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SC Court of Appeals

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

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, MILLS, LLC, and GREG HARRELSON, ...Respondents,
JOEL D. BARBER, ...Appellant.

**EXHIBIT TABLE OF CONTENTS / RECORD FOR APPELLANT'S REPLY
TO RETURN TO VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS**

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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 FOR PROTECTIVE ORDER**

NOW COMES the Defendant Joel D. Barber ("Defendant Barber"), by and through his undersigned counsel, pursuant to Rules 26 and 30 of the South Carolina Rules of Civil Procedure, and hereby moves the Court for a Protective Order, and in further support thereof, states the following:

- 1) On November 15, 2022, Defendant Barber was deposed by counsel for Plaintiffs in connection with this action. The deposition was closed but not completed, and is subject to continuation at a later date.
- 2) During the deposition, counsel for Defendant Barber instructed Defendant Barber not to answer certain questions posed to him by counsel for Plaintiffs.
- 3) The instructions not to answer were given in light of the applicability of one or

more privileges, including the privilege against self-incrimination under both the Fifth Amendment to the United States Constitution and S.C. Code § 19-11-80, and the privilege between mental health professionals and clients under S.C. Code § 44-22-90, as well as any and all other statutory and common law privileges and protections related to the foregoing.

4) As of the date of filing this motion, the undersigned has not received an official copy of the transcript of Defendant Barber's deposition, but the undersigned believes that said transcript will be available in the near future, at which time the undersigned will supplement and/or amend this Motion to include the relevant portions of the official transcript.

WHEREFORE, based on the foregoing, and for good cause shown, Defendant Barber respectfully requests the entry of a Protective Order affirming the existence of the above-referenced privileges, directing that he not be compelled to answer those questions which he was directed not to answer on the basis of said privileges, and further directing that he not be questioned at any future deposition or other proceeding in this action regarding any matter that is subject to said privileges.

[Remainder of page intentionally blank]

This the 17th day of November, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

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Joel D. Barber (as to the Answer and
Affirmative Defenses only)*

-and-

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*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 FOR PROTECTIVE ORDER** 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 17th day of November, 2022.

/s/ Christian H. Staples

Christian H. Staples

Shumaker, Loop & Kendrick, LLP

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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), 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:

Plaintiff's Motion/Summary Judgment is resolved.
Plaintiff's Motion/Compel Joel D Barber's Discovery Responses is respectfully denied.
Defendant's Motion/Protective Order is granted as to the deposition questions.
Plaintiff's Motion/Compel Discovery Responses from is resolved as to North Group Real Estate, Inc.
Plaintiff's Motion/Sanctions is continued to the next available term.
Defendant's Motion/Stay is respectfully denied.

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 03/24/2023 .

Case Party Info Protected

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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.

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RENEE N. ELVIS
CLERK OF COURT
Horry County, SC



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 2023-03-24 14:42:10 page 3 of 3

RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

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
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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
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
RECONSIDER**

Defendant Joel D. Barber (“Defendant Barber”), by and through his undersigned counsel, hereby submits this Memorandum of Law in support of his Motion to Reconsider the Order Granting Plaintiffs’ Motion for Contempt entered in this action on November 22, 2022 (the “Contempt Order”). For all of the reasons stated herein, the Contempt Order should be overturned or, alternatively, modified so as to ensure that: (1) its terms can actually and reasonably be complied with, and (2) compliance does not result in the unnecessary disclosure of information that is privileged, confidential, or otherwise protected from disclosure and discovery in this action.

STANDARD OF REVIEW

Defendant Barber's Motion to Reconsider serves "not only as a vehicle to request the trial court [to] alter or amend the judgment, but also as a vehicle to seek 'reconsideration' of issues and arguments. A motion under Rule 59(e) long has been viewed as [a] 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004) (internal citations omitted). "A party may wish to file such a motion when [he] 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 ruled on, in order to preserve it for appellate review. *Id.* at 24, 602 S.E.2d at 780.

"[C]ivil contempt must be proven by clear and convincing evidence". *Ex parte Cannon*, 385 S.C. 643, 661, 685 S.E.2d 814, 824 (Ct. App. 2009). "Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. A willful act is one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." *Id.* at 660–61, 685 S.E.2d at 824 (internal citations omitted).

FACTUAL AND PROCEDURAL BACKGROUND

This action was commenced on March 2, 2022, upon Plaintiffs' Complaint and Motion for Temporary Restraining Order and Temporary Injunction. Following a hearing on said motion, the

Honorable Steven H. John entered an Order on April 4, 2022 (the “Temporary Injunction”), that, *inter alia*, enjoined Defendant Barber from:

- “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 ...”
- “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”
- “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”.

The foregoing prohibitions appear to be the only restraints that Plaintiffs allege have been violated by Defendant Barber. *See* Plaintiffs’ Motion for Contempt, filed July 25, 2022.

In support of their Motion for Contempt, Plaintiffs submitted the Affidavits of Rob Safa and Susan Brown, who each allege that Defendant Barber contacted them through generic marketing emails. Plaintiffs contend these two individuals were leads contained in their database that Defendant Barber was prevented from contacting as a result of the Temporary Injunction. To be clear, these emails were the only communications Ms. Brown or Mr. Safa received from Defendant Barber; there is no allegation of any direct, in-person communication or solicitation of business as to either of them. Notably, Ms. Brown is a Realtor associated with Century 21 The Harrelson Group, and Mr. Safa is the brother of a Realtor associated with Century 21 The Harrelson Group. Defendant Barber worked as an independent contractor and residential real estate agent associated with Century 21 The Harrelson Group from March 14, 2017, until his termination on February 7, 2022.

In his Affidavit filed on October 5, 2022, Defendant Barber explains how he obtained the email addresses of Ms. Brown and Mr. Safa *after* he left Century The Harrelson Group, which

were each received independent of any association he had with Century 21 The Harrelson Group. Defendant Barber did not receive any listings from Ms. Brown or Mr. Safa and no commissions are in dispute as to these two individuals.

In further support of their Motion for Contempt, Plaintiffs submitted the Fourth Affidavit of Greg Harrelson, an individually named Plaintiff in this action and the owner of Century 21 The Harrelson Group. Mr. Harrelson attests that he “determined many of [Defendant] Barber’s listings, ranging from February 15, 2022 to November 9, 2022, were leads maintained in the Plaintiffs’ databases”. *See* Fourth Harrelson Aff., ¶ 2. Mr. Harrelson concludes that “[b]ased on the MLS listings and the information within the Plaintiffs’ databases, [Defendant] 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”. *Id.* ¶ 3. Mr. Harrelson’s Fourth Affidavit lists dozens of MLS listings (the “MLS Listings”) that he contends Mr. Barber obtained as a result of his non-compliance with the Temporary Injunction. *Id.* ¶ 4.

On November 15, 2022, Defendant Barber submitted his Second Affidavit, in specific response to the Fourth Affidavit of Greg Harrelson, in which Defendant Barber denies violating the Temporary Injunction and explains, in general terms¹, how he gained access to the leads resulting in the MLS Listings. Defendant Barber unequivocally states that he “did not obtain any of the MLS listings referenced in the Fourth Harrelson Affidavit as a result of any access I had to Plaintiffs’ databases or otherwise by virtue of my prior status as an independent contractor and real estate agent for Century 21 The Harrelson Group.” Second Aff. of Barber, ¶ 3. Defendant

¹ Defendant Barber had very limited time to respond to the Fourth Harrelson Affidavit prior to the hearing on Plaintiffs’ Motion for Contempt. The Notice of Electronic Filing for the Fourth Harrelson Affidavit is dated November 14, 2022, and the hearing on the motion was held the morning of November 16, 2022. On November 15, 2022, Defendant Barber was deposed by Plaintiffs’ counsel in Charleston, SC, and the deposition lasted from approximately 10:00AM until 5:00PM. Accordingly, Defendant Barber and his counsel had very limited time to review the Fourth Harrelson Affidavit, or to respond thereto, prior the hearing, and certainly did not have time to conduct a detailed review of the dozens of MLS Listings referenced in the Fourth Harrelson Affidavit. *See* Second Barber Aff., ¶ 8.

Barber concludes his Second Affidavit by stating that he “can provide the specific details of how I obtained each of the MLS Listings in The Fourth Harrelson Affidavit, but given the current time constraints in light of the scheduled hearing on Plaintiffs’ Motion for Contempt, I have not had an opportunity to do that just yet.”

Within a matter of hours after the WebEx hearing on November 16, 2022, the Court communicated its ruling on Plaintiffs’ Motion for Contempt to counsel in this action. The Court did not grant Defendant Barber any further opportunity to explain how he gained access to the leads and/or MLS Listings cited in the Fourth Harrelson Affidavit, apparently ignored Defendant Barber’s Second Affidavit, and did not enter any findings as to the comparative credibility of the parties’ testimony as expressed in their competing affidavits as a means to justify the ruling. This is problematic because contradictory testimony should be reserved for the jury, not resolved by the judge at a contempt hearing. *See Oakman Service Station v. People’s Oil Co.*, 174 S.C. 517, 178 S.E. 129, 130 (1935) (“The well-established rule in this state is that if there is any testimony whatever to go to the jury on an issue involved in a cause, or even if more than one inference can be drawn from the testimony, then it is the duty of the judge to submit the cause to the jury. This is true, even if witnesses for the plaintiff contradict each other, or if a witness himself in his testimony makes conflicting statements. The credibility of witnesses is entirely for the jury.”).

The Contempt Order was also explicitly based on Defendant Barber’s deposition testimony taken the day before the hearing, as “represented by Plaintiffs’ counsel” – who, by the way, was not even in attendance at the deposition² – and without reviewing and/or requesting the official transcript to verify such representations or to examine the full context of the testimony.

² Defendant Barber’s deposition was taken by Henrietta Golding, Esq., who filed an appearance in this case that very same day. Amanda Bailey, Esq. attended the WebEx hearing on Plaintiffs’ Motion for Contempt the next day and represented Defendant Barber’s testimony to the Court despite the fact that she was not in attendance at the deposition and the final transcript had not been produced.

Perhaps most importantly, the Contempt Order fails to articulate (and Defendant Barber contends that Plaintiffs wholly failed to prove), that the leads underlying the MLS Listings were actually contained in a database maintained and/or controlled by Century 21 The Harrelson Group at the time of Defendant Barber's termination on February 7, 2022, and in the information that Defendant Barber allegedly stole from Century 21 The Harrelson Group in the early morning hours of February 7, 2022. Defendant Barber's Motion to Reconsider followed, and is now ripe for adjudication.

ARGUMENT

I. DEFENDANT BARBER OBTAINED THE LEADS AND THE MLS LISTINGS AT ISSUE FROM INDEPENDENT SOURCES, WHICH DOES NOT VIOLATE THE TEMPORARY INJUNCTION OR THE UNDERLYING INDEPENDENT CONTRACTOR AND BROKERAGE AGREEMENT; ACCORDINGLY, HE SHOULD NOT BE HELD IN CONTEMPT.

Critical to this matter is the fact that Plaintiffs do not (and cannot) rule out the possibility that Defendant Barber gained access to the leads and/or listings reflected by the MLS Listings from another source, after his departure from Century 21 The Harrelson Group, completely separate and apart from his prior association with Plaintiffs. Defendant Barber attested in his Second Affidavit filed November 15, 2022, that he "did not obtain any of the MLS listings referenced in the Fourth Harrelson Affidavit as a result of any access I had to Plaintiffs' databases or otherwise by virtue of my prior status as an independent contractor and real estate agent for Century 21 The Harrelson Group." (¶ 3). Moreover, Defendant Barber pointed out that one of the MLS Listings contained in the Fourth Harrelson Affidavit is not even a listing associated with him (MLS number 2223309). *Id.* ¶ 4. For this reason alone, the Court should have more closely scrutinized the source of the MLS Listings prior to entering the Contempt Order or, alternatively, given Defendant Barber an opportunity to explain in further detail how he obtained the MLS

Listings. Unfortunately, it appears that Defendant Barber's Second Affidavit was not even considered by the Court in ruling on Plaintiffs' Motion for Contempt, or alternatively, that the Court did not find Defendant Barber to be a credible witness (although no such finding is stated in the Contempt Order), given the plainly contradictory testimony of Plaintiff Harrelson and Defendant Barber regarding the source of the MLS Listings, as reflected in their competing affidavits.

Upon further investigation, Defendant Barber has determined that two other MLS Listings cited in the Fourth Harrelson Affidavit are listings that Plaintiffs originally had, but which failed to close and expired after February 7, 2022, at which point Defendant Barber initiated contact with the property owner and was hired (refer to MLS numbers 2220365 and 2220729 and the corresponding Exhibit 2 and 3 to the Spreadsheet attached as Exhibit A to the Third Affidavit of Defendant Barber). Those MLS Listings are not confidential or proprietary information belonging to Plaintiffs, but are publicly available and generally known, certainly by local real estate agents such as Defendant Barber with a subscription to the MLS service, Vulcan7 or a similar lead generating service, or even a working knowledge of Zillow.com, a free and publicly-accessible website that contains basic information about properties listed for sale. The bottom line is that Defendant Barber should not be held in contempt for pursuing such leads when he clearly caused no loss of business to Plaintiffs, given Plaintiffs failure to generate a sale and commission from such leads in the first instance, and when such leads were generally known not only by Defendant Barber, but by every real estate agent in the Myrtle Beach area and beyond.

Defendant Barber's Third Affidavit, submitted contemporaneously herewith, contains a more thorough explanation of how Defendant Barber obtained each of the MLS Listings cited in the Fourth Harrelson Affidavit, with supporting documentary proof. Notably, for at least fifteen

(15) of the MLS Listings at issue (nearly 14% of them), Defendant Barber's clients have executed a document in which they indicate the source of their connection to Defendant Barber.³ One of Defendant Barber's clients, Arlene Sandra Churgin, submitted an Affidavit attesting to her connection to Defendant Barber as related to two (2) of the MLS Listings (Numbers 2222546 and 2222547). Based on the information provided in those affidavits, and the other information provided herein, the Contempt Order, and any finding of contempt, is premature and should be reconsidered after a thorough review and consideration of the source of each of the MLS Listings and other alleged violations of the Temporary Injunction.

II. COMPLIANCE WITH THE CONTEMPT ORDER WILL NECESSARILY RESULT IN THE DISCLOSURE OF INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE PROTECTED FROM DISCLOSURE AND DISCOVERY; THE CONTEMPT ORDER ALSO IGNORES THE PARTIES' PRIOR AGREEMENTS ABOUT HOW THE INSPECTION OF ELECTRONIC DEVICES SHOULD PROCEED.

The Contempt Order also should be reconsidered on the grounds that it appears to address (and to resolve against Defendant Barber) a pending discovery motion filed by Plaintiffs that was not properly before the Court at the contempt hearing on November 16, 2022. In so doing, the Court failed to consider the prior negotiation and agreements between counsel for the parties regarding the inspection of Defendant Barber's electronic devices.

Shortly after the commencement of this action, the parties agreed to the terms of a Stipulated Confidentiality and Protective Order (the "Confidentiality Order"), which was entered on May 16, 2022. The Confidentiality Order allows each party to designate information, documents, and other tangible things as "Confidential" and/or as "Attorney's Eyes Only" and further provides a means for resolving disputes between the parties regarding such designations.

³ Please refer to Exhibits 22, 46, 58, 73a, 74, 76, 83, 85, 91, 96, 99, 102, 103, 105, and 107 to the Spreadsheet attached as Exhibit A to the Third Affidavit of Joel Barber.

The parties have abided by the Confidentiality Order and utilized its provisions during the conduct of discovery. No party has challenged or taken issue with the Confidentiality Order.

Prior to the hearing on Plaintiffs' Motion for Contempt, counsel for Plaintiffs and undersigned counsel for Defendant Barber were in the process of negotiating a Consent Order Regarding E-Discovery Protocol ("Consent Order"), which was intended to govern the production and inspection of certain electronic devices identified through discovery by Defendant Barber (i.e., laptop, cell phone, thumb drive, etc.), which devices Plaintiffs' contend may contain stolen or otherwise unauthorized information. A copy of the email communication and latest redline revision to the proposed Consent Order which was provided by undersigned counsel to counsel for Plaintiffs on October 26, 2022, are attached hereto as **Exhibits 1 and 2**. The only response received by the undersigned from Plaintiffs' counsel was an email stating that "[i]n order to keep this case moving, we will be filing a Motion for Contempt [sic]⁴ regarding the inspection of property and discovery responses." See **Exhibit 3**. Why Plaintiffs' counsel so abruptly ceased negotiations on the proposed Consent Order and sought judicial intervention is unknown to the undersigned. Plaintiffs' counsel ultimately filed a Motion to Compel on October 31, 2022, asserting that "no agreement has been reached" regarding the proposed Consent Order. The motion was not noticed for hearing on November 16, 2022, nor has it been subsequently noticed for hearing, withdrawn, or otherwise resolved.

Undersigned counsel's contentions regarding Plaintiffs' lack of good faith or adequate prior consultation in connection with and prior to the filing of said motion notwithstanding, the bottom line is that both parties clearly recognize the need to preserve privilege and confidentiality in the context of any inspection of Defendant Barber's electronic devices. This is clearly

⁴ Plaintiffs' counsel subsequently clarified that this was a typo and that she meant to say "Compel" instead of "Contempt" since the Motion for Contempt had already been filed.

established by the language of the proposed Consent Order, drafted in the first instance by counsel for Plaintiffs, which recites the parties' agreement to "the use of a mutually agreeable third-party vendor to inspect a party's devices" and for the inspection to be "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." It is on this last point that the parties' negotiations were still ongoing at the time Plaintiffs' counsel prematurely filed the Motion to Compel and ceased further discussion with the undersigned regarding the terms of the proposed Consent Order.

As written, the Contempt Order ignores these concerns indisputably recognized by the parties regarding the privileged and confidential nature of certain information contained on Defendant Barber's electronic devices, such as (a) information protected from disclosure by the attorney-client privilege and/or work product doctrine; (b) potentially incriminating information subject to protection and non-disclosure pursuant to the Fifth Amendment to the United States Constitution;⁵ and (c) information which otherwise constitutes confidential commercial information or trade secrets (such as leads, lead/referral sources, marketing materials, etc.) belonging exclusively to Defendant Barber (especially if obtained and/or created through no wrongdoing after the termination of his agency/employment with Century 21 The Harrelson Group), the disclosure of which to Plaintiffs, Plaintiff's counsel, and/or Plaintiff's expert witness, without adequate safeguards, is highly likely to result in substantial and irrevocable harm to Defendant Barber.

⁵ Notably, Defendant Barber was instructed by his counsel not to answer certain questions posed to him by counsel for Plaintiffs during his deposition on November 15, 2022, on the basis of the Fifth Amendment privilege against self-incrimination. Defendant Barber timely filed a Motion for Protective Order with respect to such objections and instructions not to answer on November 17, 2022. This motion has yet to be noticed for hearing by the Court.

The intended purpose of the proposed Consent Order was to provide a means for addressing these concerns of privilege and confidentiality within the context of the inspection of Defendant Barber's electronic devices. However, as written, the Contempt Order enacts no such protections, and compliance with the same seems all but guaranteed to result in the waiver or relinquishment of such protections. As the saying goes, "once the cat is let out of the bag, it cannot be put back in." This is especially true here where the concerns of privilege and protection relate to matters that deserve the highest degree of protection, such as the attorney-client privilege and Fifth Amendment protection against involuntarily compelled self-incrimination.

Next, the Contempt Order provides for the inspection of Defendant Barber's electronic devices to be performed by Plaintiffs' designated expert witness, Clark Walton of Reliance Forensics, LLC. However, the parties previously agreed to use David Shelton of Advanced Technology Investigations, LLC, to conduct the inspection of Defendant Barber's devices. *See **Exhibit 1*** (Email from Ms. Voegel dated 10/20/22 at 1:06 PM). Given that Mr. Walton is a designated expert for Plaintiffs, and is therefore implicitly biased in favor of Plaintiffs and against Defendant Barber, it makes more sense for a neutral, non-designated expert (such as Mr. Shelton) to conduct the inspection, and for the findings and other data to be communicated only to counsel for Defendant Barber in the first instance, so that they may apply any necessary designations of "Confidential" or "Attorney's Eyes Only" as permitted by the Confidentiality Order prior to the ultimate disclosure or production of such findings and data to Plaintiffs and/or their counsel. Should there be a future dispute about the applicability of such designations, then the parties can follow the process outlined in the Confidentiality Order to resolve such dispute.

The bottom line is that, by its terms, the Contempt Order improperly circumvents the discovery process and implicitly rules on Plaintiffs' pending discovery motion, without affording

Defendant Barber adequate notice or opportunity to be heard in that regard, ignores the parties' prior agreements about e-discovery generally and the inspection of Defendant Barber's devices specifically, and otherwise deprives Defendant Barber of the protections afforded to him under the Confidentiality Order and applicable law pertaining to privilege and confidentiality. For these reasons, the Contempt Order should be overturned, or alternatively, modified so as to ensure that adequate safeguards exist to prevent the disclosure of privileged or confidential information.

Defendant Barber contends that any ruling on contempt should be reserved until after the conclusion of the inspection of Defendant Barber's electronic devices, at which time everyone will have a better understanding, and actual forensic proof, of whether or not Defendant Barber improperly utilized any of the information he is accused of stealing.

III. THE CONTEMPT ORDER IS OVERLY VAGUE AND UNREASONABLE AND COMPLIANCE IS ARGUABLY IMPOSSIBLE; THE CONTEMPT ORDER ALSO MISAPPREHENDS THE NATURE OF REAL ESTATE COMMISSIONS AND IS TANTAMOUNT TO AN ILLEGAL NON-COMPETE PROVISION.

Another reason why the Contempt Order should be reconsidered is that its terms are overly vague and unreasonable, and compliance in full is arguably impossible. For starters, it calls for "any and all real estate-related commissions Defendant Barber has received or will receive subsequently to February 7, 2022 ... to be held in trust by Defendant Barber" This is problematic for several reasons, but first, an understanding of how real estate agents are paid is essential. When a property is bought or sold through the use of a real estate agent, such as Defendant Barber, a percentage of the final sale price (typically between 2-3%) is reserved for the broker/agent on each side of the transaction. That commission is then further split between the agent himself (i.e., Defendant Barber) and the agent's employer or brokerage firm (i.e., Century 21, eXp Realty, or North Group Realty). That has held true for Defendant Barber at all times

relevant to this action, both during his association with Century 21 The Harrelson Group, and thereafter.

In fact, Paragraph 7 of the Independent Contractor and Broker Agreement dated March 14, 2017, by and between Defendant Barber, as Independent Contractor, and Margaret McBride on behalf of Century 21 The Harrelson Group, as Broker, express states that “[w]hen 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.”⁶

Importantly, Plaintiffs, including Century 21 The Harrelson Group, would never be entitled to that portion of the commission reserved for Defendant Barber, but only to that portion reserved for his employer/agency/brokerage firm. From that understanding, Plaintiffs should have no right to any of the commissions paid or otherwise owing to Defendant Barber, individually, but only to the portion of the commissions that were paid or otherwise owing to eXp Realty or North Group Realty, the only brokerages with which Defendant Barber has been associated after leaving Century 21 The Harrelson Group on February 7, 2022. The Contempt Order fails to make this distinction, and therefore, at a minimum, should be revised accordingly.

Moreover, Defendant Barber is unable to comply with the Contempt Order in regards to commissions he has previously received, to the extent he has already spent or made other disposition of such commissions. Defendant Barber cannot go back in time to escrow commissions he already received. Requiring such an exercise would necessarily involve complicated financial tracing of a kind and nature that is simply not warranted here. And, for the reasons discussed above,

⁶ The Independent Contractor and Broker Agreement is attached as Exhibit A to Plaintiffs’ Amended Complaint filed on May 4, 2022.

the Contempt Order is an improper overreach given that the only commissions that should be held in trust are those portions of the commissions paid or otherwise owing to eXp Realty or North Group Realty.

Importantly, because Defendant Barber is not in possession of those portions of the commissions paid or otherwise owing to eXp Realty and North Group Realty, he has no way to escrow or otherwise hold those funds in trust, or even to ensure that the brokerages are doing so on his behalf. In fact, counsel for eXp Realty has represented to the undersigned that eXp Realty continues to withhold at least three separate commissions earned by Defendant Barber in the total amount of at least \$18,605.00. See **Exhibit 4**. It is impossible for Defendant Barber to hold those funds in trust since he is not in physical possession of the same.

The Contempt Order also imposes remedies and/or sanctions that go far beyond the scope of the Temporary Injunction, in that Judge John stated at the hearing that Defendant Barber need not notify Plaintiffs of his commissions, and accordingly Judge John did not impose any escrow/trust procedure in that regard. Moreover, Judge John refused to order an immediate identification and/or inspection of Defendant Barber's electronic devices – which Plaintiffs requested at that time – and instead let that process play out through the course of discovery, which, as discussed above, counsel for the parties were attempting to do prior to the abrupt filing of Plaintiffs' Motion to Compel. Thus, the remedies and/or sanctions imposed by the Contempt Order go far beyond what Judge John originally intended and are therefore improper and excessive.

Next, the Contempt Order, as written, is tantamount to an illegal non-compete clause, because it effectively prohibits Defendant Barber from working as a real estate agent in the Myrtle Beach area. During the hearing on Plaintiff's Motion for Temporary Injunction, Judge John made it clear that Defendant Barber was free to continue working as a real estate agent and earning

commissions from listings that he obtained from an independent source or that were otherwise “generally known” within the meaning of Paragraph 12 of the Independent Contractor and Brokerage Agreement (“Independent Contractor shall not, after the termination of this contract, use to his advantage, any ... information gained for or from files or business of Broker and not generally known.”). It is also worth noting that while Paragraph 12 of the Independent Contractor and Brokerage Agreement states that “all listings are the sole property of the Broker at all times”, it contains no similar statement as to any “leads” or other information.

Unfortunately, the Injunction Order does not explicitly incorporate Judge John’s ruling on this issue, but Defendant Barber has ordered the official transcript of the hearing and intends to file it upon receipt, which should be prior to the hearing on this Motion to Reconsider. Defendant Barber believes that a review of that transcript will confirm the extent to which Defendant Barber may utilize leads and other information obtained from independent sources or that are otherwise generally known, even if such leads appear in a database or listing of leads maintained and controlled by Plaintiffs.

By way of a couple of examples of how, in practice, the Contempt Order goes too far, one need only consider that Defendant Barber not only put himself, but also his parents, into a database maintained by Century 21 The Harrelson Group while he was working there⁷. Does that mean that Defendant Barber cannot represent his parents, or even himself, in a real estate transaction without being accused of contempt and being required to hold the commission in trust for the benefit of Plaintiffs? Surely that is not an equitable result, nor what was intended by Judge John when he issued the Injunction Order. Yet, by enacting a blanket prohibition on Defendant Barber’s

⁷ Defendant Barber and his parents have received marketing and business solicitation emails from Century 21 The Harrelson Group after Defendant Barber left Century 21 The Harrelson Group, which emails are similar in nature to the emails that Rob Safa and Susan Brown received from Defendant Barber. See Exhibit 5.

representation of anyone who appears in the Century 21 database, without undertaking a thorough examination of the true source of the lead/listing, the Court is effectively enacting an unlawful prohibition on Defendant Barber's ability to earn a living as a Realtor.

As a final consideration, it should be noted that the Contempt Order's requirement that Defendant Barber hold in trust all commissions earned from February 7, 2022, until final resolution of this action, is overly harsh and oppressive and provides Defendant Barber no means by which to pay his bills, taxes, or ensure a level of income to support himself and his family. Defendant Barber's work as a real estate agent is his only real means of income, and going without commissions for an indefinite period of time has great potential to cause him substantial and irrevocable harm. No trial date has been set in this case, and given the status of the litigation thus far, it seems that no trial date will be set for several months, at a minimum. Defendant Barber should not be deprived of his rightfully earned income and commissions during that time.

CONCLUSION

For all of the foregoing reasons, and upon all of the foregoing authorities, Defendant Barber respectfully requests reconsideration of the Contempt Order, and such other relief as justice may require.

This the 23rd day of December, 2022.

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)*

-and-

CLEMENT RIVERS, LLP

/s/ Jason A. Daigle

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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 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER** was served on all counsel of record in this action via email to the following addresses:

Amanda A. Bailey Taylor Kay Voegel BURR & FORMAN LLP P.O. Box 336 Myrtle Beach, SC 29578-0336 abailey@burr.com tvoegel@burr.com <i>Attorneys for Plaintiffs</i>	Russell M. Racine CRANFILL SUMNER LLP 2907 Providence Rd., Ste. 200 Charlotte, NC 28211 rracine@cshlaw.com <i>Attorneys for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc.</i>
Lawrence M. Hershon THE HERSHON LAW FIRM 1565 Sam Rittenberg Blvd., Suite 103 Charleston, SC 29407 lawrence@hershonlawfirm.com <i>Attorneys for Defendants eXp Realty, LLC and Darcy Varney</i>	Jason A. Daigle CLEMENT RIVERS LLP P.O. Box 993 Charleston, SC 29402 jdaigle@ycrlaw.com <i>Attorneys for Defendants Joel D. Barber (as to the Counterclaims only) and Barber Real Estate, Inc.</i>

This the 23rd day of December, 2022.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

Staples, Christian H.

From: Staples, Christian H.
Sent: Wednesday, October 26, 2022 5:03 PM
To: Voegel, Taylor; Bailey, Amanda
Cc: jdaigle@ycrlaw.com
Subject: RE: HSS Barefoot v. Joel Barber, et al.
Attachments: 17929343v1 - Consent Order Regarding ESI Protocol (Redlined by C. Staples 10-26-2022).DOCX

Taylor/Amanda,

Attached is a redlined Consent Order governing ESI. Starr Insurance switched adjusters on me (which I just found out late last week) but I am planning to speak with the new adjuster tomorrow regarding the retention of ATI/David Shelton to conduct the inspection as well as Starr's agreement to share the costs of the inspection. It's my expectation that I will have an update on those items for you no later than the end of this week, but I will keep you posted regardless.

Best,

Christian

From: Voegel, Taylor <tvoegel@burr.com>
Sent: Thursday, October 20, 2022 1:06 PM
To: Staples, Christian H. <cstaples@shumaker.com>
Cc: jdaigle@ycrlaw.com; Bailey, Amanda <ABailey@burr.com>
Subject: RE: HSS Barefoot v. Joel Barber, et al.

CAUTION: External Email

Christian,

Amanda and I have discussed the entities you proposed to conduct the inspection, and we agree with the use of your third recommendation, Advanced Technology Investigations, LLC (<https://detectiveati.com/>). Please send us a proposed scope of engagement, including your proposed split of the cost, and we will review and provide any edits. As expressed in my last email, if we cannot come to an agreement regarding the scope and terms of the inspection or the ESI protocol order by next Wednesday, October 26, we will have to file a Motion to Compel.

If you have any questions or concerns, please don't hesitate to let me know.

Thank you,

-Taylor

Taylor Voegel
Associate

2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107
fax 843-444-3968
tvoegel@burr.com
[Web](#)

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From: Voegel, Taylor
Sent: Wednesday, October 19, 2022 4:51 PM
To: Staples, Christian H. <cstaples@shumaker.com>
Cc: jdaigle@ycrlaw.com; Bailey, Amanda <abailey@burr.com>
Subject: RE: HSS Barefoot v. Joel Barber, et al.

Christian,

I am following up on my September 28th email regarding the proposed consent order for ESI protocol. I will be in touch soon regarding your below recommendations for conducting an inspection, but unless I missed it, I don't believe we've received your edits to the proposed order. Please circulate any suggested changes no later than Wednesday, October 26 so we can avoid filing a motion.

Thank you,

-Taylor

From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Thursday, September 29, 2022 1:42 PM
To: Voegel, Taylor <tvoegel@burr.com>
Cc: jdaigle@ycrlaw.com; Bailey, Amanda <ABailey@burr.com>
Subject: RE: HSS Barefoot v. Joel Barber, et al.

[EXTERNAL EMAIL]

Taylor,

I'll need to meet and confer with my client and Mr. Daigle regarding most of these issues, but here are the folks we would propose conduct the inspection:

<https://rosenltd.com/>

<https://detectiveati.com/>

Please let us know if you're agreeable to one or more of these companies.

Thanks

Christian H. Staples

Attorney at Law

SHUMAKER

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280

Direct 704.945.2183 | Fax 704.332.1197

cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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From: Voegel, Taylor <tvoegel@burr.com>

Sent: Wednesday, September 28, 2022 12:11 PM

To: Staples, Christian H. <cstaples@shumaker.com>

Cc: jdaigle@ycrlaw.com; Bailey, Amanda <ABailey@burr.com>

Subject: RE: HSS Barefoot v. Joel Barber, et al.

CAUTION: External Email

Hi Christian,

Thank you for your email. Attached is a Word version of the proposed consent order regarding ESI protocol. Let me know if you have any trouble accessing it.

Will you send the names of the other individuals you have in mind for conducting the inspection? As to the cost, in our experience, the inspection costs are typically split between the parties.

For the items to be inspected, we request an inspection of everything identified by Mr. Barber in his discovery responses, including his cell phone, laptop/computer, flash drive, Apple iCloud storage account, and CRM accounts, including Homebot, Real Geeks, and Infusion Soft, in addition to any and all other responsive devices or accounts Mr. Barber or Barber Real Estate may have ever used related to real estate, sales, or marketing from June 1, 2021 to the present. On that note, we also ask that you further identify these devices by providing the IP address, make, model, and year of each device. We are entitled to an inspection of those devices and accounts, and, as provided in Paragraph 8 of the draft proposed consent order, we are happy to discuss parameters of the search of these devices and accounts. If you have a list of search terms or other specifications you would like us to review and consider, please share those at your earliest convenience.

We are likely to consent to your request that the findings be submitted to you and Jason first to determine what may be subject to the confidentiality order. Please provide proposed language.

As for the timing of the inspection, we would like this done before Mr. Barber's deposition, which is currently scheduled for Tuesday, November 15. Alternatively, if the information cannot be produced prior to November 15, please confirm you will consent to holding the deposition open and permitting us to re-notice the deposition following the inspection.

Respectfully,

-Taylor

Taylor Voegel
Associate

BURR ∴
FORMAN LLP

2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107

fax 843-444-3968

tvoegel@burr.com

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From: Staples, Christian H. <cstaples@shumaker.com>

Sent: Tuesday, September 27, 2022 11:12 AM

To: Voegel, Taylor <tvoegel@burr.com>

Cc: Daigle, Jason <jdaigle@ycrlaw.com>

Subject: HSS Barefoot v. Joel Barber, et al.

[EXTERNAL EMAIL]

Taylor,

I received your voice message from yesterday. We will have some edits to your proposed consent order, so can you please recirculate that in Word version so that we can make those edits with track changes. Also, we need to have a discussion about who will conduct the inspection of Mr. Barber's devices. We do not agree to use Clark Walton given his prior involvement and communications with Plaintiffs in this matter. We have some other folks in mind who should not be objectionable, but we need to discuss who will be paying for this inspection. I think it's our position that since this is discovery requested by Plaintiffs that Plaintiffs should be paying for whatever costs and expenses are incurred. We also want to have a clear understanding and agreement on what will be inspected. I believe we are willing to submit Mr.

Barber's laptop, cellphone, and possibly a thumb-drive; however, we do not agree to the unrestricted inspection of Mr. Barber's online referral accounts and client management resources. Homebot has already produced documents in response to Plaintiffs' Subpoena. We would also insist that the inspection findings be relayed to Jason and I initially so that we have an opportunity to object to the production or to make appropriate confidential and attorneys' eyes only designations. Finally, it would be good to know your preferred timing of the inspection in relation to Mr. Barber's deposition on 11/15. I think it makes sense to depose him first and then presumably you'll have a better understanding of what you want to inspect, but let me know.

Best,

Christian

Christian H. Staples

Attorney at Law

SHUMAKER

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ELECTRONICALLY FILED - 2022 Dec 29 12:53 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

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.

**CONSENT 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. This order streamlines Electronically Stored Information (“ESI”) 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 Cc costs ~~will~~ may be shifted for disproportionate ESI production requests pursuant to Rule 26, SCRCP. Likewise, a party’s nonresponsive or dilatory

discovery tactics ~~will~~may be cost-shifting considerations under Rule 26, SCRCP. A party's meaningful compliance with this order and efforts to promote efficiency and reduce costs may also be considered in cost-shifting determinations. Any final determination regarding cost-shifting shall be decided by the court upon motion of the party or parties seeking to have costs shifted pursuant to this order.

~~4. A party's meaningful compliance with this order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.~~

~~5.4.~~ 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 whenever practical. The fields identified in **Exhibit A** shall generally be included in the production load file identified in Paragraph 6(a) if such fields exist. The parties agree 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.

~~6.5.~~ 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 unduly 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.

7.6. 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, and flash drives.

8.7. The parties further consent to the use of a mutually agreeable 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. The parties agree that 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, privilege, and irrelevance, pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and other applicable law. Counsel shall endeavor to complete such review and designation process and to release those documents not being withheld pursuant to a claim of privilege or irrelevance 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 upon request.

9.8. The parties have and will continue to take reasonable and proportionate steps to preserve evidence relevant to the issues in this action.

10.9. 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.

11.10. 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

ELECTRONICALLY FILED - 2022 Dec 29 12:53 PM - Horry - Common Pleas - Case#2022CP2601323

APPROVED:

s/

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Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280

s/

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Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

Attorneys for Defendant, Joel D. Barber

s/

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s/

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s/

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Cranfill Sumner LLP
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Charlotte, NC 28211

Attorneys for Defendants, Nicholas Fitzpatrick, James Ray Lunsford and NorthGroup Real Estate, Inc.

s/

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tvoegel@burr.com
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

Staples, Christian H.

From: Voegel, Taylor <tvoegel@burr.com>
Sent: Friday, October 28, 2022 9:09 AM
To: Staples, Christian H.
Cc: Bailey, Amanda; jdaigle@ycrlaw.com
Subject: RE: HSS Barefoot v. Joel Barber, et al.

CAUTION: External Email

Good morning Christian,

Thank you for your email. In order to keep this case moving, we will be filing a Motion for Contempt regarding the inspection of property and discovery responses. Of course, we will withdraw the motion if we can reach an agreement and otherwise resolve these discovery issues.

Respectfully,

-Taylor

Taylor Voegel
Associate

BURR ∴
FORMAN LLP

2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107

fax 843-444-3968

tvoegel@burr.com

[Web](#)

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From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Wednesday, October 26, 2022 5:03 PM

Staples, Christian H.

EXHIBIT 4

From: Lawrence Hershon <lawrence@hershonlawfirm.com>
Sent: Thursday, December 1, 2022 12:10 PM
To: Staples, Christian H.
Subject: RE: HSS Barefoot, LLC d/b/a Century 21 Barefoot, et al. v. Joel D. Barber, et al. - 2022-CP-26-01323

CAUTION: External Email**Christian:**

I have learned this morning that the table in my initial email below is not accurate. Apparently there was an accounting system change in April, which has caused some difficulty in putting this chart together, and also which allowed for some funds to be released. The chart in this email below shows which closings had funds released and which ones did not. Let me know if we need to discuss.

EXHIBIT 3 TO REPLY

Payment Held	Actual Close Date	Address	Sales Price	Agent Net Commission
X	4/4/2022	701 11th Ave S #B, North Myrtle Beach, SC 29582, US	\$ 345,000.00	\$ 8,215.00
X	3/29/2022	210 S Ocean Blvd #304, North Myrtle Beach, SC 29582, US	\$ 153,000.00	\$ 3,607.00
X	3/24/2022	4925 Pond Shoals Ct #201, Myrtle Beach, SC 29579, US	\$ 192,500.00	\$ 4,555.00
X	3/23/2022	208 Sancroft Ln, Myrtle Beach, SC 29588, US	\$ 295,000.00	\$ 5,835.00
	3/23/2022	6702 Jefferson Pl #F-1, Myrtle Beach, SC 29572, US	\$ 132,400.00	\$ 2,085.90
	3/23/2022	6702 Jefferson Pl #F-1, Myrtle Beach, SC 29572, US	\$ 132,400.00	\$ 2,615.50
		Total	\$	26,913.40
		Total Held	\$	18,605.00
		Total Released	\$	8,308.40

Lawrence M. Hershon, Esq.
The Hershon Law Firm, P.A.
1565 Sam Rittenberg Blvd., Suite 103
Charleston, SC 29407
(p) (843) 829-2022
(f) (843) 829-2023
lawrence@hershonlawfirm.com
www.hershonlawfirm.com

EXHIBIT 3 TO REPLY

EXHIBIT 4

Market Report Update – www.c21theharrelsongroup.com

 The Harrelson Group | Century 21 <harrelsongroup-DJg3k@property-updates.com> [Unsubscribe](#) Tue, Nov 1, 8:57 AM   

Hello Joel,

We've generated a new market report for you. Click below to view it:

[Market Report: Bluffs sales](#)

We'd be happy to provide a more detailed analysis at any time.

Thank you for using our real estate search engine. It has every property for sale and is updated daily by the official Real Estate Listing Database, the MLS. We look forward to helping you with all your real estate needs.

Feel free to give me a call or email if you're interested in a custom market analysis of your property. I'm here to help.

Century 21 The Harrelson Group

Agent Liaison

www.c21theharrelsongroup.com

Office: 843-491-4619

To unsubscribe instantly: Click below to opt out and stop receiving updates:
[Opt Out](#)

 Reply

 Forward

Original message

From: Greg Harrelson <greg@myrtlebeachrealestate.com>
To: dbarber170@aol.com
Sent: Mon, Feb 28, 2022 10:00 am
Subject: 3 Costly Mistakes Property Owners Are Making (MB)

Hello Don and Karen,

Along Myrtle Beach, we are seeing a strong real estate market yet some property owners are underpricing their properties and leaving money on the table.

Please be careful...

1. In a hot real estate market, a lot of people get real estate license to make some quick money. They typically do not have market experience and convince sellers to list a too low of a price.
2. Agents will often take a short cut and go cheap on photos. Unprofessional photos will attract less showings and less offers. This equates to lower demand and ultimately a lower price.
3. Too many owners are trusting the Online Price Estimates and not verifying the accuracy. These online tools are helpful but should not be relied on to determine a selling price. I see a lot of owners losing money because they do not verify their values.

If you find yourself in a position of wanting to know what your property will sell for, please let me know so I can give you an accurate assessment of the market and make sure you are able to maximize your selling price.

You can avoid leaving money on the table by being informed.

Let me know how I can help you in the future.

Your Realtor,

Greg Harrelson

(843) 457-7816

Staples, Christian H.

From: Bailey, Amanda <ABailey@burr.com>
Sent: Wednesday, April 19, 2023 1:38 PM
To: Staples, Christian H.
Cc: Voegel, Taylor; Badami, Christine; Gilliam, James
Subject: RE: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

CAUTION: External Email

We consent.

I will be touching base with you on the ESI on Friday or early next week.

Amanda Bailey

Partner



2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107

fax 843-946-5962

abailey@burr.com

[Web](#)

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From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Wednesday, April 19, 2023 12:39 PM
To: Bailey, Amanda <ABailey@burr.com>
Cc: Voegel, Taylor <tvoegel@burr.com>; Badami, Christine <CBadami@burr.com>
Subject: FW: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

[EXTERNAL EMAIL]

Amanda,

EXHIBIT 4 TO REPLY

Just following up on the inspection/ESI. I believe you were going to send me a list of items and CRMs you want to inspect. Please let me know where things stand so we can try to move this forward.

Also, I need to request a further extension of time on my initial appellate brief and designation. The current deadline is May 1. Please let me know if you are able to consent or intend to oppose this request so that I can state your position in the motion.

Thanks

Christian H. Staples

Attorney at Law

SHUMAKER

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280

Direct 704.945.2183 | Fax 704.332.1197

cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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From: Staples, Christian H.

Sent: Wednesday, April 5, 2023 7:06 PM

To: 'Bailey, Amanda' <ABailey@burr.com>

Cc: Voegel, Taylor <tvoegel@burr.com>; Badami, Christine <CBadami@burr.com>; Daigle, Jason <jdaigle@ycrlaw.com>

Subject: RE: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

Amanda,

In advance of our call tomorrow, please see the attached redlined and clean versions of the ESI Protocol. This is based off the redline I sent you on 10/26/22. I have not discussed this with Jason or my clients, so the revisions are for discussion purposes only at this point. Mostly I have tried to align it with Judge Seals' ruling, to clarify the apportionment of costs, and limited it to our respective clients.

Also, I know I owe Taylor a response on her request for an extension of time to respond to the Writ of Supersedeas. I am speaking with the adjuster at Starr tomorrow morning before our call, so I want to speak with him first, and then I will send you my response. I don't imagine I will object, but I want to make sure he and I are on the same page first. Appreciate your understanding.

I will call you on your office line tomorrow at 11:30am.

Best,

Christian

From: Bailey, Amanda <ABailey@burr.com>

Sent: Monday, April 3, 2023 6:14 PM

To: Staples, Christian H. <cstaples@shumaker.com>

Cc: Voegel, Taylor <tvoegel@burr.com>; Badami, Christine <CBadami@burr.com>; Daigle, Jason <jdaigle@ycrlaw.com>

Subject: RE: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

CAUTION: External Email

Yes, was in depositions last week. I can do Thursday after 11 a.m.

Amanda

Amanda Bailey
Partner



2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107

fax 843-946-5962

abailey@burr.com

Web

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From: Staples, Christian H. <cstaples@shumaker.com>

Sent: Monday, April 3, 2023 5:52 PM

To: Bailey, Amanda <ABailey@burr.com>

Cc: Voegel, Taylor <tvoegel@burr.com>; Badami, Christine <CBadami@burr.com>; Daigle, Jason <jdaigle@ycrlaw.com>

Subject: Re: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

I thought we were, but you never got back to me last week. How about a call this Thursday?

Sent from my iPhone

Christian H. Staples
Attorney at Law

SHUMAKER

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280
Direct 704.945.2183 | Fax 704.332.1197

cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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On Apr 3, 2023, at 5:17 PM, Bailey, Amanda <ABailey@burr.com> wrote:

CAUTION: External Email

Christian, given the petition for supersedeas filed today, are we still working toward a potentially partial resolution a portion of this appeal regarding the ESI and devices? If so, we can reschedule a call.

Amanda

Amanda Bailey
Partner

BURR 
FORMAN LLP

2411 Oak St., Suite 206
Myrtle Beach, South Carolina 29577

main 843-444-1107
fax 843-946-5962
abailey@burr.com
[Web](#)

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From: Staples, Christian H. <cstaples@shumaker.com>
Sent: Tuesday, March 28, 2023 2:16 PM
To: Bailey, Amanda <ABailey@burr.com>; Voegel, Taylor <tvoegel@burr.com>
Cc: Badami, Christine <CBadami@burr.com>; Daigle, Jason <jdaigle@ycrlaw.com>
Subject: FW: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

[EXTERNAL EMAIL]

Amanda and Taylor,

Below and attached is the extent of my communications with David Shelton. We have not engaged him in any capacity, nor has he been privy to any privileged or confidential information. As discussed, we propose that he perform the inspection of Mr. Barber's devices pursuant to your discovery request.

Please send me a calendar invite for whatever time on Thursday works for you so that we can continue to move this forward.

Thanks,

Christian

Christian H. Staples
Attorney at Law

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280
Direct 704.945.2183 | Fax 704.332.1197
cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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From: David Shelton <david@detectiveati.com>
Sent: Friday, October 28, 2022 11:23 AM
To: Staples, Christian H. <cstaples@shumaker.com>
Subject: RE: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

CAUTION: External Email

Thank you.

My best,
David Shelton
C)DFE, CCFE, C|HFI, CCII

NC PI License: 3578
NC CI License: 175

Advanced Technology Investigations, LLC
8 Dundas Circle, Suite H
Greensboro, NC 27407

Office: 336-298-1556 **Toll Free & Fax:** 888-274-5701
Website: <http://detectiveati.com>

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----- Original Message -----

On Friday, October 28th, 2022 at 11:19 AM, Staples, Christian H. <cstaples@shumaker.com> wrote:

Ok, thank you. Let me discuss with my folks and we'll get back to you.

Christian H. Staples
Attorney at Law

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280
Direct 704.945.2183 | Fax 704.332.1197
cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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From: David Shelton <david@detectiveati.com>
Sent: Friday, October 28, 2022 11:11 AM
To: Staples, Christian H. <cstaples@shumaker.com>
Subject: Re: Joel D. Barber - inquiry for possible retention for forensic exam of electronic devices

CAUTION: External Email

Hello Christian,

I'm sorry I missed your phone call earlier this week. To your question, the \$5000.00 will cover the copying of the 3- devices listed in your previous email. Once I start the keyword searches and report building that will be at the \$185.00 an hour rate. I don't see any reason why it would go over another \$5000.00, and if I do see anything that may cause that I would let you know right away.

My best,

David Shelton

C)DFE, CCFE, C|HFI, CCII

NC PI License: 3578

NC CI License: 175

Advanced Technology Investigations, LLC

8 Dundas Circle, Suite H

Greensboro, NC 27407

Office: 336-298-1556 **Toll Free & Fax:** 888-274-5701

Website: <http://detectiveati.com>

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----- Original Message -----

On Thursday, August 25th, 2022 at 1:18 PM, Staples, Christian H.

<cstaples@shumaker.com> wrote:

Hi David,

Thanks for speaking with me earlier.

My client is Joel D. Barber. The case number is 2022-CP-26-01323 pending in Horry County, SC.

Adverse parties (Plaintiffs) include 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. Plaintiffs are represented by Amanda Bailey with the Burr & Forman law firm in Myrtle Beach.

Co-Defendants include Darcy Varney; EXP Realty, LLC; Barber Real Estate, Inc.; Nicholas Fitzpatrick; James Ray Lunsford; and Northgroup Real Estate, Inc.

The principal ask will be for you to conduct a forensic exam of Mr. Barber's laptop, cell-phone, and thumb-drive storage device in connection with Plaintiffs' request for inspection under Rules 34 and 35. I have attached a proposed Consent Order Regarding ESI Protocol, which addresses the procedure to be used to conduct the forensic exam. If we decide to move forward together, I would like to get your thoughts on the proposed Order in terms of anything we may want to remove, add, or change. The Order was prepared by Plaintiffs' counsel.

I will request the make/model and storage size of the devices from my client. His father just passed away so it may be next week before I have that info for you.

In the meantime, I would appreciate it if you could confirm that you are clear on conflicts, send me your fee schedule, and any other preliminary documents we need to address in connection with your retention/engagement for this work.

Let me know if you need anything else from me.

Thank you!

Christian H. Staples
Attorney at Law

EXHIBIT 4 TO REPLY

101 South Tryon Street, Suite 2200 | Charlotte, North Carolina 28280

Direct 704.945.2183 | Fax 704.332.1197

cstaples@shumaker.com | [bio](#) | [LinkedIn](#)

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EXHIBIT 5 TO REPLY

State of South Carolina)
) Court of General Sessions
County of Horry) 2022-CP-26-01323

HSS Barefoot, LLC, et al.)
)
 vs.) Transcript of Record
)
Joel D. Barber, et al.)

January 3, 2023
Horry, South Carolina

B E F O R E:

The Honorable William H. Seals, Jr., Judge.

A P P E A R A N C E S (All present by video or telephone):

Amanda Bailey, Esq.
Taylor Voegel, Esq.
Attorneys for the Plaintiffs

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
Attorneys for the Defendant Joel Barber

Tamara Bentzur
Transcriber



1 THE COURT: Good afternoon.

2 UNIDENTIFIED SPEAKER: Good afternoon, Judge.

3 MR. STAPLES: Good afternoon.

4 THE COURT: I'm ready whenever you are.

5 MR. STAPLES: All right. Well, good afternoon, Judge
6 Seals. My name is Christian Staples. I represent the
7 defendant Joel Barber. I'm at the law firm of Shumaker, Loop
8 & Kendrick in Charlotte. Jason Daigle, another attorney here
9 on the Zoom call today also represents defendant Barber
10 personally and with respect to Mr. Barber's counterclaims.

11 I believe the only motion that's really been noticed for
12 today is the motion to reconsider a prior order granting
13 plaintiffs' motion for contempt with respect to defendant
14 Barber. And I'm prepared to go forward with that today, but I
15 did want to make the Court aware of some -- there's really
16 been a flurry of filings since we filed the motion to
17 reconsider about five weeks ago.

18 There have been a number of affidavits, mostly
19 supplemental affidavits from witnesses or the parties that
20 have already given affidavits. There's been legal briefs.
21 There's also been additional motions including a discovery
22 motion, a second motion for contempt filed by the plaintiffs
23 that was filed today. And then there's been a prior
24 discussion about continuing this hearing until all of the
25 pending motions could be heard together.

1 That was a discussion that was had via email a few days
2 before the Christmas break and then continuing on that week
3 after Christmas. Plaintiffs initially requested that
4 continuance. And then apparel reneged on it after they found
5 out that the continued date would not be until March 20th.

6 I understand Your Honor ruled that the motion to
7 reconsider should go forward today, but I do want to renew
8 that motion for continuance primarily in light of the fact
9 that plaintiffs have now filed a second motion for contempt.
10 So that puts us in sort of the position where we're going to
11 argue a reconsideration of a prior contempt order. But then,
12 sort of regardless of what the ruling is we're going to have
13 to come back on this second motion and argue it all over
14 again.

15 And that just -- I mean, obviously, that wastes judicial
16 resources. That really increases the cost -- litigation costs
17 of the parties. And I just don't think there's any unfair
18 prejudice that's going to result if this is continued until
19 March 20th. And so I want to make that request. I don't know
20 if -- I don't really have any argument to go along with it. I
21 did file a formal motion this morning just so it would be in
22 the record because, again, the prior requests were mostly just
23 handled by email.

24 But I don't think there's going to be any opposition to
25 that from anyone than perhaps the plaintiff. I know Mr.

1 Recine (phonetic) has indicated in an email to the clerk that
2 he's willing to do that. So I just think that would be the
3 most prudent way to proceed, giving the pending motions and
4 the overlap of issues not only in the contempt motions but in
5 the discovery motions that have been filed primarily relating
6 to this inspection of electronic devices that Mr. Barber has,
7 his laptop, his cell phone, his thumb drive, and that sort of
8 thing.

9 MS. BAILEY: Judge I can see you speaking, but we cannot
10 hear you.

11 THE COURT: How about now?

12 MS. BAILEY: Yes. Thank you.

13 THE COURT: I'll be glad to hear from you, Ms. Bailey.

14 MR. STAPLES: I'm sorry. I didn't mean to cut you off,
15 Judge. I couldn't hear you.

16 MS. BAILEY: Thank you, Your Honor. Thank you, Your
17 Honor. On the request for a motion for continuance, we did --
18 we do, and we did object to any motion for a continuance. We
19 had originally requested the Court hear some other motions at
20 the same time that were previously filed. But those are
21 motions that can be heard by another judge. It's this motion
22 for reconsideration that has to be heard by you, Your Honor,
23 because it is a motion for reconsideration of your current
24 order.

25 So given the order that was granted in the contempt

1 order, which was that the electronic information, the devices,
2 databases, and cloud-based or really any type of data that is
3 stored by Mr. Barber be turned over for inspection within 15
4 days, that the funds be held in trust related to any
5 commissions after the contempt order, and that the original
6 injunction continue until the end of the case, as it was
7 originally ordered -- none of those actions have been complied
8 with.

9 And my clients have been continuously damaged by one, the
10 original access to and ongoing use of data that was taken
11 improperly from them by Mr. Barber. Based on the deposition
12 testimony, that information has been shared, and is continuing
13 to be accessed. And so to continue this does continue to
14 damage my clients.

15 And this contempt order should not be overturned. We're
16 prepared to argue that today. It should not be modified. If
17 there's an issue related to the ESI, it's already protected by
18 the confidentiality and protective order. All of these
19 matters can be addressed and argued today, but it should not
20 be continued.

21 The other motions can be heard by another judge. The
22 subsequent motion for contempt that was filed this morning is
23 based on new actions. So we're not just citing the matter
24 multiple times. We're citing new factual issues.

25 THE COURT: Well, let's go ahead and hear the motion to

1 reconsider.

2 MS. BAILEY: Thank you, Your Honor.

3 MR. STAPLES: All right. Your Honor, with all due
4 respect, we filed this motion to reconsider because we believe
5 that the prior contempt order fails to account for several
6 things and should be reconsidered.

7 Now, I've filed a memorandum of law in support of that
8 motion to reconsider, so there's been some other filings as
9 well. I believe a third affidavit from defendant Barber, I'll
10 go through that, but I just want to highlight the fact that a
11 lot of what I'll say today has been in written filings with
12 the Court.

13 But the first issue is the actual finding of contempt we
14 contend was premature. Discovery in this case is still
15 ongoing. There's only been one deposition taken, and that's
16 been of defendant Barber. Plaintiffs' counsel has indicated
17 that she has at least another handful of depositions that she
18 wants to take.

19 The parties were supposed to have mediated last month
20 but, of course, that didn't happen because we've had so much
21 litigation ongoing with respect to allegations of contempt.
22 We just -- we feel that the discovery process needs to play
23 out further because, essentially, what this boils down to is
24 whether certain MLS listings -- listings of houses for sale or
25 properties for sale or buyer representation that Mr. Barber

1 has undertaken were ultimately obtained through ill-gotten
2 means.

3 The allegation is that on the early morning hours of
4 February 7th of 2022 Mr. Barber, who was employed as an
5 independent contractor and a real estate agent for Century 21
6 accessed the Century 21 facility, downloaded or otherwise
7 accessed lead information that he was not entitled to. He was
8 terminated the very next day.

9 We vehemently deny that he's used any ill-gotten
10 information. Mr. Barber has filed affidavits saying that he
11 has not used any of that information. We have gone through
12 this fourth affidavit of Greg Harrelson. Identifies
13 approximately 100 MLS listings that they contend were
14 improperly obtained by Mr. Barber.

15 Mr. Barber has filed a spreadsheet, which identifies
16 every listing, explains how he obtained the lead, and also
17 includes whatever documentary proof he has readily available
18 to confirm that. We've also supplemented that with an
19 affidavit from a woman named Sandra Shergen (phonetic). She
20 has two of the properties that are at issue. She swears that
21 defendant Barber contacted her last August, several months
22 after he was disassociated from Century 21.

23 So these are -- we think what's essentially happening
24 here, Your Honor, is plaintiffs are using this temporary
25 injunction to litigate the case. It's the very as to whether

1 or not he's in contempt is the ultimate issue for the jury as
2 the finder of fact. There's competing issues of credibility
3 because there's wholly contradictory affidavits from defendant
4 Barber and plaintiffs Harrelson and Mills (phonetic).

5 And so in order to find him in contempt, you essentially
6 have to find that he's not a credible witness, or he's lying,
7 or that he's less credible than the other witnesses. And the
8 contempt order doesn't make any of those findings. And so we
9 think that's problematic.

10 But plaintiffs' evidence can really be divided into three
11 parts. They contend there was two individuals that were
12 improperly contacted by defendant Barber: Abe Saffa and Susan
13 Brown. They then cite the approximately 100 MLS listings.

14 We've proven that none of those instances are
15 contemptuous. We submitted the affidavit that clearly spells
16 out how he obtained Abe Saffa's email address. It was clearly
17 after he left Century 21. Defendant -- the plaintiffs don't
18 seriously contest that.

19 As to Ms. Brown, you've really got to look at the time
20 line. Defendant Barber subscribed to a service called
21 Vulcan7, which is a lead-generating service that I think
22 probably every real estate agent uses. That occurred several
23 months prior to the allegations of theft from the Century 21
24 facility.

25 Defendant Barber was an independent contractor. He paid

1 for that subscription. He received those leads directly to
2 this personal email account. Century 21 did not give him that
3 lead. They didn't pay for it. They didn't give it to him.

4 I think the analogy -- I don't know if Your Honor has
5 seen the movie Glengarry Glen Ross. This isn't like the
6 situation where Barber shows up for work, and Harrelson and
7 Mills hand him a card with ten names written on it. These are
8 not Century 21 leads, at least with respect to Ms. Brown. Ms.
9 Brown is actually a real estate agent that works at Century
10 21.

11 So and you actually read her affidavit, I think the
12 communication she complained of, most of which are actually
13 prior to the temporary injunction. And so it's not a
14 retroactive injunction. You can't be held in contempt for
15 violating an order that doesn't exist. I think at best she
16 received one email from him after the injunction was issued.
17 But again, it was the type of sort of generic, auto-generated
18 email that just said hey, I might have information about your
19 property valuation. I don't think it's fair or really what
20 the injunction was designed to prevent with respect to Ms.
21 Brown.

22 And again, as to the dozens or 100 MLS listings, I'd
23 really encourage you to review the third affidavit of Joel
24 Barber, that spreadsheet, and all the information we've
25 submitted about how he obtains those leads. I think there was

1 even like maybe 15 instances where defendant Barber actually
2 got his clients to sign a document indicating how they made
3 contact with him.

4 And so it can't be both ways. You know, Your Honor, it
5 can't be that Joel Barber stole the lead from Century 21 but
6 then at the same time the client reached out to him about
7 listing the property.

8 We've obtained the transcript of the injunction hearing
9 before Judge John. And it's really kind of amusing. I mean,
10 this is exactly the scenario that Judge John predicted. That
11 every time Mr. Barber gets a listing Century 21 is going to
12 show up and say oh, their name is in our database, so you're
13 prohibited from using that.

14 Well, Judge John made it clear that just because a name
15 appears in the Century 21 database does not mean it's a
16 violation. What he held was that the information Mr. Barber
17 gained access to by being and working with the plaintiffs --
18 so there has to be some actual connection to Century 21 as the
19 source of that lead.

20 If defendant Barber subscribes to a service independent
21 of any employment, it wouldn't matter, he could be employed by
22 EXP Realty, North Group Realty, Century 21. He is subscribing
23 as an individual using his own funds, so if he receives that
24 lead that's his lead.

25 But the other problem we have with the contempt order, it

1 really goes beyond the scope of the injunction. What Judge
2 John ruled was that he was not granting an inspection of
3 devices. He ruled that that was a matter for a discovery
4 motion's practice. And here we are; it's at issue in a
5 discovery motion but that motion's not been noticed for
6 hearing today.

7 And so we essentially sort of backdoored the discovery
8 process because the contempt order requires an inspection of
9 devices. It completely preempts the pending motion on that.
10 It preempts parties' agreement, prior agreement -- I've
11 addressed all this in my brief. We agreed on who would
12 conduct the inspection. It was a man named David Shelton out
13 of Greensborough. Now, the plaintiffs -- so they want to have
14 their own designated and retained expert conduct the
15 inspection.

16 But they've already agreed to use someone else. And so
17 we don't -- it's not that we're fighting having the inspection
18 proceed, but there've got to be the parameters in place to
19 protect attorney-client privilege, Fifth Amendment concerns or
20 potentially incriminating information. At defendant Barber's
21 deposition he was instructed not to answer a number of
22 questions. We've got a motion pending on that, an active
23 protective order over those questions.

24 Judge John ruled that he was not placing a burden on
25 defendant Barber to notify the plaintiffs of any listings or

1 commissions. And so I think if you -- I'd encourage you to
2 read it. It's the last few pages of the transcript where
3 there's some dialogue back and forth. I wasn't there.
4 Attorney Jason Daigle was there. But there's dialogue back
5 and forth between him and Judge John about this very thing.
6 About how plaintiffs are undoubtedly going to accuse him of
7 being in contempt, and it will be the duty of defendant Barber
8 to show that he had obtained that lead from some independent
9 source or through information that is generally known.

10 If you go on Zillow.com, or if he browses the MLS
11 listings for listings that are for sale by owner, or expired
12 listings. That's all fair game. I apologize. I'm hoarse,
13 Your Honor. I'm battling a cold, and the medicine is making
14 my mouth dry.

15 But I think -- so my argument one is that really any
16 ruling on contempt really ought to be held open until the
17 parties can complete discovery. But I think we've submitted
18 enough evidence to show that it really comes down to fact
19 issues and credibility issues that ought to be reserved for
20 the jury. It's the ultimate issue in the case.

21 Finding of contempt now prejudices our defense of the
22 case. And it doesn't give us an opportunity to explain really
23 where these leads came from. But if you don't agree with
24 that, I do think there need to be some significant
25 modifications to the contempt order outlined in sections 2 and

1 3 of my brief that was filed.

2 We think that the expert that conducts the inspection
3 ought to be independent. If it's not David Shelton that the
4 parties already agreed on, it ought to be someone else that
5 has not been retained by either party. The results of those
6 inspection ought to be communicated only to counsel for
7 defendant Barber in the first instance so that we have an
8 opportunity to review and to mark appropriate designations of
9 confidentiality, attorneys' eyes only, Fifth Amendment
10 privilege against self-incrimination.

11 We've already agreed to a confidentiality order that
12 outlines that procedure. But again, the contempt order as
13 written completely backdoors that process. It's just going to
14 turn over everything to plaintiffs' expert, to plaintiffs'
15 counsel. And we're not going to have any opportunity to mark
16 confidentiality. Once the cat's out of the bag, you can't put
17 it back in, so that's a huge concern that we have.

18 The other concern kind of relates to the trust or escrow
19 procedure for the commissions. And the contempt order I think
20 is a little bit vague or at least sort of noninstructive as to
21 how that exactly should occur. It would purport to be
22 retroactive all the way back to February 7th of last year.

23 That's problematic from an accounting standpoint because
24 defendant Barber hasn't been segregating commissions from
25 other funds. I mean, he's married, probably got a joint bank

1 account with his wife. I mean, it would be sort of complex to
2 go back and trace those old commissions.

3 On the other hand, you've got EXP Realty, a defendant in
4 this case, a former employer of defendant Barber. They are
5 withholding certain commissions that are payable to Mr.
6 Barber. And so Mr. Barber has no way to control what EXP does
7 with those funds. He can't hold them in trust or escrow.

8 And the other problem, Your Honor, and I think probably
9 the most important problem is that by requiring him to hold
10 all his commissions in trust, he has no means to fund his
11 lifestyle. Right? He can't pay his mortgage, can't pay his
12 bills, can't pay his car bill, can't pay taxes. I mean, I
13 don't know what his financial situation is, but you're
14 basically saying every dollar you earn from being a real
15 estate agent, which is his only mean, real means of income,
16 has got to be held in trust and not used.

17 And we don't have a trial date in this case. I mean,
18 that could be years from now before it's settled and could go
19 on appeal or anything. Plaintiffs try to make a big stink
20 about how they show these bank statements showing that he
21 withdrew 300,000 dollars or something like that. Well, first
22 of all, that's not a violation of the order because there's no
23 prohibition on transfer. It doesn't say it's got to be held
24 in any particular account.

25 And actually, why he did that -- he actually did that in

1 order to comply with the order, so that he transferred it to a
2 new account so that his commissions could be held there. I
3 think it's a higher interest-earning account. So that he
4 could at least maybe live off the interest if he's not going
5 to be entitled to access those commissions.

6 So I think at a very bare minimum, Your Honor, if the
7 order is not either overturned or held open pending completion
8 of discovery, there need to be some safeguards put into place
9 to protect privilege and confidentiality as well as Fifth
10 Amendment. And we just think that he really ought to be
11 entitled to have his day in court in front of the jury on
12 these issues. It's the same issue we're going to be having a
13 trial about as to whether or not he's accessed improper leads
14 and that sort of thing.

15 I do want to give Jason Daigle an opportunity to speak.
16 I don't know if he has anything to add.

17 MR. DAIGLE: Your Honor, Jason Daigle again for Joel
18 Barber. I was at -- I defended Mr. Barber in the injunction.
19 The injunction hearing was about allegedly illicitly accessed
20 information. It was not about the general practice of real
21 estate. It was not about leads that Joel got himself. It was
22 about illicit -- the alleged illicit obtaining of information
23 from other peoples' databases and other peoples' computers.

24 It had nothing to do with the independent contractor
25 agreement that is at issue in this case. That is the point of

1 this case. That is why we are litigating the case is that
2 independent contractor agreement.

3 And what the injunction did was prevent Mr. Barber from
4 using information that he allegedly got illicitly. And if you
5 look at the wording of that injunction it says that he can't
6 use information he got from Century 21, not while he was
7 employed there, from Century 21. So if he was just there and
8 was obtaining that information elsewhere, there's no
9 prohibition to him using it.

10 Ms. Bailey specifically asked for production of cell
11 phone, ZIP drives, laptops, things like that in the
12 injunction. Judge John specifically declined to put that in
13 there. And now, she's trying to backdoor the civil procedure.
14 She's trying to backdoor discovery rules and have us produce
15 it in sanctions for an injunction that it wasn't included to
16 begin with.

17 You can't have a sanction that makes the injunction
18 broader. Judge John specifically said I'm not putting that in
19 there. Now, she's asking for it in a sanctions hearing.

20 Additionally, she also asks that Joel, Mr. Barber notify
21 the defendants of all the commissions and all the sales that
22 he's made. Judge John specifically declined to put that in
23 there. And now, she's somehow got you to sign an order that
24 has him sequester and put those commissions in escrow, which
25 is effectively doing -- going further and even broader than

1 Judge John declined to put in the injunction.

2 She's trying to short circuit the litigation. She's
3 trying to throw the rules of discovery out the window. And
4 frankly, the sanctions that were ordered go way beyond the
5 scope of the injunction, the intent of the injunction. The
6 intent of the injunction was only to deal with the allegedly
7 illicit -- illicitly obtained information.

8 As far as the production of any cell phones and databases
9 and laptops, again, that -- Ms. Staples has already addressed
10 that. We almost came to an agreement on that. We can't
11 let -- we can't produce those. We know they contain
12 privileged information, attorney-client privilege information.
13 We cannot tell him to produce those without us seeing
14 everything that's on there first, especially to Ms. Bailey's
15 expert.

16 We've hired -- we have already identified a third party
17 who is going to pull that information off and give it
18 Christian and I so that we can pull things for privilege, for
19 attorney-client privilege. We will knowingly be producing
20 privileged documents if we comply with the contempt order as
21 written.

22 MR. STAPLES: And the order -- the prior confidentiality
23 order lays out a process for if there's a dispute over that.
24 You know, if we mark something confidential, we have to
25 provide a privilege log that explains in enough detail as to

1 what it is so that plaintiffs' counsel can assess that
2 privilege. And if they disagree with it, then we'll come back
3 to court. But as it's written, it completely throws all that
4 out of the window.

5 MR. DAIGLE: And lastly, Your Honor, Ms. Bailey's been
6 pounding the table that her client's damaged, her client's
7 damaged, her client's damages. They're not. They're not
8 damaged. This is -- this has to do -- this isn't the Coca-
9 Cola formula. What we're talking about here are people, human
10 beings that live in and around Horry County. That's public
11 information that's easily accessed by a variety of people, by
12 organizations, by lead generators, one of which or several of
13 which Mr. Barber actually subscribed to.

14 And just because somebody is in their database does not
15 mean that it was stolen from them. If you go to any real
16 estate agency in Myrtle Beach or in Horry County, they're
17 going to have so many overlapping names it'll make your head
18 spin. There's no -- they don't own -- there's nothing
19 proprietary about those leads. There's no trade secrets about
20 those leads. Those are just people that live in Horry County.

21 THE COURT: Can you reply to that?

22 MS. BAILEY: Thank you, Your Honor. Your Honor, a couple
23 of just procedural arguments. The defendant Barber is
24 attempting to use this motion for reconsideration to provide
25 the Court with new evidence that was not previously presented

1 at the original contempt hearing. That is improper and not
2 properly before the Court on a motion for reconsideration.

3 A motion for reconsideration should be limited to the
4 arguments and the evidence that was presented to the Court at
5 the time of the motion for contempt.

6 In addition, just another procedural argument, this Court
7 could deny this motion for reconsideration solely on the
8 grounds that Rule 59(g) was not complied with. We've not seen
9 any evidence that this motion was served on the Court. And I
10 think that's proper grounds to deny simply procedurally.

11 On the substance of the arguments, I do want to point
12 Your Honor to a memoranda in reply that was filed by the
13 plaintiffs in opposition to this motion for reconsideration.
14 A number of arguments were made by the plaintiff in opposition
15 to this motion to reconsider, specifically some things that
16 were misstated or misrepresented to the Court by the defendant
17 Barber.

18 First off, I'd like to point a couple things that were
19 misstated here today. One is is that the temporary injunction
20 that was granted by Judge John resulted in an order that was
21 circulated to all counsel of record. Based on the specific
22 instructions of Judge John, all counsel of record were allowed
23 to comment on the order. And if there were any disputes
24 related to the language of the order, they were to be resolved
25 with counsel before it was submitted to Judge John.

1 If there were any disputes related to the order that
2 could not be resolved, they were to be raised to Judge John.
3 Nothing like that happened in this case. An order was
4 circulated. An order was ultimately presented to the Court.
5 Judge John signed the order. The order is a final injunction.
6 There has been no motion for reconsideration and no appeal
7 from that injunctive relief. That order is a final order
8 related to that temporary injunction.

9 To the extent that they are arguing that Judge John found
10 something different than what that final injunction -- that
11 what that temporary injunction ordered, they're arguing dicta.
12 It is not contained in the order. They are also misstating
13 what Judge John ruled. That transcript is in front of you.
14 He ruled that defendant Barber is enjoined from using any
15 information to which Barber gained access to by being an
16 independent contractor and working with any of the plaintiffs.
17 Not information he received from the plaintiffs. That's just
18 a simple misstatement of what is ruled upon.

19 So what we presented to the Court in the original
20 contempt order was evidence that Mr. Barber used information
21 that he gained access to by being an independent contractor
22 and working with the plaintiffs. That is during the time
23 period that he did so from March 14th, 2017 to February 7th,
24 2020. This is based on the affidavits of both Sandra Brown,
25 Abe Saffa, and Greg Harrelson, as well as the multiple other

1 affidavits that were previously in the file.

2 Based on these affidavits, not only was Mr. Barber using
3 information that he had gained access to, but he was also
4 contacting leads. So both of those were in violation of the
5 contempt order. We went on to take a deposition of Mr.
6 Barber, and Mr. Barber is attempting to use his withholding of
7 information, both as a shield in this case and as a sword in
8 this case. So we took his deposition, and we've submitted in
9 support of this opposition to the motion to reconsider as well
10 as in support of the contempt the deposition excerpts of Mr.
11 Barber not only where he's simply declined to answer; he was
12 instructed not to answer on no grounds. He just was told not
13 to answer, and he did not answer. And he declined to answer
14 questions specific to whether or not he downloaded information
15 from Century 21, whether or not he retained information from
16 Century 21, and whether or not he deleted information from
17 Century 21.

18 All of those he was instructed not to answer on. They
19 are now claiming that he was instructed not to answer on the
20 grounds of the Fifth Amendment privilege against self-
21 incrimination. They didn't do so at the deposition but they
22 do so now. And Your Honor, to the extent that they do so now,
23 Your Honor is the finder of fact in this motion for contempt.
24 This is not a summary judgment standard. This is not a
25 standard related to something that should be submitted to the

1 jury. This is a question about whether or not Mr. Barber
2 violated the terms of the injunction that is not under appeal,
3 that is a final order of this Court.

4 And based on the instructions not to answer, they're
5 saying wait, wait, wait, they can't prove it because -- they
6 can't prove it. They don't have enough information to prove
7 it, but we're not going to give it to you. We're not going to
8 tell you what it is. But you can't prove it. And they went
9 ahead and put that in their memo. They said in their
10 memoranda -- they said not only -- what their allegation is is
11 that we didn't prove it, but we can't prove it because we
12 don't have that information.

13 Well, quite frankly, that's just false. We can prove it
14 based on our own information that we've supplied and what
15 Judge John advised in his dicta in the hearing was that
16 plaintiffs can show a violation of the injunction by evidence
17 of information in their database. It then falls -- the burden
18 then falls to the defendants to prove that they one, didn't
19 use it, or two, didn't have it.

20 And in this case, they didn't meet their burden. We
21 proved that this information was in our database. We proved
22 that this information was taken from our database. And we
23 proved that this information was being used from our database
24 including information that was gained access to. All of this
25 was at the original contempt hearing.

1 We then support -- provided Your Honor with a memoranda
2 in opposition today which goes on a little bit further because
3 they've raised new evidence. And because they've raised new
4 evidence, they've asserted this new evidence, we've gone ahead
5 and supplied Your Honor with some additional supplemental
6 information, which includes the evidence of transfers of
7 account information -- excuse me, of the amounts of money that
8 were held by Barber Real Estate as commissions. They were
9 transferred immediately after the contempt order.

10 I'm really pleased now to hear, based on Mr. Staples'
11 representations, that they were transferred to a new account
12 in order to comply with this order. Maybe they are holding it
13 in trust. They've not provided us that information in
14 discovery. They've not provided that bank account. They've
15 not provided any of these account records that they say
16 they've provided. All of the documents that were provided in
17 the third affidavit of Joel Barber, never provided before.
18 The only time that they've been provided was in this
19 affidavit.

20 We have pending discovery, but they're trying to withhold
21 responding to discovery and just provide us bits and pieces
22 that they can use to support their allegations.

23 MR. STAPLES: That's not a fair time line that you've
24 represented. You filed the fourth affidavit of Greg Harrelson
25 that identified 100-some MLS listings two days before the

1 hearing. The intermediate day was the day that you took --

2 MS. BAILEY: That's actually incorrect. The affidavit
3 was filed on February 11th, and it was improperly stated in
4 your memo that it was filed on the 14th.

5 MR. STAPLES: No. If you check --

6 MS. BAILEY: So it was filed on February 11th -- excuse
7 me. It was filed on November 11th, so if I can --

8 MR. STAPLES: But it wasn't approved. It didn't get to
9 NEF until Monday, meaning nobody could access it. You didn't
10 email it to anybody.

11 MS. BAILEY: That's incorrect. That's incorrect, and I'm
12 happy to go back and forth and show you how to access a
13 document that is contained on the system, but it was filed on
14 the 11th.

15 I'd like to be able to respond to the rest of this motion
16 unless Mr. -- unless Your Honor wants Mr. Staples to finish.

17 THE COURT: Go ahead, Ms. Bailey.

18 MS. BAILEY: Thank you. Your Honor, just a couple of
19 last things that I'd like to be able to address. We did -- we
20 engaged in discussions over the course of probably about five
21 months to try and resolve discovery disputes from June until
22 October. In October, we had this motion for contempt hearing
23 scheduled. We had depositions scheduled. And we were no
24 longer able to continue negotiations, and we filed a motion to
25 compel discovery.

1 We tried to reach an agreement. Part of the concerns
2 related to an agreement related to discovery is that not only
3 did they want to withhold information based on confidentiality
4 or based on privilege, which the current order already
5 protects, but they wanted to withhold information based on
6 what they deemed relevant. And we couldn't consent to that.
7 We also couldn't consent to their time line.

8 So we have proposed in our response to this opposition,
9 if there needs to be a supplemental order related to ESI, we
10 proposed one to Your Honor. We have no problem with that
11 being entered. We've attached as an exhibit, and we'll be
12 happy to sent you a Word document of that if you like, but we
13 don't have any issues with reviewing data for confidentiality,
14 subject to the existing protective order or for privilege, so
15 that's not something that we would have any issues with.

16 As far as whether or not my clients are suffering damage,
17 I think that is a gross misstatement because what has occurred
18 is that there has been access to editing of, deletion of data
19 from my client's computer system of their leads, clients, and
20 confidentially protected information.

21 This information, based on Mr. Barber's deposition, it is
22 being retained on a thumb drive that Mr. Barber accesses, and
23 Mr. Barber uses to create other spreadsheets and produce other
24 spreadsheets. And so the sheer access to this data, the sheer
25 use of the data and deletion of the data is damaging my

1 clients. It is not simply whether or not these contacts or
2 the use of the data resulted in a real estate closing that
3 generated a commission. The data generation costs money, and
4 the data that is generated, and the data that is stored by
5 Century 21 that was improperly accessed was at a significant
6 cost to Century 21 Harrelson Group in that someone who is
7 unauthorized that has access to it and is currently using it
8 does not -- continues to damage them.

9 Your Honor, we would simply ask that if there is any
10 amendment or any necessary supplement to this order on
11 contempt that it be limited to the proposed ESI order that we
12 have provided to the Court in opposition to this motion. But
13 otherwise and really first and foremost we ask that this
14 motion be denied in the entirety.

15 MR. STAPLES: Judge, you're muted, I think.

16 THE COURT: How about a brief response?

17 MR. STAPLES: Thank you, Your Honor. Well, yeah, I've
18 made some bullet point notes. I would take issue with the
19 contention that we're bringing up new arguments. I think all
20 of these arguments were touched on at the original hearing.

21 What I was trying to -- I apologize for that dialogue
22 with Ms. Bailey, but I think the problem is on the eve of that
23 first hearing, whether it was a day before or two days before,
24 it doesn't really matter; they show up with 100 MLS listings
25 that they accuse us of improperly obtaining. We then the very

1 next day had to go and sit through literally a full day of Mr.
2 Barber's deposition, while plaintiffs' cocounsel asked him all
3 kinds of questions about what color car his wife drives.

4 When the deposition finally concluded around 5 o'clock or
5 5:30, we finally had an opportunity to sit down with Mr.
6 Barber and say what can you say about these 100 listings. And
7 we filed an affidavit as best we could, and we requested leave
8 of Court to supplement with more information. And that was
9 not granted, and the order was issued, and that's what we've
10 gone back now and done is we've shown our evidence as to how
11 we obtained all those listings complete separate and
12 independent from any connection to Century 21.

13 So that's the first rebuttal point. The second, I
14 understand that the temporary injunction -- that the time to
15 file an appeal has passed or whatever, but an injunction can
16 be revised at any time is my understanding. It's a temporary
17 injunction. If circumstances change, the Court can modify it
18 or rescind it.

19 Also, they've got to prove contempt. The standard is
20 clear and convincing evidence. I don't think you have that
21 here. I think you have conflicting testimony, conflicting
22 evidentiary proof that the jury has to decide. It is the
23 ultimate issue in the case. And it completely hampers our
24 defense to have him slapped with this injunction. He doesn't
25 have money to pay the attorneys. He doesn't have money to pay

1 his tax bill or anything.

2 And the next point I want to make is that we did --
3 plaintiffs' counsel and defense counsel, we were in the middle
4 of discussing a consent order to deal with the ESI.
5 Literally, I sent them a redline back. And the response I get
6 back is gee, thanks. We're filing a motion to compel. There
7 was no further discussion. There was no good faith. It was
8 just yeah, we're just going to -- we're just tired of talking
9 about it. We'll just file a motion.

10 Well, that motion's pending, but it hasn't been heard
11 yet. I mean, this is the problem with having this hearing
12 today is we're talking about a bunch of issues that are
13 subject to other pending motions. And so if you resolve them
14 all in a contempt order, then what's the point of having the
15 other motions? I mean, they need to be duly noticed and heard
16 and briefed and argued.

17 I just think everybody just needs to take a step back,
18 just slow down. There's no reason he needs to be held in
19 contempt right this minute. The process needs to play out.
20 The motions need to be all heard together. I would really
21 love it if we could come down in person so that we can show
22 Your Honor this stuff instead of just referencing 100 filings
23 that have been made in the last month.

24 But that's sort of where we are. I think you understand
25 our position.

1 THE COURT: Let me take it under advisement, and I'll let
2 you know something this week.

3 MS. BAILEY: Thank you, Your Honor.

4 MR. DAIGLE: Thank you.

5 MR. STAPLES: Thank you, Your Honor.

6 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Horry)

I, TAMARA BENTZUR, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 3rd day of January, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 21, 2023



Tamara Bentzur, CET-824
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BURR.FORMAN

December 29, 2022

VIA HAND DELIVERY

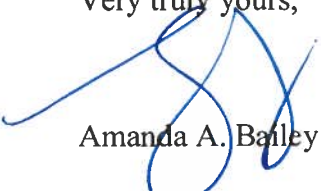
Horry County Courthouse
Civil Division
1301 Second Avenue
Conway, SC 29526
Attn: Bridgett/Tara

Re: **HSS Barefoot, LLC d/b/a Century 21 Barefoot, et al. v. Joel D. Barber, et al.**
2022-CP-26-01323

Dear Bridgett and/or Tara:

In accordance with the Consent Order to File Under Seal Pursuant to Consent Confidentiality and Protective Order entered by the Court on November 8, 2022 (copy enclosed), we herewith provide a copy the documents listed in Paragraph 2 of the Order to be filed under seal.

Very truly yours,


Amanda A. Bailey

AAB:cmf
Enclosures

cc: All Counsel

ELECTRONICALLY FILED - 2022 DEC 29 11:52 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

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.

**CONSENT ORDER TO FILE UNDER
 SEAL PURSUANT TO CONSENT
 CONFIDENTIALITY AND PROTECTIVE
 ORDER**

THE COURT ORDERS as follows:

1. The parties entered into a Stipulated Confidentiality and Protective Order, signed by the Court on May 16, 2022. The exhibits to 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's (collectively, "Plaintiffs") Motion for Contempt and Sanctions and forthcoming Memorandum in Support thereof consist of the documents produced by Homebot, Inc. in response to a subpoena, bates stamped "Homebot_000001—000833," as well as full and unredacted copies of Exhibits B, C, and E to Defendant Joel Barber's affidavit, bates stamped "Barber000611—001035." The parties have agreed, per the Stipulated Confidentiality and Protective Order, that the document production from Homebot, Inc., produced pursuant to

lawfully issued subpoena, should be designated as “Attorneys’ Eyes Only.” Further, per the Stipulated Confidentiality and Protective Order, Counsel for Defendant Joel Barber marked the full and unredacted copies of Exhibits B, C, and E to Defendant Barber’s affidavit as “Confidential & Attorneys’ Eyes Only.”

2. A non-confidential description of the documents is as follows:

Document	Non-Confidential Description
Homebot_000001—000833	All documents produced by Homebot, Inc. in response to subpoena
Homebot_000788—000816	Various correspondence between Mr. Barber and representative(s) of Homebot, Inc. and proof of file uploads from Mr. Barber to Homebot, Inc.
Homebot_000453, 000463, 000519, 000630, 000752	Various excerpts of spreadsheet data entered into Homebot, Inc.’s database(s) by Mr. Barber
Affidavit of Records Custodian for Homebot, Inc.	Affidavit of Records Custodian for Homebot, Inc.
Barber000611—001035	Full and unredacted Exhibits B, C, and E to Defendant Joel Barber’s Affidavit filed October 5, 2022

3. Rule 41.1(b), SCRCP requires a motion to seal to “state the reasons why sealing is necessary, explaining why less drastic alternatives to sealing will not afford adequate protection, and [to] address the following factors”:

- (1) the need to ensure a fair trial;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality;
- (4) the public or professional significance of the lawsuit;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Rule 41.1(b)(1)-(7), SCRCP.

4. Here, the parties have entered into a Stipulated Confidentiality and Protective Order permitting the parties to mark various documents “Confidential” or “Attorneys’ Eyes Only,” and therefore, their reliance upon expectations of confidentiality is extremely high. Furthermore, given that the exhibits, almost in their entirety, contain personal identifying information of numerous people who are not parties to this action, those members of the public certainly have an interest in the sealing of these exhibits, and the perceived harm to the parties could mean potential liability for the parties by publishing personal information. These exhibits should be sealed so the Court is free to review all the information in full, absent redaction of necessary information, and sealing these particular documents would ensure a fair trial and witness cooperation. Moreover, this particular lawsuit is not necessarily significant to the public.

5. For these reasons and pursuant to Rule 41.1, SCRCP and electronic filing rules, the Court permits Plaintiffs to file the documents described under seal for the Court’s *in camera* review and for the Court’s information and knowledge of these documents as they relate to the

issues associated with this case. The documents that are the subject of this motion will be provided under separate cover to chambers.

WE SO CONSENT:

s/Christian H. Staples
Christian Hart Staples, SC Bar #101470
cstaples@shumaker.com
Shumaker, Loop & Kendrick, LLP
101 South Tryon Street, Suite 2200
Charlotte, NC 28280

s/Jason A. Daigle
Jason A. Daigle, SC Bar #73308
jdaigle@ycrlaw.com
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

Attorneys for Defendant Joel D. Barber

s/Jason Daigle
Jason A. Daigle, SC Bar #73308
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Charleston, SC 29401

Attorney for Defendant Barber Real Estate, Inc.

s/Lawrence M. Hershon
Lawrence M. Hershon, SC Bar #77514
lawrence@hershonlawfirm.com
The Hershon Law Firm, P.A.
1565 Sam Rittenberg Blvd., Suite 103
Charleston, SC 29407

Attorney for Defendants Darcy Varney and eXp Realty, LLC

s/Russell M. Racine
Russell M. Racine, SC Bar #68814
rracine@cshlaw.com
Cranfill Sumner LLP
2907 Providence Road, Suite 200
Charlotte, NC 28211

Attorney for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc.

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar #70185
Taylor K. Voegel, SC Bar #104770
abailey@burr.com
tvoegel@burr.com
Burr & Forman LLP
2411 Oak Street
Myrtle Beach, SC 29577

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

Dated: November __, 2022

AND IT IS SO ORDERED!

Presiding Judge, Court of Common Pleas
Fifteenth Judicial Circuit

ELECTRONICALLY FILED - 2022 Dec 29 11:52 AM - Horry - COMMON PLEAS - CASE#2022CP2601323
ELECTRONICALLY FILED - 2022 Nov 08 9:55 AM - Horry - COMMON PLEAS - CASE#2022CP2601323



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Consent Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2022-11-07 16:14:26 page 6 of 6

ELECTRONICALLY FILED - 2022 Dec 29 11:52 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323
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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.

AFFIDAVIT OF JOEL D. BARBER

PERSONALLY APPEARED BEFORE ME, the undersigned, Joel D. Barber, who, being
duly sworn, deposes and says the following:

1. I am over 18 years of age, suffer from no disability, am competent to make this
Affidavit in all respects, and have personal knowledge of the matters stated herein.
2. I have been a licensed real estate agent in South Carolina for over 14 years.
3. I practiced as a real estate agent with Centruy 21 The Harrelson Group from 2017
to February of 2022.
4. I practiced as a real estate agent with EXP Realty from February of 2022 to April
of 2022.

5. I have been a real estate agent with Northgroup Realty from April of 2022 to present.

6. In my practice with EXP Realty and Northgroup Realty I have only pursued leads obtained through my own work and/or through sources other than Century 21's (including all other brokers, agents, employees, and owners of Century 21) databases, materials, CRM's, software, cloudware, subscriptions, files, and/or other proprietary business information.

7. On or about April 22, 2022 I executed a purchase order with a third-party targeted lead company that provided me with numerous leads. See Exhibit A.

8. Rob Safa's information was included as a lead provided to me by the third-party targeted lead company. See Exhibits B and C.

9. I subscribed to another third-party real estate lead generator that provided me with numerous leads. See Exhibit D.

10. Susan Brown's information was included as a lead provided to me by the third-party real estate lead generator. See Exhibit E.

11. Exhibits B, C, and E were provided to me as part of my purchases reflected in Exhibits A and D.

12. The information as it appears in Exhibits B, C, and E is exactly the same as when I received it from the third-party targeted lead company and the third-party real estate lead generator.

13. I have not altered, deleted, or added any information to Exhibits B, C, and E.

14. Upon receiving these leads from the third-parties I enter them into my own database and pursue those leads for potential clients.

15. I only obtained Rob Safa's information and Susan Brown's information through the sources shown in Exhibits A through E.

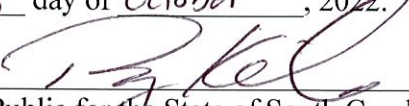
16. Neither Rob Safa's information nor Susan Brown's information was obtained through Century 21's (including all other brokers, agents, employees, and owners of Century 21) databases, materials, CRM's, software, cloudware, subscriptions, files, and/or other proprietary business information.

FURTHER AFFIANT SAYETH NOT.


Joel D. Barber

Sworn to and subscribed before me

this 3rd day of October, 2022.


Notary Public for the State of South Carolina

My Commission Expires: 09/21/2030





1440 W. Taylor Street, #402
Chicago, IL 60607

Quote + Purchase Order List Rental

Sales Contact:	Amanda Hannan
Sales Email:	amanda.hannan@exactdata.com
Contract Date:	April 15, 2022

Insertion Order Number:	1141977
Client Order Number:	
Delivery Date:	April 22, 2022

Client Contact & Campaign Information

Contact:	Joel Barber
Email:	jbarber.realtor@gmail.com
Phone:	843-655-2970 wrong #
Account:	Joel Barber
Mailing Address:	964 Bluffview Dr
City:	Myrtle Beach
State:	SC
ZIP:	29579
Terms:	Prepay

Campaign:	CPM:	Quantity:	Subtotals:
Postal	\$17.58/M	6,200	\$109.00
Email-Client Deploy	\$17.58/M	6,200	\$109.00
Cell Phones	\$0.00/M	0	\$109.00

Total Data Cost:	\$327.00
Additional Fee:	\$109.00
Multi-Use: Email:	\$109.00
Multi-Use: Cell Phones:	\$109.00
Fulfillment Fee:	\$75.00
Privacy Compliance:	\$25.00
Save Fee:	\$10.00
Total Cost:	\$764.00

Targeting Details:	B2C Postal, Email-Client Deploy, Cell Phones
	Geography: Zip Code: 29588, 29569
	Demographics/Selects: All Residents
	Output: Cell Phone Number where available
	Multi-Use: Email-Client Deploy, Cell Phones

Payment Information

Card number:	**** * 000
Cardholder Name:	Joel Barber

Expiration Date (MM/YY):	** / **
CVV	***

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By signing below the parties hereby agree to the Terms & Conditions on this Insertion Order.

Signature:	
------------	--



By:	Eric Kider
Title:	Senior Vice President / General Manager
Date:	April 15, 2022

Signature:	
------------	--



By:	Joel Barber
Title:	
Date:	April 15, 2022 (154.6.24.41)

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[REDACTED]

Rob Safa Myrtle Beach SC 29588 r a@gmail.com

[REDACTED]

Rob

Safa

Myrtle Beach

SC

29588

SCHEDULE A
To
KAI DATA: Terms of Service and Use Agreement (the "TOS")
(Vulcan7 Registration Form)

This Schedule A sets forth additional or amended terms and conditions to the TOS for Kai Data, LLC (the "Kai Data") in relation to an annual agreement (the "Agreement") between Client (the "Client") and Kai Data for the use of Kai Data's Vulcan7 subscription services (the "V7 Service").

1. SCHEDULE A TERM

The term of this Schedule A shall be twelve (12) months (the "Term"), beginning the date of the Client's full annual payment. The Full Annual Amount of \$4,818 may vary depending upon the number of products being purchased from Kai Data. This Agreement shall NOT automatically renew for an additional twelve (12) months, unless Client contacts Kai Data to renew this Agreement. In the event the Client has not contacted Kai Data to renew this Agreement or cancelled the V7 Service, the V7 Service shall continue as a month-to-month subscription service at regular retail pricing (the "Price").

In the event Client elects to add any additional product or service to the V7 Service during the Term, Kai Data will prorate the fees for such product or service with the Term of this Agreement. Client agrees to pay the prorated fees based upon the remaining months of the Term, and Client agrees to allow Kai Data to make a one-time charge of such prorated fees to the Client's credit card on file. Client understands and agrees that there shall not be any refunds for early termination of additional product or service in the event Client cancels such product and services before the end of the Term of this Agreement.

2. FEES

Client shall receive a 20% discount to the Price on the V7 Service by agreeing to this Agreement.

3. TERMINATION POLICIES

In the event Client terminates/cancels the V7 Service before the end of the Term, Client understands that there shall be no pro-rated refunds to Client for the unused time of the V7 Service. In the event Client wants an early termination fee option, the Client should not agree to this Agreement, but ask Kai Data for other contract options. In addition, there are no refunds for any additional product or services added to the terms of this Agreement.

4. ACKNOWLEDGEMENT

By signing Schedule A, Client authorizes Kai Data to process Client's credit card on file for payment according to the terms of this Agreement. The V7 Service shall be activated upon authorization of payment.

For questions please contact us at support@vulcan7.com

Name Joel Barber

Signature Joel Barber
Joel Barber (Aug 17, 2021 13:20 EDT)

Date: Aug 17, 2021

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[illegible]

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.

**SECOND AFFIDAVIT
OF JOEL D. BARBER**

I, JOEL D. BARBER, being first duly sworn, do hereby state the following:

1) I am over the age of eighteen (18) years old, suffer from no legal disability, and am competent to make this affidavit in all respects. The matters contained herein are true to the best of my own personal knowledge.

2) This Affidavit supplements my prior Affidavit filed in this action on October 5, 2022, and responds specifically to the Fourth Affidavit of Greg Harrelson filed on November 11, 2022 (NEF issued November 14, 2022) (the "Fourth Harrelson Affidavit").

3) I did not obtain any of the MLS listings referenced in the Fourth Harrelson Affidavit (the "MLS Listings") as a result of any access I had to Plaintiffs' databases or otherwise by virtue of my prior status as an independent contractor and real estate agent for Century 21 The Harrelson

Group.

- 4) MLS Listing 2223309 is not my listing.
- 5) The other MLS Listings which are mine were obtained from a variety of sources, all independent of Century 21 The Harrelson Group, including, but not limited to: (a) referrals from friends, prior clients, and various community contacts (i.e., members of my church); (b) mailing lists and lead sources to which I personally subscribe and/or pay for; (c) direct contacts/referrals to me; (d) generating leads through prior "For Sale by Owner" listings and/or listings with other real estate agents that have expired and/or failed to sell during the original listing period.
- 6) Just because a specific lead is contained within a database maintained by Century 21 The Harrelson Group does not mean that I did not derive the lead from an independent source.
- 7) The fact that the same leads appear in different databases maintained by different real estate firms and/or real estate agents, and may be obtained from various sources, is commonplace and something that all real estate agents deal with, especially in a market such as the Myrtle Beach area.
- 8) I can provide the specific details of how I obtained each of the MLS Listings in The Fourth Harrelson Affidavit, but given the current time constraints in light of the scheduled hearing on Plaintiffs' Motion for Contempt, I have not had an opportunity to do that just yet.

Further affiant say not.



JOEL D. BARBER

Sworn to and subscribed before me

This 15th day of November, 2022.



Notary Public

My commission expires: August 12, 2025

[SEAL]

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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.

**AFFIDAVIT
OF SANDRA CHURGIN**

I, SANDRA CHURGIN, being first duly sworn, do hereby state the following:

1) I am over the age of eighteen (18) years old, suffer from no legal disability, and am competent to make this affidavit in all respects. The matters contained herein are true to the best of my own personal knowledge.

2) I am the Chief Executive Officer, Founder, and President of Medical Financial Enterprises Corporation in New York, which primarily serves as a consultant for physician practices.

3) On or about August 18, 2022, I tasked members of my staff with researching the top producing residential real estate agents in the Myrtle Beach, South Carolina area. Later that same day, I received a list of such agents from one of my staff members. I then tasked my staff

with calling each of the listed agents to schedule a time for me to speak with them personally. Those agents included Defendant Joel Barber, as well as Plaintiffs Greg Harrelson and Kevin Mills. There were other agents on the list not relevant to this action or this affidavit.

4) Shortly thereafter, I personally spoke via telephone with Joel Barber and his assistant, Debra Burns, and found them to be accessible and personable, and I believed that they would be the most hardworking and tenacious agent, and able to get the job done. At that time, Mr. Barber was working for North Group Realty, not Century 21 The Harrelson Group. To the best of my own personal knowledge and recollection, this phone conversation in August 2022 was the very first time that I ever spoke with Mr. Barber or anyone purporting to work for or with him.

5) To be clear, my staff and I initiated the contact and communication with Mr. Barber; not vice versa.

6) I ultimately placed two (2) listings with Mr. Barber, and it is my understanding and belief that those listings were assigned MLS numbers 2222546 and 2222547. I am also informed and believe that Mr. Harrelson and Century 21 The Harrelson Group maintain that these listings were improperly obtained by Mr. Barber, which I would vehemently deny based on the genesis of my communication with Mr. Barber, as discussed above.

7) I did have a brief phone conversation with Mr. Harrelson and Mr. Mills in or around August 2022, but I never had any intention of giving my listings to them or to anyone else associated with Century 21 The Harrelson Group.

8) If my name appears on a database or other listing of potential leads maintained by Mr. Harrelson, Mr. Mills, or anyone else associated with Century 21 The Harrelson Group, then I can only assume that it resulted from the communications my staff and I had with them in August 2022. I have no other explanation as to how or why my name would appear in such a database or

EXHIBIT 9 TO REPLY

listing of potential leads, and I have never placed any listing with them. Moreover, I do not believe that my name would have appeared in any database or list maintained by Mr. Harrelson, Mr. Mills, or Century 21 The Harrelson Group on or before February 7, 2022, since I did not have any contact or communication with them until August 2022.

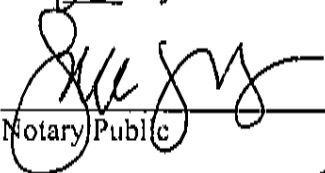
9) Based on all of the foregoing, it is my personal opinion and belief that Mr. Barber did not obtain my listings as a result of any improper access he may have had to any database or other information maintained by the Plaintiffs in this action.

Further affiant say not.


SANDRA CHURGIN

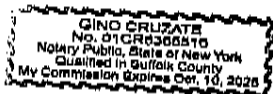
Sworn to and subscribed before me

This 23 day of December, 2022.


Notary Public

My commission expires: Oct 10, 2025

[SEAL]



ARLENE S CHURGIN
NYS DL


ARLENE S. CHURGIN

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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.

**THIRD AFFIDAVIT
OF JOEL D. BARBER**

I, JOEL D. BARBER, being first duly sworn, do hereby state the following:

1) I am over the age of eighteen (18) years old, suffer from no legal disability, and am competent to make this affidavit in all respects. The matters contained herein are true to the best of my own personal knowledge.

2) This Affidavit supplements my Affidavit filed in this action on October 5, 2022, and my Second Affidavit filed on November 15, 2022, and specifically responds to the Fourth Affidavit of Greg Harrelson filed on November 11, 2022 (NEF issued November 14, 2022) (the "Fourth Harrelson Affidavit").

3) As stated in my prior Affidavits, I did not obtain any of the MLS listings referenced in the Fourth Harrelson Affidavit (the "MLS Listings") as a result of any access I may have had to

Plaintiffs' databases or otherwise by virtue of my prior status as an independent contractor and real estate agent for Century 21 The Harrelson Group.

4) In fact, one of the MLS Listings (2223309) is not even a listing of mine. Other MLS Listings are listings that I obtained from former clients of mine for whom I first worked prior to my association with Century 21 The Harrelson Group. Accordingly, I could not have wrongfully obtained those clients/leads/listings from Century 21 The Harrelson Group. Moreover, to date, several of the MLS Listings have failed to result in any purchase or sales transaction, and as a result, no commission has been paid or is owing to me.

5) The MLS Listings were obtained by me from a variety of sources, all completely independent of Century 21 The Harrelson Group and the other Plaintiffs, which sources include but are not necessarily limited to: (a) through referrals from prior clients, friends, and various community contacts and acquaintances; (b) through subscription or fee-based lead sources to which I personally pay for; (c) direct contacts or referrals by virtue of my name and reputation as a top real estate agent in the Myrtle Beach area; and (d) my own hard work in generating original leads, primarily by contacting the property owners of "For Sale by Owner" listings and expired listings with other real estate agents that failed to sell during the original listing period.

6) I obtain additional leads from sources that are "generally known" and commonly utilized by real estate agents, such as by reviewing the MLS for the Myrtle Beach area, conducting online research through Zillow.com and other similar, publicly-available websites, driving through neighborhoods, and interacting with members of the community on a daily basis.

7) It is my understanding and belief that leads and lead sources that are "generally known" are carved-out and excepted from the prohibitions contained in Paragraph 12 of the Independent Contractor and Broker Agreement dated March 14, 2017, by and between myself and

Century 21 The Harrelson Group (the “Agreement”),¹ which Agreement was the basis for the Order Granting Temporary Injunction entered in this action on April 8, 2022 (the “Injunction Order”).²

8) Just because a specific lead is contained within a database maintained by Plaintiffs does not mean that I did not (or could not) derive the same lead from an independent source after the termination of my association with Century 21 on February 7, 2022.

9) In fact, having reviewed the affidavits and other materials submitted by Plaintiffs in connection with their Motion for Contempt, I fail to see any proof that the leads and/or property owners reflected by the MLS Listings are actually contained in a database maintained by Plaintiffs, of the date those leads were input into said database, who input the lead, or which agent is associated with the lead. I believe it is possible, if not probable, that my own listings obtained after February 7, 2022, are being input by Plaintiffs into their database after-the-fact in an attempt to have me held in contempt for violating the Injunction Order.

10) I am fully aware of the Injunction Order entered in this action on April 8, 2022, and have never intentionally done anything to violate that order. I have tried my best to honor and abide by that order. There is nothing in that order that prohibits me from continuing to earn a living as a real estate agent in the Myrtle Beach area, which is my long-time profession and primary source of income, or from pursuing leads and lead sources that are “generally known”, which is an express carve-out and exception from the prohibitions contained in Paragraph 12 of the Agreement between me and Century 21 The Harrelson Group.

¹ A copy of this Agreement is attached as Exhibit A to Plaintiffs’ Amended Complaint filed on May 4, 2022.

² Although this point is not explicitly stated in the Injunction Order, it is my understanding that Judge John stated on the record that I was not prohibited from pursuing leads and lead sources that are “generally known”, in accordance with the language contained in Paragraph 12 of the Agreement between me and Century 21 The Harrelson Group. My attorney has informed me that the transcript of the hearing before Judge John has been ordered and will be filed with the Court upon receipt.

11) In my experience as a real estate agent who has worked for various brokerage firms, the fact that the same leads appear in different databases maintained by different brokerage firms and/or real estate agents, and that the same leads may be obtained from various sources, is commonplace and something that all real estate agents deal with, especially in a market like the Myrtle Beach area where there are a large number of agents competing for the same leads and listings utilizing the same lead generation sources.

12) Attached hereto as **Exhibit A** and fully incorporated herein by reference is a spreadsheet detailing each of the MLS Listings referenced in the Fourth Harrelson Affidavit. For each such MLS Listing, the spreadsheet includes a brief explanation of how I obtained the lead/listing, as well as a reference to documentary proof I have thereof (each marked as a separate Exhibit, consecutively numbered **Exhibit 1** through **Exhibit 107**).³ When viewed and considered as a whole, I believe this information firmly establishes that the MLS Listings were not improperly obtained, but were generated in legal ways that do not violate the Injunction Order or the Agreement between me and Century 21 The Harrelson Group.

13) By way of additional information and explanation regarding the information contained on the spreadsheet, please refer to the following:

a. “Expired Listing” and “For Sale by Owner” means that I determined the prior listing to have expired, or to have been listed by the property owner (with no agent involved), at which point I initiated contact with the property owner in regards to attempting a new listing with me as the agent. I gained access to this information by virtue of my own subscription to the MLS and to Vulcan7⁴, through other publicly-accessible and

³ Note that there is no Exhibit 5, 40, 54, 66, 69, 70, or 77.

⁴ Vulcan7 is a lead generator service that I personally subscribe to on an annual basis. For more information, please refer to Paragraph 9 and Exhibit D to my Affidavit filed in this action on October 5, 2022.

generally known websites such as Zillow.com, Facebook.com Marketplace, and Craigslist.com, or through simply driving through neighborhoods where I want to have listings.

b. “Referral from 3rd Party” means that I obtained the listing through a word-of-mouth referral from a former client, friend, or acquaintance, or that a lead was provided to me from an online referral source such as Homelight.com, FastExpert.com, and EffectiveAgents.com, which are all websites that pair potential home buyers and sellers with agents in their local area, based upon information input by the buyer/seller. These companies receive a percentage of the commission paid to me, as the referred agent, if a purchase or sale is ultimately consummated. However, I do not pay any subscription or other fees to these companies.

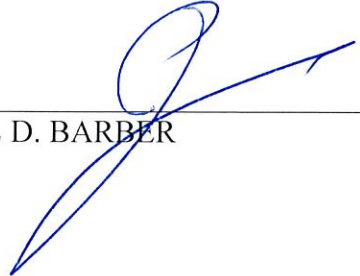
c. “Paid Lead Source” refers to sources that I personally pay for or subscribe to, such as Vulvan7 and ZBuyer.com, which in turn provide me with a list of leads, which is typically received directly to my email inbox. From time to time, I also subscribe (either for free or at some cost paid by me) to certain community lists that I then utilize as a source for leads and potential listings.

d. “Call in to Agent” means that the initial contact between me and the client was initiated in the first instance by the client, typically as a result of the client’s own research and due diligence of local agents, typically conducted online or through some form of referral.

14) Finally, I have significant concerns with the Contempt Order entered on November 22, 2022. Those concerns include the directives regarding the inspection of my personal electronic devices without adequate safeguards to protect and preserve matters that are confidential and

privileged, as well as the procedure for holding my commissions in trust, and the resulting lack of income I will experience as a result. I am also at a loss to understand why I should be prohibited from pursuing leads that are generally known or obtained from an independent source, separate and apart from any association I had with Plaintiffs. I feel that, as written, the Contempt Order effectively prohibits me from working and earning a living as a Realtor in the Myrtle Beach area, where I have worked hard over a period of years to build my reputation as a top agent. Finally, I am concerned about my ability to pay bills, taxes, and to ensure a level of income necessary to support myself and my family. In sum, I believe the Contempt Order is overly harsh and oppressive and should be reconsidered and, if not overturned, at least revised to ensure that these concerns are adequately addressed.

Further affiant say not.


JOEL D. BARBER

Sworn to and subscribed before me

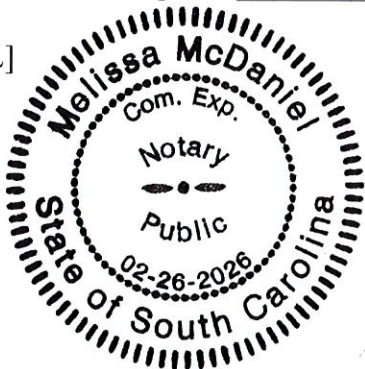
This 21 day of December, 2022.



Notary Public

My commission expires: 2-26-26

[SEAL]



<u>MLS Number</u>	<u>Explanation of Source of Lead/Listing</u>	<u>Exhibit Reference</u>
2223309	not my listing; no commission	1
2220365	expired listing	2, 2a
2220729	expired listing	3, 3a, 3b
2204633	referral from 3rd party	4
2203399	for sale by owner	6
2204920	for sale by owner	7
2206383	friend, call in to agent	8
2207566	referral from 3rd party	9
2204631	for sale by owner	10
2208255	referral from 3rd party	11
2208382	referral from 3rd party	12
2208912	family member of existing client, call in to agent	13
2209274	for sale by owner	14
2209786	for sale by owner	15
2209915	for sale by owner	16
2210573	for sale by owner	17
2210942	referral from 3rd party	18
2210948	referral from 3rd party	19
2212799	paid lead source	20
2213411	paid lead source	21
2213540	call in to agent (client confirmation)	22
2213746	expired listing	23
2214576	family member of existing client	24
2216613	referral from 3rd party	25
2220747	expired listing	26
2220835	referral from 3rd party	27
2220892	referral from 3rd party	28
2221042	for sale by owner	29
2217160	referral from 3rd party	30
2217686	referral from 3rd party	31
2217675	expired listing	32
2217794	for sale by owner	33
2218210	for sale by owner	34
2219532	for sale by owner	35
2219785	referral from 3rd party	36
2219868	for sale by owner	37
2219905	expired listing	38
2220169	expired listing	39
2220339	referral from 3rd party	41
2220538	expired listing	42
2221863	for sale by owner	43
2221907	for sale by owner	44

2222455	expired listing	45
2222647	call in to agent; former client (client confirmation)	46
2222692	for sale by owner	47
2222773	expired listing	48
2222774	expired listing	49
2222799	expired listing	50
2222810	referral from 3rd party	51
2223278	expired listing	52
2223346	expired listing	53
2223390	for sale by owner	55
2223486	expired listing	56
2223565	for sale by owner	57
2224375	expired listing; call in to agent (client confirmation)	58
2224376	call in to agent	58
2224378	call in to agent	58
2224379	call in to agent	58
2224380	call in to agent	58
2204949	expired listing	59
2203745	referral from 3rd party	60
2203966	expired listing	61
2205213	for sale by owner	62
2203972	expired listing	63
2208383	referral from 3rd party	64
2208738	paid lead source	65
2209573	for sale by owner	67
2209766	expired listing	68
2207200	call in to agent	71
2206382	call in to agent	72
2206590	call in to agent (client confirmation)	73, 73a
2203649	call in to agent (client confirmation)	74
2204322	call in to agent; former client	75
2204534	call in to agent (client confirmation)	76
2221052	for sale by owner	78
2221053	for sale by owner	78
2204251	for sale by owner	79
2203131	referral from 3rd party	80
2208718	paid lead source	81
2211764	referral from 3rd party	82
2212484	call in to agent (client confirmation)	83
2213184	referral from 3rd party	84
2213440	call in to agent (client confirmation)	85
2213740	referral from 3rd party, former client	86
2213742	referral from 3rd party	87

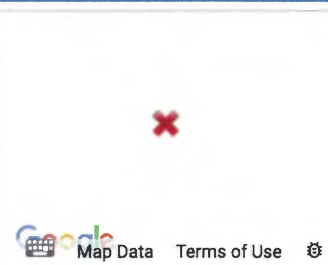
2214575	referral from 3rd party	88
2215863	referral from 3rd party	89
2216805	referral from 3rd party	90
2217275	community list; call in to agent (client confirmation)	91, 92
2218333	community list	93
2220281	expired listing	94
2208994	call in to agent	95
2224050	community list; call in to agent (client confirmation)	96
2220996	former client	97
2221508	former client	97
2223818	former client	97
2223821	former client	97
2223823	former client	97
2221051	community list	98
2221308	call in to agent (client confirmation)	99
2223227	community list	100, 100a
2224530	for sale by owner	101
2211455	call in to agent (client confirmation)	102
2217149	call in to agent; former client (client confirmation)	103
2213268	call in to agent	104
2209521	call in to agent; former client (client confirmation)	105
2210624	call in to agent; former client	106
2219967	community list; referral (client confirmation)	107, 107a
2208995	call in to agent	no proof readily available, but property did not sell; no commission earned
2222546	call in to agent	Churgin Affidavit
2222547	call in to agent	Churgin Affidavit

ALL FIELDS DETAIL



◀ 1 of 40 ▶

MLS #	2223309	Bedrooms	2
Status	PEND. CNTGT. ON FINANCING	Incl. Non-conforming bedrooms	No
Type	Condo	Full Baths	2
Address	8805 Chandler Dr.	Half Baths	0
Address 2	Unit D	Exterior Finish	Vinyl Siding
City	Surfside Beach	Bldg Style	Low-Rise 2-3 Stories
State	SC	Parking	Assigned
Zip	29575	Furnished	No
Area	28B Surfside Area -Glensbay to GC Connector		
Class	CONDO/TOWNHOUSE		
Asking Price	\$204,500		
Sale/Rent	For Sale		



GENERAL

Agent Hit Count	169	Client Hit Count	87
VOW Include	Yes	VOW Address	Yes
VOW Comment	Yes	VOW AVM	Yes
County	Horry	Zip	29575
Construction Status	Resale	Listing Agent	Russo Team - Cell: 843-300-7077
List Team		Listing Office	Century 21 Barefoot Realty - Main Line: 843-390-2121
CSL Subagents Fee	0%	Buyers Broker Fee	3%
Variable Commission (Y/N)	No	Co-Listing Agent	John Russo - Cell: 843-259-3289
Stipulation of Sale	None	Owners Name	Stepansky
Listing Date	10/21/2022	Home Warranty	No
Type of Agency	Exclusive Right to Sell	Est. Lot Size	
Project/Section Code	SOUTH BAY LAKES	Unit #	D
Building Name	South Bay Lakes	TMS/PIN#	46200000920
2nd TMS/PIN #		3rd TMS/PIN #	

①

2

PROPERTY HISTORY DETAIL

Address
4008 Tupelo Ct.
Conway, SC 29526

MLS # 2218222



Google

Map data ©2022

MLS # 2220365 **Class** RESIDENTIAL **List Date** 9/8/2022 **DOM** 49

Chg Date	Chg Type	Status	Price	Listing Agent	Selling Agent
10/31/2022	Status, Proposed Closing Date	SOLD-CO-OP	\$389,900	The Advantage Group	Lora Serral
10/06/2022	Status, Proposed Closing Date	PENDING	\$384,900	The Advantage Group	
10/03/2022	Asking Price	ACTIVE	\$384,900	The Advantage Group	
09/09/2022	First Recorded Entry	ACTIVE	\$389,900	The Advantage Group	

Chg Date	Chg Type	Status	Price	Listing Agent	Selling Agent
10/15/2022	Status	WITHDRAWN	\$379,900	The Mills Group	
08/12/2022	First Recorded Entry	ACTIVE	\$379,900	The Mills Group	

MLS # 2218222 **Class** RESIDENTIAL **List Date** 8/12/2022 **DOM** 3

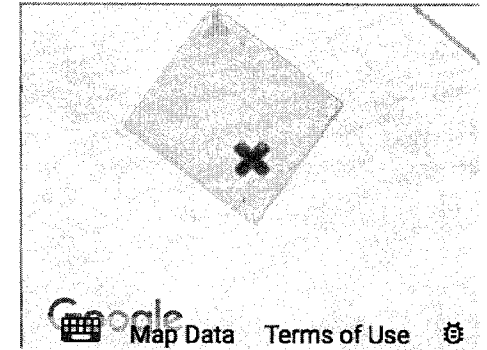
MLS # 1820029 **Class** RESIDENTIAL **List Date** 7/31/2018 **DOM** 230

ALL FIELDS DETAIL



◀ 1 of 40 ▶

MLS #	2218222	Bedrooms	3
Status	WITHDRAWN	Incl. Non-conforming bedrooms	No
Type	Detached	Full Baths	2
Address	4008 Tupelo Ct.	Half Baths	0
Address 2		Formal Dining	Yes
City	Conway	Style	Ranch
State	SC	Type of Parking	Attached 2
Zip	29526		-Car
Asking	\$379,900	Vehicle Parking Capacity	6
Price			
Area	21B Conway central between 701 & Long Ave / north of 501		
Class	RESIDENTIAL		



GENERAL

Listing Agent	<u>The Mills Group - Cell: 843-213-7919</u>	Elementary School	Conway Elementary School
Listing Office	<u>Century 21 Barefoot Realty - Main Line: 843-390-2121</u>	Intermediate School	
Co-Listing Agent		Middle School	Conway Middle School
Construction Status	Resale	High School	Conway High School
Agent Hit Count	57	County	Horry
		Client Hit Count	7
		Buyers Broker Fee	3%

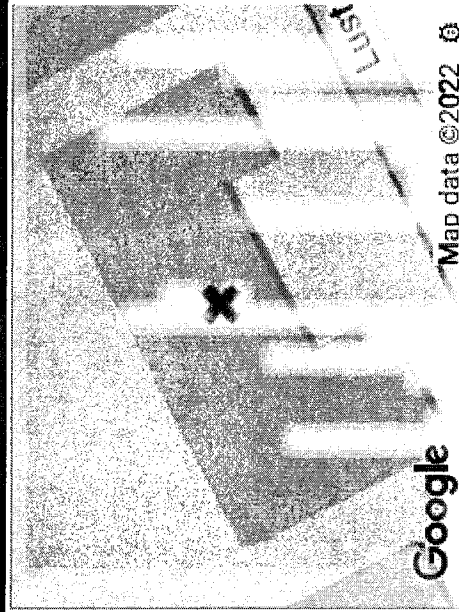
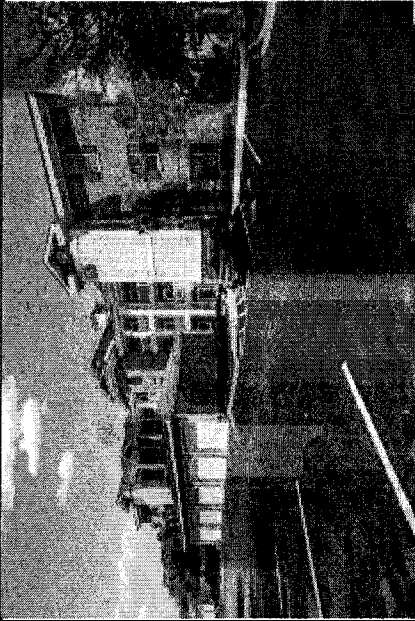
2a

04/26/2022 10:46:47 AM	First Recorded Entry	ACTIVE	\$294,900	202	42000000805	<u>Group</u> The Advantage	<u>Inc</u> NorthGroup Real Estate
MLS # 2206519		Class CONDO/TOWNHOUSE		List Date 3/30/2022		DOM 160	
<u>Chg Date</u>	<u>Chg Type</u>	<u>Status</u>	<u>Price</u>	<u>Unit #</u>	<u>TMS/PIN#</u>	<u>Listing Agent</u> - Agent Name	<u>Listing Office</u> - Office Name
09/06/2022 8:17:23 AM	Status	WITHDRAWN	\$349,900	201	42000000802	Greg Harrelson Sales Team	Century 21 The Harrelson Group

3

PROPERTY HISTORY DETAIL

Address
4805 Luster Leaf Circle
#201
Myrtle Beach, SC 29577



MLS #2206519

EXHIBIT 10 TO REPLY

MLS #	220729	Class	CONDO/TOWNHOUSE	List Date	9/13/2022	DOM	82
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN#	Listing Agent - Agent Name	Listing Office - Office Name
12/04/2022 7:27:21 PM	Status	WITHDRAWN	\$349,900	201	42000000802	The Advantage Group	NorthGroup Real Estate LLC
09/13/2022 4:21:56 PM	First Recorded Entry	ACTIVE	\$349,900	201	42000000802	The Advantage Group	NorthGroup Real Estate LLC

MLS #	2206519	Class	CONDO/TOWNHOUSE	List Date	3/30/2022	DOM	160
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN#	Listing Agent - Agent Name	Listing Office - Office Name
09/06/2022 8:17:23 AM	Status	WITHDRAWN	\$349,900	201	42000000802	Greg Harrelson Sales Team	Century 21 The Harrelson Group
06/28/2022	Asking Price	ACTIVE	\$349,900	201	42000000802	Greg	Century 21

3a

EXHIBIT 10 TO REPLY

Stephen Newhouse



(937) 661-5706 Local time 10:31 AM

DIBS80@YAHOO.COM

Click to add tags What are tags?

Contact Details

Public Records

Activity

Tasks and Events

Email Campaigns

Details

Call Recordings

Changes

Documents

NOTES

Insert Timestamp

EXHIBIT 10 TO REPLY

Contact Information

Name	Stephen Newhouse	+
	Dawnel Newhouse	
Phone	(937) 661-5706 (Mobile)	
	(865) 748-2036 (Mobile)	
	(843) 650-9025	
	(865) 354-2769	
	(614) 801-9111	
	(937) 661-5150 (Mobile)	

Residential Property

MLS Number:	2206519	Property Type:	Residential
MLS Name:	Coastal Carolinas Association	Subdivision:	Magnolia Pointe
MLS Status:	Relisted	Tax Owner:	NEWHOUSE STEPHEN R / NEWHOUSE DAWNEL I
Status Change Date:	Sep 14, 2022	Owner Mailing Address:	4805 LUSTER LEAF CIR #201 MYRTLE BEACH SC, 29577
Listing Office:	Century 21 The Harrelson Group	List Price:	\$349,900
Listing Agent:	Greg Harrelson Sales Team	Year Built:	2005
Days On	160	Beds / Baths:	3 / 2



3b

Thanks,
The HomeLight Team

Contact Info

Client Name
Phone Number
Email Address

Gregory Adams
(843) 655-3234
autofixingreg@yahoo.com

Full Details

Transaction Side
Requested Areas
Property Type
Estimated Price

Seller
Myrtle Beach
Single Family
\$280,000

4



Source: **CCoMLS** CCAR #2203399 Report

2/18/2022 Listed for sale \$224,900 (0%) \$214/sqft

Source: **CCoMLS** CCAR #2203399 Report

2/13/2022 Listed for sale \$225,000 \$214/sqft

Source: Owner Report



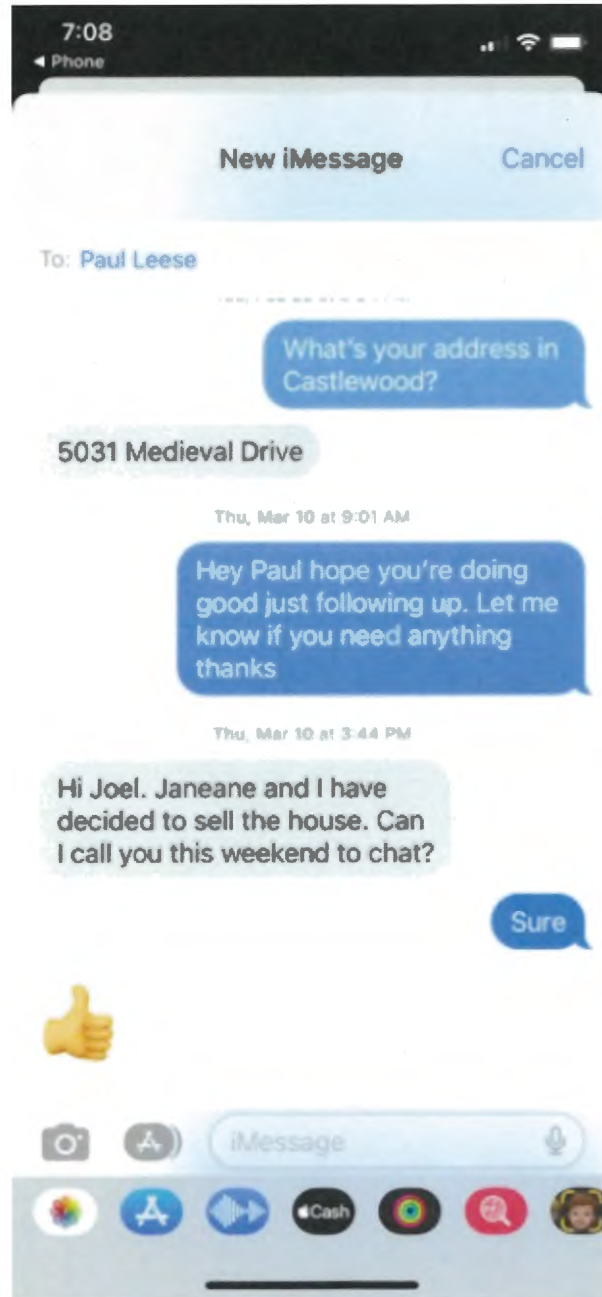
From: Zillow <instantupdates@mail.zillow.com>
Date: February 18, 2022 at 4:42:35 PM EST
To: kofinnest@gmail.com
Subject: New Listing: 3572 Evergreen Way, Myrtle Beach, SC 29577, Your FSBO - Good Search.



This home has been listed for sale at \$269,000.



7





The HomeLight Support Team · no-reply@homelight.com

To: me

Mon, Apr 4, 3:54 PM



Hi JOEL BARBER,

JOEL BARBER's Team has assigned a new seller referral to you:

Client Name: Steve Vinson

Address: 3557 CHESTNUT DR, MYRTLE BEACH, SC 29577



Best,

Team HomeLight

EXHIBIT 10 TO REPLY

EXHIBIT 10 TO REPLY

9

3/7/2022 Listed for sale \$324,900 (+1.9%) \$186/sqft

Source: **CCMLS** CCAR #2204631 Report

3/2/2022 Listing removed \$318,900 \$183/sqft

Source: Owner Report

3/1/2022 Listed for sale \$318,900 (+110.7%) \$183/sqft

Source: Owner Report

10

You've auto-accepted the following lead on April 12, 2022 13:52:03 PST. Attached is your referral agreement for this lead. Please keep it for your records. We've shared your profile with the lead, so you may receive a call from them.

[View Lead on FastExpert](#)

Lead Details

Name: John Bianchi Bianchi
Received: April 12, 2022
Lead: 593054
Phone: (843) 333-8092
Email: Jbianchi7876@gmail.com
Lead Type: Seller
Address: 7278 Guinevere Circle
Myrtle Beach, SC 29588

(11)

Anthony Mendez <anthony.mendez@homesight.com>
 Reply To: Anthony Mendez <anthony.mendez@homesight.com>
 To: jbarber.realtor@gmail.com
 Cc: Anthony Mendez <anthony.mendez@homesight.com>

Mon, Mar 21, 2022 at 12:12:46M

Hi JOEL

Thanks for calling Cheryl Martin. Their full contact details are below

How did the conversation go?

 Left client voicemail

 Not working with

 Spoke with client
will follow up

 Meeting scheduled

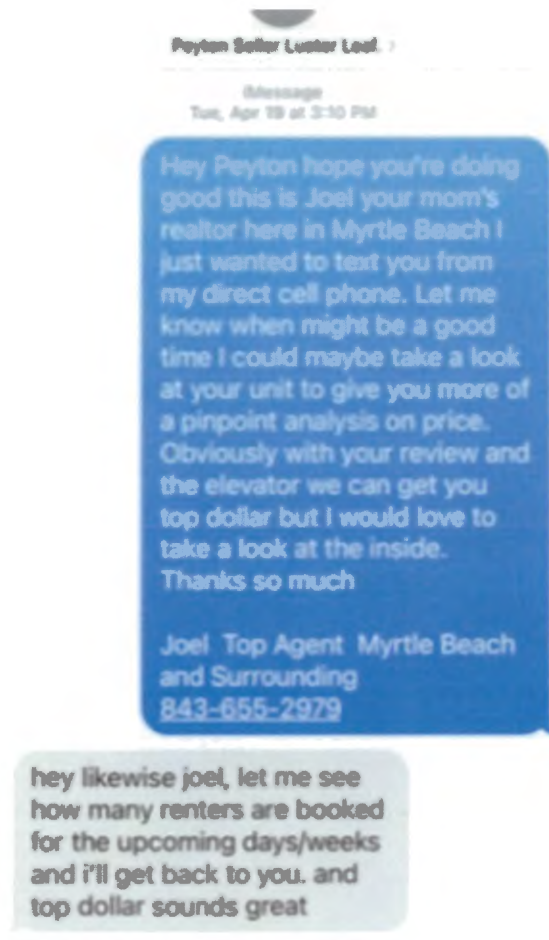
Thanks
 The Homesight Team

Contact Info

Client Name	Cheryl Martin
Phone Number	(703) 363-3313
Email Address	cheryl.martin@gmail.com

Full Details

Transaction Type	Seller
Requested Areas	Murrells Inlet
Property Address	1 BIRDSONG CT Murrells Inlet, South Carolina
Property Type	Single Family



5/3/2022	Listed for sale	\$259,900	\$260/sqft
Source:  COMPS CCAR #2209573 Report			
4/30/2022	Price change	\$259,900 (+4%)	\$260/sqft
Source: Owner Report			
4/27/2022	Price change	\$249,900 (+92.4%)	\$250/sqft
Source: Owner Report			

5/5/2022	Listed for sale	\$549,900 (+3.8%)	\$229/sqft
----------	-----------------	----------------------	------------

Source:  CCMLS CCAR #2209786 Report

4/23/2022	Listed for sale	\$530,000 (+77.3%)	\$221/sqft
-----------	-----------------	-----------------------	------------

Source: Owner Report

15

5/6/2022	Listed for sale	\$199,900 (+0.5%)	\$154/sqft
Source:  COMPS 12-1-AR #1 2019-11-11 Report			
5/5/2022	Price change	\$199,000 (+5.3%)	\$153/sqft
Source:  COMPS 12-1-AR #1 2019-11-11 Report			
4/22/2022	Price change	\$189,000 (+2.2%)	\$145/sqft
Source:  COMPS 12-1-AR #1 2019-11-11 Report			
4/19/2022	Listed for sale	\$185,000	\$142/sqft
Source:  COMPS 12-1-AR #1 2019-11-11 Report			

<https://www.zillow.com> > ... > Myrtle Beach > 29577

2689 Stellar Loop, Myrtle Beach, SC 29577 | Zillow

2689 Stellar Loop, Myrtle Beach, SC 29577 is currently not for sale. The 3221 Square Feet single family home is a 5 beds, 4 baths property.

You've visited this page 5 times. Last visit: 03/12/22

17

 **REFERRALEXCHANGE**

ReferralExchange Client Referral Confirmation (Claudette Perina, 30%)

Your Account

Hi Joel,

This email is to acknowledge that we have just referred a new client to you at 04:07pm EDT on 04/06/2022. Please save this email for your records.

Contact Information		Real Estate Details	
Name:	Claudette Perina	Request:	Buyer
Phone:	+1 732-207-6311	City, State:	Loris, SC
Email:	claudetteperina152@gmail.com	Target Price:	\$150,000 - \$200,000

Joel, Referral Update Request: Caycee Pfeiff

2 messages

ExpertHomeOffers.com <automated@experthomeoffers.com>
To: jbarber.realtor@gmail.com

Thu, Apr 14, 2022 at 3:15 AM

Hello Joel,

You recently completed a referral with ExpertHomeOffers.com. We would like to ask for an update on this referral. With only 1 question, this will take less than 15-seconds of your time.

To provide an update, please visit the following link: <http://www.ExperthomeOffers.com/ReferralFollowup.aspx?rid=548456&uid=22969>

Referral Info:

Name: Caycee Pfeiff

Phone: (540) 272-8167

E-mail: Caycee.pfeiff@gmail.com

19



Joel Barber <jbarber.realtor@gmail.com>

Dakota in Myrtle Beach (Seller)

2 messages

zBuyer Lead <zlead@zbuyer.com>

Wed, May 25, 2022 at 2:27 PM

To: Joel Barber <jbarber.realtor@gmail.com>

Dakota Erikson

Curious about selling 613 Hatteras River Rd

 dakota@scooast.net

 (843) 650-0766
(843) 742-0934

 613 Hatteras River Rd
Myrtle Beach, SC 29588

Buyer Lead - lead@zbuyer.com
to me

Tue, Jun 7, 9:26 AM

zbuyer

Seller **Cash Offer**

Hilda Pasour

Curious about selling **2506 Reta St**

 hilda2040@att.net

 (843) 915-0298
(854) 218-9180

 **2506 Reta St**
Conway, SC 29526


3
Bedrooms

21



Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Herbert
 Address: 179 Low Country Loop

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
advantage-version
 12/04/22 9:21 AM EST
 0000-0000-0000-0000

Agent

Anna Herbert
advantage-version
 12/04/22 3:36 PM EST
 0000-0000-0000-0000

Client

Client

06/17/2022 5:48:04 PM	First Recorded Entry	ACTIVE	\$94,900	The Advantage Group	NorthGroup Real Estate Inc
MLS # 2125885	Class LAND	List Date 11/18/2021	DOM 152		
Chg Date	Chg Type	Status	Price	Listing Agent - Agent Name	Listing Office - Office Name
04/19/2022 2:01:16 AM	Status	EXPIRED	\$98,500	Derek Herod	Ace Realty, LLC

ALL FIELDS DETAIL



41 of 34

MLS #
2207488

Status
SOLD-CO-OP BY
CCAR MEMBER

Type
Detached

Address
171 Fern Den Dr.

Address 2
Murrells Inlet

City
SC

State
29576

Zip
\$424,000

Asking
Price

Area
278 Murrells Inlet -
Horry County

Class
RESIDENTIAL

Unbranded
Virtual
Tour

Bedrooms
4

Incl. Non-conforming
bedrooms
No

Full Baths
3

Half Baths
0

Formal Dining
No

Style
Traditional

Type of Parking
Attached 2
-Car

Vehicle Parking
Capacity
2



Fox Den Dr

Map Data

Terms of Use

GENERAL



Contact details for Elizabeth Weiss

2 messages

Anthony Mendez <anthony.mendez@homelight.com>

Tue, Jun 28, 2022 at 1:09 PM

Reply-To: Anthony Mendez <anthony.mendez@homelight.com>

To: joel@thangnmb.com

Cc: Anthony Mendez <anthony.mendez@homelight.com>, jbarber.realtor@gmail.com

Hi JOEL

Thanks for calling Elizabeth Weiss. Their full contact details are below.

How did the conversation go?**Left client voicemail****Not working with****Spoke with client
will follow up****Meeting scheduled**

Thanks,

The HomeLight Team

Contact Info

Client Name	Elizabeth Weiss
Phone Number	(843) 651-0017
Email Address	ewissm1@yahoo.com

Full Details

Transaction Side	Seller
Requested Areas	Murrets Inlet
Property Address	4649 FRINGETREE DR Murrets Inlet, South Carolina
Property Type	Condominium

The
Advantage
Group

\$469,900

ACTIVE

First Recorded Entry

09/13/2022
9:19:02 PM

MLS # 2219722		Class RENTAL		List Date 8/30/2022		DOM 8	
Chg Date	Chg Time	Status	Price	Listing Agent - Agent Name	Listing Office - Office Name	Listing Agent - Agent Name	Listing Office - Office Name
09/07/2022 10:39:01 AM	Status	WITHDRAWN	\$2,800	Stephen Sassi	MLB Premier Properties	Stephen Sassi	MLB Premier Properties
Active Status	Placed Status	SPOTTY	P-1 5000	Previous Agent	MLB Premier	Previous Agent	MLB Premier

Contact details for Dustin Owens

3 messages

HomeLight Referrals <referrals-support@homelight.com>

Sat, Aug 13, 2022 at 10:36 AM

Reply To: HomeLight Referrals <referrals-support@homelight.com>

To: joel@livinginmb.com

Cc: HomeLight Referrals <referrals-support@homelight.com>, joelbarberrealtor@gmail.com

HI JOEL

Thanks for calling Dustin Owens. Their full contact details are below.

How did the conversation go?**Left client voicemail****Not working with****Spoke with client
will follow up****Meeting scheduled**

Thanks,

The HomeLight Team

Contact Info

Client Name	Dustin Owens
Phone Number	(843) 796-0667
Email Address	dustinowens27@gmail.com

Full Details

Transaction Side	Seller
Requested Area	Conway
Property Address	283 BEULAH CIR Conway, South Carolina
Property Type	Single Family
Estimated Price	\$255,500

2 messages

HomeLight Referrals <referrals-support@homelight.com>
 Reply-To: HomeLight Referrals <referrals-support@homelight.com>
 To: josh@livinginmb.com
 Cc: HomeLight Referrals <referrals-support@homelight.com>, barber.teator@gmail.com

Wed Aug 24, 2022 at 12:08 PM

H. JOEL

Thanks for calling Steven Rizzo. Their full contact details are below.

How did the conversation go?

☐ Left client voicemail

☐ Not working with

☐ Spoke with client will follow up

☒ Meeting scheduled

Thanks
 The HomeLight Team

Contact Info

Client Name	Steven Rizzo
Phone Number	(443) 909-6759
Email Address	stvrizzo@gmail.com

Full Details

Transaction Side	Seller
Requested Areas	Lots
Property Address	3826 BRYANT ST Leno, South Carolina
Property Type	Single Family
Estimator Price	600,000

ELECTRONICALLY FILED - 2022 Dec 29 12:46 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

Zillow · instant-updates@mail.zillow.com · unsubscribe
to me

Tue, Sep 13, 4:10 PM



This home has been listed for sale at \$115,000.



\$115,000 1 bd | 1 ba | 680 sqft
4214 Pinhurst Cir UNIT 02, Little River, SC

HomeLight Referrals <referrals-support@homelight.com>
 Reply-To: HomeLight Referrals <referrals-support@homelight.com>
 To: joel@livinginmb.com
 Cc: HomeLight Referrals <referrals-support@homelight.com>, jbarber.realtor@gmail.com

Thu Jul 21, 2022 at 9:41 AM

HI JOEL

Thanks for calling Carol Saylor. Their full contact details are below:

How did the conversation go?



Left client voicemail



Not working with



Spoke with client
will follow up



Meeting scheduled

Thanks,
The HomeLight Team

Contact Info

Client Name	Carol Saylor
Phone Number	(703) 926-0036
Email Address	csaylor@breedercompanies.com

Full Details

Transaction Side	Seller
Requested Areas	North Myrtle Beach
Property Address	4501 GROVECREST CIR North Myrtle Beach, South Carolina
Property Type	Single Family

HomeLight Referrals <referrals-support@homelight.com>
Reply-To: HomeLight Referrals <referrals-support@homelight.com>
To: joel@livinginmb.com
Cc: HomeLight Referrals <referrals-support@homelight.com>, barber.raulor@gmail.com

Sat, Jul 30, 2022 at 6:24 PM

Hi JOEL

Thanks for calling Robert Martel. Their full contact details are below

How did the conversation go?



Left client voicemail



Not working with



Spoke with client
will follow up



Meeting scheduled

Thanks,
The HomeLight Team

Contact Info

Client Name	Robert Martel
Phone Number	(843) 267-0860
Email Address	martelbob1787@yahoo.com

Full Details

Transaction Side	Seller
Requested Areas	Myrtle Beach
Property Address	1787 BAY TREE LN Myrtle Beach, South Carolina
Property Type	Single Family
Estimated Price	\$406,100

The
Advantage
Group

\$399,900

ACTIVE

First Recorded Entry

06/04/2022
2:34:12 PM

MLS # 2211069		Class RESIDENTIAL		List Date 5/18/2022		DOM 60	
Chg Date	Chg Trac			Status	Price	Listing Agent - Agent Name	Selling Agent - Agent Name
07/17/2022 9:44:22 AM	Status			WITHDRAWN	\$389,090	Irish Cohen	

8/5/2022	Listed for sale	\$324,900 (+1.8%)	\$221/sqft
Source:  CCAR #2217794 Report			
8/4/2022	Listing removed	\$319,000	\$217/sqft
Source: Owner Report			
7/29/2022	Listed for sale	\$319,000 (+145.4%)	\$217/sqft
Source: Owner Report			

33

7/30/2022	Listed for sale	\$477,777 (-2.3%)	\$268/sqft
-----------	-----------------	----------------------	------------

Source:  CCMLS CCAR #2217266 Report

7/25/2022	Listed for sale	\$488,888 (+77.8%)	\$275/sqft
-----------	-----------------	-----------------------	------------

Source: Owner Report

34

8/27/2022	Listed for sale	\$649,900 (-5.8%)	\$232/sqft
-----------	-----------------	----------------------	------------

Source:  CCAR #2219532 Report

8/22/2022	Listing removed	\$689,999	\$246/sqft
-----------	-----------------	-----------	------------

Source: Owner Report

8/18/2022	Listed for sale	\$689,999 (+206.7%)	\$246/sqft
-----------	-----------------	------------------------	------------

Source: Owner Report

Anthony Mendez <anthony.mendez@homelight.com>
 Reply-To: Anthony Mendez <anthony.mendez@homelight.com>
 To: barber.realtor@gmail.com
 Cc: Anthony Mendez <anthony.mendez@homelight.com>

Thu, Apr 7, 2022 at 1:06 PM

Hi JOEL

Thanks for calling John Rainville. Their full contact details are below

How did the conversation go?

☐ Left client voicemail

☐ Not working with

☐ Spoke with client
will follow up

☐ Meeting scheduled

Thanks,
 The HomeLight Team

Contact Info

Client Name	John Rainville
Phone Number	(843) 455-3251
Email Address	jrainv5@aol.com

Full Details

Transaction Side	Seller
Requested Areas	Myrtle Beach
Property Address	180 CLOVIS CIR Myrtle Beach, South Carolina
Property Type	Single Family

\$834,900 4 bd 4 ba 2,911 sqft

Price cut: \$5K (11/23)

824 Waterbridge Blvd, Myrtle Beach, SC 29579

Est. payment: \$4,916/mo  **Get pre-qualified**

Request a tour
as early as today at 5:30 pm

Contact agent

[Home value](#) [Rental value](#) [Price and tax history](#) [Nearby homes](#)

9/1/2022 Listed for sale \$865,000 \$297/sqft
(-2.8%)

Source:  CCAR #2219868 [Report](#)

8/28/2022 Listing removed \$890,000 \$306/sqft

Source: Owner [Report](#)

8/4/2022 Listed for sale \$890,000 \$306/sqft
(+812.8%)

Source: Owner [Report](#)

37

MLS # <u>2204421</u>		Class CONDO/TOWNHOUSE		List Date 3/3/2022		DOM 92	
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN #	Listing Agent - Agent Name	Listing Office - Office Name
08/02/2022 9:31:06 AM	Status	WITHDRAWN	\$264,900	302	42005040011	Jennifer Asselin	Realty ONE Group Dockside

09/07/2022 8:38:07 AM		First Recorded Entry	ACTIVE	\$549,900	The Advantage Group
MLS # 2214151		Class RESIDENTIAL	List Date 6/21/2022	DOM 69	
Orig Date	Orig Time		Status	Price	Listing Agent Name
08/29/2022	Status		WITHDRAWN	\$599,900	Anthony Wise
9:58:48 PM					

FastExpert.com <admin@fastexpert.com>
Reply-To: FastExpert Support <support@fastexpert.com>
To: jbarberrealtor@gmail.com

Mon Aug 22, 2022 at 1:57 PM



Mike sent you a message.

Client Message to Agent:

Hi Joel I am looking for an Agent to sell my condo. I would like to set up a time today to talk with you.

09/12/2022 1:22:20 PM	First Recorded Entry	ACTIVE	\$179,900	0	44808010003	The Advantage Group	NorthGroup Real Estate Inc
MLS # 2213445							
Chg Date	Chg Time	Class	CONDO/TOWNHOUSE	List Date	6/15/2022	DOM	47
Chg Date	Chg Time	Status	Price	Unit #	TRSL/PRI#	Listing Agent - Agent Name	Listing Office - Office Name
08/01/2022 9:11:08 PM	Status	WITHDRAWN	\$174,900	0	44808010003	Richard Brooks	Realty, Brook
07/07/2022	Adding Price	ACTIVE	\$174,900	0	44808010003	Richard	Realty, Brook

42





4161 Hibiscus Drive

Little River, SC, 29866

 Condo For Sale

Listed 88 Days Ago

\$149,900

1 Beds

1.5 Baths

800 SqFt

9/29/2022	Listed for sale	\$359,900 (+0.2%)	\$220/sqft
-----------	-----------------	----------------------	------------

Source:  CCAR #2221907 Report

9/22/2022	Listed for sale	\$359,100 (+116.3%)	\$220/sqft
-----------	-----------------	------------------------	------------

Source: Owner Report

44

10/10/2022 7:29:41 PM	First Recorded Entry	ACTIVE	\$99,900	Listing Agent Name The Advantage Group Inc	DOM List - Of Name Boss Gro Doc
MLS # 2219929	Class LAND	List Date 9/2/2022	Status	Price	Listing Agent Name Laura Parker
10/03/2022 2:00:55 AM	Chg Type	Chg Date	Status	Price	Listing Agent Name Laura Parker

45

Listing Agent Checklist

(for lead tracking and compliance purposes)

Name: Sonya Conner

Address: 1917 Enclave Lane, North Myrtle Beach, SC 29582

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☒ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
Signature required
 11/05/22 12:46 PM EST
 1917 Enclave Lane, North Myrtle Beach, SC 29582

Agent

Sonya Conner
Signature required
 11/05/22 12:46 PM EST
 1917 Enclave Lane, North Myrtle Beach, SC 29582

Client

Client

46

10/13/2022	Listed for sale	\$324,900 (+1.8%)	\$227/sqft
------------	-----------------	----------------------	------------

Source:  CCMLS CCAR #2222692 Report

9/12/2022	Price change	\$319,000 (-0.8%)	\$223/sqft
-----------	--------------	----------------------	------------

Source: Owner Report

7/26/2022	Listed for sale	\$321,499	\$225/sqft
-----------	-----------------	-----------	------------

Source: Owner Report

Public tax history



47

48

MLS # 22081132		Class CONDO/TOWNHOUSE		List Date 4/16/2022		DOM 179	
Chg Date	Chg Type	Status	Price	Unit #	TMS/PRN#	Listing Agent - Agent Name	Listing Office - Office Name
10/12/2022 9:44:43 AM	Status	WITHDRAWN	\$128,200	20106	44314010695	Christa Marchis	Realty ONE Group DocksideSou th

49

MLS # 2208132		Class CONDO/TOWNHOUSE		List Date 4/16/2022		DOM 179	
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN#	Listing Agent - Agent Name	Listing Office - Office Name
10/12/2022 9:44:43 AM	Status	WITHDRAWN	\$128,200	20106	44314010695	Christin Maschus	Realty ONE Group DocksideSou th

MLS # 22081132		Class CONDO/TOWNHOUSE		List Date 4/16/2022		DOM 179	
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN#	Listing Agent - Agent Name	Listing Office - Office Name
10/12/2022 9:44:43 AM	Status	WITHDRAWN	\$128,200	20106	44314010695	Christin Marchas	Realty ONE Group DocksideSou th

50

Contact details for Gerald lamunno
1 message

HomeLight Referrals <referrals-support@homeight.com>

Tue, Oct 11, 2022 at 12:22

Reply-To: HomeLight Referrals <referrals-support@homeight.com>

To: joel@livinginmb.com

Cc: HomeLight Referrals <referrals-support@homeight.com>, jbarber.realtor@gmail.com

Hi JOEL

Thanks for calling Gerald lamunno. Their full contact details are below

How did the conversation go?

☐ Left client voicemail

☐ Not working with

☐ Spoke with client will follow up

☐ Meeting scheduled

Thanks,
The HomeLight Team

Contact Info

Client Name	Gerald lamunno
Phone Number	(910) 619-1684
Email Address	sarabella11@yahoo.com

Full Details

Transaction Side	Seller
Requested Areas	Myrtle Beach
Property Address	295 STAR LAKE DR Myrtle Beach, South Carolina
Dynamic Time	Client Family

10/21/2022
12:20:53 PM

First Recorded Entry

ACTIVE

\$324,900

[The Advantage Group](#)

MLS #	2212624	Class	RESIDENTIAL	List Date	8/4/2022	DOM	74
Chg Date	Chg Type	Status	Price	Listing Agent Name	Selling Agent Name		
10/17/2022 8:26:09 AM	Status	WITHDRAWN	\$359,900	The Gerring Group	The Gerring Group		
08/04/2022	First Recorded Entry	ACTIVE	\$359,900	The Gerring Group	The Gerring Group		

First Recorded Entry

ACTIVE

\$319,900

The
Advantage
Group

1917730

Class RESIDENTIAL

List Date 8/13/2019

DOI

Chg Type

Status

Price

Listing Agent
- Agent
Name

Status

WITHDRAWN

\$234,900

PAUL
Schroeder

53

10/24/2022	Listed for sale	\$99,900	\$226
		(+24.9%)	

Source:  CCAR #2223390 [Report](#)

10/22/2022	Listed for sale	\$80,000	\$187
------------	-----------------	----------	-------

Source: Owner [Report](#)

10/25/2022 2:41:37 PM	First Recorded Entry	ACTIVE	\$449,900	1604	42115020102	The Advantage Group	
MLS # 2215030	Class CONDO/TOWNHOUSE	List Date 7/4/2022	DON				
Chg Date	Chg Type	Status	Price	Unit #	TMS/PIN#	Listing Agent's - Agent's Name	
08/18/2022 7:13:05 AM	Status	WITHDRAWN	\$445,000	1604	42115020102	Grand Strand Seaside Partners	

10/26/2022	Listing removed	\$429,000	\$133/sqft
Source: Owner Report			

7/27/2022	Listed for sale	\$429,000 (+36.4%)	\$133/sqft
Source: Owner Report			

(57)

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Cathy Gubler
 Address: 70 Addison Cottage Way / Palace Vnbs /
Landmark CA 95

Source of lead:

- ☐ - COI (Center of Influence)
☐ - Cold Calling
☐ - Website
☒ - ~~Referral~~ Withdrawn
☐ - Facebook/ Social Media
☐ - For Sale By Owner
☐ - Homelight
☐ - Referral Source
☐ - Open House
☐ - Past Client
☐ - Property Valuation
☐ - Sign Call
☐ - Zillow
☐ - Call in to agent
☒ - Call in to agent from top agent search or other online portal
☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Garber is our selected agent by choice.

[Signature]
 Agent

Cathy Gubler
 Client

 Date

59

09/13/2022 2:49:06 PM	Status, Proposed Closing Date	PENDING SALE - CASH TERMS	\$52,900	The Advantage Group	NorthGroup Real Estate Inc
09/10/2022 10:15:09 AM	First Recorded Entry	ACTIVE	\$52,900	Joel Barber	EXP Realty LLC
DOM 327					
MLS # 2102153	Class LAND	List Date 2/8/2021			
One Date	One Trst	Status	Price	Listing Agent - Agent Name	Listing Office - Office Name
01/01/2022 1:02:14 AM	Status	EXPIRED	\$49,895	The Collins Team	Realty ONE Group Docksider

Client Call Notes (Please excuse any typos)

Joseph is looking to sell his investment home and see what options he has to get the right amount the right approach would be to the market.

Details

Client Name	Joseph P
Client Type	Seller
Requested Areas	Conway
Property Address	Woodholme Drive, Conway, 29526
Property Listed?	No
Time Frame	0-3 months
Estimated Price	\$181,000
Property Type	Single Family
Reason for Selling	Relocating Within Current Market
Agent Communication Preference	call
Introduced to Investors?	Yes
Seller's Initial Interest	Agent Matching

Qualification Steps

We spoke with Joseph.

How to Contact

Call: (415) 985-1909

PIN: 641976

Homesight charges a simple 25% referral fee upon close of escrow for this referral. There are no

81

02/25/2022 6:33:28 PM

First Recorded Entry

ACTIVE \$153,500 [Joel Barber](#)

MLS #	2107318	Class	LAND	List Date	4/2/2021	DOI
Exp Date	Exp Time			Status	Price	Listing Agent - Agent Name
01/01/2022 1:01:31 AM	Status			EXPIRED	\$129,000	Alissa Carpenter
MLS #	2107318	Class	LAND	List Date	4/2/2021	DOI
Exp Date	Exp Time			Status	Price	Listing Agent - Agent Name

61

3/13/2022	Price change	\$109,900 (+1.8%)	\$79/sqft
-----------	--------------	-------------------	-----------

Source:  CCMLS CCAR #2205213 Report

3/8/2022	Listing removed	\$108,000 (-9.9%)	\$78/sqft
----------	-----------------	-------------------	-----------

Source: Owner Report

62

Charles Whaley



(843) 293-7555 Local time 5:24 AM

DRMYRTLE@HOTMAIL.COM

NOTES

Insert Timestamp

Click to add tags What are tags?

Contact Details

Public Records

Activity

Tasks and Events

Email Campaigns

Details

Call Recordings

Changes

Documents

Contact Information

Name

Charles Whaley

Phone

(843) 293-7555 (Home)

(843) 388-5672 (Home)

(843) 293-4473 (Home)

(843) 293-6145 (Home)

(919) 493-3699 (Home)

EXHIBIT 10 TO REPLY

Residential Property

MLS Number:	2204429	Property Type:	Residential
MLS Name:	Coastal Carolinas Association	Subdivision:	Rosewood Estates
MLS Status:	Relisted	Tax Owner:	WHALEY CHARLES A
Status Change Date:	Mar 22, 2022	Owner Mailing Address:	2407 RIVER RD MYRTLE BEACH SC, 29588
Listing Office:	EXP Realty LLC	List Price:	\$184,900
Listing Agent:	Joel Barber	Year Built:	1984
Days On Market:	8	Beds / Baths:	3 / 2
Area:	19A	Square Footage:	950

63

Details

Client Name	Dawn F
Client Type	Seller
Requested Areas	Myrtle Beach
Property Address	Dahlia Ct, Myrtle Beach, 29577
Time Frame	ASAP
Estimated Price	\$148,038
Property Type	Condominium
Agent Communication Preference	call
Top Investor Estimated Cash Offer	\$96224 - \$127312
Seller's Initial Interest	Agent Matching

Qualification Steps

We did not speak with Dawn Forman, but we confirmed their contact information and that

How to Contact

Call: [\(415\) 985-1909](tel:4159851909)

PIN: 513067

Nancy Yengo

Curious about selling 10200 Beach Club Dr

 nyengo@aol.com

 (910) 818-1257

 10200 Beach Club Dr
Myrtle Beach, SC 29572

Condition: **Excellent**

Reason Selling: **Relocating**

65

5/3/2022 Listed for sale \$259,900

Source:  CCAR #2209573 Report

4/30/2022 Price change \$259,900 (+4%)

Source: Owner Report

4/27/2022 Price change \$249,900 (+92.4%)

Source: Owner Report

(67)

05/05/2022 9:19:19 PM	Showing Time Instructions	ACTIVE	\$274,900	<u>The Advantage Group</u>
05/04/2022 8:13:03 PM	First Recorded Entry	ACTIVE	\$274,900	<u>The Advantage Group</u>

EXHIBIT 10 TO REPLY

EXHIBIT 10 TO REPLY

<u>Chg_Type</u>	<u>Status</u>	<u>Price</u>	<u>Listing Agent - Agent Name</u>
Status, Heated Sq Ft Ground Floor, Interior Access from Ground Floor	WITHDRAWN	\$230,000	<u>Karyn Seesan</u>

68

To: Bill Brochu Wwv Owner.

Mike Williams 207-212-1339

Mon, Mar 28 at 4:37 PM

Ok

Left vm.

Wednesday

Ok. Im available after 930 if
you need to call me.

On Wednesday

Ok

Wed, Mar 30 at 5:54 PM

71

Wed, Feb 16, 7:14 AM

Cara Floyd <carafloyd23@gmail.com>

to Joel, jessie ▼

Good Morning,

Are you available to meet at our house in Waterbridge on Friday at 7pm?

We are strongly considering flipping the house and would like for you to take a look at it.

Thank you,

Cara

72

Ina French

Curious about selling 600 Seth Ln



sf1833@yahoo.com



(937) 541-1080



600 Seth Ln
Longs, SC 29568



3

Bedrooms

Price: 1,505,000

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: French
 Address: 600 Seth Ln, Longs SC 29568

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
 dotloop verified
 12/10/22 9:31 AM EST
 BGWL-RS4G-MODY-X79J

Agent

Ina French
 dotloop verified
 12/14/22 7:55 PM EST
 AGKY-CCBP-QTVS-2HU6

Client

Client

73a

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Hayes

Address: 1100 Possum Trot Rd #H344
North Myrtle Beach, SC 29582

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber

dotloop verified
12/14/22 10:50 AM EST
NKHS-YKPH-5B8R-D8MS

Agent

Joanne Hayes

dotloop verified
12/14/22 12:00 PM EST
VZUX-KTEM-DYUI-94EG

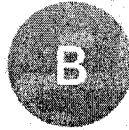
Client

Client

74

7:41

EXHIBIT 10 TO REPLY



Buyer Bambi. >

iMessage
Wed, Feb 16 at 5:15 PM

Hi Bambi, Would you mind
texting me your email address?
I apologize I was in the car
when you called earlier. Thank
you

Sure...bambincu@m-voxx.com



OK I have you penciled in for
Saturday at 11 AM

The 26th.

Thank you

Email d

Wed, Feb 23 at 9:16 AM

Hey baby I have you penciled
in for 11 o'clock Saturday.

Bambi oops.



iMessage



75

ELECTRONICALLY FILED - 2022 Dec 29 12:46 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Reid
 Address: 6010 Windsor GreenWay

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber

dotloop verified
 12/14/22 10:54 AM EST
 CNM4-JBLC-GULI-TADU

Agent

Joan Reid

dotloop verified
 12/14/22 3:04 PM EST
 MHTD-EOEW-APDJ-INMU

Client

Client

3:20

EXHIBIT 10 TO REPLY



Phone

New Message

Cancel

To: Ryan Land Seller

Text Message
Wed, Aug 31 at 1:28 PM

Thank you

Emailed some info. Getting started on holly.

Ok thank you

Professional investment group
Llc

Owner ?

I am now

I have a contract with them

Ok.

I don't see the attachment

Here is the apn for the other
one if you want to glance at it



Text Message



EXHIBIT 10 TO REPLY

ELECTRONICALLY FILED - 2022 Dec 29 12:46 PM - HORRY - COMMON PLEAS - CASE#2022CP2601323

78

3:14

Phone

New iMessage

Cancel

To: Anitra Fsb Crystal Waterway.

Hi Joel. It is not.

Hmm

Have you had cut interest?

*Good

I only showed it to a few people out of respect for an agent in my community. Haven't listed it or even put another word out regarding it

Ok. Seems priced pretty good are you still asking 500,000? Correct me if I'm wrong.

Yes. You are correct.

OK

Next cheapest priced house in



iMessage



79

EXHIBIT 10 TO DEPLY

Thanks,
The HomeLight Team

Contact Info

Client Name	Lettie Black
Phone Number	(336) 778-0124
Email Address	<u>we are hair@msn.com</u>

Full Details

Transaction Side	Seller
Requested Areas	North Myrtle Beach
Property Address	<u>22 south ocean blvd North Myrtle Beach, South Carolina</u>
Property Type	Condominium
Estimated Price	\$280,000

80

Seller

Cash Offer

Virginia Billingsley

Curious about selling 9698 Kings Grant Dr



maybg1964@yahoo.com



(843) 283-7032



9698 Kings Grant Dr
Murrells Inlet, SC 29576



2

Bedrooms

Contact Info

Client Name	Russell Gibbs
Phone Number	(843) 344-1066
Email Address	<u>rustygibbs1979@gmail.com</u>

Full Details

Transaction Side	Seller
Requested Areas	Conway
Property Address	<u>1205 CocksFoot Ln Conway, South Carolina</u>
Property Type	Single Family
Estimated Price	\$169,386

82

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Herbert
 Address: 179 Low Country Loop

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Other (_____)

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
 dotloop verified
 12/04/22 8:21 AM EST
 DA8A-9QZ0-ERD1-COCM

Agent

Anna Herbert
 dotloop verified
 12/04/22 3:26 PM EST
 XLLM-HZMX-NYJO-OBYY

Client

Client

Details

Client Name	Ray L
Client Type	Seller
Requested Areas	Conway
Property Address	Dunraven Ct, Conway, 29527
Property Listed?	No
Time Frame	3-6 months
Estimated Price	\$425,000
Property Type	Single Family
Reason for Selling	Other
Agent Communication Preference	call

Qualification Steps

We spoke with Ray.

84

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: McMillan

Address: 2213440

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
dotloop verified
 12/08/22 9:29 AM EST
 AW3J-6FGB-XUAY-T01R

Agent

Nelda McMillan
dotloop verified
 12/09/22 10:12 AM EST
 9V0U-PWT9-9ZBA-VJF0

Client

Client

85

John is looking to sell the property. He would like you to reach out to him to discuss the current marketing strategies to help her get his home sold quickly.

Details

Client Name	John R
Client Type	Seller
Requested Areas	Little River
Property Address	Williamsburg Road, Little River, 29566
Property Listed?	No
Time Frame	0-3 months
Estimated Price	\$150,000
Property Type	Single Family
Client Availability	tbd
Agent Communication Preference	call
Introduced to Investors?	No
Seller's Initial Interest	Agent Matching

Qualification Steps

We spoke with John.

28

To provide an update, please visit the following link: <http://www.ExpertHomeOffers.com/ReferralFollowup.aspx?lid=584854&uid=22969>.

Referral Info:

Name: Scott Martin

Phone: (508) 317-6083

E-mail: jess10060110@gmail.com

87

Seller

EXHIBIT 10 TO REPLY

Email

bjohanson78@yahoo.com

Copy

Alt email

Add alt email

Phone

(781) 856-2466

Alt phone

Add alt phone

Property Address

4839 SOUTHERN TRL, MYRTLE BEACH,
SC 29579

Price

\$275,000

Client timeframe

0 2 months

EXHIBIT 10 TO REPLY

88

Thanks,
The HomeLight Team

Contact Info

Client Name Lynn Terrell Rodgers
Phone Number (843) 229-6377
Email Address lynnterrell01@gmail.com

Full Details

Full Details

Transaction Side
Requested Areas
Property Address
Property Type
Estimated Price

Seller
Myrtle Beach
1529 LANTERNS REST RD Myrtle Beach, South Carolina
Condominium
\$183,308

90

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: KhaykinAddress: 4805 Luster Leaf Circle Unit 303 Myrtle Beach SC 29577

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☒ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
dotloop verified
 12/14/22 11:20 AM EST
 EG47-XCRM-Y1W0-90EN

Agent

Yeva Khaykin
dotloop verified
 12/14/22 11:53 AM EST
 TCUD-Y0ZR-FHG3-YDUT

Client

91

92

EXHIBIT 10 TO REPLY

EXHIBIT 10 TO REPLY

Khaykin Gennady 41693 Kenilworth Ln
Novi, MI 48377
734.318.0890

1



0

0

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07/18/2022

93

EXHIBIT 10 TO REPLY

08/02/2022

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0

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1

Phillip Richards... 704 Bethesda Ave
Aberdeen, NC 28315

(410) 992-6767

EXHIBIT 10 TO REPLY

09/08/2022 First Recorded Entry
2:26:43 PM

ACTIVE \$239,900

The
Advantage
Group

EXHIBIT 10 TO REPLY

EXHIBIT 10 TO REPLY

MLS # 2216478

Class RESIDENTIAL

List Date 7/20/2022

DOM

Chg Date

Chg Type

Status

Price

Listing Agent
- Agent
Name

08/28/2022 Status
10:10:48 PM

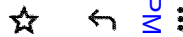
WITHDRAWN \$235,000

Jodi Jordon

94

Alan Goess <agoess@stny.rr.com>
to me ▼

Sun, Apr 17, 10:00 PM



Joel,

Getting real close to putting my condo up for sale. Do you have any current buyers interested in a two bedroom ocean view condo in CherryGrove. If so, please let me know. Plan to visit MB within the next two weeks to get my unit ready, although it is probably in good enough condition to be seen as-is. Just need to select the best realtor for the job.

Alan

95

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Cook
 Address: Atlantica Unit 500

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☒ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber

dotloop verified
 12/10/22 10:03 AM EST
 DIA8-6PEK-NGBB-EFMD

Agent

Richard Cook

dotloop verified
 12/14/22 4:36 PM EST
 CZUB-FYCH-VRVL-MRQC

Client



Tony Greene <homesinconwaysc@real-estate-request.com>
to Jbarber.realtor ▼

Thu, Jun 25, 2015, 12:07 PM



A new lead just signed up. Here is the information:

First Name: Tony

Last Name: Greene

Phone: 843-933-0596

Alt Phn:

Email: Union1124@Gmail.com

Area: Surfside Beach

Most Recent Search: Foreclosures Cherry Grove, Conway, Garden City, Garden City Beach, Georgetown..., type: Condo

Assigned to JOEL BARBER from Homesinconwaysc.com.

Click here to view this lead: <https://leads.realgeeks.com/leads/1838222>

97

05/30/2022

Ed Maffia
(917) 913-2416
367 Pinebrook Blvd
New Rochelle, NY 10804

1

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1

98

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: London

Address: Twin Pond

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
dotloop verified
 12/10/22 9:37 AM EST
 MTTO-QTUM-C9IX-TZXA

Agent

Cynthia London
dotloop verified
 12/12/22 12:20 PM EST
 XRHS-UGJN-JORS-6SMU

Client

99

Steve Zickefoose <sazickefoose@msn.com>

Mon, Oct 10, 9:00 AM



to me ▾

EXHIBIT 1 TO REPLY

Please check the listing price on my unit at Myrtle Beach Resort. It is located in the Ocean Front Spa Building/ B building 132B. We are thinking about listing it but would like an opinion on what it would sell for. We contacted the on-site agent several weeks ago however he has never returned our call . It grossed over \$16000.00 last year. If you are unable to check on our unit please advise.

Sent from my iPhone

101

100a

EXHIBIT 10 TO REPLY

EXHIBIT 10 TO REPLY

Steven Zickefo...
20 Twin Oaks Dr
Huntington, WV 25701

(304) 634-6239

1



0

0

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09/20/2022



FOR SALE BY OWNER

3647 Pecan St.

\$285,000

Largest 3 bedroom 1 ½ bath(l) duplex floorplan in Seagate Village,

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Harrison

Address: 1100 Possum Trot, North myrtle beach, SC 29582-

Source of lead:

- ☒ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other (_____)

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
dotloop verified
 12/13/22 4:34 PM EST
 XEPL-NGYT-M6DS-4XBZ

Agent

Lexora Harrison
dotloop verified
 12/14/22 10:59 AM EST
 DECV-TKMN-DVXC-S6XY

Client

Client

102

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Seeger
 Address: 2355 Seaford Dr

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☒ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber
dotloop verified
 12/13/22 8:06 PM EST
 I6JS-66FT-CM5B-FCPS

Agent

Mary Ann Seeger
dotloop verified
 12/14/22 10:49 AM
 EST
 RKV2-AJIK-VQYQ-L5/Q

Client

Client

103

7:52

EXHIBIT 10 TO REPLY

Phone



New iMessage

Cancel

To: Royal Garden Seller Daniel Raj.

Wed, Jun 1 at 3:41 PM

Yes going to get linens washed and everything cleaned think realtor wants to come Saturday for pics he asked me to wash walls in bedroom so going to do it tomorrow. Ceilings have mold & not something I can do the popcorn ceiling will crumble once wet

👉 from Leanne

Wed, Jun 1 at 6:34 PM

All right let me know if you want me to get you someone that might be able to help with the ceiling.

Yes please. She is leaving on Friday. The sooner it gets on the market the better it is

I don't want to advertise for



iMessage



EXHIBIT 10 TO REPLY

ELECTRONICALLY FILED - 2022 Dec 29 12:46 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

104

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Klesta

Address: 4349 Grand Harbour Boulevard, Little River, SC 29566

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☐ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☒ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☐ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber

dotloop verified
 12/13/22 4:37 PM EST
 IRDJ-6O3A-8KS3-YLLH

Agent

Stanley Klesta

dotloop verified
 12/15/22 6:31 AM EST
 VQTM-E1JG-ZKJ6-XZHC

Client

Client

105



106

Listing Agent Checklist

(For lead tracking and compliance purposes)

Name: Haddad
 Address: 265 Connemara Dr. 16-A

Source of lead:

- ☐ - COI (Center of Influence)
- ☐ - Cold Calling
- ☐ - Website
- ☐ - Expired/ Withdrawn
- ☐ - Facebook/ Social Media
- ☐ - For Sale By Owner
- ☐ - Homelight
- ☒ - Referral Source
- ☐ - Open House
- ☐ - Past Client
- ☐ - Property Valuation
- ☐ - Sign Call
- ☐ - Zillow
- ☐ - Call in to agent
- ☐ - Call in to agent from top agent search or other online portal
- ☒ - Community updates
- ☐ - Other ()

By signing below, I affirm that the source above was how agent obtained our business and not from any other lead source, database or otherwise and Joel Barber is our selected agent by choice.

Joel Barber

dotloop verified
 12/05/22 5:36 AM EST
 HCVO-J4LQ-Q0RO-URSR

Agent

Edward Haddad

dotloop verified
 12/05/22 6:53 AM EST
 6G7C-AJBT-7GHT-X6KR

Client

107a

EXHIBIT 10 TO REPLY

06/22/2022

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0

1

163 Shweky Ln
Southington, CT 06489

Edward Haddad
(860) 621-2781

EXHIBIT 10 TO REPLY

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
ANSWER TO AMENDED
COMPLAINT, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS**

NOW COMES the Defendant, Joel D. Barber ("Mr. Barber" or "this Answering Defendant"), by and through his undersigned counsel, and hereby responds the numbered allegations of Plaintiffs' Amended Complaint, as follows:

1. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 1 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.
2. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.
3. This Answering Defendant lacks sufficient knowledge or information to admit or

deny the allegations contained in Paragraph 3 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

4. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 4 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

5. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 5 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

6. The allegations contained in Paragraph 6 of Plaintiffs' Amended Complaint are admitted.

7. The allegations contained in Paragraph 7 of Plaintiffs' Amended Complaint are admitted.

8. The allegations contained in Paragraph 8 of Plaintiffs' Amended Complaint are admitted.

9. The allegations contained in Paragraph 9 of Plaintiffs' Amended Complaint are denied as stated; it is admitted that Mr. Barber was an independent contractor with eXp from February 14, 2022 through April 1, 2022.

10. The allegations contained in Paragraph 10 of Plaintiffs' Amended Complaint are admitted.

11. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 11 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

12. This Answering Defendant lacks sufficient knowledge or information to admit or

deny the allegations contained in Paragraph 12 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

13. The allegations contained in Paragraph 13 of Plaintiffs' Amended Complaint are denied.

14. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 14 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

15. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 15 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

16. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 16 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

17. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 17 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

18. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 18 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

19. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 19 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

20. This Answering Defendant lacks sufficient knowledge or information to admit or

deny the allegations contained in Paragraph 20 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

21. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 21 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

22. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 22 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

23. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 23 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

24. The allegations contained in Paragraph 24 of Plaintiffs' Amended Complaint are admitted.

25. The allegations contained in Paragraph 25 of Plaintiffs' Amended Complaint are admitted.

26. It is admitted that this Answering Defendant is affiliated with Defendant Northgroup Real Estate, Inc. Except as expressly admitted, the allegations contained in Paragraph 26 of Plaintiffs' Amended Complaint are denied.

27. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 27 of Plaintiffs' Amended Complaint, and therefore the allegations are denied.

28. This Answering Defendant lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 28 of Plaintiffs' Amended Complaint, and therefore

the allegations are denied.

29. The allegations contained in Paragraph 29 of Plaintiffs' Amended Complaint are denied.

30. The allegations contained in Paragraph 30 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied, although this Answering Defendant does not dispute venue at this time.

31. The allegations contained in Paragraph 31 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied, although this Answering Defendant does not dispute jurisdiction at this time.

FACTUAL ALLEGATIONS

32. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

33. It is admitted only that the Independent Contractor and Broker Agreement between Mr. Barber and Margaret McBride is a written document that speaks for itself. To the extent the allegations contained in Paragraph 33 of Plaintiffs' Amended Complaint vary or contradict said document, the allegations are denied. Except as expressly admitted, the allegations contained in Paragraph 33 of Plaintiffs' Amended Complaint are denied.

34. The allegations contained in Paragraph 34 of Plaintiffs' Amended Complaint are admitted.

35. The allegations contained in Paragraph 35 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, it is admitted only that on February 7, 2022, Mr. Barber was dismissed from Century 21's premises

and directed to remove all of his personal belongings and effects. Except as expressly admitted, the allegations are denied.

36. The allegations contained in Paragraph 36 of Plaintiffs' Amended Complaint are denied.

37. The allegations contained in Paragraph 37 of Plaintiffs' Amended Complaint are denied.

38. The allegations contained in Paragraph 38 of Plaintiffs' Amended Complaint are denied.

39. The allegations contained in Paragraph 39 of Plaintiffs' Amended Complaint are denied.

40. The allegations contained in Paragraph 40 of Plaintiffs' Amended Complaint are denied.

41. The allegations contained in Paragraph 41 of Plaintiffs' Amended Complaint are denied.

42. The allegations contained in Paragraph 42 of Plaintiffs' Amended Complaint are denied.

43. The allegations contained in Paragraph 43 of Plaintiffs' Amended Complaint are denied.

44. The allegations contained in Paragraph 44 of Plaintiffs' Amended Complaint are denied.

45. The allegations contained in Paragraph 45 of Plaintiffs' Amended Complaint are denied.

46. The allegations contained in Paragraph 46 of Plaintiffs' Amended Complaint are

denied.

47. The allegations contained in Paragraph 47 of Plaintiffs' Amended Complaint are denied.

48. The allegations contained in Paragraph 48 of Plaintiffs' Amended Complaint are denied.

49. The allegations contained in Paragraph 49 of Plaintiffs' Amended Complaint are denied.

FIRST CAUSE OF ACTION
(Breach of Contract)

50. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

51. The allegations contained in Paragraph 51 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, it is admitted only that the Independent Contractor and Broker Agreement, the Agent Manual and Company Office Policy Manual, as well as other contractual documents, are all written documents that speak for themselves. To the extent the allegations contained in Paragraph 51 of Plaintiffs' Amended Complaint vary or contradict the foregoing documents, the allegations are denied.

52. The allegations contained in Paragraph 52 of Plaintiffs' Amended Complaint are denied.

53. The allegations contained in Paragraph 53 of Plaintiffs' Amended Complaint are denied.

54. The allegations contained in Paragraph 54 of Plaintiffs' Amended Complaint are denied.

55. The allegations contained in Paragraph 55 of Plaintiffs' Amended Complaint are

denied.

56. The allegations contained in Paragraph 56 of Plaintiffs' Amended Complaint are denied.

57. The allegations contained in Paragraph 57 of Plaintiffs' Amended Complaint are denied.

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

58. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

59. The allegations contained in Paragraph 59 of Plaintiffs' Amended Complaint are denied.

60. The allegations contained in Paragraph 60 of Plaintiffs' Amended Complaint are denied.

61. The allegations contained in Paragraph 61 of Plaintiffs' Amended Complaint are denied.

62. The allegations contained in Paragraph 62 of Plaintiffs' Amended Complaint are denied.

THIRD CAUSE OF ACTION
(Restraining Order/Injunctive Relief)

63. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

64. The allegations contained in Paragraph 64 of Plaintiffs' Amended Complaint are denied.

65. The allegations contained in Paragraph 65 of Plaintiffs' Amended Complaint are

denied.

66. The allegations contained in Paragraph 66 of Plaintiffs' Amended Complaint are denied.

67. The allegations contained in Paragraph 67 of Plaintiffs' Amended Complaint, including subparts (a) through (l), are denied.

FOURTH CAUSE OF ACTION

(Trespass)

68. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

69. The allegations contained in Paragraph 69 of Plaintiffs' Amended Complaint are denied for lack of knowledge or information.

70. The allegations contained in Paragraph 70 of Plaintiffs' Amended Complaint are denied.

71. The allegations contained in Paragraph 71 of Plaintiffs' Amended Complaint are denied.

FIFTH CAUSE OF ACTION

(Conversion)

72. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

73. The allegations contained in Paragraph 73 of Plaintiffs' Amended Complaint are denied for lack of knowledge or information.

74. The allegations contained in Paragraph 74 of Plaintiffs' Amended Complaint are denied.

75. The allegations contained in Paragraph 75 of Plaintiffs' Amended Complaint are

denied.

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. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

77. The allegations contained in Paragraph 77 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, it is admitted only that the South Carolina Code of Laws is in writing and therefore speaks for itself. This Answering Defendant craves reference to the official statutes for a full and complete recitation of their contents. To the extent the allegations contained in Paragraph 77 of the Plaintiffs' Amended Complaint vary or contradict the South Carolina Code of Laws, the allegations are denied.

78. The allegations contained in Paragraph 78 of Plaintiffs' Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, it is admitted only that the United States Code is in writing and therefore speaks for itself. This Answering Defendant craves reference to the official statutes for a full and complete recitation of their contents. To the extent the allegations contained in Paragraph 78 of the Plaintiffs' Amended Complaint vary or contradict the United States Code, the allegations are denied.

79. The allegations contained in Paragraph 79 of Plaintiffs' Amended Complaint are denied due to the lack of citation or source for the stated definition.

80. The allegations contained in Paragraph 80 of Plaintiffs' Amended Complaint are denied.

81. The allegations contained in Paragraph 81 of Plaintiffs' Amended Complaint are denied.

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

82. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

83. The allegations contained in Paragraph 83 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

84. The allegations contained in Paragraph 84 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

85. The allegations contained in Paragraph 85 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

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

86. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

87. The allegations contained in Paragraph 87 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

88. The allegations contained in Paragraph 88 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

89. The allegations contained in Paragraph 89 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

90. The allegations contained in Paragraph 90 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

NINTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

91. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

92. The allegations contained in Paragraph 92 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

93. The allegations contained in Paragraph 93 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

94. The allegations contained in Paragraph 94 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

TENTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

95. This Answering Defendant restates each and every response to the prior allegations as if fully set forth herein.

96. The allegations contained in Paragraph 96 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

97. The allegations contained in Paragraph 97 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

98. The allegations contained in Paragraph 98 of Plaintiffs' Amended Complaint are denied as to this Answering Defendant.

Plaintiffs' prayer for relief is denied.

FIRST DEFENSE

If it is determined that Plaintiffs have failed to state one or more claims upon which relief can be granted against this Answering Defendant, then such claims should be denied.

SECOND DEFENSE

Plaintiffs' claims may be barred by the doctrines of laches, waiver, or estoppel.

THIRD DEFENSE

If it is determined that Plaintiffs failed to mitigate their alleged damages, then such failure to mitigate serves as a bar, in whole or in part, to Plaintiffs' recovery.

FOURTH DEFENSE

If it is determined that Plaintiffs' alleged damages were caused by the intervening acts or omissions of individuals or entities other than this Answering Defendant over whom this Answering Defendant has no right of control or duty of supervision, then the doctrine of intervening and superseding acts and omissions are pled in defense and bar of Plaintiffs' right to recover.

FIFTH DEFENSE

If it is determined that no act or omission of this Answering Defendant was the proximate cause of Plaintiffs' alleged damages, then the same serves as a bar to Plaintiffs' right to recover.

SIXTH DEFENSE

To the extent Plaintiffs seek the recovery of punitive or other exemplary damages against this Answering Defendant, such recovery, if any, must be limited by the provisions of S.C. Code § 15-32-530, the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 3 of the South Carolina Constitution, and all other laws pertaining to the limitation or "cap" on such damages.

SEVENTH DEFENSE

Upon information and belief, Plaintiffs suffered no actual injury or damages as a result of the alleged misconduct by this Answering Defendant, and the same is therefore pled in defense and bar of Plaintiffs' right to recover.

EIGHTH DEFENSE

This Answering Defendant asserts the economic loss rule insofar as it may preclude recovery in tort for a mere breach of contract.

NINTH DEFENSE

This Answering Defendant denies each and every allegation contained in Plaintiffs' Amended Complaint not expressly admitted to be true.

TENTH DEFENSE

This Answering Defendant reserves the right to assert such further defenses as may be revealed or determined during the course of discovery and investigation in this matter.

**ANSWERING FURTHER AND BY WAY OF COUNTERCLAIMS AGAINST 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**

1. Defendant Joel D. Barber ("Mr. Barber") restates each and every response to the prior allegations as if fully set forth herein.
2. Mr. Barber is a citizen and resident of Horry County, South Carolina.
3. Upon information and belief, both HSS Barefoot, LLC d/b/a Century 21 Barefoot and R&G Corp d/b/a Century 21 The Harrelson Group are South Carolina Limited Liability Companies which do business in Horry County, South Carolina (collectively "C21").
4. Upon information and belief, Mills, LLC is a South Carolina Limited Liability

Companies which does business in Horry County, South Carolina.

5. Upon information and belief, Kevin Mills is a citizen and resident of Horry County, South Carolina.

6. Mills, LLC and Kevin Mills will be hereinafter collectively referred to as "Mills".

7. Upon information and belief, Greg Harrelson ("Harrelson") is a citizen and resident of Horry County, South Carolina.

8. This matter arises out of Mr. Barber's employment by C21 and Harrelson and an Independent Contractor and Broker Agreement between the parties which defines such employment.

9. Mr. Barber was employed with C21 and Harrelson from March 14, 2017 through at least February 7, 2022. The Independent Contractor and Broker Agreement between the parties which defines such employment is fully incorporated herein (the "Agreement").

10. Under the terms of the Agreement Mr. Barber was entitled to certain commissions related to his and his team's work as real estate agents for C21 and Harrelson.

11. The Agreement requires payment of such commissions as soon as practicable after the collection of such commissions.

12. The Agreement states that the rights to commissions shall not be divested by the termination of the Agreement.

13. Upon information and belief the Agreement was terminated after February 7, 2022.

14. C21 and Harrelson have not paid Mr. Barber the commissions which he is due.

15. Mr. Barber is owed all the commissions earned for, including, but not limited to, his and his team's listings, sales, and closings.

16. C21 and Harrelson have collected commissions earned by and due to Mr. Barber

and have refused to pay such commissions pursuant to the Agreement.

FOR A FIRST CAUSE OF ACTION
(QUANTUM MERUIT as to C21 and Harrelson)

17. Mr. Barber realleges each and every allegation herein.
18. Mr. Barber conferred a benefit on C21 and Harrelson by laboring in his position with C21 and Harrelson resulting in significant profit.
19. C21 and Harrelson realized the benefit by enjoying the profit created by Mr. Barber and his team.
20. C21 and Harrelson retained the full amount of the profit after Mr. Barber's employment and did not pay to Mr. Barber the portions he was owed.
21. C21 and Harrelson have been unjustly enriched and failed to pay Plaintiff his fair rate of pay including commissions.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT as to C21 and Harrelson)

22. Mr. Barber realleges each and every allegation herein.
23. C21 and Harrelson entered into a contract with Mr. Barber.
24. The Agreement is a valid Contract between Mr. Barber and C21 and Harrelson supported by valuable consideration.
25. Under the Agreement and law, Mr. Barber is entitled to payment of commissions earned for, including, but not limited to, his and his team's listings, sales, and closings.
26. C21 and Harrelson breached the contract by failing to pay all wages and commissions due under the Agreement, failing to pay commissions within the time periods(s) allowed by the Agreement, and other breaches.
27. As a direct and proximate cause of Defendant's breach, Plaintiff has suffered

damages and is entitled to recover all actual, incidental, and consequential damages under this cause of action.

FOR A THIRD CAUSE OF ACTION
(VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT)

28. Mr. Barber realleges each and every allegation herein.

29. C21, Harrelson, and Mills, by and through their deceptive practices in violation of the industry standards and standard practices and procedures related to the real estate agencies and brokers have engaged in unfair or unlawful methods of competition and unfair and deceptive acts in the conduct of trade and/or commerce.

30. C21's, Harrelson's, and Mills' 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.

31. As a result and proximate cause of C21's, Harrelson's, and Mills' unfair and unlawful and deceptive trade practices, Mr. Barber has been damaged and entitled to actual and statutory damages and attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH EXISTING AND PROSPECTIVE CONTRACTUAL RELATIONSHIPS)

32. Mr. Barber realleges each and every allegation herein.

33. C21, Harrelson, and Mills intentionally interfered with the existing and prospective contractual relationships of Mr. Barber with third-parties, including but not limited to listing agreements, contracts, sales agreements, independent contractor and broker agreements, and marketing agreements.

34. C21, Harrelson, and Mills had and have actual knowledge and/or should have known of the existing and prospective contractual relationships of Mr. Barber with third-parties.

35. C21, Harrelson, and Mills intentionally, and without justification, interfered with the existing and prospective contractual relationship of Mr. Barber with third parties and procured the breach of such relationships.

36. As a result of C21's, Harrelson's, and Mills' intentional interference with the existing and prospective contractual relationships, Mr. Barber has been damaged, including actual damages and lost profit damages, and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(AMALGAMATION and/or PIERCING THE CORPORATE VEIL)

37. Mr. Barber realleges each and every allegation herein.

38. C21, Harrelson, and Mills have operated in such a manner that the distinctions between the entities and their activities have become blurred.

39. There is excessive interrelationship between the entities and their activities; a sharing of management and employees and other public assets; and an absence of delineation between the entities such that the public is unable to tell where one entity's activities stop and the next entity's activities start.

40. Upon information and belief, C21, Harrelson, and Mills has been set up as different legal entities so to protect fraud, exercise bad faith, justify wrong, and defeat public policy.

41. Upon information and belief, there is evidence that the blurred legal distinctions of these separate entities have resulted in bad faith, abuse, fraud, wrongdoing, and injustice.

42. Treating C21, Harrelson, and Mills as separate entities will perpetuate an injustice on Mr. Barber and others and allow C21, Harrelson, and Mills to unjustly enrich themselves by untoward means.

43. HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC should be amalgamated for purposes of any judgment in this

action and viewed as a single business enterprise.

44. HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC should be disregarded as it relates to Kevin Mills and Greg Harrelson as the corporate entities are used to protect fraud, justify wrong, and defeat public policy.

45. Upon information and belief, HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC (1) were undercapitalized; (2) failed to observe corporate formalities; (3) paid no dividends; (4) were insolvent; (5) lacked corporate records; (6) had their corporate funds siphoned off by the dominant stockholder(s); and/or (7) were used as a mere facade for operations of their dominant stockholder(s).

46. A fundamental unfairness would result from recognition of the corporate entities.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to the Plaintiffs' Amended Complaint, and having asserted his Affirmative Defenses and Counterclaims, the Defendant Joel D. Barber respectfully prays for the following relief:

1. That Plaintiffs' Amended Complaint and all causes of action asserted therein against Defendant Barber be dismissed with prejudice;
2. That Defendant Barber have and recover judgment against the Plaintiffs pursuant to his Counterclaims;
3. That the costs of this action be taxed against the Plaintiffs;
4. For an award of Defendant Barber's reasonable attorneys' fees as allowed by contract or applicable law;
5. For a trial by jury on issues so triable; and
6. For such further relief as justice requires.

This the 3rd day of June, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

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*Attorneys for Defendant
Joel D. Barber (as to the Answer and
Affirmative Defenses only)*

-and-

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*Attorneys for Defendant
Joel D. Barber (as to the Counterclaims only)*

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the **DEFENDANT JOEL D. BARBER'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF** was electronically filed using the SC Courts' E-Filing portal which will send notice of filing to all counsel of record in this action, as follows:

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This the 3rd day of June, 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) 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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MARCH 31, 2022

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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

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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

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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

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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

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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

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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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CERTIFICATE OF COURT REPORTER

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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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