMB.com

[843-655-2979](tel:843-655-2979)

[Check your property value](#)

[Property Search](#)

[Connect with Joel](#)



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

COUNTY OF HORRY

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

**FOURTH AFFIDAVIT OF GREG
HARRELSON**

I, GREG HARRELSON, attests under penalties of perjury, as follows:

1. I have reviewed the listings for Joel Barber on the Coastal Carolinas Multiple Listings Services, Inc. ("MLS") and Plaintiffs' records and databases, which are true and accurate and kept in the course of normally conducted activity of Plaintiffs' businesses.


2. In so reviewing, I determined many of Joel Barber's listings, ranging from February 15, 2022 to November 9, 2022, were leads maintained in the Plaintiffs' databases, including potential leads and/or existing or former customers/clients.

3. Based on the MLS listings and information within the Plaintiffs' databases, Joel Barber used information he gained access to, by being an independent contractor and working with Plaintiffs, to communicate and conduct business with leads and/or clients of the Plaintiffs, both prior to and after the issuance of the injunction.

4. The following MLS numbers reflect some, but not all, of the above-described listings:

2204633	2211455	2220835
2204251	2211764	2220892
2203131	2212484	2220996
2207200	2212799	2221042
2203399	2213184	2221051
2206382	2213268	2221052
2206590	2213411	2221053
2203649	2213440	2221308
2204920	2213540	2221508
2206383	2213740	2221863
2204322	2213742	2221907
2204949	2213746	2222455
2203745	2214575	2222546
2204534	2214576	2222547
2203966	2215863	2222647
2205213	2216613	2222692
2207566	2216805	2222773
2204631	2217149	2222774
2203972	2217160	2222799
2208255	2217275	2222810
2208383	2217686	2223227
2208382	2217675	2223278
2208718	2217794	2223346
2208738	2218210	2223390
2208912	2218333	2223486
2208994	2219532	2223509
2208995	2219785	2223565
2209274	2219868	2223818
2209521	2219905	2223821
2209573	2219967	2223823
2209766	2220169	2224050
2209786	2220281	2224375
2209915	2220339	2224376
2210573	2220365	2224378
2210624	2220538	2224379
2210942	2220729	2224380
2210948	2220747	2224530

[Signature on Following Page]


GREG HARRELSON

Sworn to and subscribed before me,
this 11th day of November, 2022.


Notary Public
My Commission Expires: April 14, 2029

ELECTRONICALLY FILED - 2022 Nov 11 2:29 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
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HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)
)
Plaintiffs,)

**PLAINTIFFS’ MOTION TO COMPEL
DEFENDANT JOEL D. BARBER’S
DISCOVERY RESPONSES**

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)
)
Defendants.)

YOU WILL PLEASE TAKE NOTICE that Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot (“C21 Barefoot”), R&G Corp, d/b/a Century 21 The Harrelson Group (“C21 Harrelson”), Kevin Mills, individually, Mills, LLC, and Greg Harrelson, individually (collectively, “Plaintiffs”), by and through their undersigned counsel, hereby request this Honorable Court, within ten days after service hereof or as soon thereafter as counsel may be heard, to issue an Order compelling Defendant Joel D. Barber (“Defendant”) to provide complete responses to Plaintiffs’ First Set of Interrogatories and First Set of Requests for Production of Documents, and to permit inspection of items responsive to Plaintiffs’ First Request for Inspection of Property pursuant to Rule 37(a) of the South Carolina Rules of Civil Procedure.

Defendant was served with Plaintiffs' First Request for Inspection of Property on May 2, 2022 as well as Plaintiffs' First Set of Interrogatories and Plaintiffs' First Set of Requests for Production of Documents on May 4, 2022. A copy of these discovery requests are attached hereto as Exhibit A. Defendant responded with limited answers, objections, and only four pages of document production on June 3, 2022 and July 15, 2022. On July 25, 2022, Plaintiffs sent a letter to Defendant, identifying the discovery deficiencies and requesting complete responses by July 29, 2022, pursuant to Rule 11, SCRCF. A copy of this letter is attached as Exhibit B.

On July 27, 2022, Defendant served additional document production, and on August 4, 2022, Defendant supplemented his answers to Plaintiffs' First Set of Interrogatories. However, Defendant's discovery responses remain deficient as Defendant has failed to disclose and/or fully identify his devices and has failed to produce portions of emails, attachments, and communications between Defendants and Defendant and his leads/customers/clients.

Further, although the undersigned has provided Defendant a draft proposed consent order regarding electronically-stored information ("ESI") protocol, in order to move forward with inspection of Defendant's property, no agreement has been reached, and a court order is necessary to move forward with discovery.

As of the date of this Motion, Defendant has provided neither items for inspection nor complete discovery responses. Pursuant to Rule 11, SCRCF, the undersigned, as counsel for the Plaintiffs, hereby affirms that attempts were made in good faith to resolve the matters contained in this Motion with Defendant's counsel, but those attempts were unsuccessful.

Plaintiffs request this Court issue an Order compelling responses to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production of Documents in addition to ordering the inspection of Defendant's property that is responsive to Plaintiffs' First Request for Inspection of

Property pursuant to Rule 36, SCRCP, and awarding attorneys' fees and expenses regarding this Motion, and/or for such other sanctions as this Court deems proper pursuant to Rule 37(a)(4), SCRCP.

Dated: October 31, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar # 70185
Taylor K. Voegel, SC Bar #104770
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*Attorneys for Plaintiffs HSS Barefoot, LLC d/b/a
Century 21 Barefoot, R&G Corp, d/b/a Century 21
The Harrelson Group, Kevin Mills, Mills, LLC,
and Greg Harrelson*

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN MILLS,)
Individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC,)

Defendants.)

**PLAINTIFFS' FIRST REQUEST FOR
INSPECTION OF PROPERTY**

**TO: JASON DAIGLE, ESQ. AND LAWRENCE M. HERSHON, ESQ., COUNSEL
FOR DEFENDANTS:**

Pursuant to Rule 34(a) of the South Carolina Rules of Civil Procedure, the Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, Individually, by and through undersigned counsel, hereby submit this Request for Inspection of Property to Defendants, Joel Barber, eXp Realty, LLC, and Darcy Varney (collectively, the "Defendants"). In accordance with the procedure set forth under Rule 34(a), SCRCP, Defendants shall permit the Plaintiffs, including the Plaintiffs' agents, representatives, or experts, to inspect, copy, test, and/or sample the designated property and electronically stored information set forth below, by or before thirty (30) days after service of this request:

1. All electronic communication devices or file storage devices and platforms used or accessed by Joel Barber for real estate-related business or communications from June 2021 to the present for an expedited inspection, including but not limited to any:

- a. Electronic communication equipment, including but not limited to any computer, desktop, laptop, tablet, personal digital assistant, cellular telephone, landline telephone, or the like;
- b. Storage drive, including but not limited to USB drives, flash drives, external hard drives, or the like;
- c. Cloud-based storage or internet website storage accounts, including but not limited to Dropbox, Amazon Drive, OneDrive, Box, Wrap-up, Egnyte, Idrive, MEGA, iCloud, or the like;
- d. Cloud-based or internet website customer relationship management (“CRM”) tool or account, including but not limited to Homebot, Real Geeks, InfusionSoft, Pipedrive, or the like; and
- e. Cloud-based or internet website referral service accounts, including but not limited to Homelight.com, Homelight.com/simplesale, Fastexpert.com, Effectiveagents.com, Upnest.com, Glenbeck.com, or the like.

2. All responsive property to Request No. 1, above, used or accessed by Joel Barber’s agents, principals, and any others acting on Joel Barber’s behalf or in active concert or participation with Joel Barber.

Dated: May 2, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Email: abailey@burr.com
Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN)
MILLS, Individually,)

Plaintiffs,)

vs.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC.,)

Defendants.)

**PLAINTIFFS' FIRST SET
OF INTERROGATORIES
TO DEFENDANT, JOEL D.
BARBER**

**TO: JASON A. DAIGLE, ESQUIRE AND CHRISTIAN HART STAPLES, ESQUIRE,
ATTORNEYS FOR THE DEFENDANT, JOEL D. BARBER**

Plaintiffs, by and through their undersigned counsel, hereby submits this First Set of Interrogatories to Defendant, Joel D. Barber. The following Interrogatories are to be answered separately and in writing by the Defendant. Pursuant to and in accordance with Rule 33 of the South Carolina Rules of Civil Procedure, you are hereby requested to serve answers, under oath and within thirty (30) days from the date of service hereof, to Plaintiffs' counsel at Burr & Forman LLP, 2411 North Oak Street, Suite 206, Myrtle Beach, South Carolina 29577.

DEFINITIONS

Definitions set forth in the Complaint, and any other pleadings, are incorporated herein by reference.

“Document” shall mean any document or electronically stored information (“ESI”) described in South Carolina Rules of Civil Procedure Rule 34 and shall also include information

created, manipulated, communicated, stored, and/or best used in digital form, requiring the use of computer hardware and software or other electronic storage device.

“Identify” (with respect to persons) shall mean to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

“Identify” (with respect to Documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s)

“Identify” (with respect to records) shall means to state the name and title of the person(s) who had responsibility for creating and/or maintaining the record, and explain how such records are stored, in what format, and where. If any such records have been destroyed or lost, explain the circumstances in detail.

“Describe” shall mean to give a full account in words of someone or something, including all relevant characteristics, qualities, or events.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or, provide a copy of any written or recorded statements taken from such witness.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, if any.

6. List the names and addresses of all expert witnesses whom you expect to call at the trial of this case and with respect to each witness, state the following:

- a. The subject matter on which each said expert witness is expected to testify;
- b. The substance of the facts and opinions to which each said expert witness is expected to testify;
- c. A summary of the grounds of each opinion;
- d. Whether or not any such expert witness is employed by you and in what capacity; and
- e. The financial interest each said expert witness has in this litigation.

7. Identify each of Defendant's immediate family members residing in Horry County, South Carolina, including parents (and step-parents), spouse, and former spouse(s), children (and step-children), siblings (and step-siblings), grandparents, aunts, uncles, cousins, and in-laws.

8. Identify all real estate related subscriptions or accounts and Documents related to real estate related subscriptions or accounts including, but not limited to, Customer Relationship Management ("CRM") or referral subscriptions or accounts, created for, by, or owned by Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from June 1, 2021 to the present including, but not limited to, Real Geeks, Homebot, InfusionSoft, Homelight.com, Fastexpert.com, Effectiveagents.com, Upnest.com, Glenbeck.com, Pipedrive, or the like.

9. Identify all communications between you and Darcy Varney or EXP Realty, LLC from June 1, 2021 to the present regarding real estate sales, marketing, “leads,” contracts or listings.

10. Identify all communications between you and Nicholas (“Nick”) Fitzpatrick from June 1, 2021 to the present regarding real estate sales, marketing, “leads,” contracts or listings.

11. Identify all communications between you and James Ray Lunsford or NorthGroup Real Estate, Inc. from June 1, 2021 to the present regarding real estate sales, marketing, “leads,” contracts or listings.

12. Identify each real estate listings and Documents related to each real estate listings for Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from February 1, 2022 to the present.

13. Identify any persons working with you or Barber Real Estate Inc. as an agent, broker, or on a real estate team as an employee, agent, partner, affiliate, contractor from June 1, 2021 to the present.

14. Identify any persons with whom you have agreed to pay or split real estate related commissions, or agreed to pay or receive a referral fee, from February 1, 2022 to the present.

15. Identify any contracts or Documents related to any of your contracts with any broker, Realtor, real estate agent, or real estate company including, but not limited to, Darcy Varney, EXP Realty, LLC, Nicholas (“Nick”) Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present.

16. Identify any and all electronic storage media (i.e. disks, CD, DVDS, drives (external or internal, or any other type data storage or drives, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

17. Identify any and all electronic storage devices (i.e. computer, laptop, desktop, tablet, server, cell phone/smart phone, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

18. Identify any and all electronic storage locations (cloud-based, storage providers, subscriptions services, back up, files, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

19. Identify all software, hardware, equipment, or technology used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

Pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure, these Interrogatories shall continue from the time of service until the time of trial of the case, and any information requested herein which shall come to your knowledge or the knowledge of the parties, after answers have been submitted, shall be promptly submitted to the undersigned.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar #70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: 843.444.1107
Fax: 843.443.9137
Email: abailey@burr.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Christine Badami, an employee of Burr & Forman LLP, certify the foregoing document was served on counsel of record for the Defendants, on this 4th day of May, 2022, via electronic communications only and/or U.S. Mail, postage prepaid and affixed thereto, addressed as follows:

Jason A. Daigle, Esquire
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401
Email: йдаіgle@ycrlaw.com

Lawrence M. Hershon, Esquire
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Attorneys for Defendants, Darcy Varney
and EXP Realty, LLC

Attorneys for Defendant, Joel D. Barber



Christine Badami

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21)
BAREFOOT, R&G CORP d/b/a CENTURY 21)
THE HARRELSON GROUP, and KEVIN)
MILLS, Individually,)

Plaintiffs,)

vs.)

JOEL D. BARBER, individually and as licensed)
realtor, DARCY VARNEY, individually and as)
broker in charge, and EXP REALTY, LLC.,)

Defendants.)

**PLAINTIFFS' FIRST SET
OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
TO DEFENDANT, JOEL D.
BARBER**

**TO: JASON A. DAIGLE, ESQUIRE, AND CHRISTIAN HART STAPLES, ESQUIRE,
ATTORNEYS FOR THE DEFENDANT, JOEL D. BARBER**

You are hereby requested under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure to produce and permit the Plaintiffs or persons acting on their behalf, to inspect, measure, photograph, and copy the documents and tangible things designated hereafter. Unless otherwise noted, or agreed to between counsel, the production, inspection, copying and all acts necessarily related thereto shall take place at the offices of Plaintiffs' counsel at 2411 North Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, thirty (30) days after receipt hereof, and continue from day to day thereafter until said inspection, copying and related acts are completed.

DEFINITIONS

Definitions set forth in the Complaint, and any other pleadings, are incorporated herein by reference.

"Document" shall mean any document or electronically stored information ("ESI") described in South Carolina Rules of Civil Procedure Rule 34 and shall also include information

created, manipulated, communicated, stored, and/or best used in digital form, requiring the use of computer hardware and software or other electronic storage device.

NOTE: These requests shall be deemed continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

1. Copies of any and all correspondence, communications, statements, reports, reviews, analysis, and any other such Documents, whether in written, electronic, or in transcription form, concerning the allegations and defenses in the pleadings in the above referenced matter.

2. Copies of any and all written or recorded statements taken from witnesses or expert witnesses, or other persons which in any way relate to this action.

3. Any and all Documents related to any cause of action, defense, fact, or allegation in this lawsuit.

4. Any and all communications, including, but not limited to, emails, text messages, social media posts, letters, or any type of transmission of the written word whatsoever, between Defendants and any other individual regarding the Plaintiffs, this lawsuit, or the allegations in this lawsuit.

5. Any and all Documents that may pertain to the subject of this action and which may be utilized at the time of trial in any manner whatsoever.

6. Full copy of any insurance policy that may provide indemnity of defense related to the allegations of this lawsuit.

7. Any and all Documents provided to or received from any expert witness you expect to call at the trial of this case.

8. A complete copy of any real estate listing and Documents related to each real estate listing for Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present.

9. A complete copy of any commissions or referral fees received and Documents related to any commissions or referral fees received by Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present.

10. A complete copy of any contracts or Document related to any contracts with any broker, Realtor, real estate agent, or real estate company, including but not limited to Darcy Varney, EXP Realty, LLC, Nicholas (“Nick”) Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present.

11. A complete copy of Joel Barber and Barber Real Estate, Inc.’s tax returns, including any and all schedules, from January 1, 2020 to the present.

12. A complete copy of any contracts or Documents that you rely upon or have reviewed to support any claimed damages.

13. A complete copy of any contracts, or agreements, or Documents related to any contracts or agreements for commissions, referral fees, or agreement for commission splits between Joel Barber and Barber Real Estate, Inc. and any of the named Plaintiffs, Lee Lott, Ryan Pitchall, and/or Jim Hannigan.

14. Copies of any Documents referred to in your answers to Interrogatories or reviewed by you in answering any discovery requests.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar #70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336

Myrtle Beach, SC 29578-0336
Ph: 843.444.1107
Fax: 843.443.9137
Email: abailey@burr.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Christine Badami, an employee of Burr & Forman LLP, certify the foregoing document was served on counsel of record for the Defendants, on this 4th day of May, 2022, via electronic communications only and/or U.S. Mail, postage prepaid and affixed thereto, addressed as follows:

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Clement Rivers, LLP
25 Calhoun Street, Suite 400
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Attorneys for Defendants, Darcy Varney
and EXP Realty, LLC

Attorneys for Defendant, Joel D. Barber



Christine Badami

Myrtle Beach, South Carolina

Taylor K. Voegel
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Myrtle Beach, SC 29577
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BURR FORMAN

July 25, 2022

VIA EMAIL (cstaples@shumaker.com; jdaigle@ycrlaw.com)

Christian H. Staples, Esq.
SHUMAKER, LOOP & KENDRICK, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280

Jason A. Daigle, Esq.
Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

**Re: HSS Barefoot, LLC, d/b/a Century 21 Barefoot, et al. v. Joel D. Barber, individually and as licensed realtor, et al.
Civil Action No. 2022-CP-26-01323**

Dear Christian and Jason:

On June 3, 2022, you served *Defendant Joel D. Barber's Response to Plaintiffs' First Request for Inspection of Property*. On July 15, 2022, you served *Defendant Joel D. Barber's Objections and Responses to Plaintiffs' First Set of Interrogatories and First Requests for Production of Documents*. However, your responses and production are deficient as set forth below:

Plaintiffs' First Set of Interrogatories

- Interrogatory No. 1: "Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements."
 - Defendant Barber's answer to this Interrogatory does not provide a name or address for any individual. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 2: "For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the facts known to or observed by such witness, or, provide a copy of any written or recorded statements taken from such witness."

- Defendant Barber’s answer vaguely states, “[I]t is generally expected that the parties to this action have knowledge of the facts at issue in this action.” This Interrogatory requests that for each person known, you should provide a summary of what you expect the party to have knowledge of, specifically when you mentioned potential individuals other than the parties in your answer to Interrogatory No. 1. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 3: “Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case.”
 - Defendant Barber’s answer to this Interrogatory states, “Defendant Barber is not aware of any non-privileged responsive documents.” However, you provided four pages of documents in your document production, and by email dated July 22, 2022, you stated you would provide more documents electronically. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC, and if any document is subject to a claimed privilege, please provide a privilege log.
- Interrogatory No. 4: “Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.”
 - Defendant Barber’s answer to this Interrogatory did not provide the addresses of the insurance company, the number of policies, or the amount of liability coverage in each policy. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 5: “Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, if any.”
 - Defendant Barber’s answer states, “Please refer to the pleadings filed by Defendant Barber, which contain responsive information.” Defendant Barber’s Answer and Counterclaims filed June 3, 2022 provide only that Defendant Barber allegedly did not receive commissions, his “fair rate of pay,” or “wages,” in addition to other damages. However, this Interrogatory requests an *itemized* statement of all damages. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.

- Interrogatory No. 9: “Identify all communications between you and Darcy Varney or EXP Realty, LLC from June 1, 2021 to the present regarding real estate sales, marketing, ‘leads,’ contracts or listings.”
 - Defendant Barber answered in part that he did have communications with Darcy Varney once he joined EXP Realty as an agent, and he further answered he would provide written communications with Defendant Varney. However, no communications with Defendant Varney or Defendant EXP Realty, LLC were identified as requested by this Interrogatory or produced as stated in Defendant Barber’s answer. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 10: “Identify all communications between you and Nicholas (‘Nick’) Fitzpatrick from June 1, 2021 to the present regarding real estate sales, marketing, ‘leads,’ contracts or listings.”
 - Defendant Barber responded in part that he would produce written communication with Defendant Fitzpatrick. However, Defendant Barber did not identify any applicable communications as requested by this Interrogatory or produce any written communications within his document production, contrary to his indications in answering this Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 11: “Identify all communications between you and James Ray Lunsford or NorthGroup Real Estate, Inc. from June 1, 2021 to the present regarding real estate sales, marketing, ‘leads,’ contracts or listings.”
 - Defendant Barber answered in part that he would produce written communication with Defendant Lunsford or Defendant NorthGroup. However, Defendant Barber did not identify any applicable communications as requested by this Interrogatory or produce any written communications within his document production, contrary to his indications in answering this Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRPC.
- Interrogatory No. 12: “Identify each real estate listings and Documents related to each real estate listings for Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from January 1, 2022 tot eh present.”
 - In answering this Interrogatory, Defendant Barber did not identify each real estate listing and Document related to each listing as required, but rather, cited to two of

the four pages he produced. Of the four pages Defendant Barber produced, only two are partially responsive to this Interrogatory in that they contain MLS listings. However, this Interrogatory requested that the listings “*and Documents* related to each real estate listings” be identified in answering the Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.

- Interrogatory No. 15: “Identify any contracts or Documents related to any of your contracts with any broker, Realtor, real estate agent, or real estate company including, but not limited to, Darcy Varney, EXP Realty, LLC, Nicholas (‘Nick’) Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present.”
 - Defendant Barber responded in part with a general reference to “initial contracts of employment/agency executed at the inception of his involvement with the various entities.” This Interrogatory asks Defendant Barber to *identify* any contracts or Documents. Please specifically state with whom you had each “initial contract[] of employment/agency.”
- Interrogatory No. 16: “Identify any and all electronic storage media (i.e. disks, CD, DVDs, drives (external or internal, or any other type [of] data storage or drive, or the like)[]) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.”
 - Defendant Barber answered that he uses a flash drive “from time to time for storage of electronic documents in connection with his work as a real estate agent.” This Interrogatory asked to Defendant Barber to *identify* “Documents.” Please identify these “electronic documents” and any other “Documents” as defined in Plaintiffs’ discovery requests that are responsive to this Interrogatory.
- Interrogatory No. 19: “Identify all software, hardware, equipment, or technology used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.”
 - Defendant Barber stated in part that he distinguished no difference between this Interrogatory and Interrogatories Nos. 8, 16, 17, and 18. However, this Interrogatory includes all software, hardware, equipment, or technology not otherwise described or previously requested. Therefore, if there is no additional, responsive answer to this Interrogatory, please respond accordingly.

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
July 25, 2022
Page 5

Plaintiffs' First Requests for Production of Documents

In addition to insufficient responses to Plaintiffs' First Requests for Production of Documents as described more fully below, Defendant Barber produced only four (4) pages of documents in response to these Requests for Production despite your answers in other discovery responses indicating other responsive documents exist as detailed herein. On Friday, July 22, 2022, you informed Ms. Bailey via email you had received additional documentation from Defendant Barber and would be producing those documents through electronic means. To date, we have received no further documents. Please produce these documents in their native forms. Your responses are further deficient in the following ways:

- Requests Nos. 1, 2, 3, 4, 5, 9, 10, 12, 13, and 14: Defendant Barber provided the same response to these Requests: "Any non-privileged responsive documents in Defendant's possession will be made available for inspection and copying at a mutually agreeable date, time and location." However, you have not provided dates or times for Ms. Bailey or someone on her behalf to inspect these documents. Instead, mostly recently, you stated you would electronically produce these electronically in your Friday, July 22, 2022 email. To date, we have not received these documents. Please respond as required by Rule 34(a), SCRCP, and produce these documents in their native formats.
- Request No. 6: "Full copy of any insurance policy that may provide indemnity of defense related to the allegations of this lawsuit."
 - Two of the four pages Defendant Barber produced are merely the declarations page of one insurance policy. This Request seeks a full copy of any insurance policy—not just the declarations page; please respond as required by Rule 34(a), SCRCP, and provide the full insurance policy.
- Request No. 8: "A complete copy of any real estate listing and Documents related to each real estate listing for Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present."
 - This Request seeks the actual listings and any related Documents as defined therein, not a two-page list prepared by Defendant Barber or you containing nothing more than MLS numbers. Please respond fully as required by Rule 34(a), SCRCP.
- Request No. 11: "A complete copy of Joel Barber and Barber Real Estate, Inc.'s tax returns, including any and all schedules, from January 1, 2020 to the present."

- Defendant Barber objected to this Request on the grounds that it is “overly broad, unduly burdensome, irrelevant to the issues in this case, and not reasonably calculated to lead to the discovery of admissible evidence.” However, you have put alleged payments, and specifically, commissions and wages, at issue. Accordingly, tax returns are relevant and commonly requested in civil actions. Please respond fully as required by Rule 34(a), SCRPC.

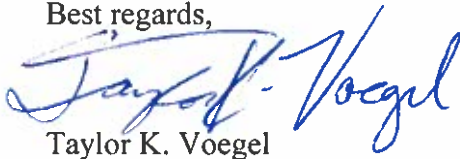
Plaintiffs’ First Request for Inspection of Property

- Request No. 1: “All electronic communication devices or file storage devices and platforms used or accessed by Joel Barber for real estate-related business or communications from June 2021 to the present for an expedited inspection, including but not limited to any [electronic communication equipment, storage drives, cloud-based storage accounts, cloud-based or internet website customer relationship management accounts, or referral service accounts.]”
 - In responding to this Request, Defendant Barber stated he would allow “an inspection of his personal cell phone, laptop/computer, and Apple iCloud storage by an independent third-party vendor such as Reliance Forensics[.]” Defendant Barber did not provide any CRM, other accounts, or the flash drive referenced in other discovery responses. Please fully respond to this Request. Plaintiffs further propose that Clark Walton, Lead Forensic and Cyber Security Expert at Reliance Forensics, LLC, be permitted to inspect the above-listed devices and accounts in accordance with the Stipulated Confidentiality and Protective Order. If this is agreeable, please provide dates and times for availability of this inspection by Mr. Walton. A proposed Consent Order Regarding Electronically Stored Information Protocol will be forthcoming.
- Request No. 2: “All responsive property to Request No. 1, above, used or accessed by Joel Barber’s agents, principals, and any others action on Joel Barber’s behalf or in active concert or participation with Joel Barber.”
 - Defendant Barber responded in part that this Request was not directed to him. This response is deficient because anyone using Homebot, Real Geeks, other CRMs, or other accounts on Defendant Barber’s behalf, such as assistants, employees, or other members of Defendant Barber’s “team,” would be responsive to this Request. Please conduct a reasonable inquiry to responsive material in Defendant Barber’s possession and respond fully to this Request.

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
July 25, 2022
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Pursuant to Rule 11(a), SCRCP, this letter is an attempt to avoid filing a motion to compel sufficient and complete responses to the above-mentioned discovery requests. I have enclosed a courtesy copy of Defendant Barber's responses to Plaintiffs' Interrogatories, Requests for Production, and Request for Inspection of Property, as well as your document production to date. Given the numerous extensions to respond to discovery and recent communications requesting inspection of your document production, we are requesting your answers and responses within four days of the date of this letter, making **Friday, July 29, 2022** the deadline to respond.

Best regards,



Taylor K. Voegel

Enclosures (*via email only*)

cc: Amanda A. Bailey, Esq., w/enc. (*via email only*)
Lawrence M. Hershon, Esq., w/enc. (*via email only*)
Russell M. Racine, Esq., w/enc. (*via email only*)
Clients, w/enc. (*via email only*)

State of South Carolina)
) Court of General Sessions
County of Horry) 2022CP2601323

HSS Barefoot, LLC, et al.)
)
 vs.) Transcript of Record
)
Joel D. Barber, et al.)

November 16, 2022
Horry, South Carolina

B E F O R E:

The Honorable William H. Seals, Judge.

A P P E A R A N C E S (All present by video or telephone):

Amanda A. Bailey, Esq.
Attorney for the Plaintiffs

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
Attorney for the Defendants

Erica Wolfe
Transcriber

1 THE COURT: All right. I think we have everybody, and
2 I'm ready whenever you are.

3 MS. BAILEY: Your Honor, Amanda Bailey. I am here on
4 behalf of the named plaintiffs in this lawsuit. We are here
5 on a motion for contempt and sanctions against the named
6 defendant, Joel D. Barber, individually and as a licensed
7 realtor. Your Honor, this motion was filed on July 25th,
8 2022.

9 We were able to take Mr. Barber's deposition, or at least
10 start Mr. Barber's deposition yesterday. It was not completed
11 yesterday, and there are a number of items that I would be
12 pointing to from his deposition yesterday. We have a rough
13 copy of that transcript, but we do not have a signed copy of
14 the transcript from the court reporter. So I may be referring
15 to it. The notes in the transcript do indicate that it is a
16 rough copy.

17 Your Honor, on March 31st, 2022, of -- earlier this year
18 a hearing was held before Judge John on our motion for a
19 temporary restraining order, and this temporary restraining
20 order and injunction was against the then-named defendants,
21 which included Joel Barber and Darcy Varney and eXp Realty.
22 The motion for temporary restraining order and injunction
23 arose as a result of the independent contractor agreement
24 between Century 21 Harrelson Group and Joel Barber.

25 What occurred and what is supported by a volume of

1 affidavits in support of that injunctive relief was that Mr.
2 Barber was a licensed real estate agent who hung his license
3 as a licensed sales person with Century 21 Harrelson Group
4 through their broker in charge, Margaret McBride. They had a
5 number of documents -- they had an independent contractor
6 agreement, which defined the terms of their relationship.
7 That independent contractor agreement incorporated an agent
8 manual and an office policies document.

9 From about 2016 through February 7th, 2022, Mr. Barber
10 was indeed an agent of Century 21 Harrelson Group. This is
11 both because he hung his real estate license with them under
12 the South Carolina Real Estate Commission, but also as defined
13 by the independent contractor agreement that they had.

14 On February 7th, 2022, what is referenced in the original
15 affidavits filed with the TRO is that there was an incident
16 that occurred that was reviewed on Ring camera footage and an
17 encounter between Kevin Mills, who is a real estate agent
18 associated with a group called Century 21 Barefoot, and Mr.
19 Barber, who is the real estate agent associated with Century
20 21 Harrelson Group.

21 What Mr. Mills discovered on the morning of February 7th,
22 2022, was that his office had been accessed -- improperly
23 accessed, and his computer that was utilized by his assistant,
24 Martina Hartsock (phonetic), as well as his files, databases,
25 online databases, Gmail accounts, Gmail calendars -- all of

1 the databases and online accounts that he uses for the
2 operation of his business were broken into. They were
3 accessed, they were accessed without permission, and they were
4 accessed by Mr. Barber based on the video footage that show
5 Mr. Barber entering and exiting the facility, but also based
6 on the admissions that Mr. Barber made to the investigating
7 officer that day, in which he does say he entered that
8 building and does say that he was looking at information to
9 investigate "teams".

10 In his deposition yesterday, he admits telling third
11 parties that he was terminated on -- his independent
12 contractor agreement was ended, and he was dismissed on
13 February 7th, 2022, because he was looking at somebody else's
14 leads. So what Mr. Barber was doing is really not in dispute.
15 So on February 7th, he was accessing the office. He was
16 looking at somebody else's leads. He shouldn't have been
17 doing that.

18 After February 7th, after his discharge, the Century 21
19 Harrelson Group undertook an investigation to determine how he
20 got into this building and what all he had access to. What
21 was revealed was remarkable. They sent their documents off to
22 an independent investigator, Clark Walton, who has also filed
23 an affidavit in this case.

24 Clark Walton is an expert and he does forensic analysis
25 of databases, forensic analysis of devices, and based on Clark

1 Walton's affidavit, what he discovered was that over the
2 course of at least December 2021 through February 7th, 2022,
3 that at times in which correspond with video footage with Mr.
4 Barber entering and exiting the Century 21 Harrelson Group
5 building in the middle of the night or at the very wee hours
6 of the morning -- at 2 a.m. or 3 a.m. -- that not only were
7 Kevin Mills' databases, leads, Gmail accounts, computers
8 accessed, but also Greg Harrelson's accounts were accessed.

9 Greg Harrelson is the owner of Century 21 Harrelson
10 Group, and he has administrative capacities related to these
11 databases, meaning he has the ability to control everything
12 related to the databases. Greg Harrelson has access to
13 everything, whereas his agents may have some limited accesses
14 to these databases.

15 But the documents show from Clark Walton is that Greg
16 Harrelson's passwords were accessed in 2021 and early 2022,
17 and these would include all administrative passwords, which
18 allow access to every database. And those were accessed in
19 times that correspond with Mr. Barber accessing the building.

20 What also occurs thereafter, is there are some edits.
21 There are edits to Kevin Mills' accounts, which not only
22 reveal that the databases were accessed, but reveal that
23 actual meetings with clients were deleted from Mr. Mills'
24 account. So he had calendared meetings out in the future, and
25 those were deleted. Those meetings were deleted and follow-

1 ups didn't occur because changes were made to his account.

2 All of this action is what resulted in the issuance of
3 the temporary restraining order and injunction on March 31st,
4 2021 (sic). Judge John orally granted that relief and
5 instructed a written order to be prepared, which was. It was
6 circulated with the parties, and it was entered by the Court
7 on April 8th, 2022. The bond that was required under the
8 order was posted that same day, so the temporary restraining
9 order was in effect and entered and bond posted on April 8th,
10 2022. Mr. Barber had notice of it through his counsel, as did
11 eXp Realty and Darcy Varney.

12 That temporary restraining order prevented Mr. Barber, as
13 well as the other named defendants and anyone acting in any
14 capacity with Mr. Barber, from doing a number of things. One,
15 it prevented him from using any information which he gained
16 access to by being an independent contractor and working with
17 any of the plaintiffs. That would've been between March 14th,
18 2017, and February 7th, 2022.

19 It goes on to list, with specificity, what that means.
20 It means you can't use leads; you can't use clients; you can't
21 use prospects; you can't use customers; you can't use CRMs,
22 which are customer relationship management databases; you
23 can't use software, cloudware, and files. He was prevented
24 from using any of that information.

25 He was also prevented from contacting these leads,

1 clients, customers, prospects, and customers. Not just these
2 clients, contacts, and -- not just those that anybody could
3 specifically identify at that point in time, but it is broad
4 enough to say anyone that he gained access to by being an
5 independent contractor and working with the plaintiffs.

6 And he is prevented from disclosing any information which
7 he gained access to. This is broad language. This is
8 language that arose as a result of egregious conduct by Mr.
9 Barber, and it prevents him from utilizing to his financial
10 benefit information that he gained access to.

11 What he had gained access to, based on the affidavits in
12 the TRO, was every database with administrative credentials
13 that Greg Harrelson maintained for Century 21 Harrelson Group.
14 That's set forth in the affidavits that were filed in support
15 of the TRO.

16 What happened after the March 31st hearing where the
17 order granting the TRO was read out loud in court and what
18 happened after it was entered and the bond was posted is
19 astonishing and quite flagrant. What Mr. Barber did is he
20 took hundreds and thousands of leads and prospects, and he
21 uploaded this information into a new Homebot account, which he
22 opened in his name.

23 This Homebot account we've asked for through a subpoena
24 and is part of our motion to file under seal. We received the
25 data back from Homebot, which has been Bates marked 1 through

1 833, and indicates various correspondence between Mr. Barber
2 and Homebot that date after the March 31st order, after the
3 April 8th order was entered, where he's asking that hundreds
4 of files be uploaded to Homebot. He has no documentation to
5 show. He's not produced, he's not identified -- quite
6 frankly, he's withheld intentionally, and he has failed to
7 preserve these files, so we've been unable to identify what
8 files he uploaded to Homebot. But it is demonstrated through
9 these documentation (sic) that immediately after the
10 injunction was ordered he throws thousands of files up to his
11 own Homebot account.

12 What (sic) he testified in his deposition yesterday, he
13 admitted that he had approximately 60,000 leads while he was
14 with Century 21 Harrelson Group. He said about 60 to 70,000
15 leads and prospects and that he took those 60 to 70,000 leads
16 and prospects and he took some of them. When he left, he took
17 them and took some of them to eXp Realty, and then he took
18 them to his new broker in charge at North Group.

19 So he doesn't dispute that he's got these leads that he
20 had with Century 21 Harrelson Group. He doesn't dispute that
21 he took them with him, and he doesn't dispute he still has
22 them. In fact, he was testifying yesterday he's got them all
23 on a thumb drive which has not been produced in this case. By
24 the way, we have a separate motion to compel discovery.

25 So again, after these documents were uploaded, this data

1 was uploaded, and after these leads and prospects were
2 continued to be held by Mr. Barber, he began initiating
3 contact with these leads. And we have at least two that we
4 have affidavits from: One is Susan Brown (phonetic), and one
5 is Rob Safa. Both of these leads were in the Century 21
6 database, and both of these leads were contacted by Mr. Barber
7 after March 31, 2022. In addition, Greg Harrelson has
8 provided his fourth affidavit to this Court where he's
9 identified 20-plus customers and clients of Century 21
10 Harrelson Group that Mr. Barber has current listing agreements
11 with.

12 In opposition to this motion, Mr. Barber has filed two
13 affidavits. These are the first affidavits that he's filed,
14 and then yesterday, we were able to partially take his
15 deposition. It is apparent, based on his two affidavits that
16 he has filed, that his argument is not that he hasn't used,
17 disclosed, or initiated contact with leads, clients,
18 prospects, customers that are located in plaintiffs' database,
19 in plaintiffs' CRM, their Real Geeks or their Homebot
20 database. In fact, quite frankly, he admits all that.

21 Rather, his argument is that those leads, clients,
22 prospects, customers were not Century 21's leads, contacts,
23 and customers, but that they were his individual leads and
24 contacts and customers because he got them from a third party
25 while he was with Century 21 Harrelson Group. This is a

1 distinction without consequence for really any purpose, but
2 specifically for the purposes of this TRO and for purposes of
3 a motion for sanctions.

4 At all times between when Mr. Barber began hanging his
5 real estate license with Century 21 Harrelson Group all the
6 way through February 7th of 2022, Mr. Barber was a licensed
7 real estate salesperson with Century 21 Harrelson Group.
8 Their relationship is not only defined by the South Carolina
9 Real Estate Commission, but it's defined by their independent
10 contractor agreement, it's defined by the agent manual, and
11 it's defined by the office policies.

12 The statute related to the real estate commission that
13 sets forth, really, the standards of real estate licensees in
14 South Carolina is South Carolina Code 40-57-5, and it creates
15 a South Carolina Real Estate commission. It tells what
16 brokers in charge, licensees, management companies -- it tells
17 you what those standards are. And it defines a salesperson
18 and it defines a licensee as a sub-agent of the real estate
19 brokerage firm. That's 40-57-30.

20 Under statute, at all times Mr. Barber was hanging his
21 real estate license with Century 21, he was acting as a sub-
22 agent for Century 21. He was acting on their behalf, and
23 that's statutory. That's just how you obtain a real estate
24 license and how you're able to operate as a salesperson under
25 a broker in charge.

1 During his agency with Century 21 at Harrelson Group, he
2 certainly could bring in his own leads. He certainly could
3 contact with a third party to identify leads that would
4 benefit Century 21 Harrelson Group, and he certainly would
5 have those own leads that he could work on individually while
6 as an agent with Century 21 Harrelson Group. But under no
7 circumstances were those leads not for the benefit of Century
8 21 Harrelson Group, both statutory and pursuant to the
9 independent contractor agreement. All of that was done as an
10 agent of Century 21 Harrelson Group.

11 In fact, while he was an agent with Century 21 Harrelson
12 Group, statutorily and pursuant to his independent contractor
13 agreement, Barber could not engage in real estate transactions
14 with another real estate firm. His license had to be hung
15 with one company and one company only.

16 When his independent contractor agreement with Century 21
17 Harrelson Group was terminated on February 7th, 2022, the
18 independent contractor agreement dictates what happens to his
19 leads, regardless of whether the leads were handed to him by
20 somebody else or regardless of whether those leads came from a
21 third party. It says all transactional files, prospects, and
22 referral lists were to be turned over to the broker. It is
23 undisputed he did not do that. He did not turn these over.
24 He is still sitting on a flash drive that has all this
25 information on it.

1 All listing contracts, pendings, and buyer agencies are
2 property of the broker. What he testified to yesterday was
3 that he took no steps -- zero -- to identify whether or not
4 the people he was contacting were not within the Century 21
5 Harrelson Group database. He has the Century 21 Group
6 database. He has the leads that he took from Century 21
7 Harrelson Group -- that database. He is utilizing that
8 database, and he is utilizing it both prior to and after the
9 entry of the temporary restraining order. It is a flagrant
10 disregard to the language of the temporary restraining order,
11 and it is verified by the affidavits that are on file.

12 Your Honor, to the extent that we were able to get a
13 partial deposition of Mr. Barber yesterday, I will note that
14 we have pending numerous motions to compel. There are also
15 well over 15 relevant and very specific questions that his
16 counsel instructed him not to answer yesterday without any
17 reference to any privilege or any reason for that instruction
18 not to answer. I certainly expect that they're going to file
19 a motion for a protective order, but nonetheless, those
20 instructions were made to him yesterday without any reference
21 on the record as to the grounds.

22 Your Honor, to the extent that any supplementation
23 related to the deposition that was taken yesterday, we would
24 ask -- is needed, we would certainly supplement with those
25 transcripts once copies that are capable of being filed can be

1 filed, and we'd be happy to do so.

2 With this motion for sanctions, what we would ask for the
3 requested relief is, that we would ask for the relief that was
4 originally asked for in the temporary restraining order, but
5 not granted at that time, which is that Mr. Barber immediately
6 identify and turn over all devices, databases, and website
7 information to a neutral third party which would be chosen by
8 the plaintiffs and paid for by the defendants. That neutral
9 third party should conduct a preservation and inspection and
10 inspect to the same scope and extent that the plaintiffs'
11 expert, Clark Walton, conducted the inspection on all these
12 devices and databases.

13 In his deposition yesterday, Mr. Barber identified some.
14 I don't think he identified all, but certainly there's a
15 volume of databases that he has access to. There's a volume
16 of devices that he utilizes. We would ask that that be
17 granted at this time.

18 We'd also ask that the Court order that any and all
19 commissions, referral fees, and any other compensation
20 associated with Mr. Joel Barber as a realtor, as a licensee,
21 from any transaction that he's conducted since February 7th,
22 2022, without deduction be held in trust in an account
23 maintained by the defendants, not comingled with any other
24 funds, and that a report be provided to all parties within 30
25 days and every 30 days thereafter.

1 We'd ask for an award of attorneys' fees and costs
2 related to this motion and the motion for a temporary
3 restraining order. This would include all fees and costs
4 related to the preparation of the temporary motion, temporary
5 restraining order motion, the motion for sanctions, the
6 numerous affidavits, and any memoranda and orders.

7 I will have to provide an affidavit of attorneys' fees
8 following this hearing. I suspect, given the volume of the
9 evidence, the lack of cooperation of the defendants regarding
10 discovery, and efforts that we've had to utilize to obtain
11 information from third parties, including out of state third
12 parties, that these attorneys' fees will certainly cost
13 greater than 20,000 dollars at this time.

14 Further, we'd ask that this Court further enjoin
15 defendants from using, in any manner, his existing database.
16 We are unable to identify or discern anything that would be
17 capable of examination related to his existing database. He's
18 simply not provided it, and that existing database is
19 admitted, based on his deposition, followed him from Century
20 21 Harrelson Group to eXp and to his current broker.

21 Thank you, Your Honor.

22 THE COURT: Your reply to that?

23 MR. STAPLES: Yes, Your Honor. Good morning. Christian
24 Staples for the defendant, Joel Barber.

25 Just to make clear for the record, Your Honor, Attorney

1 Jason Daigle also represents Mr. Barber. He represents him in
2 connection with the counter claims that Mr. Barber has
3 asserted against the plaintiffs, but I'll take the lead on the
4 hearing today. But I want to give Mr. Daigle the opportunity
5 to be heard as well, if he would like.

6 Your Honor, I think it's -- well, first of all, let me
7 say I do take issue with a lot of what Ms. Bailey has said in
8 terms of the motion to compel and whether or not the
9 defendants have cooperated, but I'll save all that for another
10 day. That's not before the Court today.

11 On the contempt motion that is properly noticed and heard
12 today, Your Honor, the standard of review is that civil
13 contempt must be proven by clear and convincing evidence. The
14 contempt must be willful, meaning that it must be voluntary
15 and intentional with the specific intent to do something that
16 the law forbids, and in this case, to do something that the
17 prior injunction order entered by Judge John forbids. And of
18 course, an injunction being restraining must be narrowly
19 construed. And the cite I would give you for those are Ex
20 Parte Cannon 385 S.C. 643 from 2009.

21 I think if you read the injunction order and the
22 plaintiffs' motion, they cite three components of the
23 injunction order that they allege Mr. Barber has violated, and
24 it's basically related to him using information that he gained
25 access to by being an independent contractor and working with

1 the plaintiffs, initiating contact or communication with
2 leads, clients, prospects, and customers he gained access to
3 by being an independent contractor and working with the
4 plaintiffs. And so the key question is whether or not Mr.
5 Barber gained access to the information by virtue of him being
6 an agent at Century 21 as opposed to access he derived from
7 some other independent source.

8 Now, I don't believe the plaintiffs have met this burden
9 by clear and convincing evidence, and instead, when you
10 actually read the affidavits that have been submitted by Mr.
11 Harrelson, Ms. Brown, and Mr. Safa, they make wholly
12 conclusory allegations, none of whom can say with absolute
13 certainty that Mr. Barber did not obtain these leads in lawful
14 and independent way, in some way other than referring to the
15 Century 21 database.

16 Mr. Barber has submitted two affidavits attesting to how
17 he gained access to this information primarily through third
18 party vendors. I believe Exact Data is the name of one
19 vendor, and the other vendor is called Vulcan 7. They're
20 basically subscription services that Mr. Barber paid for out
21 of his own funds and in return would receive a listing of
22 leads, individuals with a phone number and address -- an email
23 address, perhaps. And so, as well, we've got one of these
24 lead sources that he subscribed for and paid for and received
25 was after the termination of his employment with Century 21.

1 In the plaintiffs' -- and Your Honor, unfortunately, I
2 think I'm having a fire drill in my office right now. So I'll
3 continue on until I might get kicked out here.

4 The two individuals that are cited in the plaintiffs'
5 motion, Susan Brown and Rob Safa, I think it's important to
6 note Susan Brown is actually an agent with Century 21, and Rob
7 Safa is actually the brother of an agent at Century 21 named
8 Abe Safa. And so it's not as if they're walking in a number
9 of individuals that are just off the street. I mean, these
10 are people that are affiliated with the plaintiffs that claim
11 they received marketing emails from Mr. Barber.

12 And if you look at the emails that they received, and
13 they were filed supplementally, I think, on October 27th, it's
14 clear that these are generic marketing email blasts that went
15 out to a large distribution group. It's not an email that is
16 specifically targeted to Ms. Brown or to Mr. Safa. And so
17 once this was brought to Mr. Barber's attention, he, of
18 course, removed Ms. Brown and Mr. Safa from his email
19 distribution group, just as he would do for anyone else that
20 expressed a desire not to receive communications from him.

21 I think what the plaintiffs want this Court to do is to
22 essentially say that Mr. Barber cannot practice as a realtor
23 in the Myrtle Beach area. That is clearly not what the
24 injunction order says. That was not Judge John's intent. Mr.
25 Barber has been practicing as a real estate agent for a number

1 of years. He's well-established, top agent in the Myrtle
2 Beach area. I think the plaintiffs are arguing for an overly
3 strict interpretation and enforcement of the order.

4 It's highly probable, if not virtually guaranteed, that
5 these same leads would appear in numerous places: The Century
6 21 database, third party sources that Mr. Barber obtained.
7 Practically every realtor agency in the Myrtle Beach area
8 is -- probably all has the same list of leads, because they
9 all obtain those leads from the same sources -- various
10 community lists, subscription services, and the like.

11 And so the bottom line, I don't think there's clear and
12 convincing evidence that Mr. Barber did not obtain these leads
13 from an independent source. When you hold up the Harrelson,
14 Safa, and Brown affidavits against Mr. Barber's affidavits,
15 they, at best, sort of balance each other out. I mean, it
16 would be a question for a jury, supposedly, as to what -- how
17 he actually obtained the leads. It's not clear and convincing
18 that he did, in fact, use the Century 21 information.

19 Practically, thinking about how we could prevent this, it
20 would be impractical, I think, for every time Mr. Barber gets
21 a lead to reach out to Century 21 and say, hey, is this
22 individual in your database? And even if it is, that doesn't
23 mean that Mr. Barber derived that lead from an improper means
24 in violation of the injunction. It could've been an
25 individual at his church, somebody he met at the Starbucks --

1 there's a number of ways that leads are generated by real
2 estate agents, and the mere fact that Mr. Barber comes upon
3 somebody's email address and contact information does not mean
4 that he's illegally obtained that from Century 21.

5 So for those reasons, Your Honor, I think the motion
6 should be denied. Similarly, if the motion is denied, we
7 would in turn request our costs in opposing this. The
8 plaintiffs were required to post a 100,000 dollar bond in
9 order to get the injunction, and so there are funds available
10 from which that could be ordered.

11 But that's all I have at this time, Your Honor, and I do
12 want to give Mr. Daigle an opportunity, if he has anything to
13 add. Thank you.

14 THE COURT: Mr. Daigle?

15 MR. DAIGLE: No, Your Honor. I'm representing Mr. Barber
16 on his counter claims. I don't think those counter claims are
17 germane to the injunction or to the contempt hearing.

18 THE COURT: Any reply to this, Ms. Bailey? Oh no, you're
19 muted.

20 MS. BAILEY: Very briefly, Your Honor.

21 It would have been very easy for Mr. Barber to return the
22 leads that he took back to Century 21 Harrelson Group. Had he
23 done so, anything that he did from thereon forward would have
24 been new leads and not derived from his independent contractor
25 relationship with Century 21 Harrelson Group.

1 Not only did he take leads that didn't belong to him, he
2 took those leads, he kept them, and he continues to use them.
3 Regardless of whether or not he now tries to recreate this
4 same list and duplicate this same list from what he took with
5 Century 21 Harrelson Group, he has no means to identify what
6 leads he took from Century 21 Harrelson Group because he never
7 returned them. He still has them.

8 Based on his deposition yesterday, he was instructed not
9 to answer some very important questions.

10 To your knowledge, did you ever transfer leads out of
11 that Homebot account, meaning Century 21 Harrelson's Group
12 account? He was instructed not to answer.

13 When you say, put leads on community reports, did you
14 then, in this taking leads from someone's account like Mr.
15 Harrelson's, did you transfer it to your own? I'd like to
16 confer with my attorneys. Instructed not to answer.

17 Did you ever obtain any passwords that Kevin Mills used
18 for any of his accounts in his computer. Instructed not to
19 answer.

20 Did you take any computers with you? Instructed not to
21 answer.

22 What was on the flash drive that you gave to Officer
23 Knapp, who was the officer that investigated the incident on
24 February 7th, 2022? Instructed not to answer.

25 What have you removed, destroyed, or deleted? Why have

1 you destroyed, removed, or deleted information that you had
2 electronically stored related to Century 21? Instructed not
3 to answer.

4 Your Honor, the lack of cooperation for identifying what
5 these leads were and where they were obtained is evident from
6 the failure to cooperate, the instructions not to answer, and
7 quite frankly, in his own affidavit, he has said, I'm happy to
8 provide you information about where these leads came from if
9 given the time. He's had nine months. This lawsuit has been
10 filed for nine months, and none of this information has been
11 returned to Century 21 Harrelson Group. It's not been made
12 available for inspection. It's not been made available for us
13 to review and identify. Absolutely no steps were taken to
14 ensure that Century 21 Harrelson Group's databases'
15 information was not used in his listings. Your Honor, to the
16 extent that we need to supplement with these deposition
17 transcripts, we are happy to do so.

18 The documents and the evidence that has been presented
19 via affidavit prior to the TRO and in support of this motion
20 for sanctions make clear that Mr. Barber was prohibited from
21 taking leads with him when he left Century 21 Harrelson Group.
22 It makes no difference as to whether or not those leads were
23 obtained from a third party. His own affidavit reflects at
24 least a set of leads from Vulcan 7 were obtained by Joel
25 Barber while an agent of Century 21 Harrelson Group. Those

1 leads should've been returned to Century 21 Harrelson Group.
2 They were not. Thank you, Your Honor.

3 MR. STAPLES: Your Honor, if I may, briefly.

4 I just want to point out that failing to return the leads
5 is not contempt. Not answering a deposition question on
6 advice of your attorney is not contempt. Lack of cooperation
7 in discovery, even if we assume that that's true, which we
8 don't, is not contempt.

9 They have not established contempt by clear and
10 convincing evidence, which is the standard that has to be
11 applied. Thank you.

12 THE COURT: Does the defendant explain the Ring camera --
13 the video footage and the after --

14 MS. BAILEY: No, Your Honor. He was instructed not to
15 answer.

16 MR. STAPLES: And frankly, Your Honor, that all was
17 subject to the prior hearing when Judge John entered the
18 injunction. I mean, we're only concerned with what has
19 happened since that time, and all they've got is two emails
20 that were sent to Century 21 agents and affiliates that Mr.
21 Barber has explained where he got that from.

22 And then, with respect to this fourth Harrelson affidavit
23 that became available Monday morning -- and we sat all day
24 yesterday in the deposition -- we did file the second
25 affidavit of Mr. Barber yesterday evening in an attempt to

1 explain where those listings came from. We have not had time,
2 frankly, to provide a detailed information as to where those
3 came from, but if leave of Court would be granted, we can
4 certainly do that.

5 But Mr. Barber does have a lawful explanation for where
6 each and every of those MLS listings came from, one of which I
7 would note is not even his listing. So that raises some
8 questions about the level of care that plaintiffs have put
9 into their own affidavit, but we're happy to supplement with
10 an explanation, but we would need some time to do that.

11 MS. BAILEY: Your Honor, if I may have just one moment.

12 Quite frankly, we don't have just the two affidavits.
13 Yesterday, for the very first time, Mr. Barber testified that
14 he took 60 to 70,000 leads with him when he left Century 21
15 Harrelson Group, and that he has all of those leads on a flash
16 drive. This is the first time we've learned of this
17 information. This information is directly supportive of our
18 motion for contempt.

19 THE COURT: I will take it under advisement and let you
20 know something this week.

21 MS. BAILEY: Thank you, Your Honor.

22 MR. STAPLES: Thank you.

23 THE COURT: Thank you all.

24 (End of Transcript of Record)

25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR CONTEMPT AGAINST
DEFENDANT JOEL D. BARBER**

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

This matter was presented to the Court by Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp., d/b/a Century 21 The Harrelson Group (collectively, “Century 21”), Kevin Mills, Mills, LLC, and Greg Harrelson’s (collectively, “Plaintiffs”) Motion for Contempt Against Defendant Joel D. Barber, filed July 25, 2022. A virtual hearing was held regarding Plaintiffs’ Motion on November 16, 2022. Present at the hearing were Plaintiffs Greg Harrelson and Kevin Mills, as well as Amanda A. Bailey, Esquire, and Taylor K. Voegel, Esquire, as counsel for Plaintiffs. Defendant Barber was also present, as was his counsel, Christian H. Staples, Esquire and Jason A. Daigle, Esquire. Lawrence M. Hershon, Esquire, counsel for Defendants Darcy Varney and eXp Realty, LLC, and Russell M. Racine, Esquire, counsel for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc., were also present. After

consideration of the submittals by Plaintiffs and Defendant Barber, the arguments of counsel, and the applicable law, the Motion is granted.

This civil action is premised upon the allegations that Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21 for his benefit and the benefit of other brokerage companies. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction (“the Injunction”). The Court held hearings on the matter and issued an oral ruling on March 31, 2022, granting Plaintiffs’ Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. The Injunction, which continues to be in effect until the resolution of this case, sets forth in pertinent part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

Inj., ¶ 23(c)-(e). Based upon this Court’s review of Rob Safa, Susan Brown, Defendant Barber, and Plaintiff Harrelson’s affidavits, Defendant Barber’s deposition testimony from November 15, 2022 represented by Plaintiffs’ counsel, and all arguments of counsel, this Court finds clear and

convincing evidence that Defendant Barber willfully, voluntarily, and intentionally violated the Injunction by using information, disclosing information, and initiating communication with leads, clients, prospects, and customers he gained access to or otherwise obtained during his time as an agent and independent contractor with Plaintiffs.

Accordingly, it is ORDERED that Defendant Barber is hereby held in contempt of court for failing to comply with the Injunction and otherwise acting with disregard for the judicial process. Therefore, this Court orders the following:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order;
2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;
4. Plaintiffs' request for attorneys' fees is denied at this time; and
5. The Injunction issued March 31, 2022 remains in full force and effect pending the trial of this case unless otherwise modified or terminated by Court order.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Presiding Judge of the 15th Judicial Circuit

Conway, South Carolina
Dated: November _____, 2022



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Sanctions

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2022-11-22 13:04:54 page 4 of 4

ELECTRONICALLY FILED - 2022 Nov 22 3:00 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21 BAREFOOT; R&G CORP, d/b/a CENTURY 21 THE HARRELSON GROUP; KEVIN MILLS, Individually; MILLS, LLC, and GREG HARRELSON, Individually,

Plaintiffs,

vs.

JOEL D. BARBER, individually and as licensed realtor; BARBER REAL ESTATE, INC.; NICHOLAS FITZPATRICK, as licensed realtor; DARCY VARNEY, individually and as broker-in-charge; EXP REALTY, LLC; JAMES RAY LUNSFORD, individually and as broker-in-charge, and NORTHGROUP REAL ESTATE, INC.,

Defendants.

**DEFENDANT JOEL D. BARBER'S
MOTION TO RECONSIDER**

NOW COMES the Defendant Joel D. Barber (“Defendant Barber”), by and through his undersigned counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and hereby moves for reconsideration of the Order Granting Plaintiffs’ Motion for Contempt entered in this action on November 22, 2022 (the “Order”). The basis of this motion is that the Order will necessarily lead to the production of privileged and/or non-discoverable information; the Order has undefined terms; the Order appears to circumvent the discovery rules and pending discovery motions which have yet to be heard; the Order is inconsistent with the injunction upon which it is ostensibly based; the Order effectively creates an unenforceable non-compete clause where one does not exist; the retroactive nature of the Order makes adherence to it impossible; and such other

grounds as may become apparent. Defendant Barber reserves the right to submit a memorandum of law and/or affidavit in further support of this motion.

This the 22nd day of November, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

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Charlotte, NC 28280
Telephone: 704-375-0057
Facsimile: 704-332-1197
cstaples@shumaker.com

*Attorneys for Defendant
Joel D. Barber (as to the Answer and
Affirmative Defenses only)*

-and-

CLEMENT RIVERS, LLP

/s/ Jason A. Daigle

Jason A. Daigle, SC Bar No. 73308
P.O. Box 993
Charleston, SC 29402
(843) 720-5436
jdaigle@ycrlaw.com

*Attorneys for Defendant
Joel D. Barber (as to the Counterclaims only)
and Barber Real Estate, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **DEFENDANT JOEL D. BARBER'S MOTION TO RECONSIDER** was electronically filed using the SC Courts' E-Filing portal which will automatically send notice of filing to all counsel of record in this action.

This the 22nd day of November, 2022.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

**PLAINTIFFS' REPLY MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANT
JOEL D. BARBER'S MOTION TO
RECONSIDER**

Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot ("Century 21 Barefoot"), R&G Corp, d/b/a Century 21 The Harrelson Group ("Century 21 Harrelson") (collectively, "Century 21"), Kevin Mills, individually, Mills, LLC, and Greg Harrelson, individually (collectively, "Plaintiffs"), by and through their undersigned counsel, submit this Reply Memorandum of Law in Opposition to Defendant Joel D. Barber's Motion to Reconsider.

FACTS

This case began when Plaintiffs discovered Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21, including leads, for his benefit and for the benefit of other brokerage companies when, on numerous occasions, Defendant Barber entered Century 21's office in the early morning hours

and logged into other people's computers, accessing and saving their lead information and deleting appointments from calendars, among other things. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction ("the Injunction"). The Court held a hearing on the matter and issued an oral ruling on March 31, 2022 [See Ex. A, Transcript of March 31, 2022 Hearing], granting Plaintiffs' Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. Plaintiffs were ordered to pay a bond in the amount of \$100,000.00. (Inj., ¶ 27.) The Injunction, which is unappealed and continues to be in effect until the resolution of this case, sets forth in part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMSs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

(Inj., ¶ 23(c)-(e).) Subsequent to the hearing and order granting the injunction, Defendant Barber continued to initiate contact with individuals and utilize information he gained access to by being an independent contractor and working with the Plaintiffs, in violation of the Injunction. In particular, Plaintiffs submitted the affidavits of Susan Brown and Rob Safa who each attested to receiving email communications from Defendant Barber despite never having provided him their

contact information. (**Rob Safa Aff. and Susan Brown Aff.**) Rather, both Rob Safa and Susan Brown attested they provided their contact information to other agents associated with Century 21, but never Defendant Barber. (**Safa Aff., ¶¶ 6-8; Brown Aff. ¶¶ 6-8.**) Specifically, Susan Brown received an email on March 30, 2022 from Defendant Barber from the software “Homebot.” (**Brown Aff., ¶ 3.**) Susan Brown attested she had never provided Defendant Barber her contact information, but rather, had only entered her own contact information into a Homebot database belonging to Century 21. (**Brown Aff., ¶¶ 5-10.**)

Although Defendant Barber contends he received the contact information for Susan Brown and Rob Safa through some source other than Century 21, the evidence does not support this assertion; specifically, the documents Plaintiffs received in response to their subpoena to Homebot Inc., reflect that Defendant Barber entered Susan Brown’s contact information into his new Homebot account on March 24, 2022. (**Exhibit B, pg. 752.**)¹ Defendant Barber’s own affidavit and testimony evidences that he gained access to this information while an independent contractor and working with Century 21. (**Joel Barber Aff., ¶¶ 9-10, Exs. D and E**) (**Barber Depo., pp.157-164.**)

In light of these violations of the Injunction, and other violations later revealed at Defendant Barber’s deposition and in discovery, Plaintiffs filed a Motion for Contempt Against Defendant Barber on July 25, 2022. The Court held a virtual hearing on November 16, 2022. Plaintiffs presented evidence from affidavits as well as Defendant Barber’s deposition testimony, which was taken November 15, 2022.² Based on Defendant Barber’s deposition testimony, he

¹ By consent order dated November 8, 2022, the Parties were permitted to file Homebot, Inc.’s documents under seal, portions of which are marked as Ex. 52 (Confidential Homebot_000763) and 53 (Confidential Homebot_000764 to 000833) of Barber’s deposition. **Exhibit B** is filed under seal.

² Excerpts from Defendant Barber’s transcript are included herein as **Exhibit C**.

retains a flashdrive of some 60,000 to 70,000 leads, 4,000 to 6,000 of which he has transferred to eXp and/or NorthGroup, and several thousand of which he has uploaded to a new personal Homebot account. (**Barber Depo.**, pp. 163, 178, 189, 201-202, 205-206, 216, 222-223.) Moreover, he uses this same flashdrive to prepare and store spreadsheets. *Id.* None of which have been produced.

The Court granted Plaintiffs' Motion for Contempt Against Defendant Barber. Defendant Barber filed a Motion to Reconsider on November 22, 2022, but to date, Defendant Barber has not served the Honorable William H. Seals, Jr. with a copy of his Motion per Rule 59(g), SCRCP. On December 23, 2022, counsel for Defendant Barber emailed counsel of record copies of his Memorandum of Law in Support of his Motion to Reconsider, in addition to new affidavits and over 100 exhibits never previously presented to the Court on November 16, 2022, or otherwise produced in discovery. Plaintiff produced the affidavit of "Sandra Churgin" signed by "Arlene S. Churgin", neither of which were identified as a potential witness by Defendant Barber.³

Since the Court's Order Granting Plaintiffs' Motion for Contempt Against Defendant Joel D. Barber, Defendant Barber has continued to violate the Injunction and disregard the Contempt Order. Among other evidence, Plaintiffs have since received the subpoena response⁴ of Defendant Barber Real Estate, Inc.'s bank statements⁵, which show checks paid out from this account on

³ Defendant Barber asserts these exhibits are "documentary proof" of how he obtained each listing. (**Barber Third Aff.**, ¶ 12.) These documents provide no such evidence of how he obtained any listing. Further, these documents have never been produced in discovery and were not made available to Plaintiffs prior to Barber's deposition or prior to the Motion to Contempt. Plaintiffs have a pending Motion to Compel for Defendant Barber's continued incomplete and inadequate discovery responses.

⁴ Excerpts of First Citizens Bank's subpoena response are included herein as **Exhibit D**.

⁵ The First Citizens Bank account for Barber Real Estate, Inc. is Barber's real estate related business account. (**Barber Depo.**, pp. 79)

November 21, 2022 for \$250,000.00 and on November 30, 2022 for \$100,000.00, both after the Contempt Order was entered.

LEGAL STANDARD

“A party *may* wish to file [a Rule 59(e), SCRCP] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised but not rule on, in order to preserve it for appellate review.” *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original).

Contempt results from a willful disobedience of an order of the Court. *Miller v. Miller*, 375 S.C. 443, 454, 552 S.E.2d 754, 759 (Ct. App. 2007) (citations omitted). An act is willful when it is committed “voluntarily and intentionally with the specific intent to do something the law forbids...[or] with bad purpose either to disobey or disregard the law.” *Id.* at 454, 552 S.E.2d at 759-60 (citations and quotations omitted).

South Carolina Code Section 14-5-320 provides: “The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempt of authority in any cause or hearing before the same.” Although a determination of contempt should be imposed sparingly, “The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Miller*, 375 S.C. at 452-53, 552 S.E.2d at 759 (citations and internal quotation marks omitted).

The record must “clearly and specifically reflect the contemptuous conduct” before a court may find a party in contempt, and when a prima facie case of contemptuous conduct is shown, the

burden shifts to the nonmoving party to establish his defense and inability to follow the court's order. *Id.* at 454, 552 S.E.2d at 760 (citations and internal quotation marks omitted).⁶

In this case, Plaintiffs made a prima facie showing of contemptuous conduct at the November 16, 2022 hearing in support of their motion for contempt and sanctions and Defendant Barber did not meet his burden to establish any defense or inability to follow the Injunctive Order.

DISCUSSION

I. The Court did not misapprehend or overlook any argument when deciding Plaintiffs' Motion for Contempt, and sufficient evidence existed to grant Plaintiffs' motion.

The affidavits of Rob Safa and Susan Brown provide direct evidence of Defendant Barber's violation of the Injunction. Although Defendant Barber insists he obtained this information independently of Century 21, the evidence does not support this contention, and regardless of where Defendant Barber allegedly obtained the information, the Injunction prohibits his use of it because he gained access to this information while an independent contractor with Century 21.

Both Rob Safa and Susan Brown attested they were contacted by Defendant Barber related to the valuation of their homes or the use of Defendant Barber for real estate transactions. (**Safa Aff., ¶ 5; Brown Aff., ¶ 3.**) Subsections 23(c) and (d) prohibit Defendant Barber's use of any information to which he gained access to by being an independent contractor and/or initiating contact with anyone whose information he may have gained access to by being an independent contractor at Century 21. (**Inj., ¶ 23(c)-(d).**) Here, both Rob Safa and Susan Brown attested they never provided their information, specifically, their personal email addresses, to Defendant Barber,

⁶ Defendant Barber cites to a 1935 Supreme Court of South Carolina decision that addressed the denial of motions for directed verdict—not a motion for contempt—and therefore, such case is inapposite to the issue before the Court. *Oakman Serv. Station v. People's Oil Co.*, 174 S.C. 517, 178 S.E. 129 (1935).

and their email addresses were not public information. (**Safa Aff.**, ¶¶ 4, 6-10, **Brown Aff.**, ¶¶ 4, 6-8.)

Defendant Barber’s own affidavit proves he violated the Injunction when he utilized information he received in August 2021—while he was an independent contractor with Century 21—to contact Susan Brown. (**Brown Aff.**, ¶¶ 9-10, **Exs. D & E.**) While Defendant Barber asks this Court to refrain from enforcing the Injunction because he supposedly received such information from other sources, Defendant Barber himself concedes that he is using information he gained access to while an independent contractor with Century 21 and working with Century 21, such conduct is prohibited by the Injunction. Further, Defendant Barber did nothing to ensure he refrained from using information obtained from Century 21’s databases. (**Barber Depo.**, pp. 222-223.)

In his deposition taken the day prior to the hearing on Plaintiffs’ Motion for Contempt, Defendant Barber admitted to use of these leads and information he gained access to while an independent contractor at and otherwise working with Plaintiffs. Although he was instructed not to answer over twenty questions related to whether he improperly accessed and retained information from Plaintiffs, Defendant Barber did admit he was terminated from Century 21 because he was “caught looking at other people’s leads.” (**Barber Depo.**, pp. 100:5-10.) Defendant Barber further stated he imported leads he obtained during the time period he was associated with Century 21 into the database of Defendant eXp Realty, LLC, and later imported that information into Defendant NorthGroup Real Estate, Inc. (**Barber Depo.**, pp. 189:19-24; 197:7-18; 198:17—200:4.) Defendant Barber also conceded he provided several lists of leads he gained access to while at Century 21 to Homebot, Inc. (**Barber Depo.**, pp. 198:17—199:21; 205:14—206:1.) Moreover, Defendant Barber admits that 60,000 to 70,000 leads as well as

spreadsheets and other electronic data is stored on his two computers and a flash drive. Defendant Barber admits the flash drive is assessed and used in his real estate business. **(Barber Depo., pp. 163, 178, 189, 201-202, 205-206, 216, 222-223.)** This flashdrive has not been produced nor even identified in Defendant Barber's response to Plaintiff's Request to Inspect served on June 3, 2022. Further, Defendant Barber admits to deleting electronic data as recently as 45 days prior to his deposition. **(Barber Depo., pp. 190-193, 208-210.)** Thus, according to his own testimony, Defendant Barber has used and continues to use information subject to the Injunction and has taken no efforts to preserve his data related to his activities.

Not only did the evidence presented to the Court on November 16, 2022 demonstrate Defendant Barber's disregard for court orders, but his behavior since the Court's order of contempt illustrates his continued disregard. Defendant Barber continues to obfuscate orders of the Court, such as Defendant Barber Real Estate, Inc.'s transfer of \$350,000.00 of real estate business/commission funds immediately after Defendant Barber had been ordered to hold any and all real estate-related commissions in trust until the final resolution of this action. **(Ex. D.)**

Ultimately, in support of their Motion for Contempt, Plaintiffs proved by clear and convincing evidence that Defendant Barber willfully violated the Injunction. Defendant Barber failed to meet his burden of establishing a defense for compliance with the Injunction or inability to follow, and accordingly, the granting of contempt was proper.⁷

⁷ In his Memorandum of Law in Support of his Motion to Reconsider not previously argued, Defendant Barber insists he can explain where he received lead information for the MLS listings set forth by Plaintiff Greg Harrelson in his fourth affidavit. However, not only do the exhibits Defendant Barber set forth fail to prove or otherwise support that he did not improperly use such lead information in violation of the Injunction, but such an argument fails because regardless of whether Defendant Barber subsequently purchases contact information with his own money or from a vendor, the Injunction prohibits the use of information he gained access to while an independent contractor at Century 21 or while otherwise working with Plaintiffs. Defendant Barber has taken no steps to attempt to comply with his obligations pursuant to the Injunction, and he has willfully continued using such information and initiating contact with such leads in violation of the Injunction. Defendant Barber asserts these exhibits are "documentary proof" of how he

Moreover, for purposes of Rule 59(e), SCRCP, Defendant Barber has not asserted any argument that was overlooked or misapprehended by the Court, but rather, Defendant Barber takes issue with the relief ordered. Counsel for the undersigned circulated the draft order regarding the contempt and incorporated proposed edits for co-defendants prior to submitting to the Court. Although counsel for the co-defendants responded and requested changes, which were incorporated, counsel for Defendant Barber requested no changes, edits, or limitation in this order prior to submittal.

Defendant Barber now asserts the inspection of his devices is improper because there are no restrictions or safeguards of what information may be discovered, such as that subject to a privilege. Defendant Barber's other concerns initially raised are thoroughly protected by the current Consent Protective and Confidentiality Order entered May 16, 2022.⁸

Defendant Barber also asserts the relief provided by the Court will keep him from practicing real estate in the area entirely. However, the Court simply ordered Defendant Barber to do what he has been required to do all along, which is to refrain from using information he gained access to while working with Century 21. According to his own testimony, Defendant Barber has taken no steps to distinguish which information he should and should not use, and as such, the Court has now ordered measures to ensure he will not continue harming Plaintiffs. **(Barber Depo., pp. 222:8-14.)**

obtained each listing, but, from those that are legible, these exhibits do not demonstrate how these listings were originally obtained, and in fact, some exhibits even demonstrate Defendant Barber's violation of the Injunction as he seemingly initiated contact with various pre-existing leads. **(Barber Third Aff., ¶ 12; Ex. 13.)**

⁸ To the extent Defendant Barber seeks to preserve any purported privilege, objections to which Plaintiff does not waive, Defendant Barber should pay the cost and Plaintiff proposes the attached Proposed ESI Order, which is consistent with the Contempt Order and proposes to allow for the identification of privilege and confidential material, **Ex. E.**

Lastly, Defendant Barber has not only continued to violate the injunctive relief, but also continues to violate the Contempt Order. He has not provided his devices, data, or databases for inspection, he has not held his commissions in trust, and he continues to use information he gained access to while an independent contractor and working with Century 21. Nothing in their Rule 59(e) motion stays the enforcement of the Injunction or Contempt Orders. *Cf. Haselden v. Haselden*, 347 S.C. 48, 63, 552 S.E.2d 329, 336-37 (Ct. App. 2001) (holding a Rule 59(e), SCRCPP motion did not stay the enforcement of a judgment, and the granting of contempt was not in error simply because a contempt motion was granted prior to the ruling on the Motion to Reconsider).

This Court should deny the motion to reconsider. Notwithstanding, the Plaintiffs consent to the entry of the attached proposed ESI Order, provided Defendant Barber and each party pay a proportional share of the cost to image and preserve Defendant Barber's data, devices, and databases, and Defendant Barber solely pay the entirety of the costs of any effort for searching and reporting and for privilege/confidentiality review.

II. Defendant Barber is procedurally barred from seeking reconsideration.

Rule 59(g), SCRCPP provides that “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” The Court entered its Order Granting Plaintiffs’ Motion for Contempt on November 22, 2022. Although Defendant Barber electronically filed his Motion to Reconsider, Plaintiffs are aware of no service of the Motion on the Honorable William H. Seals, Jr. as required by Rule 59(g), SCRCPP. *See* Rule 6(b), SCRCPP (“The time for taking any action under rule[] . . . 59 . . . may not be extended except to the extent and under the conditions stated in them.”); Rule 59(e), SCRCPP (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”); Rule 59(g) (providing ten days after the filing of a motion pursuant to

Rule 59, SCRCP to the judge). *Cf. Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 397, 665 S.E.2d 222, 227 (Ct. App. 2008) (finding appellant's Rule 59(e), SCRCP motion was not properly before the court where the appellant failed to serve the opposing party with the motion). Further, the time for appealing both the Order Granting the Injunction and the Contempt Order has passed. *See* Rule 203(b)(1), SCACR (providing a party thirty days after receipt of written notice of entry of a judgment to appeal). Accordingly, Defendant Barber's Motion questioning the Injunctive Order and the Contempt Order is procedurally improper and should be denied.

As a result, Defendant Barber's Motion for Reconsideration is procedurally barred as untimely.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant Barber's Motion to Reconsider.

Dated: December 28, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey
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Century 21 Barefoot, R&G Corp, d/b/a Century 21
The Harrelson Group, Kevin Mills, Mills, LLC, and
Greg Harrelson*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2022-CP-26-01323

HSS BAREFOOT, LLC, D/B/A)
CENTURY 21 BAREFOOT; R&G)
CORP, D/B/A CENTURY 21)
THE HARRELSON GROUP, AND)
KEVIN MILLS,)
INDIVIDUALLY,)

Plaintiffs,)

vs.)

JOEL D. BARBER,)
INDIVIDUALLY AND AS)
LICENSED REALTOR, DARCY)
VARNEY, INDIVIDUALLY AND)
AS BROKER-IN-CHARGE, AND)
EXP REALTY, LLC.)

Defendants.)

Transcript of Record
Motion for Temporary Restraining
Order and Temporary Injunction

March 31, 2022

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Amanda Bailey, Esquire
Attorney for Plaintiffs

David Daigle, Esquire
Attorney for Defendant Barber

Lawrence M. Hershon
Attorney for Defendants Varney and EXP

Kay H. Richardson
Circuit Court Reporter

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I N D E X

MARCH 31, 2022 Pg.

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Ruling of the Court 34

Certificate of Court Reporter 41

E X H I B I T S

No. ID EV

(No exhibits were marked or admitted.)

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1 MARCH 31, 2022

2 ON THE RECORD - 9:55 A.M.

3 THE COURT: So, this is 2022-CP-26-1323, HSS Barefoot,
4 LLC, d/b/a Century 21 Barefoot, R&G Corporation, d/b/a Century
5 21 Harrelson Group, and Kevin Mills, individually versus Joel
6 D. Barber, individually and as licensed realtor, Darcy Varney,
7 individually, and as broker-in-charge, and EXP Realty, LLC.

8 All right. For the court reporter's benefit and for the
9 record, Counsel appearing, stand up, state your name and the
10 party you're representing, please.

11 MS. BAILEY: Your Honor, Amanda Bailey on behalf of all
12 plaintiffs.

13 THE COURT: All right.

14 MR. DAIGLE: Your Honor, Jason Daigle, on behalf of Joel
15 Barber.

16 THE COURT: All right. Very good.

17 MR. HERSHON: Your Honor, Lawrence Hershon on behalf of
18 EXP Realty and Darcy Varney.

19 THE COURT: All right. Very good.

20 COURT REPORTER: I'm sorry. Can you spell that for me,
21 please?

22 MR. HERSHON: My name?

23 COURT REPORTER: Yes, sir.

24 MR. HERSHON: H-E-R-S-H-O-N.

25 THE COURT: Thank you.

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1 All right. We are here on behalf of the filing of the
2 plaintiff for temporary relief in this matter. The Court had
3 set today for that hearing on that request.

4 That being your request, Ms. Bailey, be glad to hear from
5 you, ma'am.

6 MS. BAILEY: Thank you, Your Honor.

7 Your Honor, I represent the plaintiffs in this matter who
8 are brokerage real estate companies, as well as an individual
9 licensed real estate agent or licensed independent contractor
10 with this brokerage real estate company. They have filed for
11 a motion for a temporary restraining order or temporary
12 injunction pursuant to 65 -- Rule 65(a) and (b). Service of
13 the summons and complaint was made on all defendants on March
14 3rd and a hearing notice was served on March 8th for EXP and
15 -- EXP Realty and Darcy Varney, and accepted by counsel for
16 Joel Barber, Jason Daigle on March 14th. As notice and
17 service of this motion has been provided and served on all
18 parties, we're requesting this Court proceed on the hearing of
19 this motion for a motion for temporary injunction. We have
20 provided the Court numerous affidavits. In addition to the
21 verified complaint, we have submitted the affidavit of Kevin
22 Mills; Greg Harrelson; Jimmy Recinos; Montana Hartsock; Stacey
23 Weaver; Clarkee Walton, who is an expert forensic digital
24 forensic analyst; Lindsey Colbert; Kevin -- and a supplemental
25 affidavit of Kevin Mills and Greg Harrelson; and then an

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1 affidavit of Vincent Bufano.

2 In addition, we have provided this Court with a memoranda
3 in support. Those documents have been filed and served on all
4 parties in this case prior to this hearing. Based on the
5 affidavits, the verified complaint, and the documents
6 submitted to this Court, temporary injunctive relief is proper
7 in this case. The plaintiffs have shown irreparable harm, a
8 likelihood of success on the merits on all causes of action,
9 and an absence of adequate remedy at law.

10 Temporary injunctive relief is also necessary and
11 reasonably necessary in this case to protect the legal rights
12 of the plaintiffs while this case is actioned. The
13 irreparable harm in this case is great to the plaintiffs. And
14 substantial equities fall in -- squarely in favor of the
15 plaintiffs in this case. By way of factual background and
16 supported by the verified complaint and affidavits that have
17 been filed and served on all parties in this case, Joel Barber
18 was an independent contractor with Century 21 Harrelson Group,
19 which is a brokerage firm through Margaret McBride the broker-
20 in-charge from March of 2017 through February 7th of 2022.
21 During that time, he gained access to valuable proprietary and
22 competitive data and information of Century 21 Harrelson
23 Group. This valuable proprietary competitive and confidential
24 information was acknowledged as having been received and
25 acknowledged as having been designated as confidential by Joel

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1 Barber and by Joel Barber at the initiation of his independent
2 contractor back in 2017. The terms of this independent
3 contractor agreement and these acknowledgments are in the
4 affidavit of Greg Harrelson and the supplemental affidavit of
5 Greg Harrelson where it goes through in great detail the types
6 of proprietary information and the confidential nature of this
7 proprietary information. It further goes into great detail,
8 which Joel Barber acknowledged that Joel Barber agrees not to
9 disclose or use this information or data for competitive
10 advantage. And that he agrees not to remove, not to copy, and
11 to return. All of this is in signed acknowledgements that
12 Joel Barber signed at the initiation of his independent
13 contractor agreement through the terms of the independent
14 contractor agreement itself and the policies and manual of the
15 brokerage firm, also based on the affidavits and the verified
16 pleadings at least beginning in mid-2021. It could be
17 earlier, but as of right now, the affidavits of Jimmy Recinos
18 and Lindsay Colbert reflect that in mid-2021, probably June
19 2021, Joel Barber gained and used unauthorized access to Greg
20 Harrelson's administrative credentials to transfer leads and
21 use marketing resources for his personal benefit without the
22 authorization, without the knowledge, and without the
23 permission of Greg Harrelson. This was in deceit and was
24 indeed deceiving Century 21 Harrelson Group and Greg
25 Harrelson. The affidavits reflect at the very least this was

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1 with a Homebot account and Century 21 Harrelson Group CRM
2 account. These are accounts that are used in the real estate
3 business for customer relationship management. Century 21
4 Harrelson Group and Greg Harrelson were unaware in mid-2021
5 that Joel Barber had gained unauthorized access and was using
6 these administrative credentials.

7 And then February 7th, 2022 happened. On February 7th,
8 2022, the early morning of February 7th, Kevin Mills'
9 assistant, Montana Hartsock -- and this is set forth in her
10 affidavit -- she entered her locked office and noticed her
11 computer and her wiring on her computer in her locked office
12 were out of place. She logged into that computer and
13 immediately saw on that computer screen a -- an alert that
14 said in the early morning hour, a device was improperly
15 ejected from that computer. She knew that was not her device,
16 and she was not there at 4:00 a.m. on the morning on February
17 7, 2022. She took a screenshot of that error, and she
18 notified Kevin Mills that her computer and her locked office
19 were accessed that morning. And that information, data, and
20 files on her computer and locked in the locked office were
21 deleted, modified, downloaded, or transferred without her
22 authorization, without her knowledge, and without her
23 permission. Montana Hartsock is an assistant to Kevin Mills,
24 who is a licensed real estate independent contractor with
25 Century 21 Barefoot.

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1 As a result of what Montana Hartsock discovered, further
2 review and investigation incurred both by Kevin Mills and by
3 Greg Harrelson. You'll see this based on the affidavits of
4 Kevin Mills, Greg Harrelson, Montana Hartsock, and Stacey
5 Weaver, and the expert Clarke Walton.

6 Upon investigation, the office Ring camera footage was
7 reviewed. And on that Ring camera footage, the -- Kevin Mills
8 and Greg Harrelson observed, beginning on December 11th, 2021
9 all the way through February 7th, 2022, Joel Barber accessing
10 the building in the wee morning hours or the middle of the
11 night. This is outside regular business hours of the office.
12 It was during the exact same time that Joel Barber is observed
13 on the Ring camera footage that the computer records both
14 viewed by Montana Hartsock and Stacey Weaver, and also
15 reviewed by the expert Clarke Walton revealed that the
16 computer in the locked office of Montana Hartsock was accessed
17 without her permission or authorization, and without Kevin
18 Mills' permission or authorization, and also it was during
19 these same late night/early morning hours that Joel Barber is
20 witnessed accessing the building that the locked office of
21 Stacey Weaver, who is an assistant to Greg Harrelson, was
22 accessed. It appears to be -- have been accessed with some
23 force as there is damage to the door, and her computer in the
24 locked office was accessed. On that computer contained all of
25 Greg Harrelson's passwords and log-in information for his

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1 cloud and web-based accounts, which contained proprietary and
2 confidential business-related information. All this was
3 discovered as a result of what was observed on the morning of
4 February 7th, 2022, and was not known prior to this time.
5 There is, based on the affidavit, substantial unauthorized
6 access to both locked offices and password-protected
7 computers, websites, cloud accounts, during the time period
8 that Joel Barber had had access to the building in the middle
9 of the night.

10 In addition, there is substantial unauthorized access and
11 unauthorized deletions and modifications to Kevin Mills'
12 Chrome account or his Goggle account, which includes Gmail,
13 Google Calendar, Google Sheets. All of his personal
14 information was contained in this Google account, which was
15 hacked into, for lack of a better word, during these time
16 periods in which Joel Barber had access to the building and
17 gained access to the locked offices.

18 Kevin Mills, on his Google account, had not only work-
19 related information, leads, contact information, marketing
20 materials, communications with clients; he also had all of his
21 personal information. So, personal log-in information for
22 bank accounts, tax records, all of this based on the
23 affidavits of Clarke Walton and based on the affidavits of
24 Montana Hartsock were not only accessed, they were viewed,
25 much of it was downloaded, and much of it was deleted. So, it

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1 was not only accessed, but then it was removed from Kevin
2 Mills' Google account and deleted. This is reflected on what
3 the investigation of -- occurred through Montana Hartsock, and
4 she has -- had reviewed the deletions on this Google account
5 and these things are verified through Clarke Walton.

6 Since February 7th, 2020, Joel Barber has -- the
7 independent contractor agreement with Century 21 Harrelson
8 Group, by and through Margaret McBride, has been terminated.
9 He -- after February 7th, 2022, he had continued to contact
10 customers, clients, and leads that belonged to Century 21
11 Harrelson Group or belonged to Kevin Mills, and were
12 information that was acquired through the unauthorized access.
13 Since February 7th, 2022, and you will see that in the
14 affidavit of Vincent Bufano, he has attempted to list and gain
15 business of clients and customers of Kevin Mills and caused
16 great confusion with the clients and customers of Kevin Mills,
17 because after his termin -- after the independent contractor
18 agreement was terminated, Joel Barber continued to represent
19 himself as a agent of Century 21 Harrelson Group. He told
20 Vincent Bufano that he was an extension of Kevin Mills. He
21 told Vincent Bufano that he was working with Kevin Mills, and
22 this caused great confusion to Vincent Bufano because this is
23 untrue. This is one individual that was contacted and that
24 has provided this information. We believe that there are
25 substantial others based on the scope and the access that he

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1 had both unauthorized and during the course and scope of his
2 -- his independent contractor agreement.

3 Your Honor, based on what was -- two things. One, there
4 is a set of information that is proprietary and confidential
5 that belongs to Century 21 Harrelson Group that he gained as
6 an independent contractor with the brokerage firm and the
7 broker-in-charge. Contractually, he agreed that this
8 information was confidential, proprietary, shouldn't be
9 removed, copied, or used against him before and after the
10 termination of the independent contractor agreement and should
11 be returned. That set of information is basically anything
12 that was developed from March 2017 to February 7th, 2022.
13 That's a contractual obligation that he agreed to. It's also
14 part of the licensing act, because the brokerage firm is
15 required to supervise those independent contractors, and the
16 brokerage firm is the actual supervisor and the actual person
17 that authorizes the independent contractor to act. So, both
18 under the contractual obligations and the South Carolina
19 Licensing Act, that information that Joel Barber gained access
20 to from the beginning of his independent contractor agreement
21 to the end of his independent contractor agreement belongs to
22 the brokerage firm. It belongs to the broker, and it's
23 confidential, proprietary, and needs to be returned.

24 In addition to that, however, Joel Barber also, by
25 breaking into locked offices, breaking into password-protected

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1 computers, and using log-in passwords and unauthorized
2 passwords and credentials to access websites, without
3 permission, without knowledge, without authority, he
4 improperly gained access to additional information that is
5 substantially outside the scope of his independent contractor
6 agreement, relates to third parties, relates to personal
7 information including bank accounts, tax returns. It relates
8 to unrelated brokerage firms like Century 21 Barefoot, which
9 he was not an independent contractor of, and potentially
10 relates to other independent brokerage firms that are not
11 parties. That information is unauthorized. That information
12 is outside the scope of his independent contractor agreement,
13 and that information is ill-gotten gain.

14 Based on both the contractual terms, the licensing act,
15 and the improper information he gained access to without
16 authorization or approval, both by accessing an office that
17 was locked and by accessing computer equipment and websites,
18 we're asking this Court to enjoin Mr. Barber, as well as the
19 full scope of anybody acting within his authority under Rule
20 65, and I'm -- bear with me just a moment -- so, any officers,
21 agents, service, employees, attorneys, and any persons in
22 active concert or participation with Joel Barber be enjoined
23 from using any of the information that was gained during this
24 course and scope of his independent contractor agreement from
25 March of 2017 to February 7th of 2022. As well as enjoin Joel

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1 Barber and all individuals that would be otherwise subject to
2 this injunction pursuant to Rule 65(d) from accessing,
3 contacting any individuals on that database, any systems that
4 were accessed or gained -- that he gained information from
5 during this time period. We are also asking for -- asking
6 this Court for some expedited inspections of any and all
7 devices accessed or used by Joel Barber from at least June 1,
8 2021 to the present.

9 Your Honor, very specifically, I will set forth what I
10 would ask an order to enjoin Mr. Barber from doing would be
11 from stepping foot on any of the property of the plaintiffs,
12 which includes 4757 Highway 17 Bypass South, Myrtle Beach,
13 South Carolina, 29577. It would enjoin him from accessing any
14 databases, systems, CRMs, software or cloudware, servers and
15 computers connected to the internet using any log-in account
16 or password information that would've belonged to or have been
17 derived from any of the plaintiffs. This would include any
18 Google accounts, Real Geek accounts, Homebot, InfusionSoft,
19 Homelight, Fastexpert.com, EffectiveAgents.com, UpNest.com,
20 Linbec.com (spelled phonetically), and Pipedrive. We'd ask
21 this Court to enjoin the use or access of copies of any of the
22 information. We would ask this Court to enjoin the defendants
23 from contacting any of the leads, prospects, and/or customers
24 identified in those -- in that subset of information. We'd
25 ask the defendants be enjoined from selling, publishing, or

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1 disclosing any of the data or information contained in that
2 subset of information. And, Your Honor, that is -- that is
3 important for a couple of reasons based on the verified
4 complaint. There are some -- historically, at least one
5 action by EXP Realty and Darcy Varney in which they reached
6 out to third-party realtors attempting to sell Joel Barber's
7 leads for a 25 percent referral fee. And that sale of those
8 leads would include leads that were derived from this improper
9 subset of information both in violation of the independent
10 contractor agreement and improperly obtained.

11 We'd ask this Court to require the defendants to
12 immediately notify the plaintiffs in writing any commissions
13 or referral fees obtained from any of those leads, prospects,
14 clients, or customers. And we'd ask this Court to issue an
15 order that would require the identification of all devices
16 used from June 1, 2021 to the present for Joel Barber but also
17 including any of his employees, agents, licensees, team
18 members, staff, LLC members, employees from June 1, 2021 to
19 the present for an expedited inspection. That inspection
20 should include a third-party expert that could inspect and
21 preserve the data contained thereon. And, Your Honor, we have
22 used Clarke Walton for our purposes. We would suggest that he
23 would be an independent third-party expert that could perform
24 that preservation. However, since we've used him in the past
25 related to our computer documents, we would also suggest Steve

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1 Abrams for that purpose as well.

2 We would agree to once those devices are identified and
3 preserved, we would agree to meet and confer with defense
4 counsel to develop a protocol and a plan for inspection and
5 production of that data therein.

6 So, Your Honor, that's the scope of what we are asking
7 for today based on the affidavits that we've provided to you,
8 and we've provided to you a hard copy of all of the documents
9 filed, which include all of the service documents in this
10 case. There is substantial evidence -- substantial evidence
11 of the contractual arrangements of the bad acts of Mr. Barber
12 in accessing the locked offices and accessing the computers,
13 as well as substantial documentation and evidence related to
14 the impact that this has on the reputation and the goodwill
15 and the ongoing business operations of the plaintiffs. That,
16 Your Honor, is sufficient to reflect a irreparable harm and
17 inability to fully recover monetary damages. Now, I will tell
18 you that in the supplemental affidavit of Greg Harrelson, he
19 has set forth information that is able to show potentially the
20 monetary value that this set of data could have to a third
21 party. And that monetary value, that positive monetary value
22 is very low in comparison to the damage that's being caused to
23 these plaintiffs. And that's because the goodwill, the
24 investment, the time and the money that has gone into
25 developing this information doesn't necessarily transfer to a

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1 third party. So, Greg Harrelson's supplemental affidavit
2 estimates that the value of this to a third party in this case
3 and Joel Barber is approximately maybe \$1,250 per month. We'd
4 ask that the Court issue the injunction and that the bond be
5 set at that amount of \$1,250 because the harm caused to the
6 plaintiffs is great, but the value, the positive value to the
7 defendants is minimal. They can, in fact, have used this
8 information to harm plaintiffs, but the positive value is
9 minimal.

10 Your Honor, thank you.

11 THE COURT: All right.

12 All right. Mr. Daigle, let me hear from you, sir.

13 MR. DAIGLE: Your Honor, again, Jason Daigle for Joel
14 Barber.

15 Let's take care of the easy stuff first. Ms. Bailey has
16 requested that we not step foot on the property of Century 21.
17 We're fine with that. If you want to issue a temporary
18 restraining order or an injunction preventing us from doing
19 so, we'll agree to that.

20 Accessing the Century 21 databases that are connected to
21 the internet, we can agree; we won't do that.

22 Outside of that, we might have a little bit of a problem,
23 because the threshold matter in injunctions is they have to --
24 have to set forth facts sufficient in which the injunction can
25 be granted. And again, as a threshold matter here, we don't

1 have the information they think we have. We don't have leads.
2 We don't have proprietary information. We do not have
3 anything that they think we have; we do not have. We don't
4 have electronic copies of it. We don't have hard copies of
5 it. We don't have cloud copies of it. We don't have access
6 to it at all. So, they are seeking to enjoin us from using
7 information we do not have. We have not used it. We are not
8 currently using it. We are not going to use it. And, we
9 don't have access to it even if we wanted to. So, there's a
10 problem with the factual allegations and that they are just --
11 they're just wrong. They are incorrect, because we do not
12 have the information they're seeking to enjoin us from using.
13 The other part of the facts that are just flat wrong are what
14 it is alleged that Joel Barber and EXP have done. One of
15 those is selling these databases to third parties. That's not
16 correct; that never happened.

17 Another thing that they are saying that we did is
18 publicly listing deals or publicly closing listings with this
19 information. That is also not true -- also incorrect; it's
20 wrong. There's allegations that those listings would only be
21 accessible or would only be known to Joel by misappropriating
22 certain information on those databases, which is also
23 incorrect. These leads are not -- you know, it's not the
24 Coca-Cola formula. It is -- they are people who may or may
25 not want to sell or buy real estate at some point. There are

1 dozens of lead generators that give not only Century 21, not
2 only EXP, but all the dozens and hundreds or thousands of
3 realtors in the area access to those leads for a certain
4 amount of money a month. There are plenty of ways to get this
5 -- these information and these leads without using proprietary
6 or without using ill-gotten information from a former
7 employer.

8 The injunction is based on facts that simply aren't
9 there. The requirements for an injunction are to have had the
10 facts there to -- relief to be granted, and again they don't
11 exist here.

12 The other issue is that you have to show that there is a
13 substantial -- that there's a likelihood of success on the
14 merits. The very first thing that is mentioned in the memo to
15 support is a violation of the Trade Secrets Act. There is a
16 zero percent chance that they succeed on the merits of that.
17 Why is that? Because it is mentioned nowhere. Not one place
18 in their verified complaint is there a cause of action related
19 to the Trade Secrets Act. There is not a reference to the
20 Trade Secrets Act. There is no -- in any of the causes of
21 action, they do not reference trade secrets whatsoever that
22 were violated by Joel Barber. The factual allegations made,
23 again, they say that they were prospect leads or client lists
24 that were sold. That there were listings that were made
25 publicly. What we don't have here and what you haven't seen

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1 from the plaintiff is what those leads are, who's on the
2 lists, what people, what leads, what prospects are in those
3 databases that we -- that we gained -- that we
4 misappropriated. They can't give us that list. What
5 closings, what listings, what contracts have been entered into
6 with ill-gotten leads? They can't give us a list of that
7 either. So, effectively what they're asking for is an open-
8 ended injunction to keep us from doing anything, to keep us
9 from working leads, to keep us from practicing real estate in
10 the Myrtle Beach area by giving this open-ended injunction
11 that is clearly gonna be weaponized in this case, and we're
12 gonna be back here every single month, every time that there's
13 a lead -- I'm sorry -- a closing, every time that there's a
14 contract, every time there's a listing, we are gonna be back
15 here on a motion for sanctions or a motion for contempt on
16 where that lead came from and how -- and how the lead was
17 used. That is how -- that is the gist of this case, that's
18 the crux of this case of what the litigation is for. These --
19 this information, this -- these facts as alleged, not only are
20 they wrong, they are not subject to such a broad injunction.
21 That is what is going to be discovered in this case. We are
22 going to -- we are disputing the vast majority of the factual
23 allegations in the complaint, we are disputing the
24 overwhelming majority of the facts that are in these
25 affidavits because they are factually incorrect. And basing a

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1 injunction -- an injunction is not to be -- you can't allege
2 improper -- incorrect facts for an injunction. The facts have
3 to be correct, and they're just not in this case. They are
4 disputed. There's no -- there's no chance of irreparable harm
5 anyway because their argument for irreparable harm is that
6 we're using these misappropriated leads and misappropriated
7 information that we don't have. There can be no irreparable
8 harm because we don't have that information.

9 But, you know, the -- they have requested that we be
10 enjoined from contacting leads on these databases. We don't
11 know who those leads are. They can't provide us a list of the
12 leads we're not allowed to contact. Again, that's going to be
13 part of the discovery process. They're enjoining use from
14 selling, selling the leads that are improperly obtained.
15 Again, we need to know who those are. They can't provide
16 those lists. And, until they can provide those lists, you
17 can't -- the Court can't issue an open-ended injunction saying
18 that we're not allowed to do anything.

19 As far as the -- as far as the inspection of the devices
20 goes, that's a discovery issue that Ms. Bailey and I will deal
21 with, and I don't think we're gonna have an issue there but
22 that's certainly not part -- not part of an injunctive -- of a
23 temporary injunction.

24 And as far as immediately notifying for referral fees
25 from customers that were -- that they deem ill-gotten, if we

1 could have a list of those customers, then we'd be happy to do
2 that. But again, we -- they can't provide a list, so we don't
3 know who we're not supposed to contact or who we're supposed
4 to inform Century 21 if they contact us.

5 And the last issue is that the -- there's no appropriate
6 remedy at law. That's just not the case here, Your Honor.
7 The -- we have been sued for breach of contracts, trespassing,
8 conversion, unfair trade practices, among other things. Those
9 are not typically the types of causes of action that would
10 warrant an injunction. There's an employment contract or an
11 agency contract between Century 21 and Joel Barber. Those
12 issues will be taken care of in the litigation. The -- if
13 there's a breach of the contract, then they're certainly going
14 -- they have to prove their damages and they have to show what
15 those are and they're entitled -- they might be entitled to
16 money damages for that cause of action. But again, there's no
17 -- there's no chance of irreparable harm because we don't have
18 the information they say that we have. We just do not have
19 it, and we can't use it even if we wanted to.

20 And just to -- as an example of how common it is for
21 multiple real estate agencies to have these same leads, these
22 non-proprietary leads that no way would be part of the Trade
23 Secrets Act anyway, that is Joel Barber's parents, his
24 parents, got a solicitation email from Greg Harrelson saying
25 that they -- that he wants them to be part of the Century 21

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1 family and to sign on with them. That's how common it is for
2 the -- for multiple leads to be in multiple real estate
3 agencies and come from multiple lead providers in the field.
4 And for that reason, we -- with the exception of not stepping
5 foot onto the property, not accessing the databases, and we
6 would ask that all other requests for the injunction be
7 denied.

8 THE COURT: All right.

9 All right. Mr. Hershon?

10 MR. HERSHON: Thank you, Your Honor.

11 Lawrence Hershon. I represent EXP Realty, LLC and Darcy
12 Varney. EXP Realty is a local brokerage company, and Darcy
13 Varney is its managing broker in South Carolina. And Your
14 Honor, here I think there are distinctions to make -- while
15 some of my arguments are very similar to what was made on
16 behalf of Mr. Barber, I also do want to make the distinction
17 that, you know, that I do represent separately EXP and Darcy
18 Varney in that I think some arguments here and some positions
19 here are distinct from what may or may not happen in a court
20 ruling from -- as related to Mr. Barber.

21 As you've heard, many of the accusations are -- most of
22 the accusations are about activity that he took prior to
23 onboarding with EXP. There's been an affidavit submitted by
24 Darcy Varney that runs through that Mr. Barber was hired on
25 February 14th of this year, which is after the date of these

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1 alleged -- you know, alleged activities in the offices of the
2 plaintiffs, and that he again was just -- you know, just as he
3 was at Century 21, he is with EXP as an independent
4 contractor, as that works throughout the real estate industry
5 in South Carolina. I do believe the plaintiffs here are
6 turning the rules and the caselaw a little bit on their head
7 as it relates to temporary restraining orders and what the
8 Court is permitted to do under caselaw and under Rule 65,
9 because again an affidavit has refuted many of positions as to
10 the least in terms of what EXP has. EXP has never had this
11 information, has never sought to obtain this information, has
12 never had access to this information, has never used this
13 information. That's all in the affidavit that's been
14 submitted earlier this week on March 28th, the affidavit of
15 Darcy Varney. There's essentially -- in the complaint,
16 there's essentially one allegation against EXP throughout all
17 of this, because EXP certainly was not involved, and it's not
18 alleged that they were involved before February 14th. And
19 it's this allegation that there was some attempt to purchase
20 or sell the leads from Mr. Barber to 25 percent referral fee.
21 Certainly, through the affidavit and certainly since that
22 information was never had and there is no -- and the answer is
23 filed -- the answer deadline is Monday, that allegation will
24 be denied. But that's basically the allegation that's there,
25 and then there's this allegation in a couple of the affidavits

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1 that there's been these couple of listings or sales that may
2 or could've happened that Mr. Barber has brought over, yet
3 it's done in such a broad sense, there's no name -- there's no
4 names associated with that. We have no idea who they may be
5 talking about. You know, if there was a listing that
6 occurred, that's an MLS that every -- multiple listing service
7 that everybody has, share those names. I've got a stack here
8 of hundreds of pages of documents, of affidavits that have
9 been thrown at us, and there's not something in there to tell
10 me what those properties are. You know, and it's -- as Mr.
11 Daigle had said, who is in this list, what is this? You know,
12 you're wanting to stop something that we don't have any
13 information on what they're seeking to stop. And I do think
14 that's what -- here there is some danger or what an order
15 could do when it's based on that generic information of CRM
16 data and data that has never been in EXP's hands. I don't
17 know who that list is. EXP doesn't know who that list of
18 leads, potential customers, whatever they may be.

19 So, again, this is about -- you know, a TRO is about
20 preventing irreparable injury, loss, or damage that I don't
21 think has been shown or established here today. You know, for
22 example, if -- you know, a common example of a need for a TRO
23 is seeing your neighbor -- your neighboring property of two
24 real estate owners and somebody is looking to cut down trees
25 that are on the boundary and you start seeing the trucks

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1 coming out there, you start seeing someone is about to cut
2 trees, and you think those trees are on your own property, not
3 your neighbor's property, that's when you can see irreparable
4 harm is about to happen. Those trees may disappear; there's a
5 boundary dispute. But, if nobody has ever been on that
6 property, nobody has been there, you know, bringing trucks and
7 the other things to cut those trees down, right now, we're in
8 really a hypothetical sense of a potential harm rather than
9 actual harm. Plaintiffs have been very aggressive at the
10 start of this lawsuit. I certainly understand based on their
11 claims why they were doing so, but I think this also leads to
12 a larger -- there's been some newspaper articles published
13 about this case already. I think there's a larger business
14 play at issue here from the plaintiffs that, you know, involve
15 the market of who is a big real estate player in the Myrtle
16 Beach and Horry County area. And the right place for that
17 market fight or market battle is in the marketplace, not in
18 the courtroom.

19 You know, as to the case law, Your Honor, certainly the
20 rules are well established about what the plaintiffs have to
21 show and that it's a heavy burden of demonstrating facts and
22 circumstances warranting an injunction, such as noted in the
23 *Strategic Resources* case at 367 S.C. 540. And that this
24 temporary -- you know, the point of this temporary injunction
25 is to preserve the status quo. Again, that many of these

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1 things are already -- you know, the Court is informed that I
2 think the status quo, based on the responsive affidavit, is
3 going to already stay in place.

4 Looking at the alleged facts here, Your Honor, again the
5 -- what has been stated in responsive affidavit is that EXP
6 doesn't have this data, doesn't have this information. Yes,
7 Mr. Barber is still an active independent contractor real
8 estate broker with them. But, looking at the allegations and
9 the causes of action, you have eight causes of action in this
10 complaint. Let's take -- you know, one of those is for the
11 temporary restraining order. The other seven are breach of
12 contract, breach of contract accompanied by fraudulent act,
13 trespass, conversion, violation of the South Carolina Crimes
14 Act, violation of Unfair Trade Practice Act, interference with
15 existing and prospective contracts. All of those are claims
16 that normally dealt with through the course of a lawsuit,
17 through pleadings, through discovery to trial were damages or
18 how wrongs are dealt with. And so, you can't -- with those
19 claims, if there is a loss of goodwill, there are ways to
20 measure damage for that. This is not something that makes it
21 impossible to measure damages. Does it mean there could be
22 variances in what that damage amount could be? Yes. And
23 that's for a fact finder to determine at the end of the --
24 towards the end of this case.

25 Also, as noted by Mr. Daigle, the memorandum of law

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1 submits that there is some violations of the South Carolina
2 Trade Secrets Act here. Again, that is not in the pleadings.
3 The pleadings that are before the Court do not have a cause of
4 action related to that, so that cannot be a basis for a TRO
5 today dealing with that. So, instead of you have these causes
6 of action, you know, they've decided to plead those and plead
7 those in the alternative, but there are seven that have -- you
8 know, that are here for matters of law to be determined, not
9 -- not in equity as a TRO is normally dealt with. So, let's
10 say during the discovery it is determined, you know, based on
11 -- you know, essentially switching the standard here a little
12 bit and assuming some of allegations by plaintiff are true,
13 those things would be determined in discovery. If there are
14 sales that have occurred, real estate commissions are readily
15 available under contract -- under what will happen in any of
16 these closings. And the monetary damage can be determined.
17 You know, the affidavit that was referred to, the supplemental
18 affidavit, I believe of Mr. Harrelson, you know, puts a dollar
19 figure somehow on what that is worth as to third parties, but
20 doesn't put it on what it is to him. If he can make a damages
21 estimation of what it is to third parties, it seems like he
22 could also do it for what kind of damages caused to himself.
23 So, I don't know why that's not revealed to the Court and the
24 tribunal at this time.

25 You know, as to likelihood of success, you know, just if

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1 something is being alleged today that shows they'd have some
2 kind of likelihood of success as to Barber, which I don't
3 think -- I don't know if that's been shown today or not. I
4 don't believe it has. But as to EXP, most of these causes of
5 action don't even relate to EXP. Breach of contract, breach
6 of contract with fraudulent act, crimes -- the crime computer
7 fraud statute, those all deal with actions before he was with
8 EXP. The causes of action that deal with EXP as far as I can
9 tell are the Unfair Trade Practices Act and interference with
10 existing and prospective contracts. The interference with
11 existing and prospective contracts is not addressed in the
12 memo of law. I don't know what contracts those could even be.
13 If it's about potential customers in the future, again,
14 that'll be -- I think will be determined in the discovery
15 because we don't have those names of who those could be. From
16 past contracts, we don't have the names of who those could be,
17 what contracts those even are. So, I don't see how that has
18 been converted as to that claim has been met today. Unfair
19 Trade Practices Act is certainly normally more than the
20 consumer or individual context as opposed to business on
21 business context as we are here today. Again, I don't see --
22 you know, that claim, you know, proving that actually is a
23 difficult one. It's easy to allege. You know, I don't think
24 that here today in terms of, you know, elements like
25 repetition, I don't know if -- I haven't seen something today

1 that shows that. Deception by EXP has not been shown today.
2 And unfair act, at most -- from what I've heard again is this
3 alleged attempt to sell some of the leads, which, you know,
4 you know, whether that gets to an unfair act again will be a
5 fact finder determination, I don't -- you know, at best it's a
6 questionable claim.

7 So, simply put, Your Honor, I don't believe that the
8 requirements -- the three requirements and elements of a TRO
9 have been met. As Plaintiff has referenced, any -- you know,
10 if the Court does decide to order injunctive relief in some
11 way -- well, taking a step back from that, I am -- I am
12 worried about what this order -- an order could do in terms of
13 cooling the market place and hurting consumers if there is
14 something that just generally talks about CRM data that has
15 come from the plaintiffs that is -- that we don't know who is
16 in that list, and then having to make a determination of can
17 this property -- can a certain property, property at Green
18 Acres be listed in our MLS when is there some possibility that
19 Joel Barber, although he's told us that none of these are
20 leads that he got from Plaintiffs. He certainly made that
21 statement to Ms. Varney that somehow listing that could be a
22 problem. That can cause economic loss, and each listing, you
23 know, with the property values that we're at today, those
24 properties are -- many properties are \$300,000 in excess of
25 that and each one has a real estate commission that's at three

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1 percent each. And so, getting to the -- if the Court does
2 decide to do some form of injunctive relief, the rule
3 certainly requires that there be a -- that there be a bond or
4 some other security to protect the defendants from damages.
5 And I think those damages are this potential loss -- the
6 effect of this could be a potential loss of listings, and
7 \$1,250 is -- I think would fall under what is instead a
8 nominal amount, which caselaw certainly says is not permitted
9 under the *Atwood Agency v. Black* case from the -- it's a 2007
10 case, 374 S.C. 68 is that a -- it cannot be a nominal amount
11 because that erroneously assumes the injunction is proper
12 instead of providing the amounts, they should protect the
13 defendants.

14 So, Your Honor, one -- as I've gone through, don't
15 believe a TRO is proper in this standpoint, but if it does, I
16 believe the Court's got to look a little bit deeper at this --
17 at whether this requested bond amount or security amount of
18 \$1,250 is appropriate.

19 Thank you, Your Honor.

20 MR. DAIGLE: Your Honor, may I say -- just follow up on
21 one thing that Mr. Hershon said?

22 THE COURT: Yes, sir.

23 MR. DAIGLE: Okay. Just real quick on the maintaining
24 the status quo, the point of an injunction is to maintain the
25 status quo. What the plaintiff is requesting here is that we

1 not use this information that is allegedly ill-gotten. That
2 is currently what is happening now. That is the status quo.
3 We don't have access to it. We don't have it, we're not using
4 it; that's the status quo. Issuing an injunction would in
5 fact disrupt the status quo by preventing Joel Barber and EXP
6 from practicing real estate in the Myrtle Beach area.

7 Thank you.

8 THE COURT: All right. Go ahead, Ms. Bailey. Brief
9 reply.

10 MS. BAILEY: Thank you, Your Honor.

11 Your Honor, the injunction is tailored. The request for
12 injunction is tailored. It's -- and important to note, there
13 is -- other than Darcy Varney giving an affidavit saying she
14 personally doesn't have access to the information that she
15 says she doesn't have access to, there's no affidavit from
16 Joel Barber, there's no evidence. There's no answer, there's
17 no filing whatsoever from Joe Barber to say any of these facts
18 are disputed. So, all of the evidence that's been presented
19 set forth a likelihood of success in the merits. Any
20 information gathered from any other source should not be
21 subject to this injunction. That is something that would
22 require Joel Barber to demonstrate. The sources that this
23 information was acquired through that we're seeking the
24 injunction were from March 2017 to February 7th, 2022, when he
25 was an independent contractor with Century 21 Harrelson Group.

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1 Your Honor, there is -- I want to -- I think it's
2 important to specifically point to the supplemental affidavit
3 of Kevin Mills and the affidavit of Vincent Bufano. In the
4 supplemental affidavit of Kevin Mills, Kevin explained some of
5 the evidence that is set forth in Montana Hartsock's affidavit
6 and Clarke Walton's affidavit about the improper access to
7 Kevin Mills' Google account. What happened when Joel Barber
8 came in in the middle of the night, broke into locked offices,
9 and hacked onto Kevin Mills' computer and Google account is
10 that he deleted information from that account. One set of
11 that information was a calendar entry for Vincent Bufano.
12 That calendar entry was for Kevin Mills to follow-up and
13 continue contacting his existing customer, client, lead,
14 prospect, however you define it. And when Joel Barber deleted
15 that, it came off of Kevin Mills' calendar, came off of his
16 reminders, came off of his information about that individual,
17 about his -- the valuable information he had about that
18 potential sale. And Kevin Mills didn't follow-up with Vincent
19 Bufano and -- because it wasn't on his calendar entry. But
20 you know who did? Joel Barber. Joel Barber, between the
21 beginning of February and the end of February, when he was an
22 agent with Darcy Varney and EXP Realty, he emailed multiple
23 emails, ten-plus calls, he called Vincent Bufano. And do you
24 know what he did? He represented that he was an extension of
25 Kevin Mills. So, he took information from Kevin Mills.

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1 Didn't leave it with Kevin Mills, he took it, utilized it for
2 his own benefit while he was being supervised as a licensee of
3 Darcy Varney as a broker-in-charge. So, how Darcy Varney can
4 put an affidavit in this Court that says she doesn't know this
5 information, doesn't have access to this information, and
6 still be charged with supervising her licensees is
7 unexplainable to me. She has a statutory obligation to
8 supervise her licensees. And if she's representing this in an
9 affidavit, she's not doing her statutory obligation.

10 Your Honor, in anticipation of some of this argument
11 related to Ms. Varney, I have prepared a supplemental
12 memoranda which I'll provide to the parties. It has not been
13 provided to the Court. We've discussed this just in general
14 related to -- may I approach the bench?

15 THE COURT: Yes, ma'am, please.

16 MS. BAILEY: Discusses in general related to the
17 obligations of a brokerage firm and a brokerage in charge
18 specifically as it relates to the supervisory obligation, and
19 as it relates to the information that is gathered by a
20 licensee and then used by the licensee. So, in this case, it
21 works both ways. So, contractually and under the licensing
22 act, when Joel Barber was with Century 21 Harrelson Group, he
23 was benefitting Century 21 Harrelson Group. His obligations
24 were Century 21 Harrelson Group. When he moved over to Darcy
25 Varney and EXP Realty, he's being supervised by that group and

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1 he's benefitting that group. They're the principals; it's an
2 agency/principal relationship.

3 Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 All right. Counsel, if y'all give me a few minutes, I'll
6 come back and give you a ruling. All right?

7 MS. BAILEY: Thank you.

8 THE COURT: Thank you very much.

9 **RECESS - 10:57 A.M.**

10 *****OFF THE RECORD*****

11 **ON THE RECORD - 11:15 A.M.**

12 RULING OF THE COURT:

13 THE COURT: In this matter, requesting a temporary
14 injunction, regarding a temporary injunction, obviously, it's
15 in the Court's discretion to issue that to prevent irreparable
16 harm to the plaintiff. The plaintiff's complaint must allege
17 facts as well as the affidavits filed in conjunction thereto
18 must allege facts sufficient to constitute a cause of action
19 for an injunction, demonstrate that it is reasonably necessary
20 to protect the legal rights of the plaintiff during the
21 pendency of the litigation. For preliminary injunction will
22 be granted the plaintiff must establish that they would suffer
23 irreparable harm if the injunction is not granted; that there
24 is a likelihood of success on the merits of the litigation;
25 and there is an inadequate remedy of law. Now, the plaintiff

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1 is not required to prove an absolute legal right when seeking
2 a preliminary injunction, but the plaintiff must present a
3 reasonable question as to the existence of such a right. So,
4 that being the guiding principles, I looked at the filings of
5 the plaintiff including the verified summons and complaint,
6 all the affidavits that have been filed. In opposition to
7 that, I have only the affidavit of Darcy Varney. There's been
8 no other filings on behalf of the defendants at this time,
9 understanding that the complaint was filed -- summons and
10 complaint was filed on March 2nd of this year, and the time
11 period for responding has not yet expired.

12 Pursuant to the rules and the statutory -- and I'm sorry
13 -- the caselaw regarding temporary injunctions, I do find in
14 this matter that the plaintiff has more than sufficiently
15 proved that they would suffer irreparable harm. There is
16 certainly a likelihood of success on the merits, and I do find
17 that there is an inadequate remedy of law regarding the
18 information.

19 Now, there are different parties in this. Regarding the
20 defendant in this matter, the -- Joel Barber individually and
21 as a licensed realtor, I am enjoining him from, as agreed
22 upon, from the business property of the plaintiffs. I am also
23 enjoining him from being on the personal property of the
24 plaintiffs during the pendency of this action.

25 For the time period that Mr. Barber was employed and

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1 associated with the plaintiffs, from the period of March 17th,
2 2017 through February 7th of 2022, the information he gained
3 access to by being and working with the plaintiffs for that
4 period of time, as to leads, clients, prospects, however they
5 are defined, he is prohibited from using that information.
6 Those individuals cannot be communicated with or contacted by
7 the defendant, Barber. Now, that's only as to him. He -- if
8 someone would communicate with him and is not as a result of
9 any action on behalf of Mr. Barber, then he'd be free to
10 communicate with them, but he cannot initiate in any shape,
11 manner, or form, communication with any of those individuals
12 by any means. Now, the -- further, that information cannot be
13 sold or disclosed to anyone else.

14 The affidavit of Darcy Varney states that she, in her
15 capacity for the EXP Realty, has -- in her sworn affidavit has
16 none of this information. The Court finds therefore that the
17 restraining order by agreement should extend to Darcy Varney
18 and EXP Realty because they claim no access and no
19 information. So, there is no harm in extending the injunction
20 to them to information they claim to have no knowledge of or
21 access to. That does not prevent the defendant, Varney or EXP
22 Realty from using any of the available real estate sources to
23 access that kind of information and communicate with
24 individuals; they just cannot use the information of the
25 plaintiff. Since there could be -- and again I'm limited by

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1 the lack of filings on behalf of the defendant, again, I
2 understand the answers are not due and whether or not they'll
3 be any counterclaims in those answers, but I think there at
4 least exists the potential of harm to the defendants from the
5 potential loss of sales or commissions on information that
6 they could garner from other sources. And therefore, I'm
7 gonna set the bond at \$100,000.

8 Now, I am not granting in the injunction the requested
9 inspection of devices. That is a matter for a motion of
10 discovery strictly for that. I do not find it to be proper in
11 the request for a temporary injunction. Further, I do not
12 place on the defendants any burden to notify the plaintiffs as
13 to any commissions or fees gained. If the plaintiff has a
14 claim for that, they clearly have all of the information and
15 the resources to make such a claim by monitoring the MLS
16 system and other systems that are available that show sales.
17 And they can and have the ability to match up people that they
18 have in their database with these sales and can include that
19 in their claim against the defendants if such exists.

20 I believe that covers it. Anything else from the
21 plaintiffs?

22 MS. BAILEY: Nothing from the plaintiff, Your Honor.

23 THE COURT: From the Defendant Barber?

24 MR. DAIGLE: Your Honor, if I could have about two
25 seconds to ---

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1 THE COURT: Yes, sir.

2 MR. DAIGLE: Your Honor, just by way of clarification.

3 THE COURT: Yes, sir.

4 MR. DAIGLE: I understand that you're ruling that Barber
5 and EXP can't use the information in the plaintiffs'
6 databases. What I'm concerned about is what does that mean?
7 We don't know what's in there.

8 THE COURT: Well, I understand you don't know what's in
9 it. If the question comes up and -- it's not part of the
10 order, but clearly, if y'all engage in some kind of activity
11 regarding John Doe, you know, just picking John Doe, and that
12 person happened to be in the database, but the defendants can
13 show, look, we found John Doe either because John Doe called
14 us or we used these various real estate sources that are
15 available to everybody in the market place, and that's now --
16 we came in contact with John Doe, then it's not a violation.

17 MR. DAIGLE: Okay.

18 THE COURT: But, you know, if that doesn't -- obviously,
19 that doesn't prevent the plaintiff from -- you may have to
20 explain that based upon a complaint by the plaintiff saying,
21 look, you -- John Doe is in our database and you've now sold
22 property to John Doe, and so that'll be part of the
23 litigation. Okay? So, I understand that, and I can't give
24 you an order that covers every eventuality.

25 MR. DAIGLE: I understand that and that's why I asked for

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1 the clarification.

2 THE COURT: Okay.

3 MR. DAIGLE: Just because somebody is in their database,
4 doesn't necessarily mean it's in violation of this injunction?

5 THE COURT: No, it doesn't mean that necessarily -- it's
6 just -- but it means that, obviously, the plaintiff could make
7 a complaint about it and then y'all have to explain it.

8 MR. DAIGLE: That we got it from somewhere else.

9 THE COURT: That it was accessed in some other manner.

10 MR. DAIGLE: Yes, sir.

11 THE COURT: And did not have this information or
12 whatever. So, you know, that's -- it's just not automatically
13 a violation. Then it comes whether it's part of the case or
14 part of a request regarding the order.

15 MR. DAIGLE: Thank you, Your Honor.

16 THE COURT: Okay?

17 MR. DAIGLE: Yes, sir.

18 THE COURT: Mr. Hershon?

19 MR. HERSHON: Nothing further, Your Honor. Thank you.

20 THE COURT: So, what I'm gonna ask that you do -- I'm
21 sorry, Ms. Bailey, is there ---

22 MS. BAILEY: Your Honor, I was just gonna offer to
23 prepare the order.

24 THE COURT: Well, that's what I was gonna ask you to do.
25 I'm gonna ask you to prepare the order, but before you eFile

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1 it with the Court, obviously share it with Mr. Daigle and Mr.
2 Hershon, and you know, if there's some problems, see if y'all
3 can work them out. If not, then obviously, you file it and,
4 gentlemen, you communicate with the Court that you have some
5 objection to some part of the -- of the proposed order.

6 All right?

7 MR. DAIGLE: Thank you, Your Honor.

8 THE COURT: All right. Thank you very much.

9 MR. HERSON: Thank you, Your Honor.

10 MS. BAILEY: Thank you.

11 **ADJOURNED - 11:28 A.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of HSS Barefoot, et al. v. Joel D. Barber, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 31, 2022.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

December 27, 2022.

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EXHIBIT B

Homebot_000752

Exhibit 52, Joel Barber Deposition

Exhibit 53, Joel Barber Deposition

Filed under Seal

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EXHIBIT C

Excepts from Joel D. Barber Deposition
taken November 15, 2022

Joel D. Barber Deposition Exhibits 1, 2, 3, 6, 7, 50, 54,

Filed under Seal



AFFIDAVIT AND CERTIFICATION
OF COPIES OF BANK RECORDS

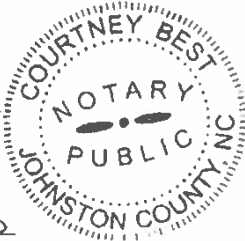
Lori Dunn, being duly sworn, states as follows:

- 1. This Affidavit and Certification of Copies of Bank Records is issued on behalf of the following bank (the "Bank"):
 - “ First-Citizens Bank & Trust Company, a North Carolina banking corporation
- 2. I am a custodian of the business records of the Bank. As such, I am familiar with the system by which the bank records are made and maintained.
- 3. I certify that the copies attached to this affidavit are true and accurate copies of the records of original entry of the Bank kept in the ordinary course of the Bank's business.

Date: December 12, 2022


 Lori Dunn, Mgr Deposit Operations VP & Asst Sec
 Deposit Operations

Sworn to and subscribed before me on
December 12 2022
Courtney Best
 Notary Public for Wake
 County, North Carolina
 My Commission Expires: 11/14/2026



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Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

IM EST
264

08041
BARBER REAL ESTATE, INC
964 BLUFFVIEW DR
MYRTLE BEACH SC 29579-5246

Your Account(s) At A Glance

Checking Balance **16,773.81+**

Statement Period: November 1, 2022 Thru November 30, 2022

Account Number [REDACTED]



Basic Business Checking

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance	346,241.61+	Statement Period Days	30
0 Deposits	0.00	Average Ledger Balance	270,380.00+
11 Other Credits	51,625.00+		
4 Checks	353,610.00-		
6 Other Debits	27,482.80-		
Monthly Service Charge	0.00		
Ending Balance	16,773.81+		

Other Credits To Your Account

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-01	Ecommission Fina 0000120477 *****0477	2,575.00
11-01	Ecommission Fina 0000120566 *****0566	5,000.00
11-10	Ecommission Fina 0000125543 *****5543	4,325.00
11-10	Ecommission Fina 0000125555 *****5555	9,422.50
11-10	Ecommission Fina 0000125557 *****5557	6,391.00
11-14	Ecommission Fina 0000125995 *****5995	4,475.00
11-14	Ecommission Fina 0000126185 *****6185	3,800.00
11-17	Ecommission Fina 0000128030 *****8030	2,874.00
11-23	Ecommission Fina 0000130862 *****0862	3,065.00
11-23	Ecommission Fina 0000131006 *****1006	5,925.00
11-30	Ecommission Fina 0000133488 *****3488	3,772.50
Total		51,625.00

Checks Paid From Your Account

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Check No.</u>	<u>Date</u>	<u>Amount</u>
1089	11-21	2,770.00	1157*	11-07	840.00
1090	11-21	250,000.00	1158	11-30	100,000.00

*Prior Check Number(s) Not Included or Out of Sequence.



Direct Customer Inquiry Calls To
Personal 1-888-323-4732
Business 1-866-322-4249

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Statement Period: November 1, 2022 Thru November 30, 2022

Account Number : XXXXXXXXXX

Other Debits From Your Account

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-03	Amex Epayment ACH Pmt A5208	13,175.31
11-09	Adp Tax Adp Tax Keze* ****23A01	2,228.14
11-09	Adp Wage Pay Wage Pay *****424Ze6	2,869.09
11-23	Adp Tax Adp Tax Keze* ****24A01	2,263.24
11-23	Adp Wage Pay Wage Pay *****729Ze6	2,947.02
11-28	Transfer Internet 11-28 Seq # 79438	4,000.00
Total		27,482.80

Daily Balance Summary

<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>
11-01	353,816.61+	11-10	354,842.57+	11-23	117,001.31+
11-03	340,641.30+	11-14	363,117.57+	11-28	113,001.31+
11-07	339,801.30+	11-17	365,991.57+	11-30	16,773.81+
11-09	334,704.07+	11-21	113,221.57+		

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21
BAREFOOT; R&G CORP, d/b/a CENTURY 21
THE HARRELSON GROUP, KEVIN MILLS,
individually, MILLS, LLC, and GREG
HARRELSON, individually,

Plaintiffs,

v.

JOEL D. BARBER, individually and as licensed
realtor, BARBER REAL ESTATE, INC.,
NICHOLAS FITZPATRICK, as licensed realtor,
DARCY VARNEY, individually and as broker-in-
charge, eXp REALTY, LLC, JAMES RAY
LUNSFORD, individually and as broker-in-charge,
and NORTHGROUP REAL ESTATE, INC.,

Defendants.

**ORDER REGARDING
E-DISCOVERY PROTOCOL**

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders, including, but not limited to, the Stipulated Confidentiality and Protective Order entered May 16, 2022 and the November 22, 2022 Order Granting Plaintiffs’ Motion for Contempt. This order streamlines Electronically Stored Information (“ESI” or “Documents”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Rule 1 of the South Carolina Rules of Civil Procedure (“SCRCP”). This order further serves the purposes of preventing inadvertent disclosure of privileged information and limiting discovery to relevant to the subject matter involved in the pending action pursuant to Rule 26(b)(1), SCRCP.

2. This order may be modified in the Court’s discretion or by agreement of the parties.

3. The parties acknowledge that costs will be shifted for disproportionate ESI production requests pursuant to Rule 26, SCRCP. Likewise, a party's nonresponsive or dilatory discovery tactics will be cost-shifting considerations under Rule 26, SCRCP.

4. A party's meaningful compliance with this order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

5. As a specific supplement to the November 22, 2022 Order Granting Plaintiffs' Motion for Contempt against Defendant Joel Barber, Defendant Barber was required to turn over all real estate business-related data, devices, and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of November 22, 2022. Any imaging, preservation, searching and reporting by Clark Walton in compliance with the November 22, 2022 Order shall be provided first to counsel for Defendant Barber to review and redact for privilege and to mark "Confidential" in accordance with May 16, 2022 Stipulated Confidentiality and Protective Order before being turned over to other parties. A privilege log shall be produced with respect to any redactions as a result of the assertion of any privilege. The costs associated with imaging and preserving the data, devices, and databases shall be borne equally by all parties. The costs associated with searching and reporting on file sources and/or privilege and confidentiality review shall be borne by Defendant Barber.

6. Absent a showing of good cause, general ESI production requests per Rules 34 and 35, SCRCP, or compliance with a mandatory disclosure requirement of this Court, shall include metadata. The fields identified in **Exhibit A** shall generally be included in the production load file identified in Paragraph 6(a) if such fields exist. Except as set forth in Paragraph 5, that compliance

with this paragraph may be fulfilled through the use of third-party vendors and/or experts who are engaged and/or retained to conduct an inspection of a party's ESI.

7. Absent agreement of the parties or further order of this Court, the following parameters shall apply to ESI production:

- a. General Document Image Format. ESI shall be produced in the form in which it is ordinarily maintained ("native format") or in single-page Tagged Image File Format ("TIFF") or multiple page, searchable PDF format at a resolution of at least 300 dpi. TIFF files shall be single page and shall be made with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF or PDF files, as well as the metadata fields identified in Exhibit A to the extent they exist. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.
- b. Text-Searchable Documents. Documents shall be produced in a text-searchable format to the extent possible without undue effort.
- c. Production Numbers. Each document image shall contain a footer with a sequentially ascending production number, provided that, if a footer would obstruct any information on the document image, the sequentially ascending production number may be affixed to an alternative location on the document image.
- d. Native Files. A party is not required to produce the same ESI in more than one format. After initial production of electronic documents in electronic file format has occurred, a party may request that specific documents be produced in native format by specifically identifying to the producing party the Bates number of the

document(s) sought and the basis for the request for production in native format. The parties should then meet and confer in good faith to determine whether the production in an alternative format is necessary. A party shall not make undue burdensome and unreasonable requests for production of documents in native format, and a party shall not unreasonably refuse a request for the production of documents in native format. Notwithstanding the foregoing, all spreadsheets (e.g., Excel files), presentations (e.g., PowerPoint files), database files, audio files, video files, and animations shall be produced in native format (with speaker notes, hidden comments or content, and track changes intact), unless redaction is necessary to protect a privilege or immunity from discovery. Natively-produced files should be produced with a placeholder, Bates numbered TIFF image stating “Document Produced Natively,” and the load file should include a link referencing the record in the NATIVEFILE field. The parties acknowledge that the processing and production of ESI in certain formats, including native format, may result in minor or otherwise insignificant alteration of metadata, including metadata within or about the native file.

- e. Duplicate Documents. A party may identify and remove duplicate copies of records produced electronically, in which case it must include an “ALL CUSTODIANS” field (or other clearly identified field) identifying the custodian(s) from whom a record was de-duplicated. The producing party shall not be required to search for or produce additional copies of such duplicative documents absent a showing of good cause that the production of such additional copies is necessary.

8. Each party shall conduct diligent searches of all reasonably accessible sources which it has reason to believe may contain ESI responsive to the opposing party's discovery requests. Reasonably accessible sources of ESI generally include, but are not limited to, email, computer hard drives, shared network drives, and other storage devices and media, including CD-ROMs, DVDs, flash drives, cloud-based storage, or internet based storage.

9. The parties shall use Clark Walton or a neutral third-party vendor to inspect a party's devices, including, but not limited to, cell phones, laptops, computer hard drives, email, shared network drives, cloud-based storage or internet website storage accounts, cloud-based or internet website referral service accounts, cloud-based or internet website customer relationship management tools or accounts, and other storage devices and media, including CD-ROMs, DVDs, and flash drives. Such inspection may take place at a mutually agreeable date and location and subject to mutually agreeable parameters, including but not limited to, search terms, provided that such parameters are in accordance with Stipulated Confidentiality and Protective Order and are disclosed to the third-party vendor, who is also required to comply with the Stipulated Confidentiality and Protective Order. A third-party vendor's access to or review of a party's privileged information shall not result in a waiver of such privilege. The findings and data generated upon such inspection by a third-party vendor shall be produced in the first instance only to counsel for the party or parties whose devices were inspected, so that said counsel has an opportunity to review the same and to make appropriate determinations, if applicable, regarding confidentiality, attorneys' eyes only, and privilege, pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and other applicable law. The costs associated with searching and reporting for privilege and confidentiality review shall be borne by the party whose devices were inspected.

10. Counsel shall complete such review and designation process and to release those documents not being withheld pursuant to a claim of privilege or designation of Confidential to counsel requesting such documents within thirty (30) days of their receipt in the first instance from the third-party vendor, unless an extension of time is granted by agreement of counsel for the parties or court order. Counsel shall provide a privilege log for all documents withheld from production to opposing counsel at the time of production.

11. The parties have and will continue to take reasonable and proportionate steps to preserve evidence relevant to the issues in this action.

12. The inadvertent production of a privileged or work-product-protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

13. The receiving party shall not use ESI that the producing party asserts is attorney-client privileged or work-product-protected to challenge the privilege or protection.

AND IT IS SO ORDERED.

Dated:

Presiding Judge, Court of Common Pleas
Fifteenth Judicial Circuit

DRAFT

APPROVED:

s/

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cstaples@shumaker.com
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s/

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s/

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Burr & Forman LLP
2411 Oak Street
Myrtle Beach, SC 29577

Attorneys for Plaintiffs

Dated: August ___, 2022

Exhibit A

1. BEGDOC (*first Bates number in document*)
2. ENDOC (*last Bates number in document*)
3. PAGECOUNT (*number of pages in document*)
4. BEGATTACH (*first Bates number of attachment range*)
5. ENDATTACH (*last Bates number of attachment range*)
6. CUSTODIAN (*name of person or location where docs came from*)
7. ALL CUSTODIANS (*to detail custodians a document has been de-duplicated from*)
8. TO (*email receiving party or parties*)
9. FROM (*email sending party*)
10. CC (*email copied party or parties*)
11. BCC (*email blind-copied party or parties*)
12. SUBJECT (*subject title for emails*)
13. DATE/TIME SENT (*date and time email was sent*)
14. DATE/TIME RECEIVED (*date and time email was received*)
15. DATE/TIME CREATED (*date and time a non-email document was created*)
16. DATE/TIME MODIFIED (*date and time a non-email document was last modified*)
17. MD5HASH (*unique document identifier*)
18. AUTHOR (*creator of a non-email document*)
19. FILENAME (*name of a non-email document*)
20. DOCEXT (*document extension*)
21. RECORDTYPE (*Email/Email Attachment/E-Doc, etc.*)
22. FILESIZE
23. NATIVEFILE (*hyperlink to native file, if any*)
24. TEXTFILEPATH (*relative path to the corresponding document textfile on the production media*)
25. CONFIDENTIAL STATUS
26. REDACTION STATUS


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-01323
)	
HSS BAREFOOT, LLC, d/b/a CENTURY 21)	
BAREFOOT; R&G CORP, d/b/a CENTURY 21)	
THE HARRELSON GROUP, and KEVIN MILLS,)	
individually,	)	THIRD AFFIDAVIT OF KEVIN MILLS
)	
Plaintiffs,)	
)	
v.)	
)	
JOEL D. BARBER, individually and as licensed)	
realtor, DARCY VARNEY, individually and as)	
broker in charge, and EXP REALTY, LLC,)	
)	
Defendants.)	

I, Kevin Mills, attest under penalties of perjury, as follows:

1. Sandra Churgin is a lead contained within my database since 2016. I first spoke with her and emailed her in May 2016.
2. I have been emailing Ms. Churgin at mrschurgin@***** regularly since that time including through 2022.
3. I did not speak with Ms. Churgin by phone in August 2022 and have not spoken with her nor her staff in August 2022.
4. I believe Ms. Churgin or her staff received outbound marketing by email, telephone, text or otherwise from Joel Barber using information Joel Barber gained access to while with C21 Harrelson Group. Unless deleted, Joel Barber should have record in his devices and databases that reflects outbound and inbound communications with Ms. Churgin. I have not seen this information produced in this lawsuit or in Barber's Third Affidavit.

5. Ms. Churgin was in the database titled "Database Export 7.26.2016.csv", which was improperly and without authorization accessed from the iMac computer on January 29, 2022 at 4:55:48 a.m.

(signature on following page)



KEVIN MILLS

Sworn to and subscribed before me,
this 20th day of December, 2022.



Notary Public
My Commission Expires: April 16, 2029

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-01323
HSS BAREFOOT, LLC, d/b/a CENTURY 21)	
BAREFOOT; R&G CORP, d/b/a CENTURY 21)	
THE HARRELSON GROUP, KEVIN MILLS,)	
individually, MILLS, LLC, and GREG)	
HARRELSON, individually,)	
)	
Plaintiffs,)	
	)	FIFTH AFFIDAVIT OF GREG
v.	)	HARRELSON
)	
JOEL D. BARBER, individually and as licensed)	
realtor, BARBER REAL ESTATE, INC.,)	
NICHOLAS FITZPATRICK, as licensed realtor,)	
DARCY VARNEY, individually and as broker-in-)	
charge, eXp REALTY, LLC, JAMES RAY)	
LUNSFORD, individually and as broker-in-charge,)	
and NORTHGROUP REAL ESTATE, INC.,)	
)	
Defendants.)	

I, GREG HARRELSON, attests under penalties of perjury, as follows:

1. Attached as **Exhibit A** is a copy of a LinkedIn page for Joel Barber which was searched on December 29, 2022.
2. The LinkedIn page for Joel Barber uses a banner image and slogans that were designed by Century 21 The Harrelson Group as marketing material and a template for Century 21 The Harrelson Group agents for use while affiliated with the real estate firm.
3. Joel Barber continues to use this marketing material and template which he gained access to by being an independent contractor and working with Century 21 The Harrelson Group.
4. Attached as **Exhibit B** is a MLS Listing 2225118 posted by “The Advantage Group” on November 17, 2022, the day after the hearing on Plaintiffs’ Motion for Contempt before the Honorable William J. Seals.

5. "The Advantage Group" is, upon information and belief, the real estate team Joel Barber currently does business as.

6. The owner of the property identified in **Exhibit B** has been in the Century 21 The Harrelson Group and Greg Harrelson database since 2019 and has been and currently is a contact, lead, and past client of Century 21 The Harrelson Group.

7. Attached as **Exhibit C** is MLS Listing 2225493 posted by The Advantage Group on November 22, 2022.

8. The owner of the property identified in **Exhibit C** has been in the Century 21 The Harrelson Group, agent Jill Lindstrand, and agent Greg Harrelson database since 2018 and been and currently is a contact, lead, and past client of Century 21 The Harrelson Group.

9. Sandra Churgin is a lead contained in Century 21 The Harrelson Group database and has been a lead since 2016. The lead was originally manually input by Kevin Mills on May 26, 2016 and separately manually input by Greg Harrelson.

10. Her telephone number is *****-5515 and her email address is mrschurgin@***** or doctors4surgery.asc@*****.

11. I spoke with Ms. Churgin in 2016. I have telephoned, emailed, and/or texted Ms. Churgin many times over the years on a regular basis to establish relationships with the C21 Harrelson Group Brand.

12. Kevin Mills has also emailed and called Ms. Churgin during this time as well.

13. In addition, for a time period following 2018, Ms. Churgin was assigned to agent Max Kilic, who sent communications to Ms. Churgin.

14. Recently, I spoke with Ms. Churgin on May 26, 2022 and provided research on sales in the buildings she owned units in and she was also requesting help on HOA matters related to her units.

15. Ms. Churgin was on my calendar to call her on June 7, 2022. I called her on June 9, 2022. I sent a text to Ms. Churgin on July 14, 2022. Ms. Churgin called back on July 14, 2022.

16. I spoke with Ms. Churgin last on July 14, 2022.

17. Unless deleted, Mr. Barber should have easily accessible electronic records of all or most of his communications with Ms. Churgin or any other customer, including each of the customers identified in Paragraph 12 of his Third Affidavit, in his current devices and electronic databases, CRMs and calendars, including a trail of outbound and inbound marketing, reflecting the dates and times of email communications, text message communications, phone calls sent through his electronic devices or databases, including but not limited to his cloud or web based accounts with Homebot, KVCORE, and Gmail accounts. I have not seen this information produced in this lawsuit or in Barber's Third Affidavit.

18. The information included in Barber's Third Affidavit fails to evidence that Barber did not use information he gained access to by being an independent contract and working with Century 21 Harrelson Group related to Ms. Churgin or any of the MLS Listings. For example, just because a lead source is "call in to agent", does not mean that the lead did not receive outbound marketing. Typically, "call in to agent" is a result of extensive marketing and promotion directed to a lead in a database over a period of time.

19. Further, just because a lead source is "expired listing" or "for sale by owner" does not mean that Barber did not use information obtained which he gained access to by being an

independent contract and working with Century 21 Harrelson Group to learn more about the seller, to contact the lead, to obtain email addresses, home or cell phone numbers, review lead notes, or review previous marketing efforts.

20. Barber's use of information he obtained he gained access to by being an independent contract and working with Century 21 Harrelson Group damages Century 21 Harrelson Group regardless of whether a sale closes as such leads are generated and maintained by Century 21 Harrelson Group at a substantial cost per lead and expense regardless of any closing.

21. Documents bates marked "Confidential Attorneys Eyes Only" 783-785 and produced on July 27, 2022 contains a spreadsheet that myself and my office created, updated through June 24, 2022, of Joel Barber's MLS Listings and the source and assignment of C21 Harrelson Group leads associated with those listings prior to Joel termination at Century 21 Harrelson Group. I am not inputting leads into the Century 21 Harrelson Group database "after-the-fact" in any attempt to hold Joel Barber in contempt. Rather, I am tracking Joel Barber's ongoing use of Century 21 Harrelson Group's leads, which were established prior to February 7, 2022.

(signature on following page)



GREG HARRELSON

Sworn to and subscribed before me,
this 30th day of December, 2022.



Notary Public
My Commission Expires: April 16, 2029

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Joel Barber

Realtor in Myrtle Beach
Myrtle Beach, South Carolina, United States
73 followers · 47 connections

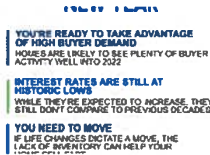
NorthGroup Real Estate

Sign in to follow

About

I have been practicing Real Estate in the Myrtle Beach area since 2007. My goal is to provide buyers and sellers with excellent individualized service. As a top agent, I utilize the latest technologies, market research and business strategies to meet buyer and seller expectations. If you are considering purchasing or selling a property in the Myrtle Beach area, let me know how I can assist you.

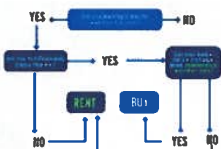
Activity



Is this the year you make that move you've been dreaming of? Give me a call and let's discuss your options. Shared by Joel Barber



It's that time of year when we all begin to think about all the amazing things we will accomplish in the upcoming year. What are some of your... Shared by Joel Barber



Ready to buy? Let's chat, I am here to help you reach your real estate goals! www.joelbarberteam.com ... #joelbarberteam #joelbarber... Shared by Joel Barber

Sign in to see all activity

Experience

People also viewed

- Enzo Farrar Business Management Myrtle Beach, SC
Haley Jennings Student at Carolina Forest High School Myrtle Beach, SC
Sterling Henry Government Relation Specialist at J. Watson & Co., LLC Washington, DC
Henry Sterling HVAC Manager at Pompeii's Plg Htg & AC Avon, OH
Starling Henry AML KYC Analyst at SunTrust Atlanta, GA
Henry Sterling Business Development Manager at Dever group Indonesia
Jay Philon English Teacher--Board Cert at Horry County Schools Myrtle Beach, SC
Kenrich Salters Pack Assembler at Nan Ya Plastics Corporation America Lake City, SC
Abel Wilson Student at Clemson University Clemson, SC
Jay Philon English Teacher at Carolina Forest High School Myrtle Beach, SC

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Others named Joel Barber

- Joel Barber Director at Eurasia Capital Limited London
Joel Barber Hydrogeologist Professional Engineer

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Experience

Real Estate Agent NorthGroup Real Estate Jan 2007 - Present · 16 years

Real Estate Agent eXp Realty Jan 2007 - Present · 16 years

Real Estate Agent CENTURY 21 2007 - Present · 15 years Myrtle Beach, South Carolina, United States

More activity by Joel



May you have a great year filled with immense happiness and luck! Stay in good health and achieve greater heights of success. 🍀 Have a wonderful... Shared by Joel Barber



We want to know: What's the most important thing you learned in 2021? Tell us in the comments 🗨️ #2022 #newyear #happynewyear #NewYear2022... Shared by Joel Barber



Is your home everything you expected it to be at this point in your life? If not, let's talk about finding a house that feels like home. ---- 🌐... Shared by Joel Barber



If you're thinking of buying a home in today's housing market, you may be wondering how strong your investment will be. The good news is, according... Shared by Joel Barber



SELLER 🧠 TIP Listing your home is a BIG deal. With the right tips and tricks, we can help you sell your home. Clean windows help you ensure you... Shared by Joel Barber



Trying to time the market is best left to people who enjoy market timing. Also, the best time to buy is when you need to

- Director at Eurasia Capital Limited London
Joel Barber Hydrogeologist, Professional Engineer, Groundwater Modeler, Scientist Denver, CO
Joel Barber Manager Human Resources at Vulcan Materials Company Birmingham, AL
Joel Barber Retired LCSW US Army Civilian Colorado Springs, CO
Joel Barber Analyst at Two Circles London

41 others named Joel Barber are on LinkedIn

See others named Joel Barber

Add new skills with these courses

- How to Land Job Interviews without Applying Online
Jeffrey Gitomer's Little Red Book of Sales Answers (getAbstract Summary)
Virtual Investing in Real Estate

See all courses

Joel's public profile badge

Include this LinkedIn profile on other websites

Joel Barber Realtor in Myrtle Beach Real Estate Agent at NorthGroup Real Estate

View profile



View profile badges

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Trying to time the market is best left to people who enjoy gambling. Also, the best time to buy is when you need to move. If your family situation...

Shared by Joel Barber



The most important thing about selling your home is having a trusted, knowledgeable and professional real estate agent by your side, like me. I'll...

Shared by Joel Barber



Let me make the process easier for you! 🌟 ---- 🌐 www.joelbarberteams.com #joelbarberteams #joelbarber #MyrtleBeach #homebuying #homeselling...

Shared by Joel Barber



Before making the decision to buy, people shopping for homes consider hundreds of factors including certain amenities. ---- 🌐 www.joelbarberteams.com...

Shared by Joel Barber



Make sure to hire a professional when selling your home! - --- 🌐 www.joelbarberteams.com #joelbarberteams #joelbarber #MyrtleBeach...

Shared by Joel Barber

🧑‍🎨 Selling during the holiday season can offer some real advantages in the real estate market! Despite seeing a lower volume, buyers are highly...

Shared by Joel Barber

Wishing you all the happiness your holiday can hold! 🎁

🌲 Thank you for your continued support this year. We truly mean that. 🧡🧑‍🎨 Merry...

Shared by Joel Barber

Selling in Winter? No problem! 🧡 I say, bring it on! . Selling your home in the Winter season means you'll face less competition, find more...

Shared by Joel Barber

Home Is Where the Heart Is More than Ever for 2022. There's no denying the financial benefits of



Shared by Joel Barber



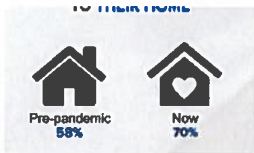
Wishing you all the happiness your holiday can hold! 🎁
🎄 Thank you for your continued support this year. We truly mean that. 🧡🎅 Merry...

Shared by Joel Barber



Selling in Winter? No problem! 🏠 I say, bring it on! .
Selling your home in the Winter season means you'll face less competition, find more...

Shared by Joel Barber



Home Is Where the Heart Is More than Ever for 2022.
There's no denying the financial benefits of homeownership, but what's often overlooked are the...

Shared by Joel Barber



Did you set the goal at the start of 2021 to make a move or has something come up and you need to make a change?
Whatever your reason, plans or...

Shared by Joel Barber

The Federal Housing Finance Agency just announced an increase in the conforming loan limit, which means that more credit will be available, creating...

Shared by Joel Barber

Do you know how much equity you have in your home? A licensed professional (such as myself) can help you determine that value and evaluate whether...

Shared by Joel Barber

View Joel's full profile

👁 See who you know in common

🗉 Get introduced

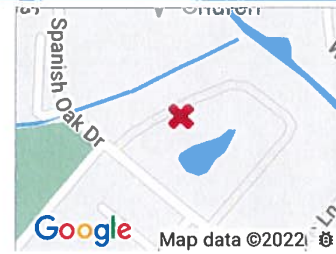
🗉 Contact Joel directly

Sign in to view full profile

ALL FIELDS DETAIL



MLS #	2225118	Bedrooms	3
Status	ACTIVE	Incl. Non-conforming bedrooms	No
Type	Detached	Full Baths	2
Address	422 Mallard Lake Circle	Half Baths	0
Address 2		Formal Dining	No
City	Surfside Beach	Style	Ranch
State	SC	Type of Parking	Attached 1
Zip	29575	Vehicle Parking	-Car
Asking Price	\$314,900	Capacity	4
Area	28B Surfside Area -Glensbay to GC Connector		
Class	RESIDENTIAL		



GENERAL

Listing Agent	The Advantage Group - Cell: 843-259-2139	Elementary School	Seaside Elementary School
Listing Office	NorthGroup Real Estate Inc - Main Line: 843-999-0119	Intermediate School	Saint James Intermediate School
Co-Listing Agent		Middle School	Saint James High School
Construction Status	Resale	High School	Horry
Agent Hit Count	111	County	Horry
CSL Subagents Fee	0	Client Hit Count	40
Variable Commission (Y/N)	No	Buyers Broker Fee	2.5
Owners Name	[REDACTED]	Stipulation of Sale	None
Type of Agency	Exclusive Right to Sell	Home Warranty	No
Section/Subdivision	Mallard Landing	4 Sided Lot Measurement	
Living Room		Zoning	R1
Dining Room		Transaction Broker Fee	0.00
Master Bedroom		TMS/PIN#	45814030011
Bonus Room		2nd TMS/PIN #	
Total Heated Sq Ft	1400	3rd TMS/PIN #	
Total Sq Ft	1650	Legal Description	MALLARD LANDING PH 1A; LOT 31
Living Area Source	Estimated	Furnished	No
Number of Acres	0.14	Great-Family Room	
Original Price	\$314,900	Kitchen	
Display on Realtor.com	Yes	Bedroom 1	
Bedroom 1 Level		Bedroom 2	
Bedroom 2 Level		Bedroom 3	
Bedroom 3 Level		Approximate Year Built	1996
Heated Sq Ft Ground Floor		MLS Approved Lockbox	No
Interior Access from Ground Floor		Display on Internet	Y
Price Per SQFT	\$224.93	Associated Document Count	3
Sold Price Per SQFT		Frequency HOA Paid	Monthly
Land Lease Amount		HOA as Calculated Monthly	\$30
Land Lease Amount Frequency		HOA Contact Name & Number	Mallard Landing HOA - 843-997-2530
Sale/Rent	For Sale	Last Photo Update Date	
Property Subject to the SC Vacation Rental Act	No	Status Date	11/17/2022
Previous Tax Map#		Price Date	11/17/2022
Lot Size Source	Estimated	Listing Date	11/15/2022
Builder Name		Primary School	
Gross Rental Income		Service Level	
Listing Service	Full Service	Provider Company	
Builder Model		Price of Warranty	
Picture Count	40	Zip	29575
Search By Map		Master Level	
Input Date	11/17/2022 12:36 PM	Off Market Date	
Update Date	11/18/2022	Days On Market	8
Input Date	11/17/2022 12:36 PM	Update Date	11/18/2022 1:06 PM
List Team		HotSheet Date	11/17/2022

SOLD STATUS

How Sold
Selling Agent
 MLS # 2225118

Sold Price
Sellers Concession

EXHIBIT B

00363

EXHIBIT 13

ELECTRONICALLY FILED - 2022 Dec 30 4:17 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

Sell Team
Selling Office
Proposed Closing Date
Contract Date
Closing Date

FEATURES

Living Room Vaulted/Cathedral Ceiling Ceiling Fan	Interior Features Garage Door Opener Smoke Detector Wshlr/Dryer Connection	Foundation Slab	Lot Description Rectangular
Master Bedroom Vaulted/Cath. Ceiling Ceiling Fan 1st Flr Level Walk-in Closet	Floor Cover Laminate	Other Rooms Carolina Room 1st Floor Bedrooms 1st Floor Baths	Showing Use ShowingTime Link
Kitchen Range Dishwasher Refrigerator Microwave Pantry Stainless Steel Apps.	Exterior Finish Vinyl Siding	Amenities Available Home Owners Assoc. Fees Restrictions Seller Disclosure Long Term Rental Allowed	Possession Closing
	Levels Single Level	Utilities Available Electricity Water Public Sewer Cable TV	Terms Of Sale OWC-VA Conventional Cash
	Heating and Cooling Central Heat Central Air		Lot Location On Lake/Pond
	Water Heater Electric		HOA Fee Includes Trash Pickup

AGENT TO AGENT REMARKS

Agent to Agent Remarks Schedule through showing time. Please show to serious buyers only. Be prompt, leave a card and leave feedback after showing. Listing agent request that all buyers get pre-qualified with Cole Williams, Revolution Mortgage (843) 267-7009 or email him at cwilliams@revolutionmortgage.com. This does not mean they must use this lender. It is for pre-qualification purposes only. If you have been pre-qualified you may submit that pre-qual letter instead. Please send offers w/ POF or Pre-qual Letter to advantagegroupmb@gmail.com

PUBLIC REMARKS

Public Remarks Absolutely beautiful 3 bedroom 2 full bath home in Mallard Landing with manicured curb appeal, beautiful laminate flooring and magnificent lake views. Living/Dining room combo offers lovely vaulted ceilings and fills with natural light. Well-appointed kitchen offers vaulted ceilings and Stainless Steel appliances. Master bedroom suite offers vaulted ceiling, walk in closet, double-sink vanity, tub and separate shower. Enclosed Sunroom to enjoy in all seasons and just outside lies your beautiful patio area, with a fully fenced backyard, bordering the pond. Absolutely stunning views!

DRIVING DIRECTIONS

Driving Directions Please use GPS

SHOWINGTIME INSTRUCTIONS

ShowingTime Instructions Please book through Showingtime

ADDITIONAL INFO

VOW Address	Yes	VOW AVM	Yes
VOW Comment	Yes	VOW Include	Yes
Geocode Quality			

ADDITIONAL PICTURES







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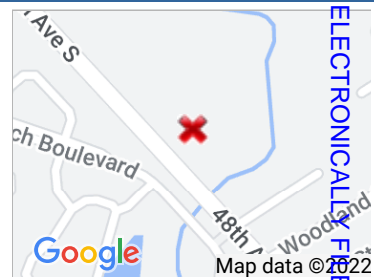
DISCLAIMER

This information is deemed reliable, but not guaranteed. Neither the Coastal Carolinas Association of REALTORS, nor the listing broker, nor their agents or subagents are responsible for the accuracy of the information. The buyer is responsible for verifying all information. This information is provided by the Coastal Carolinas Association of REALTORS for use by its members and is not intended for use for any other purpose.

ALL FIELDS DETAIL



MLS #	2225493	Bedrooms	3
Status	ACTIVE	Incl. Non-conforming bedrooms	No
Type	Condo	Full Baths	3
Address	502 48th Ave. S	Half Baths	0
Address 2		Exterior Finish	Concrete /Steel
City	North Myrtle Beach	Bldg Style	Mid-Rise 4-6 Stories
State	SC	Parking	Under Bldg.
Zip	29582	Furnished	Yes
Area	11E North Myrtle Beach Area--Windy Hill		
Class	CONDO /TOWNHOUSE		
Asking Price	\$384,900		
Sale/Rent	For Sale		
Unbranded	Unbranded Virtual		
Virtual Tour	Tour		



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GENERAL

Agent Hit Count	110	Client Hit Count	61
VOW Include	Yes	VOW Address	Yes
VOW Comment	Yes	VOW AVM	Yes
County	Horry	Zip	29582
Construction Status	Resale	Listing Agent	The Advantage Group - Call 843-259-2139
List Team		Listing Office	NorthGroup Real Estate LLC - Main Line: 843-999-0119
CSL Subagents Fee	0	Buyers Broker Fee	2.5
Variable Commission (Y/N)	No	Co-Listing Agent	
Stipulation of Sale	None	Owners Name	
Listing Date	11/22/2022	Home Warranty	No
Type of Agency	Exclusive Right to Sell	Est. Lot Size	
Project/Section Code	Ocean Marsh	Unit #	106
Building Name		TMS/PIN#	39107030040
2nd TMS/PIN #		3rd TMS/PIN #	
Zoning	R4	Elementary School	Ocean Drive Elementary
Middle School	North Myrtle Beach Middle School	High School	North Myrtle Beach High School
Living Room		Great-Family Room	
Dining Room		Kitchen	
Master Bedroom		Bedroom 1	
Bedroom 2		Bedroom 3	
Which Floor?	01	Approximate Year Built	2007
HOA as Calculated Monthly	\$530	Frequency HOA Paid	Monthly
HOA fee Include Insurance	Yes	HOA Include HO6 Insurance	No
MLS Approved Lockbox	No	Gross Annual Rental Incom	
Off Market Date		Search By Map	
Display on Internet	Y	Update Date	12/4/2022
Status Date	12/2/2022	HotSheet Date	12/4/2022
Price Date	12/4/2022	Input Date	11/22/2022 7:00 PM
Associated Document Count	2	Original Price	\$399,900
HOA Contact Name & Number	843-267-6130	Display on Realtor.com	Yes
Last Photo Update Date		Rental Mgmt Contract	No
Total Sq Ft	1600	Property Subject to the SC Vacation Rental Act	No
Primary School		Intermediate School	
Previous Tax Map#		Service Level	
Living Area Source	Estimated	Provider Company	
Price of Warranty		Total Heated Sq Ft	1540
Transaction Broker Fee	0.00	Proposed Closing Date	
Listing Service	Full Service	Master Level	
Bedroom 1 Level		Bedroom 2 Level	
Bedroom 3 Level		Geocode Quality	
Days On Market	37	Price Per SQFT	\$249.94
Sold Price Per SQFT		Input Date	11/22/2022 7:00 PM

MLS # 2225493

GENERAL

Update Date 12/4/2022 4:55 PM Branded Virtual Tour Branded Virtual Tour

FEATURES

Dining Room

Ceiling Fan
Lvr/DR Combo

Kitchen

Dishwasher
Garbage Disposal
Refrigerator
Range
Microwave
Pantry
Stainless Steel Apps.
Solid Surface Countertops

Levels

Single Level

Floor Cover

Carpeting
Tile

Foundation

Slab

Water Heater

Electric

Heating and Cooling

Central Heat
Electric

Amenities Available

Pool-Outdoor Community
Owner Allowed Pet
Home Owners Assn Fee
Short Term Rental Allowed
Long Term Rental Allowed
Trash Pickup
Cable TV
Internet Access
Lawn Maintenance
Owner Allowed Golf Cart
Tenant Allowed Golf Cart

HOA Fee Includes

Electric Common
Water and Sewer
Trash Pickup
Pool Service
Landscape/Lawn
Common Maint/Repair
Internet Access
Pest Control
Utilities Available
Cable TV
Electricity
Sewer
Telephone
Underground Utilities

Showing

Use ShowingTime Link

Possession

Closing

Terms Of Sale

Cash
Conventional

Unit Location

Oceanview-Unit
End Unit
Marsh/Wetlands View

SOLD STATUS

How Sold

Closing Date

Selling Agent

Selling Office

Contract Date

Sold Price

Sell Team

Sellers Concession

DRIVING DIRECTIONS

Driving Directions Please use GPS

AGENT TO AGENT REMARKS

Agent to Agent Remarks \$250 Selling agent bonus for a ratified contract by 12/31/22. Schedule through showing time. Please show to serious buyers only. Be prompt, leave a card and leave feedback after showing. Listing agent request that all buyers get pre-qualified with Cole Williams, Revolution Mortgage (843) 267-7009 or email him at cwilliams@revolutionmortgage.com. This does not mean they must use this lender. It is for pre-qualification purposes only. If you have been pre-qualified you may submit that pre-qual letter instead. Please send offers w/ POF or Pre-qual Letter to advantagegroupmb@gmail.com

PUBLIC REMARKS

Public Remarks Welcome home to this 3BR/3BA corner unit in Ocean Marsh condos in the Windy Hill section of North Myrtle Beach. Amazing views of the ocean and Marsh right from your balcony!! New HVAC in 2020 and new water heater in 2019. Within walking distance of the ocean Ocean Marsh is convenient to everything! Beautiful kitchen with granite countertops, dishwasher, and stainless steel appliances. Washer and dryer will convey. Ocean Marsh offers swimming pool, private indoor/public outdoor jacuzzi and is near area attractions, dining and shopping. You will not want to pass up the chance to preview this incredible property with expansive views of the creek and accessibility to shopping and dining that you can't beat at this price. Golf carts and pets allowed for owners which is hard to find right now in our market. Almost everything in this stunning unit conveys so you can step right in and start enjoying the beach and coastal lifestyle today. There is so much to see and do in North Myrtle Beach and this condo is close to ALLOF IT. Walk to dinner and shops at Barefoot Landing, take in a great show at the Alabama Theatre, and eat some of the best steaks and seafood our coast line has to offer. Call your agent or myself to schedule a showing as soon as possible, you won't be disappointed. This unit has never been used as a rental!!

SHOWING INSTRUCTIONS

ShowingTime Instructions Please book through Showingtime

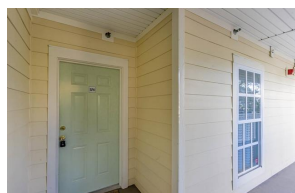
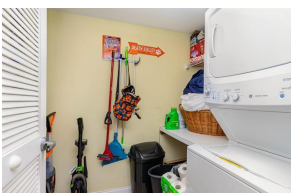
GENERAL

Picture Count 35

ADDITIONAL PICTURES



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)
)
Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)
)
Defendants.)

**PLAINTIFFS' SECOND MOTION FOR
CONTEMPT AND SANCTIONS AGAINST
DEFENDANT JOEL BARBER**

NOW COME THE PLAINTIFFS, HSS Barefoot, LLC, d/b/a Century 21 Barefoot (“C21 Barefoot”), R&G Corp, d/b/a Century 21 The Harrelson Group (“C21 Harrelson”), Kevin Mills, individually (“Mr. Mills”), Mills, LLC (“Mills, LLC”), and Greg Harrelson, individually (“Mr. Harrelson”) (collectively, “Plaintiffs”), by and through their undersigned counsel, and hereby seek an Order of this Honorable Court holding the Defendant, Joel Barber (“Defendant” or “Mr. Barber”), in contempt of court due to his continued and intentional failures to comply with the Order entered on April 8, 2022 enjoining Mr. Barber from, *inter alia*:

[c.] . . . using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction

letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

d. . . . from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;

e. . . . from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

See Order Granting Temporary Injunction, Apr. 8, 2022, ¶ 23(c)-(e) (“Injunction”).

Further, the Plaintiffs seek to hold Defendant in contempt of court due to his intentional failures to comply with the Order Granting Plaintiffs’ Motion for Contempt Against Defendant Joel D. Barber, which requires:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs’ expert, Clark Walton, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order;
2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;

See Order Granting Plaintiffs’ Motion for Contempt Against Joel D. Barber, November 22, 2022, p. 3 (“Contempt Order”).

Instead of complying with the Court’s Orders, Mr. Barber continues to disregard the Court’s mandates and proceed in business as if neither the Injunction nor the Contempt Order existed.

The facts supportive of holding Mr. Barber in contempt of court and awarding sanctions are set forth below, the attached exhibits, and in any additional memoranda, affidavits or arguments to be presented to the Court, and as set forth in the accompanying affidavits:

1. Joel Barber continues to use marketing material and templates created by Century 21 Harrelson Group following the Injunction and Contempt Order. **(See Exhibit A; Barber Depo. pp. 43 and 56, and Exhibits 5 and 54; Fifth Affidavit of Greg Harrelson.)**

2. Joel Barber has used and continues to use the databases, information and contact leads, clients, and customers of Century 21 Harrelson Group which he gained access to by being an independent contractor and working with Century 21 Harrelson Group following the Injunction **(See Fifth Affidavit of Greg Harrelson; Third Affidavit of Kevin Mills.)**

3. Joel Barber has failed to turn over any and/or all real estate business-related data devices and databases to Plaintiffs as required by the Contempt Order. **(See Fifth Affidavit of Greg Harrelson.)**

4. Upon information and belief, Joel Barber has failed to hold any real estate commissions in trust as required by the Contempt Order. **(See Exhibit B; Excerpts of First Citizens Bank response to Subpoena.)**

In light of Mr. Barber's repeated, willful violations of the Orders, Plaintiffs move this Court to: (1) strike Barber and Barber Real Estate, Inc.'s Answer, Affirmative Defenses, and/or Third-Party Complaint; and (2) order further sanctions against Mr. Barber as the Court sees fit including, but not limited to, the following remedies: (a) award attorneys' fees and costs; and (b) order such other relief as this Court deems just and proper.

(signature block on following page)

Dated: December 30, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185

Taylor K. Voegel, SC Bar #104770

2411 N. Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Email: abailey@burr.com

Email: tvoegel@burr.com

Attorneys for Plaintiffs

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Deposition of Joel D. Barber

43 (169 - 172)

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1 splitting on that? On those leads?

2 MR. DAIGLE: Object to the form.

3 A. Well, assuming that most -- if, you

4 know, they turned into listings, most listing

5 splits with Ryan were 50/50.

6 Q. Did you ever obtain any passwords that

7 Kevin Mills used for any of his accounts in his

8 computer?

9 MR. DAIGLE: Instruct you not to

10 answer that.

11 Q. Can you look at the third page in

12 Exhibit No. 05, please.

13 A. (Complies with request.)

14 Q. The third page in Exhibit No. 05, it

15 appears that you sent an email on January 30,

16 2022, to Ryan Picthall; is that correct?

17 A. I don't know. What am I looking at? A

18 screenshot here?

19 Q. Apparently.

20 A. It looks -- it says 2022. I can't read

21 the date.

22 Q. It says here, "Do not share. Do not

23 call TC, et cetera."

24 A. Uh-huh.

25 Q. Why did you say in this email to Ryan

Page 170

1 Picthall, "do not share"?

2 MR. DAIGLE: I'm going to instruct

3 you not to answer that.

4 Q. Then you say, "Do not call TC,

5 et cetera." What is "TC"?

6 A. Training center.

7 Q. And when you say "training center," what

8 do you mean by that?

9 A. Once again, that's where the agents made

10 calls.

11 Q. Okay. And that's Century 21. That's

12 where agents made calls; is that correct?

13 A. Correct.

14 Q. And why did you say, "Do not call from

15 TC, et cetera"?

16 MR. DAIGLE: Instruct you not to

17 answer that.

18 Q. Then at the bottom of the -- this page

19 on Exhibit No. 05, it has, "Joel Barber, your

20 trusted real estate resource."

21 Why do you say "your trusted real estate

22 resource"?

23 A. I know that I'm human, but every day I

24 wake up, my mission statement is to work hard to

25 prepare for the future by facing each day with a

Page 171

1 personal responsibility to glorify God and to

2 live according to the principles set up by Him

3 for me for excellence.

4 Q. When did you become "your trusted real

5 estate resource"?

6 MR. STAPLES: Object to form.

7 A. That was just a -- a signature template

8 that was provided to me by -- when I -- said

9 Century 21.

10 Q. Do you still use those words, "your

11 trusted real estate resource"?

12 A. I believe I do.

13 Q. Why?

14 A. As I mentioned, my purpose is -- in real

15 estate is to help people.

16 Q. So -- so you are still holding out to

17 the public that you are a trusted real estate

18 source even today? Is that what you're saying?

19 MR. DAIGLE: Object to the form.

20 MR. STAPLES: Objection.

21 A. Correct.

22 Q. Sir?

23 A. Correct.

24 Q. Do you believe that's true?

25 A. Yes.

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1 Q. What other slogans do you use, other

2 than "your trusted real estate resource"?

3 A. That's the only one I can recall.

4 (Exhibit No. 06 was marked for

5 identification.)

6 Q. Let me give you what's marked Exhibit

7 No. 06, which is an incident report. In this

8 incident report, it's for an incident that

9 occurred on February 7, 2022; is that correct?

10 A. Yes.

11 Q. Okay. And have you seen this incident

12 report --

13 A. Yes.

14 Q. -- previously?

15 With respect to this incident report, do

16 you know the name of the officer that responded?

17 A. No.

18 Q. Okay. Do you recall -- let's go to the

19 first sentence on the incident report in the

20 narrative. Read out loud the first paragraph.

21 A. The first paragraph or sentence?

22 Q. Yes, sir. First paragraph and sentence

23 is the same thing.

24 A. "On February 7, 2022, First PFC Knapp

25 responded to the area of 4757 Highway 17 Bypass

Page 221

1 Q. And the last name?
 2 A. Volpe, V-O-L-P-E.
 3 Q. And where does this person live?
 4 A. Murrells Inlet.
 5 Q. And had you done work for this person
 6 before?
 7 A. Yes.
 8 Q. And when?
 9 A. We both coach soccer.
 10 Q. I asked you when you did work for this
 11 person before.
 12 A. For the person?
 13 Q. Yes, sir.
 14 A. What sort of work?
 15 Q. Real estate work. Did you -- --
 16 A. I had -- when I was with North Beach,
 17 North Beach Realty, he asked me to list some
 18 properties of his that never sold; and that was
 19 the extent of it. He also called me to purchase
 20 some -- some lots to purchase.
 21 Q. Have you -- the last two years, have you
 22 earned income or received income from any -- any
 23 activities, other than real estate?
 24 A. In the last two years?
 25 Q. Yes, sir.

Page 222

1 A. I believe I sold a few items on Ebay.
 2 Q. Back on No. 54, the next block that you
 3 have on Exhibit No. 54, where did you get the --
 4 how did you paste this information? How did you
 5 develop that to paste this information on Exhibit
 6 No. 54?
 7 A. The same way I did the other one.
 8 Q. What did -- what steps did you do to
 9 undertake to make sure that any of these
 10 properties that are listed in Exhibit No. 54 are
 11 not in any database with Century 21?
 12 MR. STAPLES: Object form.
 13 MR. DAIGLE: Object to the form.
 14 A. None.
 15 Q. Okay. Now, the next page of Exhibit
 16 No. 54 is just your picture, and it has "Myrtle
 17 Beach property owners choice." And that's under
 18 "your trusted real estate resource."
 19 When did you become "Myrtle Beach
 20 property owners choice"?
 21 MR. STAPLES: Object to form. Go
 22 ahead.
 23 A. Do you mean when did I use that for my
 24 signature?
 25 Q. No. You're representing on this that

Page 223

1 you are the choice of Myrtle Beach property
 2 owners. I want to know when did you become that?
 3 MR. STAPLES: Object to form.
 4 MR. DAIGLE: Object to the form.
 5 A. Likely, have been using that for three
 6 years.
 7 Q. Who appointed you or how did you become
 8 the Myrtle Beach property owners choice?
 9 MR. STAPLES: Object to the form.
 10 MR. DAIGLE: Object to the form.
 11 A. I guess I appointed myself.
 12 Q. Okay. Now, on the second page of
 13 Exhibit No. 54, it has listing and sources.xls.
 14 Where is this spreadsheet maintained?
 15 A. On this -- what do you mean? On the
 16 second page?
 17 Q. Yes, sir. Second page of Exhibit
 18 No. 54.
 19 A. I assume it's on my flash drive.
 20 Q. Okay. And that's that flash drive
 21 containing 60- or 70,000 leads?
 22 A. Uh-huh. I would think so, yeah.
 23 Q. Okay.
 24 MR. DAIGLE: Can we take a two-
 25 minute break?

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1 MS. GOLDING: Yes, please.
 2 (A recess was taken.)
 3 MR. DAIGLE: Okay. We can go back
 4 on the record.
 5 MS. GOLDING: I have several hours
 6 more of questions, if not more than several
 7 hours; and we've been conferring with counsel,
 8 and we've agreed that we can close this
 9 deposition so that the deponent's attorneys can
 10 talk to him. But they agree that we can
 11 reschedule and continue the deposition, but I
 12 certainly won't repeat my questions. I think you
 13 can probably say it more eloquently, Jason.
 14 MR. DAIGLE: I agree with the way
 15 you stated it.
 16 MS. GOLDING: Okay. Is
 17 everybody -- I want to make sure the court
 18 reporter gets everybody's consent to that.
 19 MR. STAPLES: I content, and it's
 20 just to make it abundantly clear that we will be
 21 able to confer with Mr. Barber under cloak of
 22 attorney-client privilege during the recess
 23 before the next deposition.
 24 MS. GOLDING: You're absolutely
 25 right. I agree with that; and the next

EXHIBIT A TO PLAINTIFFS' SECOND MOTION FOR CONTEMPT
AND SANCTIONS AGAINST DEFENDANT, JOEL D. BARBER

JOEL D. BARBER DEPOSITION, EXHIBIT 5

Filed under Seal

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Darcy Varney <darcy.varney@exprealty.net>

ELECTRONICALLY FILED 2023 Jan 03 8:51 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

listings and sources attached

1 message

Joel Barber <jbarber.realtor@gmail.com>

Thu, Mar 31, 2022 at 6:45 PM

To: "Daigle, Jason" <jdaigle@ycrlaw.com>, Darcy Varney <darcy.varney@exprealty.net>

there is nothing here that is coming from me calling old people in the database. NOTHING!!!!
I can understand that exp wants to wipe their hands clean of me. I probably would too.
but there is nothing here

22	6702 Jefferson Pl.	2204440	FRBO - AFTER I LEFT C21
23	210 S Ocean Blvd	2204458	HOMELIGHT REFERRAL
24	553 White River Dr.	2204433	FSBO - AFTER I LEFT C21
25	6010 Windsor Green Way	2204534	I HAD THEIR PROEPRTY LISTED 2 YEARS AGO THEY CALLED ME!!!!!!!!!!!!
26	1675 Low Country Pl.	2204839	REFERRAL FROM A FSBO AFTER I LEFT C21!!!!!!!!!!!!
27	3572 Evergreen Way	2204920	FSBO - AFTER I LEFT C21
28	2486 Coastline Ct.	2206268	MY FRIEND!!!!!!
29	2486 Coastline Ct.	2206270	MY FRIEND!!!!!!
30	2486 Coastline Ct.	2206271	MY FRIEND!!!!!!
31	2486 Coastline Ct.	2206272	MY FRIEND!!!!!!
32	2486 Coastline Ct.	2206273	MY FRIEND!!!!!!
33	2486 Coastline Ct.	2206274	MY FRIEND!!!!!!
34	2486 Coastline Ct.	2206275	MY FRIEND!!!!!!
35	2486 Coastline Ct.	2206269	MY FRIEND!!!!!!
36	2486 Coastline Ct.	2206276	MY FRIEND!!!!!!
37			
38			
39			



Address	MLS #	Source
1074 Palm Dr.	2205213	HE CALLED ME TO SELL
1202 Park St. Ext.	2204455	HOMELIGHT REFERRAL
2005 Misty Morning Dr.	2204412	PAST CLIENT CALLED ME TO SELL
566 Woodholme Dr	2204423	HOMELIGHT REFERRAL
2444 Summerhaven Loop	2206267	HOMELIGHT REFERRAL
5031 Medieval Dr.	2206383	MY FRIEND!!!!!!
600 Seth Ln.	2206590	SHE CALLED ME
619 Saffron Ct.	2204633	HOMELIGHT REFERRAL
701 11th Ave. S	2204439	I HELPED THEM BUY THE PROPERTY. THEY CALED ME!!!!!!
1723 Coventry Rd.	2204631	FOR SALE BY OWNER - AFTER I LEFT C21
409 Waterfall Circle	2206655	FOR SALE BY OWNER - AFTER I LEFT C21
1768 Singing Rose Dr.	2206382	I HELPED THEM BUY THE PROPERTY. THEY CALED ME!!!!!!
831 Waterton Ave.	2204450	I HELPED THEM BUY THE PROPERTY. THEY CALED ME!!!!!!
131 Capt Anthony White Ln.	2204457	EXPIRED - AFTER I LEFT C21
885 Bear Lake Dr.	2204949	EXPIRED - HE CALLED ME!!!!!!!!!!!!
6966 Antonio Ln.	2204413	FOR SALE BY OWNER - AFTER I LEFT C21
861 Rowe Pond Rd.	2203558	EXPIRED - AFTER I LEFT C21
1117 Whispering Winds Dr.	2204448	FOR SALE BY OWNER - AFTER I LEFT C21
3149 Marsh Island Dr.	2204417	HE CALLED ME TO SELL!!!!!!!!!!!!!!!!!!!!!!!!!!!!
1100 Possum Trot Rd.	2204431	SHE CALLED ME TO SELL!!!!!!!!!!!!!!!!!!!!

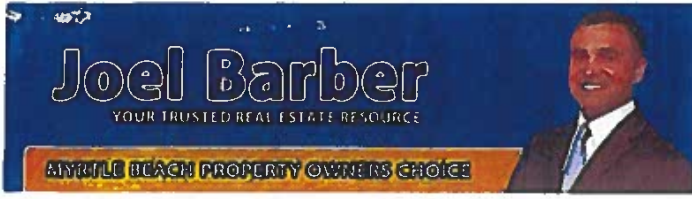
Joel Barber
Realtor
Myrtle Beach and Surrounding Area
LivinginMB.com
843-655-2979
Check your property value
Property Search
Connect with Joel

EXP_VARNEY_000228

EXHIBIT A

00378

EXHIBIT 14



Joel Barber Home Buying Experience

 LISTINGS AND SOURCES.xls
29K

EXP_VARNEY_000229

EXHIBIT A



AFFIDAVIT AND CERTIFICATION
OF COPIES OF BANK RECORDS

Lori Dunn, being duly sworn, states as follows:

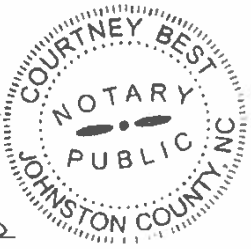
- 1. This Affidavit and Certification of Copies of Bank Records is issued on behalf of the following bank (the "Bank"):

 - “ First-Citizens Bank & Trust Company, a North Carolina banking corporation
- 2. I am a custodian of the business records of the Bank. As such, I am familiar with the system by which the bank records are made and maintained.
- 3. I certify that the copies attached to this affidavit are true and accurate copies of the records of original entry of the Bank kept in the ordinary course of the Bank's business.

Date: December 12, 2022


 Lori Dunn, Mgr Deposit Operations VP & Asst Sec
 Deposit Operations

Sworn to and subscribed before me on
December 12 2022
Courtney Best
 Notary Public for Wake
 County, North Carolina
 My Commission Expires: 11/14/2026



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Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

IM EST
264

08041
BARBER REAL ESTATE, INC
964 BLUFFVIEW DR
MYRTLE BEACH SC 29579-5246

Your Account(s) At A Glance

Checking Balance **16,773.81+**

Statement Period: November 1, 2022 Thru November 30, 2022

Account Number [REDACTED]



Basic Business Checking

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance	346,241.61+	Statement Period Days	30
0 Deposits	0.00	Average Ledger Balance	270,380.00+
11 Other Credits	51,625.00+		
4 Checks	353,610.00-		
6 Other Debits	27,482.80-		
Monthly Service Charge	0.00		
Ending Balance	16,773.81+		

Other Credits To Your Account

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-01	Ecommission Fina 0000120477 *****0477	2,575.00
11-01	Ecommission Fina 0000120566 *****0566	5,000.00
11-10	Ecommission Fina 0000125543 *****5543	4,325.00
11-10	Ecommission Fina 0000125555 *****5555	9,422.50
11-10	Ecommission Fina 0000125557 *****5557	6,391.00
11-14	Ecommission Fina 0000125995 *****5995	4,475.00
11-14	Ecommission Fina 0000126185 *****6185	3,800.00
11-17	Ecommission Fina 0000128030 *****8030	2,874.00
11-23	Ecommission Fina 0000130862 *****0862	3,065.00
11-23	Ecommission Fina 0000131006 *****1006	5,925.00
11-30	Ecommission Fina 0000133488 *****3488	3,772.50
Total		51,625.00

Checks Paid From Your Account

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Check No.</u>	<u>Date</u>	<u>Amount</u>
1089	11-21	2,770.00	1157*	11-07	840.00
1090	11-21	250,000.00	1158	11-30	100,000.00

*Prior Check Number(s) Not Included or Out of Sequence.



Direct Customer Inquiry Calls To
Personal 1-888-323-4732
Business 1-866-322-4249

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Statement Period: November 1, 2022 Thru November 30, 2022

Account Number : XXXXXXXXXX

Other Debits From Your Account

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-03	Amex Epayment ACH Pmt A5208	13,175.31
11-09	Adp Tax Adp Tax Keze* ****23A01	2,228.14
11-09	Adp Wage Pay Wage Pay *****424Ze6	2,869.09
11-23	Adp Tax Adp Tax Keze* ****24A01	2,263.24
11-23	Adp Wage Pay Wage Pay *****729Ze6	2,947.02
11-28	Transfer Internet 11-28 Seq # 79438	4,000.00
Total		27,482.80

Daily Balance Summary

<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>
11-01	353,816.61+	11-10	354,842.57+	11-23	117,001.31+
11-03	340,641.30+	11-14	363,117.57+	11-28	113,001.31+
11-07	339,801.30+	11-17	365,991.57+	11-30	16,773.81+
11-09	334,704.07+	11-21	113,221.57+		

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) **IN THE COURT OF COMMON PLEAS**
) **FIFTEENTH JUDICIAL CIRCUIT**
) **CASE NO.: 2022-CP-26-01323**

HSS BAREFOOT, LLC, d/b/a CENTURY 21
BAREFOOT; R&G CORP, d/b/a CENTURY 21
THE HARRELSON GROUP, KEVIN MILLS,
individually, MILLS, LLC, and GREG
HARRELSON, individually,

) **AMENDED ORDER GRANTING**
) **PLAINTIFFS’ MOTION FOR CONTEMPT**
) **AGAINST DEFENDANT JOEL D.**
) **BARBER**

Plaintiffs,

v.

JOEL D. BARBER, individually and as licensed
realtor, BARBER REAL ESTATE, INC.,
NICHOLAS FITZPATRICK, as licensed realtor,
DARCY VARNEY, individually and as broker-in-
charge, eXp REALTY, LLC, JAMES RAY
LUNSFORD, individually and as broker-in-charge,
and NORTHGROUP REAL ESTATE, INC.,

Defendants.

This matter was presented to the Court by Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp., d/b/a Century 21 The Harrelson Group (collectively, “Century 21”), Kevin Mills, Mills, LLC, and Greg Harrelson’s (collectively, “Plaintiffs”) Motion for Contempt Against Defendant Joel D. Barber, filed July 25, 2022. A virtual hearing was held regarding Plaintiffs’ Motion on November 16, 2022. Present at the hearing were Plaintiffs Greg Harrelson and Kevin Mills, as well as Amanda A. Bailey, Esquire, and Taylor K. Voegel, Esquire, as counsel for Plaintiffs. Defendant Barber was also present, as was his counsel, Christian H. Staples, Esquire and Jason A. Daigle, Esquire. Lawrence M. Hershon, Esquire, counsel for Defendants Darcy Varney and eXp Realty, LLC, and Russell M. Racine, Esquire, counsel for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc., were also present. After consideration of the submittals by Plaintiffs and Defendant Barber, the arguments of counsel, and

the applicable law, the Motion for Contempt was granted. Defendant Barber filed a Motion to Reconsider on November 22, 2022, and a virtual hearing was held on January 3, 2023. The Court issued a Form 4 Order on January 9, 2023, and this formal Order follows. Although it appears Defendant Barber did not comply with Rule 59(g), SCRCP, and it also appears Defendant Barber's Motion to Reconsider relies upon newly produced evidence, the Court hereby modifies its previous Order entered on November 22, 2022, as it relates to the inspection of Defendant Barber's real estate business-related data devices and databases.

This civil action is premised upon the allegations that Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21 for his benefit and the benefit of other brokerage companies. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction ("the Injunction"). The Court held hearings on the matter and issued an oral ruling on March 31, 2022, granting Plaintiffs' Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. The Injunction, which continues to be in effect until the resolution of this case, sets forth in pertinent part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites,

website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

Inj., ¶ 23(c)-(e). Based upon this Court's review of Rob Safa, Susan Brown, Defendant Barber, and Plaintiff Harrelson's affidavits, Defendant Barber's deposition testimony from November 15, 2022 represented by Plaintiffs' counsel, and all arguments of counsel, this Court finds clear and convincing evidence that Defendant Barber willfully, voluntarily, and intentionally violated the Injunction by using information, disclosing information, and initiating communication with leads, clients, prospects, and customers he gained access to or otherwise obtained during his time as an agent and independent contractor with Plaintiffs.

Accordingly, it is ORDERED that Defendant Barber is hereby held in contempt of court for failing to comply with the Injunction and otherwise acting with disregard for the judicial process. Therefore, this Court orders the following:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, or some other third-party examiner as agreed upon by the parties, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order, provided that Mr. Walton or any other such examiner shall produce all information captured first to Defendant Barber's counsel for review and designation of any privileged material subject to the attorney-client privilege, the work product doctrine, or other claim of privilege. Defendant Barber shall have forty-five days from receipt of the results of the examination to conduct a privilege review and otherwise mark documents "Confidential" or "Attorneys' Eyes Only" pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and produce non-privileged results. If Defendant Barber withholds any documents from production on the basis of any claimed privilege, he shall produce a privilege log containing sufficient detail to inform Plaintiffs' counsel of the general nature of the document(s) withheld and the basis for the claim(s) of privilege. Such a privilege review will be at Defendant Barber's expense, and to the extent necessary for examination of these devices and databases, the parties shall have fifteen days from the date of this Order to agree upon an examination protocol. If the parties determine an examination protocol is necessary and such an agreement cannot be reached between the parties at the expiration of fifteen days from the date of this Order, Plaintiffs will submit a proposed examination protocol order to the Court. The Court affirms and acknowledges that in complying with this Order, Defendants are not

waiving any applicable privileges, and the parties' obligations pursuant to Rule 26(b)(5)(B), SCRCP, remain;

2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;
4. Plaintiffs' request for attorneys' fees is denied at this time; and
5. The Injunction issued March 31, 2022 remains in full force and effect pending the trial of this case unless otherwise modified or terminated by Court order.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Presiding Judge of the 15th Judicial Circuit

Conway, South Carolina
Dated: January _____, 2023



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-25 21:19:13 page 5 of 5

ELECTRONICALLY FILED - 2023 Jan 26 8:43 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2601323

HSS Barefoot LLC et al
PLAINTIFF(S)

Joel D Barber et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

It certainly appears the Defendant's Motion/Reconsider/Certificate of Service is relying on newly produced evidence and rule 69(d) is not fully complied with; however, Judge Seals is going to modify the original order to the extent any evidence obtained by the expert be distributed to Defense counsel first for issues pertaining to attorney-client privilege.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/05/2023 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2023-01-05 10:36:01 page 3 of 3

ELECTRONICALLY FILED - 2023 Jan 09 11:58 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21 BAREFOOT,
R&G CORP d/b/a CENTURY 21 THE HARRELSON GROUP,
KEVIN MILLS, MILLS, LLC, and GREG HARRELSON,Respondents,
JOEL D. BARBER,Appellant.

NOTICE OF APPEAL

Joel D. Barber appeals the order of the Honorable William H. Seals, Jr. (“Judge Seals”) dated November 22, 2022, granting Plaintiffs’ Motion for Contempt, as modified after reconsideration by order of Judge Seals dated January 26, 2023. Appellant received written notice of entry of the modified order on January 26, 2023, so this appeal is timely filed.

[Signature on following page]

This the 7th day of February, 2023.

/s/ Christian H. Staples

Christian H. Staples
SC Bar No. 101470
SHUMAKER, LOOP & KENDRICK, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280
Telephone: 704-375-0057
Facsimile: 704-332-1197
cstaples@shumaker.com
Attorney for Appellant

Other Counsel of Record:

Amanda A. Bailey
Taylor K. Voegel
Henrietta Golding
Burr & Forman LLP
P.O. Box 336
Myrtle Beach, SC 29578-0336
abailey@burr.com
tvoegel@burr.com
hgolding@burr.com
Attorneys for Respondents

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21 BAREFOOT; R&G CORP, d/b/a CENTURY 21 THE HARRELSON GROUP; KEVIN MILLS, Individually; MILLS, LLC, and GREG HARRELSON, Individually,

Plaintiffs,

vs.

JOEL D. BARBER, individually and as licensed realtor; BARBER REAL ESTATE, INC.; NICHOLAS FITZPATRICK, as licensed realtor; DARCY VARNEY, individually and as broker-in-charge; EXP REALTY, LLC; JAMES RAY LUNSFORD, individually and as broker-in-charge, and NORTHGROUP REAL ESTATE, INC.,

Defendants.

**DEFENDANT JOEL D. BARBER'S
MOTION TO STAY ENFORCEMENT
OF CONTEMPT ORDER
PENDING APPEAL**

NOW COMES the Defendant Joel D. Barber (“Defendant Barber”), by and through his undersigned counsel, pursuant to Rule 62, SCRCP, and Rule 241, SCACR, and hereby moves for entry of an order staying the enforcement of the Order entered by the Honorable William H. Seals, Jr. (“Judge Seals”) on November 22, 2022, as modified after reconsideration by Judge Seals on January 26, 2023 (the “Contempt Order”), in light of and pending the resolution of Defendant Barber’s appeal of the Contempt Order to the South Carolina Court of Appeals.

While the undersigned believes that enforcement of the Contempt Order was automatically stayed upon service of Defendant Barber’s Notice of Appeal on February 7, 2023, the undersigned brings this motion out of an abundance of caution, to the extent that the Contempt Order may be construed as (or argued to be) a judgment “directing the assignment or delivery of documents or

personal property” under Rule 241(b)(2), SCACR, in light of the Contempt Order’s directives for Defendant Barber to (1) “turn over all real estate business-related data devices and databases” and (2) to hold “all real estate-related commissions ... in trust ...”.

Defendant Barber intends to argue on appeal that the Contempt Order itself, and specifically the above-referenced directives contained in the Contempt Order, were issued in error and should therefore be reversed or modified on appeal. Accordingly, it would be unfairly prejudicial to Defendant Barber if he is required to comply with the Contempt Order pending the resolution of his appeal. Moreover, from a practical standpoint, Defendant Barber’s compliance with the Contempt Order while his appeal remains pending would effectively render the appeal meaningless or otherwise moot, since the directives appealed from would have already occurred or been fulfilled and would be unable to be undone, regardless of the Court of Appeals’ eventual holding on appeal. *See* Rule 241(c)(2), SCACR (“In determining whether an order [of stay] should issue pursuant to this Rule, the lower court ... should consider whether such an order is necessary to preserve jurisdiction of the appeal **or to prevent a contested issue from becoming moot.**”) (emphasis added). Finally, no bond or other undertaking should be required of Defendant Barber as a prerequisite or condition to the stay, given that the Contempt Order is not a money judgment and does not otherwise direct the payment of money to Plaintiffs. As such, no security should be required for the stay.

Pursuant to Rule 11, SCRCPC, the undersigned conferred with counsel for Plaintiffs regarding this motion and the relief requested herein, and Plaintiffs’ counsel does not consent.

WHEREFORE, based on the foregoing, and for good cause shown, Defendant Barber respectfully requests the entry of an order staying enforcement of the Contempt Order in its entirety pending the final resolution of his appeal, and for such further relief as justice may require.

This the 7th day of February, 2023.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

Christian H. Staples, SC Bar No. 101470
101 South Tryon Street, Suite 2200
Charlotte, NC 28280
Telephone: 704-375-0057
Facsimile: 704-332-1197
cstaples@shumaker.com

*Attorneys for Defendant
Joel D. Barber (as to the Answer and
Affirmative Defenses only)*

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **DEFENDANT JOEL D. BARBER'S MOTION TO STAY ENFORCEMENT OF CONTEMPT ORDER PENDING APPEAL** was electronically filed using the SC Courts' E-Filing portal which will automatically send notice of filing to all counsel of record in this action.

This the 7th day of February, 2023.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

**PLAINTIFFS’ OBJECTION TO
DEFENDANT JOEL D. BARBER’S
MOTION TO STAY ENFORCEMENT OF
CONTEMPT ORDER PENDING APPEAL**

Plaintiffs,

v.

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.

Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp, d/b/a Century 21 The Harrelson Group, Kevin Mills, and Greg Harrelson (collectively, “Plaintiffs”), through their undersigned counsel, respectfully submit the following Objection to Defendant Joel D. Barber’s Motion to Stay Enforcement of Contempt Order Pending Appeal.

At the time Plaintiffs filed this action, Plaintiffs also filed a Motion for a Temporary Restraining Order and Temporary Injunction on March 2, 2022. After a hearing on the motion, the Court entered a formal Order Granting Plaintiffs’ Motion for a Temporary Injunction (“Temporary Injunction”) dated April 8, 2022, and Plaintiffs posted a \$100,000.00 bond. On July 25, 2022, Plaintiffs filed their first Motion for Contempt and Sanctions Against Defendant Joel D. Barber

for violation of the Temporary Injunction.¹ After arguments, the Court entered a formal Order holding Defendant Barber in Contempt for violation of the Temporary Injunction (“Order”) dated November 22, 2022, and required Defendant Barber to: (1) provide Plaintiffs all real estate business-related data devices and databases for inspection; (2) hold in trust any and all real estate-related commissions Defendant Barber received subsequent to February 7, 2022; and (3) not use the databases subject to inspection during the pendency of this action.

That same day, Defendant Barber filed a Motion to Reconsider. After arguments, the Court entered an Amended Order Granting Plaintiffs’ Motion for Contempt Against Defendant Joel D. Barber (“Amended Order”) on January 26, 2023, with the additional requirement that the results of any data device or database inspection should be provided first to Defendant Barber’s counsel for review of privileged material.

On February 7, 2023, Defendant Barber served his Notice of Appeal and filed a Motion to Stay Enforcement of the Contempt Order Pending his Appeal. Plaintiffs now submit this Objection to Defendant Barber’s Motion to Stay.

Although Rule 241(a), SCACR, provides the general rule that the service of a notice to appeal automatically stays “matters decided in the order. . . on appeal,” Rule 241(b), SCACR, provides a non-exhaustive list of exceptions to the automatic stay, one of which applies when the judgment appealed from “direct[s] the . . . delivery of documents or personal property” Rule 241(b)(2), SCACR. Similarly, orders providing injunctive relief are excepted from any automatic stay. *See* Rule 241(b)(8), SCACR (“An appeal from an order granting an injunction or temporary restraining order.”). Here, both the Order and the Amended Order directed Defendant Barber to

¹ Plaintiffs filed their Second Motion for Contempt and Sanctions Against Defendant Joel D. Barber December 30, 2022, which is currently pending.

produce his “real estate business-related data devices and databases for inspection” and to hold commissions in trust. (Order, ¶¶ 1—2, Nov. 22, 2022; Am. Order, ¶¶ 1—2, Jan. 26, 2023.) The Orders also enjoined Defendant Barber from using databases. (Order at ¶ 3; Am. Order at ¶ 3.) As such, the Orders fall within one or more exceptions to the automatic stay under Rule 241, SCACR.

In addition, the Orders hold Defendant Barber in civil contempt, an appeal from which does not automatically stay their enforcement. *See Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459, 461 (1995) (“[A]n order holding a person in civil contempt is not automatically stayed by the taking of an appeal.”). Accordingly, the Orders are not stayed from enforcement simply as a result of the filing of a Notice of Appeal.

In the alternative and in the event the Court views Defendant Barber’s Motion as one for an order imposing a supersedeas, Defendant Barber should be required to post a supersedeas bond or meet other conditions to stay the enforcement of the Orders. *See* Rule 241(c)(3), SCACR (“The granting of supersedeas . . . under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond”); Rule 62(a), SCRCPC (“Unless otherwise ordered by the court, an interlocutory . . . judgment for an action for an injunction . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.”); Rule 62(d), SCRCPC (“When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay The stay is effective when the supersedeas bond is approved by the court.”).

Plaintiffs reserve the right to and will supplement their Objection with further supporting documentation, including any affidavits, memorandum, and/or other information related to any bond, the amount of the bond or other conditions of stay/supersedeas, prior to the hearing on this Motion.

[Signature on Following Page]

Dated: February 8, 2023

BURR & FORMAN LLP

s/Taylor K. Voegel

Amanda A. Bailey, SC Bar # 70185

Taylor K. Voegel, SC Bar #104770

2411 N. Oak Street, Suite 206 (29577)

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Myrtle Beach, SC 29578-0336

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Email: abailey@burr.com

Email: tvoegel@burr.com

*Attorneys for Plaintiffs HSS Barefoot, LLC, d/b/a
Century 21 Barefoot, R&G Corp, d/b/a Century 21
The Harrelson Group, Kevin Mills, and Greg
Harrelson*

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)
)
Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)
)
Defendants.)

**SIXTH AFFIDAVIT OF GREG
HARRELSON**

I, GREG HARRELSON, attest under penalties of perjury, as follows:

1. The banner image and slogan, including the language and phrases contained therein, as shown in Exhibit A of my Fifth Affidavit—which is incorporated herein—were created by Century 21 The Harrelson Group using our resources and graphic designer.

2. This graphic designer was a W-2 employee of Century 21 The Harrelson Group at the time of Joel Barber’s affiliation with Century 21.

3. Joel Barber’s LinkedIn page and email, as shown in Exhibit A of my Fifth Affidavit and Rob Safa’s Affidavit, use a banner image and slogans that were designed by Century 21 The Harrelson Group as marketing material and an email template for Century 21 The Harrelson Group agents for use while affiliated with the real estate firm.

4. These banner images, slogans, and email templates were marketing materials used by Century 21 The Harrelson Group in order to promote Century 21 The Harrelson Group brand.

5. Joel Barber had neither permission nor authorization to continue using any marketing material after his relationship with Century 21 was terminated on February 7, 2022.

6. Joel Barber came into possession of these banner images, slogans, and email templates, created by Century 21 The Harrelson Group, by virtue of being an independent contractor and working with Plaintiffs between March 14, 2017 and February 7, 2022.

7. Barber was on notice, pursuant to the express terms of the Injunction entered by verbal ruling after a hearing on March 31, 2022—wherein Joel Barber was present—and later by a written order entered April 8, 2022, that he, and all others acting on his behalf or in active concern and in participation with him, are enjoined from using such marketing materials and email templates.

8. On or about March 9, 2023, I discovered additional use of Century 21 The Harrelson Group’s marketing material by NorthGroup Real Estate, Inc. (“NorthGroup”), under James Ray Lunsford, and Joel Barber, as well as any other agents affiliated with “The Advantage Group.” **Exhibit A** is a captured and preserved version of Joel Barber’s “The Advantage Group’s” webpage as of March 9, 2023.

9. “The Advantage Group” is, upon information and belief, the real estate team for which Joel Barber currently does real estate business, under both Lunsford’s broker’s license and NorthGroup’s real estate firm.

10. Toward the end of the first page of Joel Barber’s captured Advantage Group webpage, there are links to three videos, one of which is titled “Joel Barber Home Buying Experience.”

11. **Exhibit B** is a captured and preserved version of Joel Barber's YouTube channel webpage as of March 9, 2023. The video displayed in that exhibit is titled "Joel Barber Home Buying Experience," and is one of the videos Joel Barber has displayed on his Advantage Group webpage, and linked through his YouTube channel, "Joel Barber | LivingInMB."

12. **Exhibit B** further reflects that the video, "Joel Barber Home Buying Experience," was uploaded to Joel Barber's YouTube channel one month ago, meaning he posted that video sometime in February 2023. Joel Barber has a direct link to his YouTube page on his Advantage Group website as shown at the top of the page in **Exhibit A**, and the video titled "Joel Barber Home Buying Experience" is the first video that populates under that link.

13. **Exhibit C** is a captured and preserved version of the video titled "Joel Barber Home Buying Experience." In that video, two homebuyers describe their buying experience with Joel Barber as their agent. The homebuyers also make three separate references to the service they received from the Century 21 team during their buying process with Joel Barber.

14. As evidenced by that video alone, Joel Barber continues to use my company's marketing material and clients/customers which he gained access to by being an independent contractor and working with Century 21 The Harrelson Group.

15. As of the date of the upload in February 2023, Barber was expressly enjoined from using these Century 21 The Harrelson Group's customers and marketing materials.

16. Further, on or about March 10, 2023, I discovered that a number of videos remained posted to Joel Barber's YouTube channel. **Exhibit D** is a captured and preserved version of Joel Barber's YouTube page as of March 13, 2023. Over twenty-five of the videos Joel Barber has posted on his YouTube page contain images of Joel Barber with the Century 21 logo or "CENTURY 21 THE HARRELSON GROUP" posted behind him during the video. Joel Barber

also introduces himself as being “with Century 21” or “with Century 21 The Harrelson Group” in those videos. **Exhibit E** contains an example of one of these videos, titled “Myrtle Beach Area Market Update.”

17. Upon information and belief, those videos were recorded from the offices of Century 21. I would have provided coaching to Joel Barber related to the need to post such videos while he was affiliated with Century 21 The Harrelson Group.

18. Joel Barber continues to use this marketing material, including the Century 21 licensed logo and the Century 21 The Harrelson Group logo, which he gained access to by being an independent contractor and working with Century 21 The Harrelson Group.

19. If leads, prospects, clients, or other members of the public view Joel Barber’s YouTube videos, which he is actively promoting on his website, such viewers will see numerous videos crediting, promoting, and otherwise referencing Century 21 and Century 21 The Harrelson Group, leading to confusion in the marketplace and damage to Century 21, all while benefiting Joel Barber, Lunsford, and NorthGroup. Lunsford, as broker-in-charge, and NorthGroup, as a real estate firm, have affirmative duties to supervise and approve Barber’s marketing materials. *See Exhibit F*, Lunsford Dep. 16:4-13; 35:13—36:18; 37:21—38:7; 43:9-14; S.C. Code Ann. § 40-57-135(A)(1).

20. Joel Barber did not have permission or authorization to use this marketing material to which he gained access by being an independent contract and working with Century 21 The Harrelson Group, and is prohibited by the Injunction from continued use of such information.

21. In addition, pursuant to South Carolina Code Section 40-57-135, real estate agents must identify themselves by their current agency and may not “conduct business under another name . . . other than the one for which his license is issued,” or “advertise . . . a real estate

transaction and Joel Barber's continued use of Century 21 The Harrelson Group's banner image, slogan, and name is, upon information and belief, in violation of South Carolina law and causing damage to my company's goodwill. S.C. Code Ann. § 40-57-135(C)(3).

22. Further, Joel Barber entered into an agreement to abide by the terms of Century 21's Agent Manual when he was an independent contractor at Century 21 The Harrelson Group, as set forth in more detail in my Second Affidavit. Specifically, the Agent Manual that Joel Barber agreed to be bound by provided that, "It is understood that [Century 21] has the rights to all Zillow, Real Satisfied, Realtor.com, Truila and *all testimonials and reviews* acquired during the Associate's period of agreement with [Century 21]." (Emphasis added.) By posting a Century 21 client testimonial video and leaving numerous videos from Century 21 on his YouTube page, Joel Barber is also violating the Agent Manual.

23. The information included in Barber's Fourth Affidavit fails to evidence that Barber did not use information he gained access to by being an independent contract and working with Century 21 Harrelson Group related to Ms. Churgin or any of the MLS Listings. For example, just because a lead source is "call in to agent," does not mean that the lead did not receive outbound marketing. Typically, "call in to agent" from an individual is a result of extensive marketing and promotion directed to a lead in a database over a period of time.

24. Further, just because a lead source is an "expired listing" or a "for sale by owner" does not mean that Barber did not use information obtained which he gained access to by being an independent contract and working with Century 21 Harrelson Group to learn more about the seller, to contact the lead, to obtain email addresses, home or cell phone numbers, review lead notes, or review previous marketing efforts.

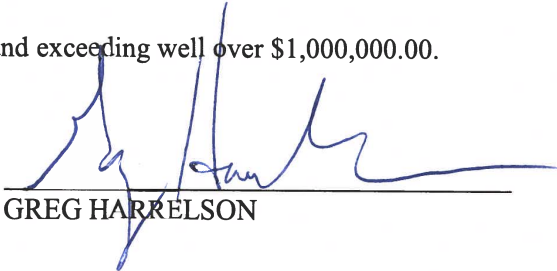
25. Joel Barber even admits one of the MLS listings was a “past client” of his, and therefore, a client of Century 21 The Harrelson Group, which is evidence he is using information he obtained access to by being an independent contractor and working with Century 21 The Harrelson Group.

26. Barber’s use of information he obtained he gained access to by being an independent contractor and working with Century 21 Harrelson Group damages Century 21 Harrelson Group regardless of whether a sale closes as such leads are generated and maintained by Century 21 Harrelson Group at a substantial cost per lead and expense, regardless of any closing.

27. A cease and desist letter is unnecessary as the Court has already issued a clear Injunction addressing this matter.


28. Documents bates stamped “Confidential Attorneys Eyes Only” and “Century 21_001120-001124, 001127” and produced on March 3, 2023 contain a spreadsheet that I and my office created, updated through February 26, 2023, of Joel Barber’s MLS Listings and the source and assignment of Century 21 The Harrelson Group leads associated with those listings prior to Joel’s termination at Century 21 The Harrelson Group. I am not inputting leads into the Century 21 Harrelson Group database “after-the-fact” in any attempt to hold Joel Barber in contempt. Rather, I am tracking Joel Barber’s ongoing use of Century 21 The Harrelson Group’s leads, which were established prior to February 7, 2022.

29. As a result of Barber's actions, including his failure to return confidential and proprietary information and data belonging to Plaintiffs, he has caused Plaintiffs damages, including lost profits, lost value of leads, lost value of goodwill, reputational damage, and other substantial damages disclosed in discovery and exceeding well over \$1,000,000.00.

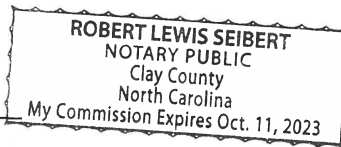


GREG HARRELSON

Sworn to and subscribed before me,
this 17 day of March, 2023.



Notary Public
My Commission Expires: 10-11-23



Document title: Joel Barber - Realtor®
Capture URL: <https://www.livinginmb.com/agents/1187278/Joel+Barber>
Page loaded at (UTC): Thu, 09 Mar 2023 13:29:47 GMT
Capture timestamp (UTC): Thu, 09 Mar 2023 13:30:53 GMT
Capture tool: 10.20.11
Collection server IP: 34.230.137.168
Browser engine: Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/108.0.5359.215 Safari/537.36
Operating system: Windows_NT (Node 16.17.1)
PDF length: 4
Capture ID: p9uT8Y1FnxC8DMRAVLxpg5
User: ml-dmorgan

PDF REFERENCE #: hmiFPCmRheFMod6wj4zmXa

EXHIBIT A

Cenutry 21_001128

00408

EXHIBIT 19

Joel Barber - REALTOR®



Joel Barber

Joel Barber | The Advantage Group



Information

Name	Joel Barber
Cell	843-655-2979
Languages	English, Spanish
E-mail Me	

About Joel

I have been practicing Real Estate in the Myrtle Beach area since 2007. My goal is to provide you with excellent individualized service. As a top agent I utilize the latest technologies, market research and business strategies to meet your expectations. More importantly, I listen and that means I find solutions that are tailored to you. If you are considering selling your current property, I would be happy to discuss our extensive marketing strategies with you and provide you with a free home evaluation. If you are purchasing a new home, I can assist you with your new purchase as well. As your Realtor, I can help you find the hottest homes for sale in the Myrtle Beach area and the best deals and I can set up a search through our MLS to narrow down your search to exactly what's important to you. If you are relocating to other areas of South Carolina, or even to other states, I can also assist you through our referral program. If you are relocating from another state to South Carolina I can also assist you with the sale of your current property by interviewing listing agents for you in your area. I look forward to working with you! Feel free to contact me anytime.

[Why I am in Real Estate](#)
[How I Sell Homes - Client First](#)
[Joel Barber Home Buying Experience](#)

[Send Joel a Message](#)

My Properties

- 8144 Sandlapper Way**
\$689,000
- 4501 Grovecrest Cir...**
\$599,900
- 809 9th Ave. S**
\$599,900
- 6001 E-5 S Kings Hwy.**
\$592,000
- 295 Star Lake Dr.**
\$589,900
- 854 Falkirk St.**
\$584,900

[View All My Listings](#)

[My Blog Posts](#)

Contact Information

Address: 13903 2423 Highway 17 South
Myrtle Beach, SC 29582

Cell: 843-655-2979

E-mail Me

[Chat With Me](#)

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ENTER YOUR CELL PHONE

YOUR MESSAGE

By submitting your message and personal details you are permitting us to contact you by these means in response to your inquiry.*

I would also like to receive email newsletters and periodic updates about real estate in my area and other related communications from Joel Barber | The Advantage Group. I understand I can withdraw my consent at any time. In addition, you also agree to our

[Privacy Policy](#) and [Terms & Conditions](#).

Joel Barber | The Advantage Group, 13903 2423 Highway 17 South, Myrtle Beach, SC 29582

Contact Me →

A few of Joel Barber's Properties



\$ 689,000
Myrtle Beach

Type: Single Family
Size: 1,882 SqFt
Rooms: 3 Beds + 2.5 Baths



\$ 599,900
North Myrtle Beach

Type: Pending
Size: 3,360 SqFt
Rooms: 4 Beds + 4.5 Baths



\$ 599,900
North Myrtle Beach

Type: Single Family
Size: 1,700 SqFt
Rooms: 3 Beds + 3 Baths



\$ 589,900
Myrtle Beach

Chat With Me



\$ 589,900
Murrells Inlet



\$ 584,900
Myrtle Beach

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\$ 689,000

Myrtle Beach

Type **Single Family**
 Size **1,882 SqFt**
 Rooms **3 Beds + 2.5 Baths**



\$ 599,900

North Myrtle Beach

Type **Pending**
 Size **3,360 SqFt**
 Rooms **4 Beds + 4.5 Baths**



\$ 599,900

North Myrtle Beach

Type **Single Family**
 Size **1,700 SqFt**
 Rooms **3 Beds + 3 Baths**



\$ 592,000

Myrtle Beach

Type **Single Family**
 Size **1,800 SqFt**
 Rooms **4 Beds + 3.5 Baths**



\$ 589,900

Murrells Inlet

Type **Single Family**
 Size **2,688 SqFt**
 Rooms **4 Beds + 4 Baths**



\$ 584,900

Myrtle Beach

Type **Single Family**
 Size **3,176 SqFt**
 Rooms **5 Beds + 2.5 Baths**



Joel Barber | The Advantage Group

Joel Barber
 Realtor®

13903 2423 Highway 17 South
 Myrtle Beach, SC 29582
 843-655-2979

Additional:
 2408 Madison Drive
 Myrtle Beach, SC 29582

Should you require assistance in navigating our website or searching for real estate, please contact our offices at 843-655-2979.



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Select Language

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User: ml-dmorgan

PDF REFERENCE #: 6tcncDJSZLcoLbufQDfMcM

EXHIBIT B

Cenutry 21_001132

00412

EXHIBIT 19



Joel Barber Home Buying Experience

Joel Barber | LivingInMB
45 subscribers [Subscribe](#)

0 0 Share Save ...

24 views 1 month ago
Joel Barber Home Buying Experience Show more

Try YouTube Kids
[LEARN MORE >](#)

Comments are turned off. [Learn more](#)

- Luxury Living in Lakewood Ranch's Lake Club**
Megan Finke
410 views · 12 days ago
- Mariner's Point Market Update- Joel Barber - Realtor**
Joel Barber | LivingInMB
4 views · Streamed 1 day ago
- ELEVATE YOUR SPACE**
Julie Khuu
15K views · 1 day ago
- Fall Asleep Instantly with Calming Rain Sounds & Cozy...**
Relaxing Noises of Nature
2M views · 2 months ago
- Step Inside a Multi-Million Dollar Mediterranean Style...**
RWB Construction
52 views · 6 days ago
- I Gave A Homeless Man A Home**
MrBeast
72M views · 4 years ago
- DUPED HIGH END DECOR with IKEA ITEMS & SAVED...**
Lisa Burningham
1K views · 2 hours ago
- Top 10 metal moments in classical music**
Amaranth
376K views · 12 days ago
- Corey Taylor - Snuff (Acoustic)**
Corey Taylor
99M views · 5 years ago
- Window on Collections: Maps**
State Library Victoria
3.6K views · Streamed 2 weeks ago
- La Llorona**
Carmen Goett - Topic
22M views · 3 years ago
- Dua Lipa - Love Again (Official Music Video)**
Dua Lipa
248M views · 1 year ago
- The Oceans Market Update- Joel Barber - Realtor**
Joel Barber | LivingInMB
1 view · Streamed 1 day ago
- Lynyrd Skynyrd - Free Bird (Official Audio)**
Lynyrd Skynyrd
3.9M views · 2 months ago
- House of Pain - Jump Around (Official Music Video) [HD]**
HouseOfPainTV
20M views · 7 months ago
- House Design On The Top Of A Ridge Surrounded By Oak Tree...**
Nikiomah
880 views · 4 hours ago
- Sigma music (phunk mix).**
MegaMusicPhonk
199K views · 1 month ago
- Westin Rowan III | Santa Rita Ranch Homestead | 3,499 Sq F...**
Sherri Breaux
128 views · 22 hours ago
- Raintree Villas- Market Update- Joel Barber Realtor**
Joel Barber | LivingInMB
2 views · Streamed 6 days ago
- river club**
Michelle Callioux
6 views · 11 days ago

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**EXHIBIT C – SIXTH AFFIDAVIT OF GREG
HARRELSON**

VIDEO BATES STAMPED “CENTURY 21_001142”

“Joel Barber Home Buying Experience”

To be Supplemented to the Court via Electronic Mail

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User: pv-sarah

PDF REFERENCE #: 9DY7FK6wnC1WZfGWHMyZ6C

EXHIBIT D

Cenutry 21_001134

00415

EXHIBIT 19



Joel Barber | LivingInMB

@joelbarberlivinginmb6891
45 subscribers

Subscribe

HOME

VIDEOS

SHORTS

LIVE

PLAYLISTS

COMMUNITY

CHANNELS

ABOUT

Recently uploaded

Popular



Joel Barber Home Buying Experience
33 views • 1 month ago



Residential for sale - 753 Tall Oaks Ct.,
Myrtle Beach, SC 29588
22 views • 2 months ago



Residential for sale - 5905 South Kings
Hwy., Myrtle Beach, SC 29575
11 views • 2 months ago



Residential for sale - 238 Vermillion Dr.,
Little River, SC 29566
8 views • 3 months ago



Residential for sale - 1413 Thames Ct.,
Myrtle Beach, SC 29577
20 views • 3 months ago



Tour video of listing at 5905 South Kings
Highway, Myrtle Beach, SC 29575 -...
4 views • 3 months ago



Video tour of Residential at 537 Woodland
Dr., Murrells Inlet, SC 29576
22 views • 3 months ago



Residential for sale - 1285 Dick Pond Rd.,
Myrtle Beach, SC 29575
9 views • 3 months ago



Residential for sale - 502 48th Ave. S, North
Myrtle Beach, SC 29582
24 views • 3 months ago



259 Landmark Rd. for sale in Conway, SC
29526 - Commercial
8 views • 3 months ago



Operation Christmas Child - Myrtle Beach -
Joel Barber Realtor
66 views • 3 months ago



Preview of the Residential for sale at 928
Trout Ct., Murrells Inlet, SC
62 views • 3 months ago

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8 views • 3 months ago 66 views • 3 months ago 62 views • 3 months ago



Residential for sale - 6001-E-5 S Kings Hwy., Myrtle Beach, SC 29575
6 views • 4 months ago

Residential for sale - 1708 N Ocean Blvd., Myrtle Beach, SC 29577
23 views • 4 months ago

Video tour of Lots And Land at TBD Stina Ave., Hemingway, SC 29554
1 view • 4 months ago



Video preview - Lots And Land for sale - TBD Stina Ave., Hemingway, SC 29554
5 views • 4 months ago

Lots And Land at TBD Stina Ave., Hemingway, SC 29554 - For sale
3 views • 4 months ago

Residential for sale - 2100 N Ocean Blvd., North Myrtle Beach, SC 29582
35 views • 4 months ago



Residential for sale - 1881 Colony Dr., Surfside Beach, SC 29575
1 view • 4 months ago

Residential for sale - 150 Riptide Circle, North Myrtle Beach, SC 29582
53 views • 4 months ago

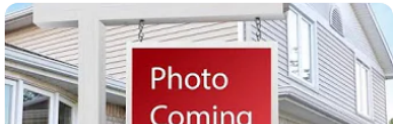
Tour video of listing at 5905 Souths Kings Highway, Myrtle Beach, SC 29575 - ...
3 views • 4 months ago



Video tour of Residential at 4458 N Fraser St., Georgetown, SC 29440
13 views • 4 months ago

Handling repair negotiations in real estate Joel Barber Realtor
9 views • 4 months ago

Residential for sale - 295 Star Lake Dr., Murrells Inlet, SC 29576
10 views • 4 months ago



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Video tour of Lots And Land at Lot #118 South Bay St., Georgetown, SC 29440
4 views · 4 months ago



Residential for sale - 1207 S Ocean Blvd., Myrtle Beach, SC 29577
1 view · 4 months ago



3563 Chestnut Dr., Myrtle Beach, SC 29577 - Residential for sale
12 views · 4 months ago



Video preview - Lots And Land for sale - South Bay St., Georgetown, SC 29440
No views · 5 months ago



Residential for sale - 4161 Hibiscus Dr., Little River, SC 29566
2 views · 5 months ago



I GOT POOPED ON!!
13 views · 5 months ago



Lots And Land for sale - TBD Stina Ave., Hemingway, SC 29554
4 views · 5 months ago



Joel Barber: Why am I in Real Estate?
20 views · 5 months ago



Lots And Land for sale - TBD Highway 9, Little River, SC 29566
4 views · 5 months ago



Residential at 468 River Oaks Dr., Myrtle Beach, SC 29579 - For sale
4 views · 5 months ago



Residential for sale - 2600 N Ocean Blvd., Myrtle Beach, SC 29577
27 views · 6 months ago



How I sell homes- CLIENT FIRST- Joel Barber Myrtle Beach Realtor
88 views · 7 months ago



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- Home
- Shorts
- Subscriptions
- Library
- History



Residential for sale - 4805 Luster Leaf Circle, Myrtle Beach, SC 29577
6 views · 7 months ago



Residential for sale - 4501 Grovecrest Circle, North Myrtle Beach, SC 29582
12 views · 7 months ago



Residential for sale - 970 Crystal Waterway Dr., Myrtle Beach, SC 29579
14 views · 7 months ago



Why am I in Real Estate- Joel Barber Myrtle Beach Realtor
114 views · 7 months ago



More inventory on the market!
220 views · 9 months ago



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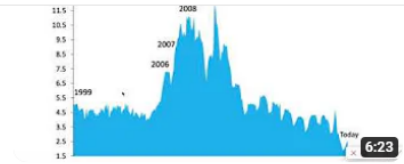
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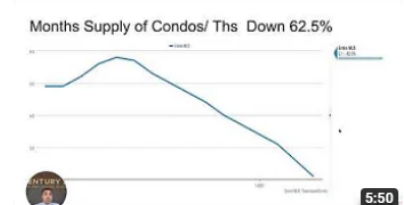
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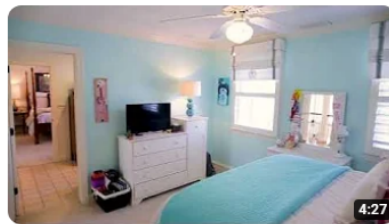
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1043 Links Road, Myrtle Beach, SC,



306 White Water Loop- Solar Panels =

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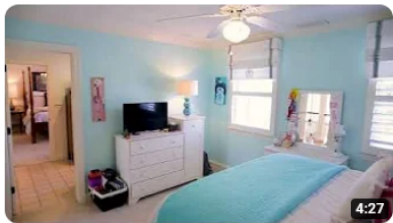
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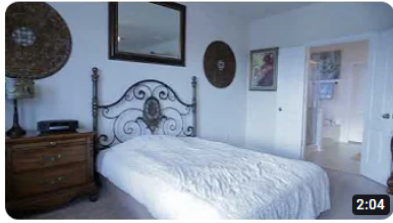
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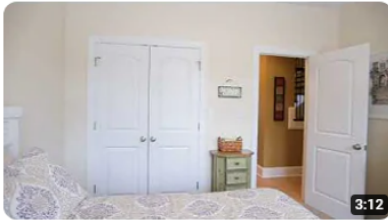
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**EXHIBIT E – SIXTH AFFIDAVIT OF GREG
HARRELSON**

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“Myrtle Beach Area Market Update”

To be Supplemented to the Court via Electronic Mail

1 STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY
3 IN THE COURT OF COMMON PLEAS

3 HSS BAREFOOT, LLC, d/b/a : CASE NO.
CENTURY 21 BAREFOOT; R & G 2022-CP-26-01323
4 GROUP CORP., d/b/a CENTURY 21 :
THE HARRELSON GROUP; KEVIN
5 MILLS, individually; MILLS, LLC; :
and GREGG HARRELSON, individually,

6 Plaintiffs :

7 vs.

8 JOEL D. BARBER, individually :
9 and as licensed realtor; BARBER :
REAL ESTATE, INC.; NICHOLAS :
10 FITZPATRICK, as licensed realtor; :
DARCY VARNEY, individually and as :
11 broker-in-charge, EXP REALTY, LLC; :
JAMES RAY LUNSFORD, individually :
12 and as broker-in-charge; and :
NORTHGROUP REAL ESTATE, INC., :

13 Defendants

14 _____
15 DEPONENT: JAMES RAY LUNSFORD

16 DATE: FEBRUARY 6, 2023

17 TIME: 11:00 a.m.

18 LOCATION: BURR FORMAN, LLP
2411 OAK STREET, SUITE 206
19 MYRTLE BEACH, SC

20 REPORTED BY: CAROL T. LUCIC, RPR, RMR

21
22 CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING

23 CHARLESTON, SC 29405

24 843-762-6294

25 WWW.CLARK-ASSOCIATES.COM

1 o'clock my phone goes to do not disturb, but after
2 10 o'clock if you call twice, it will let the call
3 through.

4 Q. As a broker in charge in South Carolina
5 for NorthGroup Real Estate, Inc., you have
6 responsibilities over the actions of each of your
7 associated licensees; is that correct?

8 A. Yes.

9 MR. RACINE: Objection.

10 Q. And part of your responsibility would be
11 to insure that your agents comply with the ethics
12 and LLR requirements?

13 A. Yes.

14 Q. As a broker in charge in South Carolina
15 for NorthGroup Real Estate, Inc., you have
16 responsibility and control and liability for your
17 real estate trust account; correct?

18 A. We don't currently have a trust account.

19 Q. Did you ever have a trust account?

20 A. No.

21 Q. How do agents for NorthGroup Real Estate,
22 Inc., receive commissions from sales?

23 A. Commission checks are either sent to the
24 main office or wired to the office, they process it
25 at our main office, and then disburse it to the

1 A. Yes.

2 Q. What is required to be a team through
3 South Carolina LLR?

4 MR. RACINE: Objection.

5 A. South Carolina has restrictions on how you
6 can brand. You have to show that your team is not
7 a firm itself.

8 Q. So you can have a team, but it still has
9 to be associated with a firm. In this case it
10 would still have to be associated with NorthGroup
11 Real Estate, Inc.?

12 A. Yes.

13 Q. Does NorthGroup Real Estate, Inc., have to
14 have any approvals related to any teams?

15 A. With branding, with any advertising. We
16 have to approve any advertising.

17 Q. What is included in advertising?

18 A. Business cards, websites, Facebook posts,
19 fliers for homes.

20 Q. What about like email campaigns; would
21 that be approved?

22 A. The majority of our email campaigns are
23 through kvCORE, and those are a set system.

24 Q. So as long as they're done through kvCORE
25 NorthGroup Real Estate has approved them?

1 MR. RACINE: Objection.

2 A. There is a template in there for an
3 approved campaign.

4 Q. When you're referring to a campaign, are
5 you referring to like an email campaign that gets
6 sent out to multiple leads or clients or customers?

7 A. Campaigns can be text and email.

8 Q. And those texts or emails get sent out by
9 an agent to multiple customers or clients?

10 A. Yes.

11 Q. I may be overly simplistic, but is that
12 what the term "campaign" means to you?

13 A. Yes.

14 Q. So if an agent initiates a text or email
15 campaign, that would have to be approved by
16 NorthGroup Real Estate, Inc.?

17 MR. RACINE: Objection.

18 A. KvCORE allows us custom campaigns as well.

19 Q. Does NorthGroup Real Estate, Inc., review
20 and/or approve custom campaigns by agents?

21 A. I'm not aware.

22 Q. Do you as broker in charge review
23 advertising or other campaigns by agents under you?

24 A. They are supposed to provide them. There
25 are a lot that don't.

1 Q. When you say they are supposed to, what
2 requirement are agents under that make them
3 supposed to provide you with their advertising or
4 text or email campaigns?

5 A. South Carolina licensing law.

6 Q. As the broker in charge, are you
7 responsible for the content of communications that
8 agents put out through their advertising or text or
9 email campaigns?

10 MR. RACINE: Objection.

11 A. Most of the time they're standard emails
12 from kvCORE for those campaigns.

13 Q. Previously you had testified that you had
14 a responsibility over the actions of all of your
15 associated licensees; correct?

16 A. Yes.

17 Q. So is part of your responsibility related
18 to the advertising or text or email campaigns that
19 are sent out by your agents?

20 A. Can you repeat?

21 Q. Yes. Part of your responsibility over
22 your licensees -- does part of that responsibility
23 extend to you being responsible related to the
24 advertising or email or text campaigns sent out by
25 your agents?

1 A. Yes.

2 Q. If I understand correctly, where an agent
3 hangs their license under you as a licensee, an
4 agent cannot perform as a South Carolina licensee
5 without having an associated broker in charge; is
6 that correct?

7 A. Correct.

8 (Deposition Exhibit No 1. was marked.)

9 Q. I'm going to hand you what I've marked as
10 Exhibit No. 1. I'll represent to you that Exhibit
11 No. 1 is a letter dated April 13, 2022, from me to
12 you at [REDACTED] Clambake Court Southwest, Supply, North
13 Carolina. Do you see that?

14 A. Yes.

15 Q. If you look at the back page of Exhibit
16 No. 1, it contains a copy of the affidavit of
17 service.

18 A. Yes.

19 Q. Did you receive a copy of this
20 correspondence on April 13, 2022?

21 A. Yes.

22 Q. Once you received Exhibit No. 1 can you
23 tell me what, if anything, did you do in response
24 to this correspondence?

25 A. I immediately sent it to our admin. team

1 you do with respect to Mr. Barber?

2 MR. STAPLES: Object to the form.

3 A. What do you mean by the question?

4 Q. Sure. So after you received Exhibit No.
5 1 -- let me go back a little bit.

6 So Mr. Barber had already been onboarded
7 by the time you received Exhibit No. 1; correct?

8 A. Correct.

9 Q. So he was already an agent under you as
10 broker in charge; correct?

11 A. Yes.

12 Q. You were already responsible for
13 Mr. Barber's actions as licensee; correct?

14 A. Yes.

15 Q. What did you do once you received Exhibit
16 No. 1? What did you do with respect to the actions
17 of Mr. Barber as licensee under you as broker in
18 charge?

19 MR. STAPLES: Object to the form.

20 MR. RACINE: Objection.

21 A. I reached out to the owner of the company
22 to see what our next steps were.

23 Q. What were your next steps?

24 A. I believe the information was supplied to
25 counsel.