STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO. 2021-CP-18-01486
	)	
John Trenton Pendarvis,	)	
	)	
Plaintiff,	)	
vs.	)	**ORDER**
	)	
L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division; Hugh E. Weathers, in his Official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s),	)	
	)	
Defendants.	)	
	)	

Judge:	Hon. Maite Murphy
Date of Hearing:	October 31, 2022, via WebEx
Appearance for Plaintiff:	Patrick J. McLaughlin & C. Bradley Hutto
Appearance for Defendant Keel:	Andrew F. Lindemann,

THIS MATTER came before the Court on the *Plaintiff's Motion to Compel Discovery from Defendant Keel* and *Plaintiff's Motion to Determine Sufficiency of Defendant Keel's Responses to Plaintiff's Requests for Admission*, both filed April 11, 2022. Plaintiff's April 11th motions included sixteen (16) filed exhibits and incorporated arguments and exhibits from both into each motion by specific reference in both motions. The Plaintiff subsequently filed *Plaintiff's Supplemental Memo in Support of his April 11, 2022, Motions* on May 23, 2022, and *Plaintiff's Second Supplemental Memo in Support of his April 11, 2022.*

Defendant KEEL made no responsive filings.

After a two-hour WebEx hearing on October 31, 2022, the Court took these matters under advisement. Having reviewed the filings by the Plaintiff and considered arguments of counsel, the

Plaintiff's motion is GRANTED.

HISTORY OF THE CASE/DISPUTE

The September 19, 2019 arrest of the Plaintiff and the destruction of his Dorchester County hemp crop has given rise to several cases. Relevant to the matters addressed in this order are this civil action under the South Carolina Tort Claims Act against the above-captioned defendants and an injunctive relief and declaratory judgment case filed in Marion County against Defendants SLED and the Department of Agriculture ("DAG").

The *Summons & Complaint* and initial discovery requests in this matter were served on KEEL on August 31, 2021. Included in those initial discovery requests were *Plaintiff's Standard Interrogatories and First Set of Interrogatories* (IROGs), *Plaintiff's Requests for Production* (RFPs), and *Plaintiff's Request for Admission to Defendant Mark Keel in his Official Capacity as the Chief of the South Carolina Law Enforcement Division* (RFAs). The deadline to timely respond pursuant to Rules 33, 34 and 36 SCRCP was October 15, 2021.

At 4:19 p.m. on October 15, 2021, KEEL's counsel emailed Plaintiff's counsel seeking an extension. Plaintiff's counsel responded, explaining they had no problem "granting an extension provided we get full and complete answers so that we can move forward with a deposition with written discovery in hand." Defendant KEEL accepted that condition by submitting his responses to the discovery requests via correspondence dated November 5, 2021.[1]

On November 9, 2021, Plaintiff sent KEEL Rule 11 correspondence noting deficiencies with KEEL's initial discovery responses. That letter noticed the following deficiencies:

1) The responses to the requests for admission were improper, failing to admit or deny the requests submitted;

1 The Plaintiff had good cause to condition his consent to KEEL's request for an extension, as at the time the extension was requested, Plaintiff had a motion to compel pending since March 12, 2021, challenging SLED's discovery responses in the Marion case.

2) No Rule 33 verification for the answers to the interrogatories as demanded;
3) Failure to produce emails that had been identified in responses as being produced (specifically noticing KEEL that his responses referred to Bates-stamped pages beyond that which had been actually produced); and,
4) Improper objections to producing responsive documents.

Plaintiff demanded KEEL cure his deficiencies within ten (10) days. KEEL ignored that demand, refusing to cure any of the noticed deficiencies.

The Plaintiff sent another Rule 11 letter on March 14, 2022. That letter noticed deficiencies still pending with KEEL's responses, the Plaintiff's concerns that those deficiencies now appeared to be intentional and willful bad faith attempts to delay and obstruct discovery and demanded KEEL cure his deficient responses within ten (10) days. KEEL ignored that second Rule 11 letter, leading the Plaintiff to file his motions. As noted above, Plaintiff subsequently filed two supporting memoranda to those motions showing other similar discovery conduct.

LAW

Rule 1 of the South Carolina Rules of Civil Procedure set out the scope and purpose of the rules by stating they "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1 SCRCP.

The rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 215 (Ct. App. 1997) (citing Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "The entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." Id. at 113, 217 (citing State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)).

Unreasonable discovery conduct unnecessarily protracts litigation, and causes both sides

to incur additional attorneys' fees and other expenses. The discovery process, like a lawsuit itself, "is not a children's game, but a serious effort on the part of adult human beings to administer justice." Griffin v. Capital Cash, 310 S.C. 288 (Ct. App. 1992) (quoting United States v. A.H. Fischer Lumber Co., 102 F.2d 872 (4th Cir. 1947).

"To use an oft-quoted phrase, justice delayed is justice denied. Although this saying is often invoked in the criminal context, it is no less applicable to civil cases." In re Atwater, 397 S.C. 518, 528, 725 S.E.2d 686, 691 (2012).

DISCUSSION & FINDINGS

I. DEFENDANT KEEL'S GENERAL OBJECTIONS ARGUED AT THE OCTOBER 31, 2022 HEARING.

KEEL began his arguments in response at the hearing raising some general objections the Court will address:

a. Plaintiff's use of Keynote Presentation during argument to the Court

KEEL argues Plaintiff's Keynote presentation used during the hearing was no different than "submitting a brief," that he had no way of determining where the information came from, and the Keynote had not been disclosed two days before the hearing, therefore it was a violation of Rule 6, improper and unfair.

KEEL failed to point the Court to any authority supporting his argument that a PowerPoint/Keynote presentation is somehow subject to Rule 6(d)'s requirement that an affidavit in support of a motion be served no later than two days before the hearing, or any authority that counsel must share such a presentation with opposing counsel before a motion hearing outside the presence of any jury.

I FIND there was nothing improper or unfair about the Plaintiff arguing his motions to the Court with the aid of a Keynote presentation. Because the filings for these motions were quite

extensive, when the motions had previously been scheduled to be heard on August 11, 2022 before the Hon. R. Kirk Griffin, the Plaintiff had organized a 3-ring binder with all the filings and the exhibits and had that binder delivered to the Dorchester County courthouse. Via email to the Court and opposing counsel on October 26, 2022, Plaintiff's counsel notified the Court that when the motions hearing in August was continued, Judge Griffin's law clerk confirmed that the binder would be kept by the Clerk of Court, informing the Court of the binder's existence and availability.

That October 26, 2022 email went on to notify the Court (and opposing counsel) that the Plaintiff would present argument using a Keynote presentation, to show documents and exhibits as they were referenced during argument. That is precisely what the Plaintiff did. Given the complexity of the filings and the filed materials that were referenced during the argument, the Court finds the presentation reasonably and appropriately aided the Court in following the Plaintiff's argument and allowed for an efficient and organized presentation of a large and complex record.

I FIND nothing improper, unfair, or prejudicial in the Plaintiff's presentation. Most of the slides presented contained screenshots of filings and/or documentary evidence filed as exhibits by the Plaintiff, with many noting the exhibit number on the slide. To the extent any other material was offered in the presentation, the presentation was simply an aid in Plaintiff's argument and South Carolina courts have long recognized that "argument is not evidence." *See* State v. Charping, 333 S.C. 124 (1998); Gilmore v. Ivey, 290 S.C. 53 (Ct. App. 1986); and Sosebee v. Leeke, 293 S.C. 531 (1987). While the Court has given due consideration to the parties' arguments at the hearing, the Court has relied on the record created by the filings in this case, the rules and case law, in rendering its findings.

b. Plaintiff's "Intertwining" of the Marion and Dorchester cases

KEEL objected to "the intertwining" of the Marion County and Dorchester County cases, arguing it was not proper for the Court to consider discovery conduct in the Marion case when ruling on the discovery motions filed in the Dorchester case.

The Plaintiff has not asked this Court for any relief in the Marion County case. The Plaintiff made filings from the Marion case a part of this record, documenting KEEL's discovery conduct in the Marion case, in support of his argument that KEEL's discovery conduct in this case is willful, intentional and in bad faith. There is nothing improper about a party making filings from another case, involving the same parties, a Court's exhibit in a pending case to be considered outside the presence of a jury, especially when those filings document similar and relevant discovery conduct.

As to the relevance of documents in the Marion case, the record reflects documents responsive to discovery in this case, including emails between KEEL and the Hon. Diane S. Goodstein's office, were not originally provided to the Plaintiff in response to production requests in this case, but were instead provided right before a March 10, 2019 motion to compel hearing in the Marion case.

The Plaintiff's November 9, 2019, Rule 11 letter specifically noticed KEEL that while his answers to interrogatories in the Dorchester case had identified email communications between his General Counsel Adam Whitsett and Judge Goodstein's office, as well as between Whitsett and the South Carolina Attorney General's office, and his requests for production claimed such emails were "produced," none of those emails appeared in the production the Plaintiff received. The Plaintiff specifically noticed KEEL his written responses referenced Bates-stamped numbers beyond that which KEEL had produced in this case. Despite having that notice, KEEL made no effort prior to the Marion motion to compel hearing to cure this deficiency.

The Plaintiff included his March 12, 2021 motion to compel in the Marion case (along with all its exhibits) as an exhibit to the motions before this Court. As noted in that Marion motion and its exhibits, in response to IROG#13 (which asked KEEL to list with specificity all contact/communications between "you and any third party" regarding the Plaintiffs and the incidents giving rise to the complaint), KEEL answered identifying only "communications with the Attorney General's office…includes emails between Adam Whitsett and David Jones."[2]

Those documents show that contrary to KEEL's representations to this Court at the instant hearing, these email communications had never been produced or even identified in the Marion case. In fact, KEEL objected to producing anything related to the Dorchester County matters in the Marion case (emphasis added by the Court):

> -IROG#17 = Please list with specificity every prosecutor/attorney general, judicial officer, clerk of court and/or other court personnel the Defendants communicated with about seizing and destroying the Plaintiffs' crops in both Dorchester and Marion Counties. For the purposes of this interrogatory, such responses should identify the parties to the communication, the date/time/method of communication, the party who instigated the communication and the information relayed in the communication. If the information in the communication was subsequently shared with other parties, please so identify the other parties.
>
> ANSWER: Objection. The Defendant **objects to the production of any information relative to any matters in Dorchester County** as such is irrelevant and immaterial to the matter before this Court. Notwithstanding this objection and expressly reserving it, as to the Marion County matter, upon information and belief, Plaintiff's counsel, Patrick McLaughlin, was copied on every communication from the Defendant to any prosecutor or judicial officer related to this matter.

The record, therefore, documents that these emails, responsive to discovery requests in this case, were never actually provided to the Plaintiff until they were turned over in the Marion case just prior the motion to compel hearing there. The record documents that the Plaintiff had also

2 Notably absent from identification by KEEL in this answer from his Marion County discovery responses: any reference to communications between KEEL and Judge Goodstein's office.

previously noticed KEEL in the Marion case of identified and referenced discovery in his written responses that KEEL had failed to produce. The record reflects that KEEL ignored the Plaintiff's complaints of unproduced discovery in Marion, just as he ignored similar notices in this case, waiting until right before a hearing on a motion to compel to attempt to cure.

The Plaintiff argues KEEL's discovery abuse is intentional, willful and ongoing, and the Plaintiff supports that argument by making a record before this Court that documents KEEL's similar discovery conduct in the Marion case.

Courts have long allowed evidence of prior incidents to prove intent or lack of mistake. Under Rule 404(b) SCRE, evidence of other wrongs or acts is admissible evidence before a jury to prove a defendant's motive, identity, the existence of common scheme or plan, the absence of mistake or accident, or intent. State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). Generally, a prior or subsequent existence is some evidence of a later or earlier one. Tate v. Mauldin, 157 S.C. 392, 154 S.E. 431 (1930); Pittman v. Galloway, 281 S.C. 70, 313 S.E.2d 632 (Ct. App. 1984). Evidence of similar accidents, transactions or happenings is admissible where there is some special relation between them which would tend to prove or disprove some fact in dispute. JKT Co. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980); Brewer v. Morris, 269 S.C. 607, 239 S.E.2d 318 (1977).

The record shows that the 79-missing pages of discovery originally identified in the Dorchester County case, was not actually produced until it was produced in response to the Marion County motion to compel hearing. In other words, KEEL's own actions have "intertwined" the discovery conduct of the two cases.

I FIND that there is nothing inappropriate, improper or unfair about the Plaintiff supporting his arguments of discovery misconduct in the present case by making a record that includes similar

discovery conduct between the parties in another pending case, especially when that record shows relevant and responsive discovery in this case was not produced until it was produced in response to a pending motions hearing in that other case.

c. Plaintiff's Supplemental Memoranda

KEEL objected to the Court taking up anything not encompassed within the April 11th motions, arguing he was not on notice of anything other than the filed motions which appeared on the docket, arguing that discovery conduct raised in the Plaintiff's two supplemental memoranda were not properly before the Court.

I FIND that KEEL received adequate notice of the Plaintiff's supplemental memoranda and exhibits, and the discovery conduct being challenged through those filings.

All parties receive notice of filings through the ECF system, and both supplemental memoranda (and their accompanying exhibits) were e-filed.

Further, via the October 11, 2022 correspondence that led the Court to schedule the October 31, 2022 hearing, the Plaintiff notified all parties and the Court of the filings representing the pending motions; specifically listing:

1) Plaintiff's Motion to Compel v. Defendant KEEL, filed April 11, 2022;
2) Plaintiff's Rule 16 Motion to Determine the Sufficiency of Responses to Plaintiff's Requests for Admission v. Defendant KEEL, filed April 11, 2022;
    a. Plaintiff's Supplemental Memo in Support of April 11, 2022 motions, filed May 23, 2022;
    b. Plaintiff's Supplemental Memo in Support of April 11, 2022 motions, filed June 13, 2022;
3) Plaintiff's Motion to Compel and Determine the Sufficiency of Discovery Responses v. Defendant WEATHERS, filed June 13, 2022;

The Court notes the Plaintiff's October 11th letter actually restated a prior notice that the Plaintiff had previously provided opposing parties and the Court via a June 14, 2022 letter to the Court, which had led to these motions being scheduled for the August 11, 2022 hearing before

Judge Griffin.

The day before the August 11th hearing, Plaintiff sent correspondence via email to the Court and opposing counsels that accompanied the previously discussed 3-ring binder delivered to the Court. That emailed correspondence served opposing counsel with an index for the binder identifying all the pending motions and supplemental memoranda delivered to the Court, along with an exhibit index which identified all twenty-three (23) exhibits filed, by filing.

The Plaintiff's October 11th letter requested "the following: (1) scheduling of the outstanding motions listed above; (2) continuances beyond the upcoming jury term; and (3) upon the resolution of the outstanding motions, we contemplate needing a scheduling order."

KEEL had ample notice of the Plaintiff's supplemental memoranda and accompanying exhibits, having received notice of the supplemental memoranda no less than four (4) times before the October 31, 2022 hearing: (1) the ECF notifications, (2) the June 14, 2022 correspondence to the Court, (3) the August 10, 2022 correspondence to the Court with enclosed Binder Index and Exhibit Index , and (4) the October 11, 2022 correspondence to the Court.

At the conclusion of the October 31st hearing, the Court informed the parties that the motions and filed documents would speak for themselves and the Court would determine what was proper to consider under the rules. The Court specifically offered KEEL the opportunity to submit a written response to the arguments heard before the Court that day. The Plaintiff indicated he had no objection to KEEL being afforded that opportunity.

KEEL chose not to take advantage of the opportunity to provide supplemental briefing after the hearing.

I FIND that KEEL suffered no unfair surprise or prejudice.

The supplemental memoranda were both filed more than four (4) months before the

hearing, the Plaintiff had specifically noticed opposing counsel and the Court of their intention to argue the memoranda in support of the filed motions via three (3) separate communications prior to the October 31st motions hearing. There is no unfair surprise or prejudice in this case.

In discovery matters, "the text of Rule 37 SCRCP tells us a party does not even need to file a motion to compel to request a sanction for another party's failure to answer a properly served discovery request." Richardson v. Twenty-One Thousand & no/100 Dollars ($21,000.00) United States Currency & Various Jewelry, 430 S.C. 594, 598 (Ct. App. 2020).

The *Richardson* Court explained that a party served with written discovery has a duty to answer it, unless he objects on a stated reason or moves for a protected order. If no answer, objection, or motion is received, the discovering party may – but is not required to – move for a court order compelling discovery, noting that the sanctions authorized by Rule 37(d) "are therefore available even to a discovering party who has not spoken up about his adversary's silence." Richardson at 598-99.

In this case, the Plaintiff's motions sufficiently notice the grounds upon which he is seeking relief.

I FIND that it is appropriate for this Court to consider the materials and information provided by the Plaintiff in his supplemental memoranda only to the extent that encompassed the challenging's in the April 11 Motion to Compel.

II. FINDINGS AS TO SPECIFIC DISCOVERY RESPONSES BY DEFENDANT KEEL

a. Rule 33 verifications – answers under oath

I FIND that KEEL has failed to comply Rule 33's "answer under oath" requirement and must produce executed verifications for all of the Plaintiff's interrogatories.

Rule 33(a) specifically requires that:

> Each interrogatory **shall** be answered separately **and fully in writing under oath**…The **answers are to be signed by the person making them, and the objections signed by the attorney making them**.

Rule 33(a) SCRCP (emphasis added).

Despite the clear and plain language of the rule requiring answers under oath, and the specific requests by the Plaintiff that requirement be complied with, KEEL has failed to comply with Rule 33. The Plaintiff has served KEEL with four (4) sets of interrogatories. During the hearing, KEEL conceded to only producing Rule 33 verifications for two (2): the 2nd and 3rd set of interrogatories.

The record reflects that KEEL was noticed five (5) times in writing about his failure to produce a Rule 33 verification for the 1st set of interrogatories: the November 9th Rule 11 letter, the March 14th Rule 11 letter, the April 11th motion, the May 23rd supplemental memorandum and the June 13th second supplemental memorandum.

Despite having written notice for 356 days before the hearing, KEEL failed to cure this deficiency.

The Court notes that KEEL represented to the Court and the Plaintiff at the October 31st hearing that the Rule 33 verification deficiencies would be "promptly" cured. As of the December 7, 2022 submission of the Court's requested proposed order from the Plaintiff, the Court is informed that KEEL has failed to produce the outstanding executed verifications.

Going forward in this litigation, the Court cautions KEEL that a failure to timely produce executed Rule 33 verifications with the actual interrogatory answers is a failure to timely answer the interrogatories.

b. KEEL's failure to produce personnel files

I FIND that Defendant KEEL has failed to comply with Rule 34 and Rule 26 and must

produce the responsive personnel files as requested by the Plaintiff in request for production No.13, without protection.

KEEL's written response to Plaintiff's RFP#13 read:

> Objection. request seeks information that is not relevant or designed to lead to the discovery of relevant information, nor is the request proportional to the claims and issues raised in this litigation. This request is also not tailored to any specific types of information contained in personnel files nor is it limited in time or scope. Furthermore, to the extent that a court orders production of the personnel files, or portions thereof, that production should be protected by a confidentiality order or other protective order which has not been entered in this litigation.

The first two sentences of KEEL's written objection are essentially the type of generalized, conclusory objections Judge Joseph Anderson's oft-cited discovery opinion explains are inadequate: "The mere statement by a party that the interrogatory was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection…" Curtis v. Time-Warner Entm't v. Advance/Newhouse P'ship, 2013 U.S. Dist. LEXIS 68115, 5-6 (D.S.C. May 14, 2013).[3]

KEEL's objection as to relevancy is insufficient and improper. The scope of discovery is "broadly construed, [and] it extends to factual issues unrelate to the merits of the case." Bailey v. Owen Elec. Steel of S.C., Inc., 301 S.C. 399, n.1 (1990). "In South Carolina the scope of discovery is very broad and an 'objection on relevance grounds is likely to limit on the most excessive discovery request.'" Sample v. Mitchell, 329 S.C. 105, 110 (Ct. App. 1997).

It is axiomatic in this action against KEEL, given the pled causes of action and factual allegations, that the personnel files of KEEL's agents/employees involved in the case are reasonably calculated to lead to admissible evidence. KEEL did not articulate why personal files

3 "In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252, 263 (2017).

would not be likely to lead to relevant evidence.

KEEL's argument that the failure of the request to name specific individuals' personnel files makes it too vague or overbroad ignores the actual language of the request, which plainly states Plaintiff is requesting the personnel files "for any agent/employee of SLED referenced at all in the complaint, your answer and/or in your discovery." While not naming specific individuals, that language reasonably and adequately identifies the persons whose personnel files are being requested: those who are referenced in the complaint, answer, or in KEEL's discovery responses.

KEEL's response also fails Judge Anderson's instruction from Curtis as to the proper way to respond when one objects based upon an unduly broad scope, such as a time frame: discovery should be provided as to those matters within the scope not disputed. Curtis at 6. KEEL refused to produce any response whatsoever.

KEEL's objection to producing the requested personnel files without protection is improper and does not comply with a responding party's duty under Rule 26 SCRCP.

KEEL argued that it was the Plaintiff's burden to obtain a confidentiality order to receive this discovery. The plain language of the rule defeats that argument: "**Upon motion by a party or person from who discovery is sought**, and for good cause shown, the court in which the action is pending…may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense…" Rule 26(c) SCRCP, emphasis added.

The burden is on KEEL to request such protection via motion. That burden requires "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." General Dynamics Corp. v. Selb Manufacturing Corp., 481 F.2d 1204, 1212 (8th Cir. 1973) (citing Wright Miller, *Federal Practice and Procedure: Civil*, §2035 at 264-65).

KEEL has filed no such motion and his arguments are not persuasive as they did not rise above stereotyped and conclusory statements.

KEEL's argument that it is appropriate to ask for protection because the agents/employees are "non-parties" ignores the reason they are "non-parties" is because the South Carolina Tort Claims Act dictates the Plaintiff name only KEEL and not the individual SLED agents/employees. South Carolina courts recognize that being a non-party is not grounds for protection. "The rules do not differentiate between information that is private or intimate and to which no privacy interests attach…Thus, the rules often allow extensive intrusion into the affairs of both litigants and third parties." Hamm v. S.C. Public Serv. Commission, 312 S.C. 238, 439 S.E.2d 852, 853-854 (1994).

All discovery is intrusive. All parties and witnesses in every case would prefer to have court orders in place protecting their information. But to do so would gut a fundamental constitutional right in South Carolina:

> Because South Carolina has a long history of maintaining open court proceedings, this Rule is intended to establish the guidelines for governing the filing under seal of settlements and other documents. Article I, §9, of the South Carolina Constitution provides that all courts of this state shall be public, and this Rule is intended to ensure that the Constitutional provision is fulfilled.

Rule 41.1(a) SCRCP.

A party requesting discovery has no duty to agree to a protective order. The default discovery position in South Carolina is unprotected responses and production.

Rule 26(c) contemplates that, unless compelling reasons exist for imposing restrictions, all discovery will take place in open court. *See* e.g., Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 789 (1st Cir. 1988), Cert. denied, 488 U.S. 1030 (1989). "As a general proposition, pretrial discovery must take place in the public unless compelling reasons exist for denying access to the proceedings." AT&T v. Grady, 594 F.2d, 596 (7th Cir. 1978). "When parties 'call on the courts,

they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials.'" Doe v. Pub. Citizen, 2104 WL 1465728 (4th Cir. Apr. 16, 2014).

KEEL's argument that personnel matters with governmental agencies may be handled in executive session and there are exceptions to production under FOIA for executive session materials is not persuasive. The South Carolina Freedom of Information Act does not govern procedure in civil litigation; the South Carolina Rules of Civil Procedure do: "These rules govern the procedure in all South Carolina courts in all suits of a civil nature…" Rule 1 SCRCP.

Further, specific South Carolina case law defeats KEEL's argument, holding that personnel files of law enforcement are subject to production as public records under FOIA. Burton v. York Co. Sheriff's Dep't, 358 S.C. 339 (Ct. App. 2004).

c. Discovery Requests concerning IRF claims information

I FIND Defendant KEEL has failed to comply with Rule 34 and Rule 26 and must produce the responsive materials as requested by the Plaintiff in request for production No.16 and 17.

These requests sought discovery related to investigative and claims handling materials. KEEL responded to both requests with:

> The Defendant Keel is not in possession of the claims file created by and in the possession of the South Carolina Insurance Reserve Fund. Upon information and belief, there are likely no documents responsive to this request. It is believed that IRF's first notice of this claim was receipt of the lawsuit from SLED on August 31, 2021, and it was assigned to the undersigned counsel on September 1, 2021. Moreover, any information contained within an IRF claims file is not discoverable under South Carolina statutory law, specifically S.C. Code Ann. § 1-11-140(G), which provides: "Documentary or other material prepared by or for the Insurance Reserve Fund in providing any insurance coverage authorized by this section or any other provision of law which is contained in any claim file is subject to disclosure to the extent required by the Freedom of Information Act only after the claim is settled or finally concluded by a court of competent jurisdiction." Because the current litigation is ongoing and has not been settled or finally adjudicated by a court of competent jurisdiction, the IRF claims file is not subject to disclosure.

KEEL's response is perfect example of a tactic that Judge Anderson specifically criticized

in Curtis, noting that the common practice of citing an objection[4] and providing an answer "preserves nothing and serves only to waste the time and resources of both the parties and the court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered." Curtis at 4, (citing to Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18).

If there is no such responsive material the party must just say so. No objection is necessary. A party is not at risk of waiving any rights to withhold material from production where there is no responsive material to withhold.

KEEL created confusion as to whether there is any responsive material, by asserting this objection in the written responses. This was evident when KEEL admitted during the hearing that the South Carolina Insurance Reserve Fund (IRF) was his agent.

"A party is charged with knowledge of what its agents know or what is in the records available to it." 8A Wright, Miller & Marcus, Fed. Practice and Procedure: Civil 2d, §2177. "It is well established that a party need not have actual possession of documents to be deemed in control of them. As long as the party has the legal right or ability to obtain the documents from another source on demand, that party is deemed to have 'control.'" Poole v. Textron, Inc., 192 F.R.D. 494, 501 (D.Md. 2000) (internal cites omitted).

Thus, KEEL's argument that he is not bound to produce responsive materials in possession of the IRF fails.

KEEL's argument raising South Carolina law authorizing the Insurance Reserve Fund fails, as the plain language of S.C. Code §1-11-140(g) shows the provision KEEL cites only provides

4 While KEEL's response may not use the word "objection," the Court considers argument within a response that the material is not subject to disclosure to be an objection.

protection from disclosure "to the extent required by the Freedom of Information Act." Again, the South Carolina Rules of Civil Procedure control discovery in civil case, not FOIA

KEEL is ordered to either produce responsive materials to these requests or supplement a simple, direct answer that no such materials exist. The Court further instructs KEEL going forward to refrain from the confusing, unnecessary and time-wasting practice of inserting language objecting to responding while also purporting to respond.

d. KEEL's Responses to Plaintiff's Requests for Admission

i. Requests for Admission Nos. 1 and 2

I FIND that KEEL's responses to RFA#1 and RFA#2 do not comply with Rule 36 and are deemed ADMITTED.

Plaintiff submitted two initial requests for admission to KEEL.

1) Admit that SLED sought judicial approval to destroy Plaintiff's hemp crop.

2) Admit that judicial approval of SLED's action was denied.

In response to those two simple and direct requests for admission, KEEL answered as follows:

1) *Admit that SLED sought judicial approval to destroy Plaintiff's hemp crop.*
Denied as stated. Further answering, on September 19, 2019, Special Agent John Neale with the South Carolina Law Enforcement Division (SLED) obtained an arrest warrant for the Plaintiff for Unlawful Cultivation of Hemp. Special Agent John Neale met with Dorchester County Magistrate Judge Ryan Templeton who issued the arrest warrant.

2) *Admit that judicial approval of SLED's action was denied.*
The Defendant Keel objects to this request in that the reference to "SLED's action" is vague and ambiguous. The Plaintiff does not specify the "action" to which he is referring. To the extent a response is required, the Defendant Keel denies the request as stated.

KEEL's response to RFA#1 is deficient and improper under Rule 36, as it does not fairly

meet the substance of the requested admission or specify so much of it as true as required by the rule.

The response evades admitting or denying whether judicial approval was sought for the destruction of the Plaintiff's hemp crop. The request did not ask KEEL whether judicial approval had been sought to arrest the Plaintiff. It specifically asked KEEL to admit whether judicial approval had been sought **to destroy his hemp crop**. Admitting that SLED sought approval to **arrest** the Plaintiff is a blatant attempt to avoid admitting or denying whether SLED attempted to comply with August 8, 2019 opinion they received from the South Carolina Attorney General.

Rule 37(a)(3) SCRCP specifically allows this Court to treat an evasive or incomplete answer as a failure to answer. Any denial of a request for admission "must specifically address the substance of the requested admission" and "may not sidestep the request or be evasive." S. Baicker-McKee, *et al*. Federal Civil Rules Handbook at 871 (2009) (citations omitted).

As to RFA#2, the Court does not find that the term "action" as used in the request was vague or ambiguous. Since there were only two requests, the "action" being referred to was readily identifiable.

If KEEL could not make legitimately make that connection, he had a duty "to obtain clarification prior to objecting on this point." Curtis at 3. Even if the request had been vague or ambiguous, the Plaintiff promptly clarified any legitimate confusion KEEL could claim and KEEL failed to cure his deficient response in light of that unnecessary clarification.[5]

These two requests are simple, direct and address two issues that are clearly relevant, material facts to the Plaintiff's claims: did KEEL ask a judge to authorize his destruction of the

5 The Court notes KEEL's supplemental amended responses to these requests served on the Plaintiff less than 2.5 hours before the hearing on October 31, 2022. Those responses do not cure the deficiencies and the Court finds them untimely. *See* discussion below.

Plaintiff's hemp crop and did a judge deny such authorization?

If KEEL sought such judicial authorization and the judge denied it, both requests should be admitted and those two relevant material facts would no longer be in controversy.[6]

As Scott noted, if those such matters in controversy "are conceded, litigants need not expend effort in investigations concerning it nor incur expense in presenting evidence to prove it. Judicial administration is also aided. Admissions reduce the time required to try a case. Indeed, they often make summary judgment possible. Finally, admissions encourage litigants to evaluate realistically the hazards of trial, and thus promote settlements." Scott at 649-650.

Conversely, if KEEL did not seek such judicial authorization, or he did and it was approved, then those requests should be denied.

What is not appropriate under the rule, is refusing to admit the specific request by denying it "as stated," then admitting things for which no admission was sought in the actual request. A responding party must respond to the request submitted. It is improper and does not comply with the rules for a responding party to respond to the request they want to admit. If a responding party has things they want admitted, they can submit their own requests for admission.

"The answering party that objects to a request for admissions does so at its own peril." Poole at 499 (noting the language of the rule "states, in detail, the requirements for denials, objections, partial admissions, and qualified answers" and that failure to adhere to the plain language of the rule requires that the fact in question be admitted, citing to Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1245 (9th Cir. 1981)).

I FIND that KEEL's RFA#1 and RFA#2 responses fail to comply with Rule 36 and are, hereby, deemed ADMITTED. "Failure to adhere to the plain language of [Rule 36] requires that

6 As discussed below, the record shows both requests should have been admitted.

the fact in question be admitted." Want v. Bulldog Fed. Credit Union, 2021 U.S. Dist. LEXIS 118096, 18 (D.Md. 2021) (citing to Poole at 499, noting Poole's cite to Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1245 (9th Cir. 1981). *See also* Rule 36 SCRCP.

III. KEEL'S DISCOVERY CONDUCT IN GENERAL

I FIND that KEEL's conduct regarding discovery in this case has been dilatory, prejudicial, willful, intentional and in bad faith and that his responses have been false, misleading, and incomplete.

The Court makes these findings, in light of the specific relief sought by the Plaintiff in his motions and the thorough and extensive record of KEEL's discovery conduct evident in the motions, supplemental memoranda and accompanying exhibits of record before the Court.

KEEL's responses to RFA#1 and RFA#2 are examples of his intentional, willful and bad faith nature of KEEL's discovery conduct. The Court noted above that KEEL amended his responses less than 2.5 hours before the October 1st hearing.

Failing to properly respond, ignoring written notifications of deficient responses, forcing the Plaintiff to file motions, forcing the Court to schedule hearings and then, at the last minute, attempting to cure the deficiency is not conducting discovery in good faith and is evidence of intentional, willful and bad faith conduct.

KEEL's refusal to amend those initial responses after being noticed about their deficiency a second time, in light of the emails between KEEL and Judge Goodstein's law clerk, is evidence of false, misleading, and incomplete responses.

Those *ex parte* emails show that on September 11, 2019, eight days before arresting the Plaintiff and destroying his hemp crop, KEEL's General Counsel Adam Whitsett sent Judge Goodstein's law clerk an email explaining that he and SLED Agent John Neale "would like to

meet with Judge Goodstein this afternoon to discuss the attached proposed Hemp/Marijuana Seizure Order and Order of Destruction in the hope that the Judge will sign such…" That email documented KEEL's agent Frank O'Neal had already communicated with Judge Goodstein's law clerk that day and the email was courtesy copied by Whitsett to John Neale, Frank O'Neal and Jason Wells, all KEEL agents using their "sled.sc.gov" email addresses. Judge Goodstein's law clerk emailed KEEL back that same afternoon, informing KEEL that "the judge has reviewed your proposed order and has decided not to sign it. She told me to let you know that if you would like a hearing on the matter, she would be glad to give you one."

The Monday following the receipt of that previously unproduced discovery, the Plaintiff sent his March 14, 2022, Rule 11 letter. After recounting the production of the discovery prior to the motion to compel hearing in Marion, the Plaintiff noticed:

> Rule 37(a)(3) specifically allows the Court to treat an evasive or incomplete answer as a failure to answer. Rule 37(a)(3) SCRCP. If there is any doubt that Defendant Keel's response to RFA#1 was purposefully evasive, I would direct you to the subsequent discovery the Plaintiff finally received.

and proceed to warn KEEL:

> Let me be clear: we view Defendant KEEL's responses to RTA#1 and RTA#2 to be **intentional and willful bad faith attempts to obstruct and delay discovery**. Those RFAs directly asked Defendant Keel to admit that SLED sought judicial approval to destroy the Plaintiff's hemp crop and that judicial approval of such action was denied and Defendant Keel has now produced emails which show SLED asked a judge for authorization and the Judge said NO.
>
> Based on the above, the **Plaintiff is specifically demanding Defendant Keel amend his RFA responses to properly respond to RFA#1 and #2.**
>
> I would caution you that we will view a failure by Defendant Keel to properly amend his responses to be bad faith and will move for sanctions. SLED's conduct in the wake of judicial approval being denied for their action, as documented through further emails and the actions SLED took after Judge Goodstein refused to authorize their desired course of action, speaks for itself…
>
> …The scope and purpose of the South Carolina Rules of Civil Procedure are clear

> from the language of the very first rule, which plainly and directly states that the rules "**shall be construed to secure the just, speedy, and inexpensive determination of every action**." Rule 1 SCRCP, emphasis added.
>
> Failing to timely respond, engaging in intentional and willfully evasive responses and improper boilerplate objections, refusing to produce discovery absent a protective order without motion under Rule 26(c) or the showing it requires, and forcing the Plaintiff to expend unnecessary time and effort to obtain discovery that should otherwise be provided, impermissibly obstructs, rather than secures, the "just, speedy, and inexpensive determination" of the action.
>
> **Please accept this correspondence as a demand that you cure these deficient responses within ten (10) days of the date of this correspondence. If you fail to cure these deficient responses, we will assume a motion will be required to address the matter. If that is necessary, you are hereby informed that the Plaintiff will file a Rule 16(a)(8), Rule 36 and Rule 37 motions, requesting the Court compel discovery and/or designate these matters as either admitted or denied and specifically allow the publishing of admissions/denials/refusals to respond to the jury at trial. If such motion is necessary, the Plaintiff will seek an award of costs, fees and such other sanctions as the Court may find just and proper.**

KEEL ignored those noticed deficiencies and warnings, refusing to cure his obviously inaccurate responses, and forced the Plaintiff to file his motions. KEEL continued to not cure his inaccurate and defective responses for 231 days, until less than 2.5 hours before he was to appear before the Court to defend his responses, when he submitted the following supplemental responses (emphasis added by the Court for discussion below):

> RFA#1: **Denied as stated. Further answering, the** Defendant Keel admits that Adam Whitsett, General Counsel for the State Law Enforcement Division, contacted the law clerk of Judge Diane Goodstein on September 11, 2019, to request a meeting with Judge Goodstein to discuss a proposed order entitled "Hemp/Marijuana Seizure Order and Order of Destruction" as well as the "Sworn Application for Hemp/Marijuana Seizure Order and Order of Destruction" all of which was also provided to the law clerk with attachments. The proposed order did authorize the seizure and destruction of the Plaintiff's hemp crop, **but the order also provided the opportunity for a post-seizure hearing with the following language: "However, former owner(s) of the plants has 7 days from the date of receipt of this Order to request a post seizure hearing to show cause why the plants in question are not illegal and why they not be destroyed. Otherwise, the plants will be destroyed." Thus, the proposed order, if signed by Judge Goodstein, would have given the Plaintiff a post-seizure hearing upon request.**

> RFA#2: **Denied as stated. Further answering**, the law clerk for Judge Diane Goodstein informed Adam Whitsett that Judge Goodstein was not willing to sign the proposed order entitled "Hemp/Marijuana Seizure Order and Order of Destruction." **Judge Diane Goodstein did not hear or adjudicate the merits of the "SLED's action."**

KEEL failed to offer the Court any reason or excuse why these supplemental responses had not been provided when noticed, but instead had been provided at the last minute before the hearing. In absence of even an attempt to explain this behavior, the Court is left to conclude the delay was willful, intentional and in bad faith.

Even if KEEL had timely provided these supplemental responses, they fail to comply with the rule. The bold language in the supplemental responses above represents language that is improper and violates the plain language of Rule 36(a), which expressly permits a party qualify an answer, but only "when good faith requires."

"Though qualifications may be required where a request contains assertions that are only partially correct, a reviewing court should not permit a responding party to undermine the efficiency of the rule by crediting disingenuous, hair-splitting distinctions whose unarticulated goal is unfairly to burden an opposing party." Poole at 499 (quoting Thalheim v. Eberheim, 124 F.R.D. 34, 35 (D. Conn. 1988).

In Poole, the district court found the responding party, in almost every response, impermissibly lodged an objection and an answer and when they did answer, its complexity "undermined the efficacy of the rule by crediting disingenuous, hair-splitting distinctions whose unarticulated goal was to unfairly burden an opposing party, finding the defendant's responses and objections lacked substantial justification and sanctioned the defendant. The district court specifically found "the responses and objections appeared crafted to sabotage the legitimate use of request for admissions." Poole at 499.

I find that KEEL's supplemental responses to RFA#1 and RFA#2 insufficient. I did not ask KEEL to admit anything about post-seizure procedures or whether a judge had a hearing and made any ruling on the merits of the destruction of his hemp crop. To accept this discovery conduct would render Rule 36 requests, other than the authenticity of documents, meaningless. A party is entitled to craft requests that seek the admissions of the truth of any matter relating to statements or opinions of fact or of the application of law to fact and have those requests directly and accurately answered. [7]

A party does not get to respond to the request they wish was asked, they must respond to the request submitted. The controlling question they must ask is: should this be admitted? KEEL's conduct is indicative of improper discovery, wherein the responding party instead asks: how can I not admit this? Such conduct is intentional, willful and in bad faith.

I FIND that KEEL has failed to respond fully and adequately to the Plaintiff's discovery requests. The record documents numerous communications KEEL neither identified nor produced.

An example of KEEL's failure to comply with his duty to fully and adequately respond to discovery, is the September 18, 2019, email between KEEL's agents Jason Wells, Frank O'Neal, John Neale, Adam Whitsett and Glenn Wood. The email literally contains the Plaintiff's name in the subject line and a description that leaves no doubt it is relevant discovery in this case: "Plan for Destruction of Hemp Field in Dorchester Co. – Trent Pendarvis." That email was then forwarded to SCAG's Bob Cook, clearly making it a communication with a prosecutor or attorney general (and responsive to a specific interrogatory served by the Plaintiff). This email, along with numerous others in the record, was never identified or produced by KEEL.

Claiming you produced "the entire files," as KEEL argued at the hearing, on something is

7 This is the further discussion referenced above regarding RFA#9, RFA#11 and RFA#13.

not sufficient response if you know that your "files" do not include specific responsive information and materials that you nevertheless know exist and/or should exist.

Emails in the record that KEEL did not identify or produce, were sent from and to "sled.sc.gov" email addresses. KEEL is the Chief Law Enforcement Officer of the State of South Carolina. It is inconceivable that KEEL does not have the knowledge and capability to execute a key word/term search of his agency's digital email archives to identify and obtain every email communication that would be responsive to the Plaintiff's discovery requests. The record reflects KEEL failed to do so.

Records the Plaintiff obtained by subpoena to non-parties also document communications such as telephone calls and in-person meetings that have never been identified by KEEL. Even after the filing of the Plaintiff's 2nd supplemental memo noticed KEEL these failures were being offered to the Court as support that KEEL's conduct was willful, intentional and in bad faith, KEEL has failed to cure his inaccurate and incomplete responses.

"An affirmative duty does exist to answer interrogatories and respond to requests to produce." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 83 (2011).

The discovery process, like a lawsuit itself, "is not a children's game, but a serious effort on the part of adult human beings to administer justice." Griffin v. Capital Cash, 310 S.C. 288 (Ct. App. 1992) (quoting United States v. A.H. Fischer Lumber Co., 102 F.2d 872 (4th Cir. 1947). Refusing to look where you know, or should reasonably know, responsive discovery would be, then claiming to have turned over the "entire file," is not acting in good faith.

KEEL is hereby ordered to execute a reasonable inquiry and search for responsive discovery, including, but not limited to, a digital key word/term search of SLED's electronic communications which would reasonably and adequately capture communications responsive to

the Plaintiff's discovery requests.

KEEL is hereby ordered to identify other communications fully and accurately (e.g., telephone calls and in-person meetings) with the specificity requested by the Plaintiff's discovery requests.

These are affirmative actions the Rule 33 answer-under-oath requirement demands of KEEL. Were KEEL to finally produce an executed Rule 33 verification for the first set of Plaintiff's interrogatories without such affirmative action being taken, whomever executed that verification would be in jeopardy of perjury, as the record shows KEEL's current responses are neither complete nor accurate.

I FIND that KEEL's failures to fully and adequately respond waives his objections to Plaintiff's initial interrogatories and requests for production.

When KEEL sought an extension to respond, Plaintiff's counsel consented via October 15, 2021 email consenting "provided that we get full and complete answers so that we can move forward with a deposition schedule with written discovery in hand." The Plaintiff had good cause to impose such a condition, as his motion to compel had been filed in the Marion case since March 12, 2021.

KEEL accepted that condition by producing responses dated November 5, 2021.

KEEL failed to meet that condition by failing to provide full and complete responses. By failing to meet the condition of the extension, KEEL's responses are untimely. Even if that condition had not been posed on the extension, Rule 37(a)(3) plainly states that "an evasive or incomplete answer is to be treated as a failure to answer" and the Court finds KEEL's responses to Plaintiff's initial interrogatories and requests for production to be incomplete.

There is well established case law from across the country finding that a party who fails to

serve timely responses to discovery requests waives any objections. *See*, e.g., Jones v. Ada S. McKinley Community Services, 1989 WL 152352, *4 (N.D. Ill. Nov. 28, 1989) ("Federal Rule of Civil Procedure 34 requires a party to respond and file objections to a request to produce within 30 days of receipt of the discovery request."); Chapman & Cole v. Itel, 865 F.2d 676, 686 (5th Cir. 1989) (waiver where objections to interrogatories not made within 30 days); and Fed. R. Civ. P. 34 advisory committee note (procedures under Rule 33 which state that failure to comply with time limits constitutes wavier apply with equal force to Rule 34).")

I FIND that KEEL is to respond/supplement the discovery as required by this order, fully and completely within thirty (30) days of its filing.

IV. Sanctions

I FIND that the prejudice to the Plaintiff from KEEL's conduct is clear, convincing and substantial. Basic discovery in this case has now been delayed for over a year. The Plaintiff has been forced by KEEL to expend substantial time and resources to obtain initial discovery responses that comply with the rules of civil procedure.

The question of what sanctions are to be imposed for failure to comply is left largely to the court. Nevertheless, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules. Downey v. Dixon, 294 S.C. 42, 45 (Ct. App. 1987).

I FIND that a sanction for attorney's fees and costs in this matter is warranted. The South Carolina Supreme Court has reminded Circuit Court judges "that the seldom-utilized rule for awarding fees and imposing sanctions, SCRCP 37, is available to deter discovery abuses." South Carolina Supreme Court Administrative Order, 2021-06-03-02, June 3, 2021.

The fact that KEEL's conduct has been found to be dilatory, willful, intentional, prejudicial and in bad faith supports the awarding attorney's fees and costs in this matter. The fact that KEEL's

conduct has been found to include false, misleading, and incomplete discovery responses supports the awarding of attorney's fees and costs in this matter. These findings apply equally to KEEL's conduct in responding to Plaintiff's interrogatories, requests for production and requests for admission.

KEEL argues that this Court can only award attorney's fees as sanctions regarding his requests for admission responses if the Plaintiff filed and proved they should be admitted by winning a motion for summary judgment or proving the matter at trial, citing to Sessions v. Withers, 327 S.C. 409 (Ct. App. 1997) and Rule 37(c) SCRCP.

The Court disagrees that a requesting party can only "prove the truth of the matter" through a motion for summary judgment or at trial, finding no such requirement in Rule 37(c) or in Sessions. The Plaintiff created an extensive record which the Court finds proves RFA#1 and RFA#2 should have been admitted.

Even if KEEL's interpretations of Rule 37(c) and Sessions were correct, that would not prohibit an award of attorney's fees and costs, as KEEL's responses did not comply with Rule 36(a), which states "the provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to this motion." The plain language of Rule 36(a) and Rule 37(a)(4) allows an award of attorney's fees and costs in this matter.

I FIND the Plaintiff is entitled to an award of attorney's fees and costs under Rule 36(a), Rule 37(a)(4) and Rule 37(c) SCRCP, in the amount of $11,307.36 as supported by the Amended Affidavit of Attorney's Fees and Costs.

That affidavit supports that Plaintiff's counsel's minimum hourly rate is $500.00/hour and identifies previous court appearances and court orders in support of that rate. The affidavit further explains counsel's experience in support of his $500.00/hour fee.

Having reviewed Plaintiff's counsel's affidavit, the extensive filings in this matter, and his arguments and presentation made to the Court, I FIND that the rate of Five Hundred and 00/100 ($500.00) Dollars per hour to be reasonable and commensurate with previous awards of attorney's fees to Plaintiff's counsel; his knowledge, experience, and professional standing; the time and labor it is apparent he devoted to these matters; the nature, extent and difficulty of what the record reflects has been a complex discovery matter; and the beneficial results he achieved, as shown in this order.

I FIND that KEEL is ordered to pay the amount of attorney's fees and costs in the amount of $11,307.36. Said payment shall be made directly to Attorney Patrick J. McLaughlin within thirty (30) days of the filing of this order. I FIND this amount to reasonable and appropriate considering the precise nature of the discovery conduct, the willfulness, and the degree of prejudice of KEEL's discovery abuse.

CONCLUSION

Based on the above, the Plaintiff's motion is GRANTED and KEEL is ordered to respond as directed above. The Court will grant an award of attorney's fees and costs in the amount of $11,307.36. This award will be fully tendered and the response to discovery as directed above, within thirty (30) days of this order.

AND IT IS SO ORDERED.

<judicial e-signature found on page to follow>

Dorchester Common Pleas

Case Caption:	John Trenton Pendarvis VS Sheriff Dorchester County , defendant, et al
Case Number:	2021CP1801486
Type:	Order/Other

So Ordered

s/ Maite Murphy 2166

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1801486

John Trenton Pendarvis
PLAINTIFF(S)

Sheriff Dorchester County 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

After careful review of the Defendant's Motion to Alter or Amend Order and/or Motion to Reconsider along with the Plaintiff's Response, previous briefings and arguments the Court respectfully Denies the Defendant's Motion. The matters raised in the Defendant's Motion do not support Rule 59(e) relief.

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 04/05/2023 .

John Doe

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), SCRCP.

Dorchester Common Pleas

Case Caption:	John Trenton Pendarvis VS Sheriff Dorchester County , defendant, et al
Case Number:	2021CP1801486
Type:	Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166