

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jun 16 2023

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2021-UP-288 (S.C. Ct. App. filed Aug. 4, 2021)

Gabriel Barnhill and GSB Enterprises LLC, ... Respondents,

v.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners LLC,
SMS Services LP, William C. Piner, WCP Limited LLC, 809 Holdings LP, QC Financing LLC,
and Sage Financial Group LLC, ... Defendants.

Of whom J. Floyd Swilley, Laurel K. Swilley and Heath Causey are the Petitioners.

APPENDIX VOLUME I OF II

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Attorneys for Respondents

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 28 2017

SC Court of Appeals

Case No. 2014-CP-26-8367 (Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC.....
Respondents

V.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

I
Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey are the
Appellants

THE RECORD ON APPEAL

VOLUME I of II

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Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-26-8367 (Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC.....
Respondents

V.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

I
Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey are the
Appellants

THE RECORD ON APPEAL

a copy to Heath Wendell Causey, Pro Se and to Nata Fata, Attorney for Appellant by depositing same in the United States Mail, postage paid, on the 19th day of May, 2017 with said copies being addressed to the Clerk of the Court of Appeals, South Carolina Court of Appeals 1015 Sumter Street, Columbia, SC 29201, to Heath Wendell Causey at 1705 N. Oak Street, Suite 2, Myrtle Beach, SC 29577 and to Attorney Fata addressed to Nate Fata, PA, Post Office Box 16620, Surfside Beach, SC 29587.

May 19, 2017



F. Miles Adler
S.C. Bar No.: 70238
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
attorney for J. Floyd Swilley and Laurel K. Swilley

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

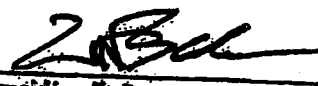
CONSENT ORDER

FILED
HORRY COUNTY
13 SEP 20 AM 9:50
CLERK OF COURT

This matter comes before the Court pursuant to the Plaintiffs' Motion to Compel Discovery which was filed on July 3, 2013. It appearing that the Defendants have agreed to provide responsive documents and responses to the outstanding Interrogatories and Request For Production of Documents.

It is hereby ORDERED that Defendants shall provide responsive documents and complete responses to all Interrogatories and Request For Production of Documents which are the subject of the Motion to Compel no later than October 15, 2013.

AND IT IS SO ORDERED.


Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina
This 17 day of Sept., 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Investment
Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC, Heath Causey,
and Sage Financial Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Case No.: 2013-CP- 26 - 2816

**ORDER GRANTING DEFENSE COUNSEL'S MOTION
TO WITHDRAW**

FILED
HORRY COUNTY
13 DEC 11 AM 11:30
MELANIE HUGGINS-WOOD
CLERK OF COURT

Counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC, moved this Court to allow F. Miles Adler to withdraw as counsel for the Defendants in this matter.

It appears to this Court that there is just cause for granting the motion.

It is therefore ORDERED that the motion to withdraw as counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC, is allowed. It is further ordered:

1. Unless this Court is otherwise notified in writing, J. Floyd Swilley, Laurel K. Swilley, William C. Piner, and Heath Causey have the burden of keeping this Court informed as to where notices, pleadings, and other papers may be served on them individually and for J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, WCP Limited, LLC, 809 Holdings, LP, and Sage Financial Group, LLC. Service of notice may be made on these Defendants as follows:

J. Floyd Swilley
350 Hilton Road - Suite 100
Myrtle Beach, SC 29577

Heath Causey
350 Hilton Road - Suite 100
Myrtle Beach, SC 29577

Laurel K. Swilley
1317 3rd Avenue - Suite B
Conway, SC 29526

J. Floyd Swilley Investment Advisors
350 Hilton Road - Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

William C. Piner
606 Calhoun Road
Myrtle Beach, SC 29577

SMG Partners, LLC
350 Hilton Road - Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

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Appendix 00009

Order Granting Defense Counsel's Motion to Withdraw
2013-CP-26-2816

Sage Financial Group, LLC
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

SMS Services, LP
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: Heath Causey

WCP Limited, LLC
606 Calhoun Road
Myrtle Beach, SC 29577
ATTN: William C. Piner

809 Holdings, LP
1317 3rd Avenue – Suite B
Conway, SC 29526
ATTN: Laurel K. Swilley

2. J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC, have the obligation to hire other counsel if they elect to do so.

3. J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC have the obligation to respond to discovery, and prepare for hearings and/or trial.

4. No proceedings are currently scheduled on the motions or trial docket for Horry County at this time with respect to this case.

5. The Clerk of Court is instructed to mail a copy of this Order to the Defendants at the below listed addresses:

J. Floyd Swilley
350 Hilton Road – Suite 100
Myrtle Beach, SC 29577

Laurel K. Swilley
1317 3rd Avenue – Suite B
Conway, SC 29526

William C. Piner
606 Calhoun Road
Myrtle Beach, SC 29577

Heath Causey
350 Hilton Road – Suite 100
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

SMG Partners, LLC
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

Sage Financial Group, LLC
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: J. Floyd Swilley

SMS Services, LP
350 Hilton Road – Suite 100
Myrtle Beach, SC 29572
ATTN: Heath Causey

WCP Limited, LLC
606 Calhoun Road
Myrtle Beach, SC 29577
ATTN: William C. Piner

809 Holdings, LP
1317 3rd Avenue – Suite B
Conway, SC 29526
ATTN: Laurel K. Swilley

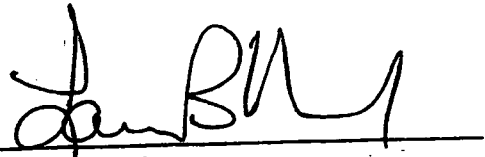
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Appendix 00010

Order Granting Defense Counsel's Motion to Withdraw
2013-CP-26-2816

AND IT SO ORDERED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

This 9 day of Dec, 2013

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Appendix 00011

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2602816

Gabriel Barnhill

GSB Enterprises LLC

J Floyd Swilley

J Floyd Swilley
Investment Advisors
SMG Partners LLC
William C Piner
809 Holdings LP

Laurel K Swilley
SMS Services LP
WCP Limited LLC
QC Financing LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ 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.

IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court

PLAINTIFF'S MOTION FOR SANCTIONS PARTIALLY GRANTED.
PLAINTIFF AWARDED ATTORNEY'S FEES IN THE AMOUNT \$1525.00
BE PAID BY THE DEFENDANT WITHIN 10 DAYS OF TODAY.

ORDER INFORMATION

order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	N/A	N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

FILED
HORRY COUNTY
2014 JAN 16 AM 10:05
CLERK OF COURT

The judgment information above has been provided by the submitting party. Disputes concerning the amount in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Circuit Court Judge BENJAMIN H. CULBERTSON

2148
Judge Code

1/13/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Natale Fata PO Box 16620 Surfside Beach, SC 29587

Frederick Miles Adler PO Box 4743 Pawleys Island, SC 29585

ATTORNEY(S) FOR THE PLAINTIFF(S)

JOHN LEITER

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins-Ward

Melanie Huggins-Ward - Clerk of Court

Court Reporter GRACE HURLEY

Copy of Order/
Mailed \$ 1-16-14
Initials S.H.

000006

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

ORDER GRANTING SANCTIONS
AGAINST DEFENDANTS

FILED
HORRY COUNTY
14 OCT 15 PM 2:23
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before me on September 30, 2014 for hearing on Plaintiffs' June 27, 2014 Motion for Sanctions. Present at the hearing were Nate Fata, counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, Inc. (collectively referred to as "Barnhill"), and John M. Leiter, counsel for Defendants. Defendant Heath Causey was in attendance as well. In support of the Motion, Counsel for Plaintiffs submitted a filed Memorandum detailing the issues and documents relating to the Motion and an Affidavit in Support of Attorney Fees.

BACKGROUND

Barnhill commenced this action by filing a Summons and Complaint on April 25, 2013. Barnhill alleges, *inter alia*, that Defendants engaged in a fraudulent investment scheme in which Barnhill, who was Floyd Swilley's client, invested no less than \$115,000 in 809 Holdings, LP and received approximately \$2,000 in return.

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Appendix 00014

Plaintiffs have filed several motions to compel discovery.¹ Plaintiffs' filed three (3) Motions for Sanctions: November 4, 2013, February 19, 2014 and most recently on June 27, 2014.

A discovery Order was entered on September 20, 2013 which required Defendants to respond to the April 2013 discovery requests. Thereafter, Defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and Judge Culbertson awarded \$1,500.00 in attorney fees by Order filed January 16, 2014.

In the discovery requests which are the subject of the instant Motion, Plaintiffs are seeking to discover any payments made after 2011 to investors in 809 Holdings, LP and any payments to Defendants from either QC Financing or 809 Holdings.

In Defendants' court ordered Responses dated October 15, 2013 to Interrogatory Number 9 of Plaintiffs' First Set of Interrogatories and Request for Production, Defendants disclosed the following 809 Holdings investors and amounts:

Raymond LaForest	\$50,000.00
John Teska	\$ 6,000.00
Tamrin Baggett	\$68,900.00
	\$ 6,200.00
Joyce Kauffman	\$48,000.00
Scott Mogal	\$17,000.00
Robert Twigg	\$25,000.00
Mark Sarvis	\$40,000.00
Gabriel Barnhill	\$49,000.00

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013, January 8, 2014, January 10, 2014 and September 5, 2014.

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GSB Enterprises	\$41,000.00
J. Floyd Swilley	\$25,000.00
	\$47,500.00

Plaintiffs' Supplemental Interrogatory Number 2, dated February 25, 2014 requested,

For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in response to Interrogatory Number 9, identify the bank name, address, payee, amount, date of payment and reason for payment.

Defendants responded, "None" in Defendants' Response to Supplemental Interrogatories dated April 4, 2014.

Plaintiffs' Supplemental Request for Admissions dated April 22, 2014 sought similar information concerning any payments to 809 Holdings investors:

Since January 1, 2012, at least one person disclosed in your response to Plaintiffs' Interrogatory Number 9 to be an 809 Holdings' investor, including but not limited to a note purchaser or limited partner, received a payment in connection with the 809 Holdings investment.

Defendants denied this request in their May 22, 2014 Response to the Supplemental Request for Admission.

Investor Robert Twigg was paid \$25,000.00 in 2012 for his 25 shares of 809 Holdings, LP.² This payment was not disclosed. A copy of former defense counsel's letter and check was included with Plaintiffs' Memorandum. The check was signed by Heath Causey.

According to the May, 2014 deposition excerpts of investor Joyce Kauffman, Floyd Swilley made multiple payments to Kauffman relating to her investment account. In the June 2014 deposition, Kauffman reiterated that she received recent payments from Swilley.

² Twigg has filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP. Civil Action No. 2013-CP-26-5711

Twigg was paid in 2012. Kauffman was paid in at least 2013 and 2014. Another 809 Holdings investor, Tamrin Baggett, appears to have been paid as well. Defendants contend that payments to these three investors were not from them but were from SAFE or from Defendants' related entities or other accounts. However, Heath Causey signed the Twigg check and Floyd Swilley signed the check to investor Kauffman. They knew about the payments to the 809 Holdings investors.

Interrogatory 6 to Plaintiffs' First Set of Interrogatories dated April 29, 2013 seeks to uncover all payments Defendants received, including through their companies, from either 809 Holdings or QC Financing.

Interrogatory 6. For the period August 2010 to the present, set forth each and every amount you provided to or received from 809 Holdings, or QC Financing and for each amount state:

- a. The date of the remittance;
- b. The form of remittance (cash, money order, check, etc.); and
- c. The reason for remittance (investment, loan, repayment, dividend, etc.)

As documented in Plaintiffs' Memorandum, Defendants' January 12, 2014 Supplemental Response failed to disclose substantial payments, including payments to Sage Financial, Swilley Financial and William Piner.

ANALYSIS

After reviewing the record and hearing the arguments of counsel, Plaintiffs' Motion for Sanctions is granted. Defendants shall provide full and complete responses to the discovery requests which are the subject of the instant Motion. This action and some of the discovery requests have been pending for over sixteen months. Defendants have been sandbagging in their discovery responses.

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The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process. The information sought is relevant for the claims asserted in the pleadings and should have been disclosed.

If a party fails to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, or rendering a default judgment. Rule 37(b)(c), SCRPC. Griffin Grading and Cleamy, Inc. v. Tire Service Equipment Manufacturing Company, Inc., 511 S.E.2d 716, 718 (S.C. App. 1999). The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. QZO, Inc. v. Moyer, 594 S.E. 2d 541, 546 (S.C. App. 2004). Pursuant to Rule 37(c), the Supplemental Request to Admit was proven.

I find that the attorney fees requested in this instance to be fair and reasonable and should be awarded pursuant to SCRPC 37(a) and 37(c). Judge Culbertson previously ordered Defendants to pay \$1,500 in attorney fees in connection with the January 2014 hearing. Attorney fees in the amount of \$2,700.00 is hereby awarded to Plaintiffs. Defendants shall pay \$2,700.00 to Plaintiffs' counsel by October 30, 2014.

CONCLUSION

It is hereby ORDERED that Plaintiffs' Motion is granted and Defendants are hereby ORDERED to provide full and complete disclosure of all information and documents responsive to the discovery requests which are the subject of the Motion by October 30, 2014. It is further ORDERED that the Request to Admit is hereby deemed proven. By October 30, 2014, Defendants shall provide a complete list of each and every transfer made by any of them or from any account to which they have/had signatory authority to any 809 Holdings' investor identified below at any time

from January 1, 2012 to present. In addition, by October 30, 2014, Defendants shall provide a copy of any and all such transfers to any 809 Holdings' investor identified below.

Raymond LaForest

John Teska

Tamrin Baggett

Joyce Kauffman

Scott Mogal

Robert Twigg

Mark Sarvis

Gabriel Barnhill

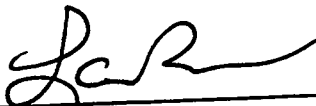
GSB Enterprises

J. Floyd Swilley

Failure to fully disclose all payments or transfers and provide all responsive information and documents to the discovery requests at issue shall be deemed a direct violation of this Order and be deemed in direct contempt of this Court's Order and will subject the Defendants to appropriate additional sanctions.

It is further ORDERED that Defendants shall pay \$2,700.00 to Plaintiffs' counsel for attorney's fees by October 30, 2014.

AND IT IS SO ORDERED.



Larry B. Hyman
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina
This 9 day of Oct, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
HORRY COUNTY
14 OCT 15 PM 2:23
ME-ANIE HUGHES-WOOD
CLERK OF COURT

Plaintiff's Attorney:
Nate Fata, Esq., Bar No. 09866
Address:
P.O. Box 16620
Surfside Beach, SC 29587
phone: 843-238-2676 fax: 843-238-0240
e-mail: nfata@fatalaw.com other:

Defendant's Attorney:
John M. Leiter, Bar No.
Address:
1203 48th Avenue, N., Suite 109
Myrtle Beach, SC 29577
phone: 843-449-1451 fax: 843-449-
e-mail: jleiter@48th.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 7, 2014

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

000013

000014

Appendix 00021

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

John M. Leiter, Bar No.

Address:

1203 48th Avenue, N., Suite 109

Myrtle Beach, SC 29577

phone: 843-449-1451 fax: 843-449-4884

e-mail: jleiter@48th.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 7, 2014

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRPC)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

Appendix 00022

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

**CONSENT
ORDER CONSOLIDATING
CASES**

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

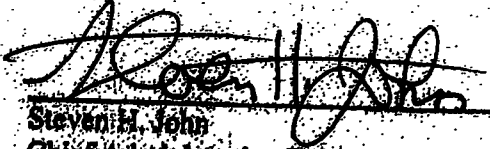
Defendants.

CASE NO. 2014-CP-26-3362

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, IT IS SO ORDERED
that Case No. 2014-CP-26-08367, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, be consolidated with Case No. 2014-CP-26-3362, Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, J. Floyd Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1 Plumbing, LLC, Sage Funding, L.P., and Christopher Pitcock under the instant caption, on the basis that both cases involve many of the same facts, parties and the same witnesses who will most likely be questioned at trial. In the interest of judicial economy, it would be proper to join these two actions for discovery and trial so that the jury or judge may decide them both in a single trial. *The cases will proceed together under the 2014-CP-26-3367 docket number.*
All parties consent to the instant Motion.

AND IT IS SO ORDERED.


Steven H. John
Chief Administrative Judge
Court of Common Pleas
Fifteenth Judicial Circuit

Conway, South Carolina

This 20th day of April, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

ORDER

FILED
Horry County
2015 MAY 22 AM 8:41
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before the Court on April 20, 2015 for hearing on the motions that have been filed by Plaintiffs and Defendants. Present at the hearing were Nate Fata, counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, Inc. (collectively referred to as "Barnhill"), and John M. Leiter, counsel for Defendants. Mark Neill also appeared for 809 Holdings, LP. This Order will address the pending Motions listed below:

1. Plaintiffs' Motion to Compel Discovery filed September 5, 2014;
2. Defendants Motion for a Protective Order filed September 24, 2014;
3. Plaintiffs' Motion to Compel Depositions filed October 20, 2014;
4. Plaintiffs' Motion to Quash Subpoena and for Protective Order filed October 15, 2014;
5. Plaintiffs' Motion for Summary Judgment filed October 3, 2014;
6. Plaintiffs' Motion for Judgment on the Pleadings and/or To Dismiss Counterclaims filed October 3, 2014;

7. **Plaintiffs' Motion to Disqualify Counsel filed August 6, 2014.**

8. **Defendants' Motion for Substitution of Counsel filed October 23, 2014;**

Plaintiffs' Motion to Compel Depositions and Defendants' Motion to Quash Deposition Notices have been resolved. The parties shall cooperate on the setting of the depositions.

Plaintiffs' September 5, 2014 Motion to Compel Discovery Responses was resolved with the Defendants' agreement to provide complete responses by May 20, 2015.

Plaintiffs' Motion to Quash the Defendant's Subpoena to BlueGreen Vacations, Inc. is hereby granted. Although discovery is broad, Defendants' BlueGreen Vacations, Inc. subpoena requests documents related to Plaintiff's employment at BlueGreen Vacations, Inc. BlueGreen Vacations, Inc. is not involved in the financial transactions of this case. Accordingly, the Motion to Quash Subpoena is granted as the requested documents are not relevant.

Plaintiffs have withdrawn without prejudice their Motion for Summary Judgment.

Plaintiffs' Motion for Judgment on the Pleadings was withdrawn without prejudice after Defendants stipulated that their claims set forth in their six Counterclaims are only being asserted on behalf of the Defendants specified below:

1. **The First Counterclaim, Frivolous Proceedings, is asserted by all Defendants;**
2. **The Second Counterclaim, Quantum Meruit, is asserted by 809 Holdings, LP, only;**
3. **The Third Counterclaim, Usurpation of Partnership Opportunities, is asserted by 809 Holdings, LP, only;**
4. **The Fourth Counterclaim, Negligent Misrepresentation, is asserted by 809 Holdings, LP, only;**

5. The Fifth Counterclaim, Breach of Fiduciary Duty, is asserted by 809 Holdings, LP, only; and
6. The Sixth Counterclaim, Breach of Loan Agreement, is asserted by J. Floyd Swilley only.

Based on that stipulation, Plaintiffs withdrew their Motion for Judgment on the Pleadings without prejudice.

The Plaintiffs' Motion to Disqualify Counsel is neither granted nor denied. Instead this Motion is postponed until such time that any party needs to address a conflict with the Court. The Defendants' Motion for Substitution of Counsel is granted. Mark Neill is hereby substituted as counsel for John Leiter on behalf of 809 Holdings, LP. This Order of Substitution will also apply in the companion case, Case No. Civil Action No. 2014-CP-26-3362, which is consolidated with the present action under Judge John's April 2015 Order.

AND IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

This 15th day of May, 2015.

***STATE OF SOUTH CAROLINA**

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

CERTIFICATE OF SERVICE

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May 27, 2015 I did serve a copy of "Order" filed on May 22, 2015 upon Counsel for Defendants by

mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.

Law Offices of John M. Leiter, PA

1203 48th Avenue, North, Ste. 109

Myrtle Beach, SC 29577

Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,

Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,

William C. Piner, WCP Limited, LLC, Alicia A. Piner,

Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP

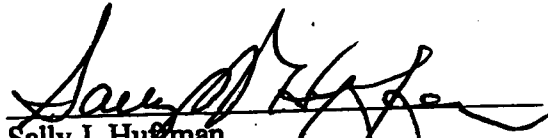
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.

Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

ORDER

2015 SEP 10 PM 1:00
CLERK OF COURT
Horry County

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

This matter came before the Court on August 18, 2015 pursuant to Plaintiffs' Motion for Sanctions filed May 4, 2015 for Defendants' failure to attend mediation, Motion for Sanctions filed June 12, 2015 for Defendants' failure to provide discovery responses required under Court

1
copy

Appendix 00030

000023

Order filed May 22 2015, and Motion to Compel Discovery filed May 15, 2015. At the hearing, Nate Fata represented the Plaintiffs, Mark Neill represented Defendant 809 Holdings, LP and John Leiter represented the remaining Defendants.¹ Counsel for Plaintiffs submitted a filed Memorandum detailing the issues and documents relating to the Motions and an Affidavit in Support of Attorney Fees.

Plaintiffs have requested that the Court grant their Motions, strike the Answer and Counterclaims of Defendants, and award attorney's fees and costs. The Court grants their Motions, awards attorney's fees and costs as set forth in their Affidavit, but denies the request to strike the Defendants' pleadings.

BACKGROUND

Barnhill commenced this action by filing a Summons and Complaint on April 25, 2013. Barnhill alleges, *inter alia*, that Defendants engaged in a fraudulent investment scheme in which Barnhill, who was Floyd Swilley's client, invested no less than \$115,000 in 809 Holdings, LP and received approximately \$2,000 in return. Defendants filed counterclaims alleging Barnhill was the cause of the investment collapse.

ANALYSIS

Plaintiffs' Motion for Sanctions filed June 12, 2015 concerns outstanding discovery requests relating to Defendants' counterclaims. At the April 2015 hearing, Defendants agreed to provide complete responses by May 22, 2015 to the discovery subject to the September 5, 2014 Motion to Compel. In particular, Defendants were to provide responses to Supplemental Interrogatories 3 and 4 which are set forth below.

¹ The Court was advised by John Leiter that William Piner and Alicia Piner filed for bankruptcy. The claims against the Piners are stayed during their bankruptcy.

3. In connection with the allegations contained in paragraph 198 of your Counterclaim, please identify the funds which you claim were misappropriated by the Plaintiff, including the date and the amount of any alleged misappropriation.
4. Set forth in detail any and all calculations of damages for each of your Counterclaims.

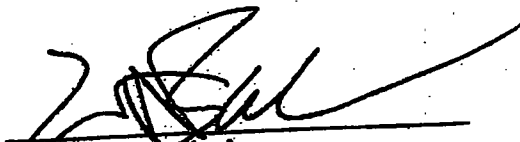
Plaintiffs assert Defendants failed to provide complete responses and responsive information to Interrogatories 3 and 4 and Plaintiffs moved to enforce the Order from the April 2015 hearing. At the hearing, defense counsel stated that they need more time to respond and requested sixty days to provide complete responses. The Court grants Plaintiffs' Motions. Defendants shall provide full and complete responses to these interrogatories within 65 days of the hearing, which is October 23, 2015.

In addition, Plaintiffs' filed their Motion to Compel discovery relating to 2014 discovery requests. Defendants provided discovery responses and documents the day before the hearing. The Plaintiffs and Defendants will address any objections raised in the responses and attempt to resolve any objections by September 20, 2015. If the objections are not resolved, Plaintiffs' counsel may renew the Motion to Compel without refiling the Motion by notifying Linda Johnson that the Motion should be placed back on the Motion's Roster. In the meantime, the May 15, 2015 Motion to Compel is held in abeyance.

Upon reviewing the pleadings, the motions, Plaintiffs' Affidavit and argument of counsel, the Court grants Plaintiffs' Motions with respect to awarding attorney's fees and costs in the amount of \$1,875.00. However, the Court denies the Plaintiffs' request to strike the Answer and Counterclaims of Defendants.

IT IS HEREBY ORDERED that Plaintiffs' Motions are granted. Defendants shall provide full and complete responses to Supplemental Interrogatories 3 and 4 which were the subject of the Plaintiffs' September 5, 2014 Motion to Compel no later than October 23, 2015. In addition, Plaintiffs' Motion to Compel Discovery is held in abeyance while the parties attempt to resolve any objections by September 20, 2015. Finally, Defendants shall cause to be paid to Plaintiffs' counsel \$1,875.00 no later than September 18, 2015 for attorney fees and costs. Plaintiffs' request to strike Defendants' Answers and/or Counterclaims is denied.

AND IT IS SO ORDERED.


William H. Seals, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit

Conway, South Carolina

This 3 day of Sept, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2608367

Gabriel Barnhill

GSB Enterprises LLC

J Floyd Swilley

Laurel K Swilley
SMS Services LP
WCP Limited LLC
QC Financing LLC

J Floyd Swilley
Investment Advisors
SMG Partners LLC
William C Piner
809 Holdings LP

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ 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:
ORDER INFORMATION

Defendant's Motion to Reconsider is **RESOLVED**.
Defendant's Motion to be Relieved as Counsel is **GRANTED**. A formal Order to follow by Attorney Letter. Trial not to be scheduled prior to May 1, 2016.

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2157
Judge Code

1/4/2016
Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Natale Fata PO Box 16620 Surfside Beach, SC 29587

Frederick Miles Adler PO Box 4743 Pawleys Island, SC 29585

Jarrett Skipper Calder PO Box 3237 Myrtle Beach, SC 29578

Mark David Neill PO Box 2810 Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02816)

ORDER RELIEVING JOHN M. LEITER
AND THE LAW OFFICES OF JOHN M.
LEITER, PA AS COUNSEL FOR J. FLOYD
SWILLEY, J. FLOYD SWILLEY
INVESTMENT ADVISORS, LAUREL K.
SWILLEY, SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER, WCP
LIMITED, LLC, ALICIA A. PINER, HEATH
CAUSEY, SAGE FUNDING, L.P., SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.,
DIGICS, LLC AND CHRISTOPHER
PITCOCK

Copy

FILED
HORRY COUNTY
2016 JAN 25 PM 2:39
MELANIE JUGGINS-WARD
CLERK OF COURT

THIS CAUSE came before me for a hearing on the 4th day of January, 2016, upon the Motion of John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA to be relieved as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

000029

Appendix 00036

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Sage Funding, L.P., Digics, LLC and Christopher Pitcock.

Defendants were duly notified of the date, time and location of the hearing. None of the Defendants appeared at the hearing. Nate Fata, Esq. appeared on behalf of the Plaintiffs and Stefan Feidler, Esq. appeared on behalf of Defendant 809 Holdings, LP.

Mr. Leiter stated that the reason for the Motion to Withdraw was nonpayment of fees, including these Defendants' failure and refusal to honor their fee agreement with him, and their failure to honor the payment plan established by the parties.

The Defendants shall obtain new legal counsel to represent them in this matter within thirty (30) days from the date of this Order. The proceedings in this case will be held in abeyance for thirty (30) days from the date of this Order. The Defendants must notify the Court within thirty (30) days of their new attorney. Based on the foregoing and without objection of counsel for any of the other parties, it is hereby

ORDERED that John M. Leiter and the Law Offices of John M. Leiter, PA shall be and the same are hereby relieved as counsel for Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock as of the date of the entry of this Order; and, it is

FURTHER ORDERED that these Defendants shall retain substitute counsel who shall enter an appearance with the Court within thirty (30) days from the date of this Order; and it is

FURTHER ORDERED that the Clerk of Court shall note that this matter shall not be called for trial before May 1, 2016.

AND IT IS SO ORDERED.



William H. Seals, Jr., JUDGE
Fifteenth Judicial Circuit

1/14, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

ORDER

HORRY COUNTY
2016 MAR 21 PM 2:25
MELANIE L. HAYES
CLERK OF COURT

CASE NO. 2014-CP-26-3362

This matter came before the Court on February 16, 2016 pursuant to Plaintiffs' Motion to Compel Depositions of Defendants and Plaintiffs' Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' Counterclaims. Present at the hearing were Nate Fata,

counsel for the plaintiffs. Stefan Fiedler was present for 809 Holdings, L.P. The other defendants were proceeding pro se as John Leiter was relieved as their counsel. Although the pro se defendants were duly notified of the hearing by plaintiffs' counsel via hearing Notice filed on February 9, 2016, they were not present at the call of the case.

BACKGROUND

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In 2014, Barnhill filed a companion case asserting derivative claims.

PROCEDURAL HISTORY

Defendants have failed to comply with multiple Court Orders on discovery and have and continue to obstruct the discovery process. Plaintiffs have filed numerous motions to compel discovery.¹

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013, January 8, 2014, January 10, 2014, September 5, 2014, September 5, 2014, October 15, 2014, May 15, 2015, and December 15, 2015.

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. Plaintiffs filed a Motion for Sanctions on November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014, the Court entered another Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses... The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process."²

Plaintiffs' Motion for Sanctions filed May 4, 2015 and Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015, granting Plaintiffs relief and the Court awarded attorney fees.

ANALYSIS

Plaintiffs' counsel argued that although the case has been pending for more than two years, defendants have not presented for depositions and have not cooperated for depositions. More than four discovery Orders have been entered in this case, three of which resulted in sanctions. See Orders of Judge Hyman dated October 9, 2015, Judge Culbertson dated January 13, 2014, and Judge Seals dated September 10, 2015. Defendants agreed in an Order filed May 22, 2015 to cooperate in discovery in setting the depositions. Although depositions notices were

² Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey; Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

served for the depositions of J. Floyd Swilley, Laurel K. Swilley, Heath Causey, 809 Holdings, LP and WCP Limited, LLC, those defendants did not appear for deposition. Moreover, through no fault of 809 Holdings' counsel, defendants never proposed any deposition dates even after the instant discovery motion was filed. The instant motion follows two years of discovery abuse and multiple motions to compel defendants to disclose information and provide deposition testimony.

Discovery is a critical component of the litigation process. Defendants have for more than two years obstructed the discovery process and have prejudiced plaintiffs' ability to prepare for trial. Judge Seals previously entered a Scheduling Order that this case could be called for trial on or after May 1, 2016.

If a party fails to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, or rendering a default judgment. Rule 37(b)(c), SCRCP. Griffin Grading and Cleamy, Inc. v. Tire Service Equipment Manufacturing Company, Inc., 511 S.E.2d 716, 718 (S.C. App. 1999). The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. OZO, Inc. v. Moyer, 594 S.E. 2d 541, 546 (S.C. App. 2004). Based on their failure to respond or cooperate in the depositions and discovery process, their failure to appear or present any argument to explain their lack of cooperation, and with their well-documented pattern of discovery obstruction, I hereby strike the Answers, Counterclaims and pleadings of Defendants J. Floyd Swilley, Laurel Swilley, 809 Holdings, L.P., Heath Causey and WCP Limited, LLC.

I further direct that the Plaintiffs' Affidavit for Attorney's Fees be served upon the parties and Plaintiffs' Motion for Attorney Fees be heard by another Circuit Court Judge at the next scheduled motion hearing on this matter.

In addition, the Court grants Plaintiffs' Motion for Judgment on the Pleadings and/or Summary Judgment on Defendants' counterclaims. On June 26, 2013, defendants filed their Amended Answer with Counterclaims. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by those Defendants indicated above. Defendants' first counterclaim under the Frivolous Proceedings Act is not ripe and, therefore, it is dismissed. Defendants' remaining counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by plaintiffs to any of the defendants. Second, defendants have proffered no evidence to support the elements of the remaining claims, including damages.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any asserted cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any defendant. No duty is owed by Barnhill to any defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC. Similarly, any claim based on Floyd Swilley's allegation that he loaned money to the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

The counterclaims for usurpation of corporate opportunity and quantum meruit are also barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation fail as a matter of law. Paragraph 201 of the Counterclaim alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Cr. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 - 213 of the Counterclaim, to-wit, that 809 Holdings did not get paid by other entities, is legally insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid.

At this late stage in the proceedings, defendants must come forward with some evidence to support each element of each cause of action. Defendants have not proffered or argued any evidence to support any counterclaim. Furthermore, defendants have offered no evidence showing plaintiffs caused any damages. Plaintiffs' Motion for Judgment on the Pleadings and for Summary Judgment is granted.

In connection with the Motion for Summary Judgment, plaintiffs' counsel moved to strike the Affidavit of William Piner. I hereby grant that Motion as the Piner Affidavit does not comply with Rule 56, SCRPC. The Affidavit contains conclusory and speculative statements and also attempts to rely on hearsay by appending to the Affidavit an email from a nonparty. Furthermore, the allegations in paragraphs five and six are made upon information and belief and are not made upon personal knowledge and, therefore, may not be used. The Affidavit is stricken in its entirety. Even if I were to consider such Affidavit, which I am not, the Affidavit does not present any material issue of fact that would allow liability on the part of any plaintiffs to defendants.

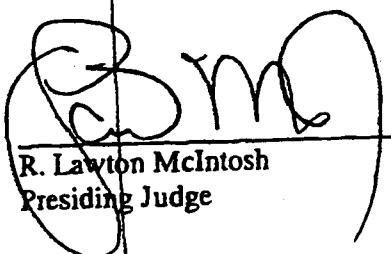
NOW, THEREFORE, IT IS HEREBY ORDERED THAT the Answer, Counterclaim and other pleadings of J. Floyd Swilley, Laurel K. Swilley, Heath Causey, 809 Holdings, LP and WCP Limited, LLC are hereby stricken;

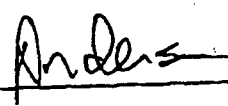
And IT IS FURTHER ORDERED that all counterclaims are dismissed with prejudice;

And IT IS FURTHER ORDERED that the Affidavit of William Piner is stricken;

And IT IS FURTHER ORDERED that the Plaintiffs shall serve their Motion for Attorney Fees and Affidavit for Attorney Fees upon the Defendants with the Motion for Attorney Fees to be heard by the presiding judge at the next term of court;

AND IT IS SO ORDERED.


R. Lawton McIntosh
Presiding Judge


Anders, South Carolina
This 16 day of March, 2016

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

FORM 4

JUDGMENT IN CIVIL CASE

CASE NO. 14-CP-26-8367

Gabriel Barabill and GSB Enterprises, LLC

J. Floyd Swilley, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Plaintiff

- ☐ **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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **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:

ORDER INFORMATION

DEFENDANTS SWILLEY, CAUSEY AND 809 HOLDINGS' MOTIONS TO SET ASIDE ORDER OF MARCH 21, 2016 ARE DENIED. *Note: Fata To prepare a formal order.*

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRCP Form 4C (03/2013)

Judge Code

Date

000039

Appendix 00046

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Copy of Order/
filed 5-2-16 mailed to all
parties not in default on 5-2-16
Initials PAW

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barahill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-88367
(formerly 2013-CP-26-02816)

ORDER DENYING DEFENDANTS
SWILLEY, CAUSEY AND
809 HOLDINGS' MOTIONS TO SET
ASIDE ORDER OF MARCH 21, 2016

Gabriel Barahill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

2016 MAY 25 PM 2:15
CLERK'S OFFICE

This matter has come before me pursuant to Defendants' Laurel Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, J. Floyd Swilley's Notice of and Motion to Set Aside Order of March 21, 2016, Heath Causey's Notice of Motion and Motion to Set Aside

Summary Judgment and 809 Holdings, LP's Motion to Reconsider and Amended Notice of Motion To Reconsider. After reviewing the record and the materials submitted by the parties, I am denying all Motions in their entirety.

II. LEGAL STANDARDS

Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. Pursuant to Rule 59(g) a party filing a written motion under Rule 59 shall provide a copy of the motion to the judge within ten (10) days of the filing of the Motion. The purpose of a motion to alter or amend is "to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Cl. App. 1999); see also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 722, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, a motion for reconsideration is governed by Rule 59(e) of the South Carolina Rules of Civil Procedure. Federal case law is also instructive as the comments to Rule 59, SCRCP state that "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ... court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." See *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *McCall v. Williams*, 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. See *National Ecological Foundation vs. Alexander*, 496 F.3d 466, 477 (6th Cir. 2007). The motion may in the discretion of the court be determined on

briefs filed by the parties without oral argument. Rule 59(f), SCRPC.

ANALYSIS

1. **J. Floyd Swilley's and Laurel Swilley's Motions are denied.**

Laurel Swilley and Floyd Swilley (collectively referred to as "Swilley") have filed identical Motions. They err, however, in their recitation of the facts. Contrary to their assertions, the Motions that were the subject of the February 16, 2016 hearing were served on their prior counsel, John Lelzer, on December 15, 2015 and December 16, 2015. Additionally, Swilley improperly asserts that Judge Seals dated his Order on January 25, 2016. The date of Judge Seal's Order is clearly January 14, 2016. The thirty days began on January 14, 2016 and not when the Order was filed. Their argument that the thirty days begins upon the filing of the Order is contrary to the plain language in the Order. Thus, any stay expired on February 13, 2016.

At the hearing, counsel for 809 Holdings represented to the Court that he was in communication with Floyd Swilley about the hearing. "I know that Mr. Swilley and Mr. Piner are representatives of that corporation. And they are the gentlemen that we have been in touch with per 809. They were notified of this hearing, they knew everything that's going on and we are just - - we're trying to move - 809 at this point is trying to claim bankruptcy. Of course we said that months ago . . ." Trans. p. 15, lines 9-17.

Nine separate mailings of the Notice of Hearing were mailed on February 3, 2016 to the Swilley address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577, one for each Swilley and one for each of their seven company defendants. Swilley knew of the hearing but chose to not attend. Thus, the hearing was no surprise to them.

Neither J. Floyd Swilley or Laurel Swilley assert through affidavit or otherwise that they did not know about the February 16, 2016 hearing. Instead, Swilley asserts they thought they

were under the "veil of protection", i.e., they thought they were following the order for new counsel but had the date wrong. Laurel Swilley and J. Floyd Swilley chose not to attend the hearing.

The argument by Swilley that there was an agreement to not proceed with the depositions due to Leiter's Motion To Be Relieved As Counsel is also unavailing. The Motion to Compel was filed after the filing of Leiter's Motion To Be Relieved, clearly evidencing there was no such understanding. Furthermore, Swilley never objected in writing to the Motion to Compel in the sixty days after the Motion was filed. Additionally, Swilley did not raise any such argument at the hearing. The Motion of Laurel Swilley and the Motion of J. Floyd Swilley are denied in their entirety.

2. Defendant Heath Causey's Notice of Motion and Motion to Set Aside Summary Judgment filed April 6, 2016 is denied.

Heath Causey's Motion is denied in its entirety. Causey has only moved to set aside the Order on the Summary Judgment Motion. In addition, Mr. Causey points to no error in the factual record or error in law. Mr. Causey was not present at the hearing, even though he was duly notified of the hearing through the Notice of Hearing that was mailed to him on February 3, 2016. Again, like Swilley, Mr. Causey has not filed an affidavit testifying that he did not know about the hearing. Causey's Motion is denied.

3. Defendant 809 Holdings, LP's Motion to Reconsider filed April 8, 2016 and Amended Motion to Reconsider are denied.

809 Holding's Motion states two grounds for reconsideration: (1) that the pleadings of 809 Holdings should not have been stricken, and (2) William Piner's Affidavit should not have

been stricken. 809 Holdings, LP's Amended Motion for Reconsideration is untimely as it was filed and served on April 25, 2016, beyond the time requirements of Rule 59(e), SCRCP.

At the hearing the Court asked counsel for 809 Holdings what counsel did once he received the Motion to Compel. 809 Holdings' counsel advised the Court that Mr. Swilley and Mr. Piner were notified of the hearing, Mr. Swilley is the representative of 809 Holdings, and that counsel's ability to argue for his client is as good as their cooperation with him. No dates were ever proposed because 809 Holdings was "trying to claim bankruptcy." Trans. p. 15, ln. 12-15. Counsel for 809 Holdings acknowledged to the Court the obvious: that he was constrained by his client's failure to cooperate with him. Trans., p. 14, lines 13-22.

809 Holdings erroneously argues on page 2 of its Memorandum, and Exhibit A thereto, that Plaintiffs' Motion for Entry of Default and Striking the Pleadings of Company Defendants for failure to obtain counsel dated February 23, 2016 should not be the basis of the Court's Order. That February 23, 2016 Motion was not the basis for the Court's Order. The December 15, 2015 Motion to Compel was the basis for striking 809 Holdings pleadings, and it specifically requested the relief granted.

Next, 809 Holdings attempts to introduce additional items in its Amended Motion for Reconsideration, including the Exhibits B and C. As stated above, 809 Holdings cannot get a second bite at the apple under Rule 59 when the items could have been presented and argued at the hearing. Even if the Court was to consider the Amended Motion and those items, they demonstrate that 809 Holdings did nothing in the 60 days after the December 15, 2015 Motion to try to eliminate the need for the motion hearing as to 809 Holdings.

No dates were ever provided by 809 Holdings, not even in the two months after the Motion was filed or in response to a simple request a week before the hearing. 809 Holdings'

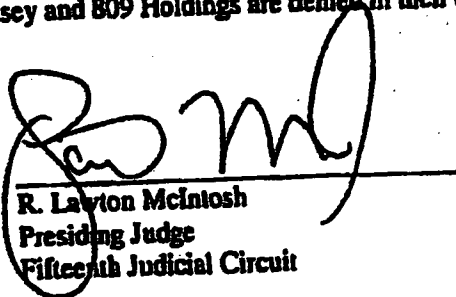
counsel had an uncooperative client. 809 Holdings representatives were asked to provide deposition dates, but 809 Holdings never provided any dates to its counsel. 809 Holdings' argument that it thought there was an agreement to not move forward with the depositions is not supported by the record. At no time prior to the hearing did 809 Holdings write to Plaintiffs' counsel stating an objection to the Motion or the hearing based on any asserted agreement. 809 Holdings' repeated failure to cooperate in discovery and delay resulted in the Court's decision.

Next, 809 Holdings asserts the Affidavit of William Piner should not have been stricken. The Affidavit did not comply with Rule 56 and did not present any material issue of fact that would allow liability on the part of either Plaintiff.

Finally, 809 Holdings cites no error for the granting of summary judgment or judgment on the pleadings. No evidence was proffered on each element of its counterclaims. The Court properly held no duty was owed by Plaintiffs. 809 Holdings Motion and Amended Motion are denied in their entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED that all Motions for reconsideration, relief from or to set aside the Order of March 21, 2016 filed by Defendants Laurel Swilley, J. Floyd Swilley, Heath Causey and 809 Holdings are denied in their entirety.

AND IT IS SO ORDERED.


R. Lawton McIntosh
Presiding Judge
Fifteenth Judicial Circuit


Anderson, South Carolina

This 17 day of May, 2015

Copy of Order/
filed 5-25-16 mailed to all
parties not in default on 5-25-16
Initials law

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000046

Appendix 00053

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

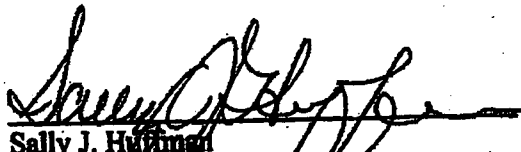
I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on June 2, 2016 I did serve a copy of the Order Denying Defendants Swilley, Causey and 809 Holdings'

motions To Set Aside Order of March 21, 2016 upon counsel and Pro Se Defendants via email as follows:

F. Miles Adler, Esq.
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
*Counsel for J. Floyd Swilley, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
Sage Financial Group, LLC and Sage Private Equity Group, LLC*
miles@adlerlaw.partners

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
heath@clear-acct.com

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com


Sally J. Huffman
Legal Assistant to Nate Pata

NATE FATA, P.A.
ATTORNEY AT LAW
P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

June 2, 2016

F. Miles Adler, Esq.
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
miles@adlerlaw.partners

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
heath@clear-acct.com

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
mneill@neilllawfirm.com

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2014-CP-26-8367

Dear Defendants:

Attached please find for service upon you the Order Denying Defendants Swilley, Causey and 809 Holdings' Motions to Set Aside Order of March 21, 2016, which Order was entered on May 26, 2016.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh
Attachment

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Appendix 00056



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

Post Office Box 8002
100 South Main Street
Anderson, SC 29622-8002
Phone: (864) 260-4058
Fax: (864) 224-6320
lmcintosh@sccourts.org

April 28, 2016

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

2016 MAY -2 PM 3:17
CLERK OF COURT

Dear Madam Clerk:

Please find enclosed an original Order which has been signed by Judge McIntosh in the following matter:

Barhill, et al v. Swilley, et al
CA No. 2014-CP-26-8367

Please let me know if you have any questions or concerns. Thank you for your assistance in this matter.

Sincerely

Elizabeth Nicholson
Law Clerk to R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

efn

enclosure

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Appendix 00057

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2014CP2608367**

Gabriel Barnhill

GSB Enterprises LLC

J Floyd Swilley

J Floyd Swilley
Investment Advisors
SMG Partners LLC
William C Piner
809 Holdings LP

Laurel K Swilley
SMS Services LP
WCP Limited LLC
QC Financing LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (vol. consent); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **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.

S ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

Motion to Strike filed February 16, 2016 heard and ruled on by Judge McIntosh.

Motion to Strike on Defendant's pleadings dated February 25, 2016 GRANTED as to WCP Limited LLC and Digics LLC.

Motion to Strike pleadings of SAFE Inc. is voluntarily WITHDRAWN.

Plaintiff's Motion for Attorney's Fees is CONTINUED until after Judge McIntosh rules in Motions to Reconsider.

Order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	N/A	N/A
Table, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Margaret T. Culbertson
Circuit Court Judge

2148

Judge Code

4/25/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Natale Fata PO Box 16620 Surfside Beach, SC 29587

Frederick Miles Adler PO Box 4743 Pawleys Island, SC 29585

Jarrett Skipper Calder PO Box 3237 Myrtle Beach, SC 29578

Mark David Neill PO Box 2810 Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Grace Hurley

Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

COMPLAINT

**(South Carolina Investment Act,
Breach of Fiduciary Duty, Breach of
Fraud, Negligence, Conversion, Unfair
Trade Practices Act)**

Jury Trial Demanded

The Plaintiffs, by and through their attorney, would respectfully allege and show unto this Court as follows:

THE PARTIES

1. The Plaintiff Gabriel Barnhill (hereinafter "Barnhill") is a citizen and resident of the County of Horry, State of South Carolina.
2. GSB Enterprises, LLC (hereinafter "GSB") is a South Carolina limited liability company owned Barnhill.
3. J. Floyd Swilley is an investment advisor and he is a resident of and conducts business in Horry County, South Carolina.
4. J. Floyd Swilley Investment Advisors conducts business in Horry County, South Carolina.
5. In 2010 and 2011 J. Floyd Swilley was Barnhill's investment advisor.
6. In 2009, 2010 and 2011 J. Floyd Swilley was Barnhill's accountant.
7. J. Floyd Swilley wanted Barnhill to trust him.
8. In the fall of 2010, Barnhill was 26 years old and trusted J. Floyd Swilley.

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9. William C. Piner (hereinafter "Piner") is a resident of Horry County, South Carolina.
10. Defendant WCP Limited, LLC (hereinafter "WCP") is a South Carolina Limited Liability Company doing business in Horry County owned by Piner.
11. WCP is the alter ego of William C. Piner.
12. Defendant SMG Partners, LLC, (hereinafter "SMG") is a South Carolina Limited Liability Company doing business in Horry County owned by Laurel K. Swilley.
13. SMG is the alter ego of Laurel K. Swilley.
14. Laurel K. Swilley is J. Floyd Swilley's wife.
15. At all relevant times Laurel K. Swilley is/was a general partner of SMG Partners.
16. Defendant 809 Holdings, LP (hereinafter "809 Holdings") is a South Carolina Limited Partnership doing business in Horry County.
17. Laurel K. Swilley of SMG Partners and William C. Piner of WCP Limited are general partners of 809 Holdings.
18. Heath Causey is a resident of Horry County, South Carolina.
19. SMS Services, LP (hereinafter "SMS") is a South Carolina limited partnership doing business in Horry County, South Carolina.
20. SMS is the alter ego of Laurel K. Swilley and/or J., Floyd Swilley.
21. SMS Services is an accounting, management and financial consulting group affiliated with Sage Financial Group, LLC, established and controlled by the principals of Sage.
22. SMS Services was to implement accounting, financial, compliance and reporting systems for companies such as 809 Holdings.
23. Sage Financial Group, LLC (hereinafter "Sage") is a limited liability company doing business in Horry County, South Carolina. The Sage principals are J. Floyd Swilley and/or Laurel K. Swilley. Sage is the alter ego of J. Floyd Swilley and/or Laurel K. Swilley.
24. Sage was to establish accounting systems, financial structures and compliance systems to assure compliance with state and federal securities laws and establish reporting

systems to provide feedback to investors and owners of 809 Holdings.

25. Upon information and belief, Sage is J. Floyd Swilley's financial advisory firm.

26. At all relevant times, Defendant Heath Causey was Chief Accounting Officer of Sage. Defendant Causey had knowledge of the financial matters involving 809 Holdings and QC Financing and Causey owed duties to the Plaintiffs but breached them.

27. J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMS, Laurel K. Swilley, SMG Partners, and Sage are owned or operated by J. Floyd Swilley and/or Laurel K. Swilley and are collectively referred to herein as the "Swilley Defendants".

28. Piner, WCP and the Swilley Defendants formed 809 Holdings to facilitate loans to QC Financing which was to operate as Quick Cash Pawn.

29. QC Financing, LLC, (hereinafter "QC Financing") is a South Carolina Limited Liability Company doing business in Horry County.

30. The Articles of Organization for QC Financing were filed on September 13, 2010 by Piner and one or more of the Swilley Defendants.

31. QC Financing, LLC became a pawn shop located on South Kings Highway in Myrtle Beach.

32. QC Financing, LLC, d/b/a Quick Cash Pawn Shop ("QC Financing") had sales for the month of December 2010 in an amount less than \$3,600.

33. QC Financing had sales for the month of January 2011 in an amount less than \$5,600.

34. QC Financing had sales for the month of February 2011 in an amount less than \$15,400.

35. QC Financing had sales for the month of March 2011 in an amount less than \$17,400.

36. QC Financing had sales for the month of April 2011 in an amount less than \$22,800.

37. State sales taxes arising from the sale of pawn shop inventory were not paid by QC Financing between December 1, 2010 and April 1, 2011.

38. Sage provided and was to provide accounting and financial oversight services to 809 Holdings and was to maintain the accounting records, operational records, and provide shareholder/investor services functions to investors in 809 Holdings, per Page 15 of the Confidential Placement Memorandum.

39. Piner executed a Factoring Agreement for QC Financing, LLC d/b/a Quick Cash Pawn. Subsequently, QC Financing, LLC did not recognize the Factoring Agreement as being valid.

40. William C. Piner warranted that Barnhill's investment in 809 Holdings complied with all federal, state and local laws, including applicable securities regulations.

41. J. Floyd Swilley used his role as Gabriel Barnhill's personal accountant and personal financial advisor and investment advisor to J. Floyd Swilley's personal financial advantage.

42. In the spring of 2011, J. Floyd Swilley had a direct or indirect interest in 809 Holdings, LP.

43. In the spring of 2011, J. Floyd Swilley had a direct or indirect interest in QC Financing, LLC.

44. The Defendants raised money to loan to an entity in which they had control and in which they were required to perform all bookkeeping.

45. The Defendants were required to have access off site to the accounting and bookkeeping of the pawn shop but failed to monitor or keep track of the pawn shop monies.

46. Some of the monies raised by Defendants for the 809 Holdings were spent outside the scope of the offering.

47. Monies raised by Defendants for investments in 809 Holdings violated the scope of the 809 Holdings offering.

48. Monies raised by the Defendants for investment in 809 Holdings were used for

general overhead expenses and fees and payments to the Defendants.

49. J. Floyd Swilley allowed the investment vehicle that he established and that he orchestrated to become delinquent in payment of state sales taxes.

THE SCHEME

50. The Defendants worked in concert to promote an "investment" which was nothing more than payments to start a pawnshop, without adequate security or financial controls.

51. The Defendants marketed and promoted the investment in 809 Holdings as a "Factoring Investment," with ample procedures in place to reduce risk.

52. The Defendants had a direct and indirect interest in the investment themselves, getting paid from initiating the "investment", managing the "investment" and being or owning the controlling interest in the "investment."

53. The Defendants had a direct or indirect interest in the pawn shop – QC Financing – which was receiving money from 809 Holdings and which was ostensibly required to pay back sums to 809 Holdings with interest.

54. The Defendants joined in concert to make various misrepresentations and omissions of material facts. Defendants earned fees and had an ownership interest in the investment they were touting.

55. Upon information and belief, the Defendants solicited "investments" in 809 Holdings from at least three (3) investors.

THE REPRESENTATIONS AND MATERIAL OMISSIONS

56. In the late summer of 2010, J. Floyd Swilley, Barnhill's financial advisor, began touting a big investment opportunity that Gabriel Barnhill could become involved in. Barnhill had monies in an Individual Retirement Account. Swilley knew Barnhill's financial situation and that Barnhill was looking for an investment.

57. In the early fall of 2010, J. Floyd Swilley stated to Barnhill that the investment opportunity pays fifteen percent (15%) annually with a return of principal and with an opportunity to get involved in the pawn shop.

58. In the fall of 2010, Swilley told Barnhill that the pawn shop was doing well and that Barnhill can get involved through the Notes Payable Program which earns fifteen percent (15%) annually, 1% per cent per month the first six months and 1.5% per month the next six months.

59. Swilley told Barnhill that the pawn shop is where the big money is. However, the pawnshop was not doing well and had little, if any, sales.

60. In 2010, J. Floyd Swilley, unbeknownst to Barnhill, was completing a negotiated settlement with the Internal Revenue Service on a \$698,000 federal tax lien relating to Swilley and/or Swilley's business. Swilley did not inform Barnhill of this material fact when Swilley was encouraging Barnhill to invest in Swilley's investment scheme.

61. Toward the end of 2010 Swilley told Barnhill that there is an opportunity for ownership in the investment but that Barnhill would have to talk others in the partnership and Swilley would need \$250,000. Swilley and Piner represented to Barnhill that there were \$400,000-\$500,000 of assets in the pawn shop.

62. In the early months of 2011, J. Floyd Swilley and William C. Piner, solicited and marketed the investment in 809 Holdings, LP to Barnhill. They represented they along with Dave Wilkerson were the only owners

63. Piner represented he was the managing partner of 809 Holdings.

64. The stated purpose of the investment was to fund a factoring arrangement whereby 809 Holdings, LP would loan money to entities, obtain collateral in connection with

the loans and receive a high interest rate for the loan monies.

65. At no time did any of the Defendants ever disclose that monies obtained by the Defendants would be used to start a new business venture (the pawn shop) and fund the initial operations and overhead of the new business venture. The Defendants did not disclose all risks of the investment.

66. The new venture was the pawn shop.

67. The Plaintiffs relied on the Swilley Defendants and Piner and Plaintiffs did expend substantial amounts of money from a retirement account and savings.

68. Upon information and belief, 809 Holdings, LP and the Defendants raised more than \$400,000 from investors.

69. In March 2011 Barnhill invested under the direction of the Defendants.

70. In April 2011 Barnhill made a further investment.

71. In May 2011 Barnhill made a further investment.

72. The total investment by Barnhill exceeds \$115,000.

73. The Defendants orchestrated a Ponzi scheme in which they would raise money for their own startup company, get paid for doing it and then leave the investors with nothing.

74. According to Page 11 of the Confidential Private Placement Memorandum for 809 Holdings, ("Placement Memorandum"), 809 Holdings was "formed specifically for the purpose of factoring receivables from short term financing instruments which are collateralized by underlying assets of various companies." However, 809 Holdings did not factor receivables from various companies.

75. According to Page 11 of the Placement Memorandum 809 Holdings, management would rely on its expertise and history within the short term lending industry as well as its

operating partner, QC Financing, to select receivables from companies and individuals. However, Defendants had no experience or lacked sufficient experience in the short term lending industry and failed to disclose the same.

76. According to the Defendants, the key issue is the quality of the company which owes the invoice, the loan to value collateral. Placement Memorandum Page 11. However, the quality of QC Financing was poor as evidenced by its failure to pay sales taxes and Defendants had actual knowledge of QC Financing's failure to pay sales taxes in January 2011 to April 1, 2011, but failed to disclose the same.

77. The Placement Memorandum also stated, "It is also critically important to confirm the invoice by verifying that the goods were purchased by the company." However, invoices were not confirmed and could not be confirmed by Defendants due to the lack of internal financial controls, and Defendants failed to disclose the same.

78. The Placement Memorandum also stated, "Because you can confirm the creditworthiness of the buyer, i.e., the company which purchased the goods or services and owes the money on the invoice, you can greatly reduce the risk involved in factoring transactions." However, risk was not reduced. Money was given to QC Financing to start a pawn shop without any adequate security, and Defendants failed to disclose the same.

79. The Placement Memorandum on Page 12 also stated, "Initially management has decided to select any transaction which are secured by hard assets which can be easily valued." However, Defendants and/or management did not have a valid, enforceable security interest in any hard assets and Defendants failed to disclose the same.

80. The Placement Memorandum on Page 11 also stated, "The key issue is the quality of the company which owes the invoice, the loan to value of the collateral, in this case the goods

sold and the terms of the transaction. It is also critically important to confirm the invoice by verifying that the goods were purchased by the company and that the company has received the goods and/or services represented by the invoice or receivable. Because you can confirm the credit worthiness of the buyer, i.e., the company which purchased the goods or service and owes the money on the invoice, you can greatly reduce the risk involved in factoring transactions . . . In essence you can reduce risk of not getting paid significantly over other financial transactions of similar maturity and rates." However, Defendants did not greatly reduce the risk. Sales taxes were not paid by QC Financing indicating grave risk, yet Defendants did not disclose the same and Plaintiffs' money was lost.

81. The Placement Memorandum further stated, "In the instant transaction management has taken additional steps to further reduce the risk associated with transactions of this nature. While it is impossible to eliminate risk, management has designed procedures which greatly reduce risks involved in this transaction." However, procedures were not in place, Defendants did not take additional steps and Defendants knew that they had not designed procedures to greatly reduce the risks.

82. QC Financing lacked managerial oversight and internal controls regarding the tracking of inventory and daily bookkeeping, yet Defendants did not disclose the same.

83. The software used to track the QC Financing pawn shop inventory and pawn loans was outdated, yet Defendants did not disclose the same.

84. The inventory software did not connect to an accounting system and was not capable of adding a point of sale inventory quickly, yet Defendants did not disclose the same.

85. QC Financing, LLC never executed any promissory note to evidence any alleged indebtedness, yet Defendants did not disclose the same.

86. Piner, who had a conflict of interest, was managing partner of 809 Holdings but supposedly signed a written agreement/factoring agreement on behalf of QC Financing.

87. QC Financing, LLC took the position that all the monies provided by 809 Holdings, LP to it were initial capital contributions and not loans.

88. QC Financing disputed the legitimacy of any factoring agreement or security agreement. Thus, the very premise of the investment to loan money with collateral as security was compromised due to Defendants' conflicts of interest. These risks and the risks of the conflicts of interest were not disclosed by the Defendants.

89. QC Financing had no computerized tracking system for any outstanding liabilities to be paid, yet Defendants did not disclose the same.

90. The Placement Memorandum, Page 13, represented Sage Financial Group, LLC was to provide monthly procedure audits and provide accounting services. Sage was to confirm compliance to the procedures and provide profit and loss statement to all investors no less than every three months. Monthly audits were not done and Sage did not provide profit and loss statements. Heath Causey and Defendants knew the same but did not disclose the same to Barnhill before he invested.

91. 809 Holdings represented it would raise \$200,000 from the offering.

92. Yet the Plaintiffs' investment of more than \$115,000 in 809 Holdings resulted in less than a seventeen percent (17%) ownership due to Defendants' manipulation of the allocated interest in 809 Holdings, to the Defendants benefit.

93. Plaintiffs lost all their money except for a little less than \$3,000. Other investors lost their money.

94. J. Floyd Swilley was required to always place the client's (Barnhill's) interest first and foremost in any situation.

95. J. Floyd Swilley was required to fully disclose potential or actual conflicts of interest to his client such as the Plaintiffs, which he did not do.

96. Independent audits were to be performed by a C.P.A. on 809 Holdings yet the general partners, Laurel K. Swilley, William Piner, and Sage and Heath Causey knowingly failed to obtain the requisite audits.

97. In the late summer of 2011, Swilley "transferred" his twenty five percent (25%) interest in QC Financing to Barnhill, without disclosing tax liabilities, internal problems of QC Financing, the conflicts of interest in doing so, the amount of alleged debt QC Financing owed to 809 Holdings, and the risks of being a minority owner in a company which was less than a year old and in which Barnhill had no experience. Swilley disclosed he had less than \$50,000 invested and Piner disclosed he had less than \$7,500 invested, contrary to their pre-investment representations that they had invested over \$200,000.

AS A FIRST CAUSE OF ACTION
(South Carolina Investment Act)

98. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

99. Upon information and belief, Defendants, in an effort to defraud Plaintiffs, wrongfully siphon Company funds and obtain Company and others assets and monies, and in breach of their obligations and duties owed to Barnhill have, in connection with the offer or sale of an investment or security within the meaning of the South Carolina Investment Act:

- (a) intentionally made false representations to Barnhill and others;
- (b) intentionally made false representations to Barnhill while conveying their

interests in QC Financing;

- (c) intentionally breached and/or procured breaches of the terms of the Partnership Agreement, Confidential Placement Memorandum, and/or Subscription Agreement;
- (d) intentionally breached and/or procured the breach of their fiduciary duties owed to Plaintiffs;
- (e) intentionally failed to properly account for Company funds, manage Company books, and pay all sales tax obligations due and owing to the South Carolina Department of Revenue;
- (f) failed to account for and disclose to Barnhill all of Defendants' actions, conflicts and financial dealings with the Company's monies, properties, records, and assets; and
- (g) by operating through the guises of 809 Holdings in an effort to take possession of all assets and siphon all 809 Holding assets and investor's monies.

100. South Carolina Code Ann. §35-1-501 provides: It is unlawful for a person, in connection with the offer, sale or purchase of a security directly or indirectly:

- (1) to employ a devise, scheme or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading; or
- (3) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

101. Each of the Defendants employed a devise, scheme or artifice to defraud, engaged in an act, practice or course of business that operates as a fraud or deceit upon the Plaintiffs or made an untrue statement of material fact or omitted to state a material fact in order to make the statements made concerning the investment in light of the circumstances under which they were made not misleading.

102. South Carolina Code Ann. §35-1-502 provides, It is unlawful for a person that advises others for compensation, either directly or indirectly or through public or writing, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) to employ a device or scheme or artifice to defraud another person;
- or
- (2) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

103. The Defendants employed a device or scheme or artifice to defraud Barnhill in connection with investments. The Defendants engaged in acts or practices or course of business that operated as a fraud or deceit upon the Plaintiffs.

104. Defendants are liable under S.C. Code Ann. §35-10-509(b)(c)(d)(e)(f).

105. South Carolina Code Ann. §35-1-509(g) provides, the following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

- (1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

- (2) an individual who is managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;
- (3) an individual who is an employee, or a person occupying a similar status or performing a similar function, of a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and
- (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.
- (5) a person who, with actual knowledge that a person is committing acts sufficient to violate Sections 35-1-501 and 35-1-502, nonetheless intentionally furthers the violation with actual awareness that the person is rendering substantial assistance to the person committing the violation of Sections 35-1-501 and 35-1-

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502, thereby becomes an aider and abettor of the violation, and is therefore joint and severally liable with and to the same extent as the assisted person who engaged in the fraudulent activity; provided, however, this subsection (5) does not require any due diligence investigation or impose liability for failure to perform any due diligence investigation otherwise required.

106. Each Defendant is a person who: directly or indirectly controls a person liable under subsection (b) through (f); and/or is an individual who is a managing partner, executive, officer or director liable under subsections (b) through (f); and/or is an individual who is an employee or person occupying a similar status or performing a similar function of a person liable under subsections (b) through (f); and/or a person who materially aides the conduct giving rise to liability; and/or is an investment advisor or a person who with actual knowledge that one or more Defendants was committing acts sufficient to violate Sections 35-1-501 and 35-1-102 and nonetheless intentionally furthered the violation with actual awareness that the person is rendering substantial assistance to the Defendants/person committing the violations.

107. As a result of Defendants' actions and violations of 35-1-501 et seq., Plaintiffs have suffered damages

108. Defendants are jointly liable to the Plaintiff for damages, interest, attorney fees and costs.

AS A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

109. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

110. As Plaintiffs' financial advisors, Swilley and J. Floyd Swilley and Advisors owed a fiduciary duty to the Plaintiffs in connection with the investment.

111. Plaintiffs had a special confidence in J. Floyd Swilley and J. Floyd Swilley and Advisors in equity and good conscience were bound to act in good faith and due regard to the interests of Plaintiffs.

112. As general partner and managing partner of 809 Holdings, Laurel K. Swilley, SMG, Piner and WCP owed a fiduciary duty to Plaintiffs in connection with the investments. Such duty included the duty to act in good faith with full disclosure of all material information.

113. Said Defendants were required to fully disclose to Plaintiffs all known information that is significant and material. In addition said Defendants were required to disclose all known conflicts of interest. Any and all monies received by Defendants should be disgorged as a result of their conflicts of interest and breach of fiduciary duties.

114. As stated above, said Defendants pursued their own selfish interests, to the detriment of the Plaintiffs and breached their fiduciary duties owed to the Plaintiffs and Plaintiffs suffered damages as a result.

115. Said Defendants are liable to Plaintiffs for damages, punitive damages, attorneys' fees as allowed by law or contracts and costs.

AS A THIRD CAUSE OF ACTION
(Accounting)

116. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

117. Swilley Defendants, Piner, 809 Holdings, Heath Causey all had a duty to keep records and render to the Plaintiffs, all transactions, associated within 809 Holdings and the investment.

118. Plaintiffs are entitled to a full and complete accounting of all transactions with 809 Holdings and transactions among or between the Defendants due to the multiple conflicts of interest.

119. The Court should order each Defendant to disclose all payments made to or

received from 809 Holdings or QC Financing and to disclose all payments any Defendant received from any other Defendant from August 2010 to present.

120. The Court should order a complete accounting of 809 Holdings, any involvement Defendants had with QC Financing, and any transactions among or between the Defendants relating in any way to 809 Holdings and/or QC Financing.

AS A FOURTH CAUSE OF ACTION
(Fraud)

121. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

122. Defendants made the misrepresentations of material facts. Such misrepresentations were statements and material omissions and specifically include the representations specified in Paragraphs 38, and 56 through 97, which are specifically and expressly incorporated herein.

123. Piner represented and warranted that the Barnhill investment complied with all securities laws, which it did not due to the misrepresentations and omissions of material fact.

124. Barnhill has incurred monetary damages and special damages.

125. The representations of Defendants were material to the relationship of the parties to the Company, and were part of a general scheme to induce Barnhill. Such representations were false.

126. The Swilley Defendants and Piner knew that the representations made by them to Barnhill were false, since they were the architects of the scheme to defraud the Company and Barnhill out of the Company assets, and in an effort to disguise the commingling and misappropriation of third-party investor funds Swilley received through the Swilley Entities,

including SAGE, or in the alternative, Swilley and Piner made the representations with a reckless disregard for their truth.

127. Defendants intended that Barnhill would act in reliance on their false representations.

128. Plaintiffs did not know of the falsity to the representations, had a right to reasonably rely on them, and did act in reliance on the truth of said representations due to Defendants' various positions and they managed the monies and accounting of the Company. In addition J. Floyd Swilley was Barnhill's investment advisor and accountant.

129. Plaintiffs suffered damages as a consequent and proximate result of the misrepresentations.

130. Barnhill requests judgment against Defendants jointly and severally, for actual, consequential, and punitive damages in an amount to be determined by the finder of fact.

AS A FIFTH CAUSE OF ACTION
(Negligence)

131. In the alternative and not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

132. The Defendants owed the duty of due care to the Plaintiffs.

133. The Defendants violated or breached the duty of due care, and caused Plaintiffs to suffer damages.

134. The Defendants were negligent, grossly negligent, willful and wanton and reckless in one or more of the following particulars:

(a) In failing to communicate truthful information concerning the investment and the status of the companies and/or taking Plaintiffs' secure retirement monies and other monies and directing them to fund Defendants' start up companies;

(b) In failing to perform their duties and disclose their inability to perform properly their duties;

(c) In failing to disclose conflicts of interest and fully disclose the risks of the investment and any limitations Defendants might have in providing sound advice;

(d) In failing to diversify Plaintiffs' investment, or provide a suitable investment for the Plaintiffs or the most suitable investment for the Plaintiffs especially given the conflicts of interest;

(e) In failing to keep apprised the Plaintiffs of the financial shortcomings and/or status of the Defendant companies;

(f) In failing to comport their conduct in accordance with industry standards;

(g) In failing to establish accounting systems, financial structures and compliance systems to assure compliance with state and federal security laws and reporting systems to provide feedback to investors and owners of 809 Holdings.

(h) In failing to comport their conduct in accordance with standards applicable to general partners as to the respective companies and limited partners, and in other regards that may be more fully discovered and disclosed following subsequent investigation.

135. As proximate cause of Defendants negligence and gross negligence, Plaintiffs suffered damages.

136. Plaintiffs are entitled to damages, punitive damages plus costs.

AS A SIXTH CAUSE OF ACTION
(Conversion)

137. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

138. Defendants converted Plaintiffs' money to their own use.

139. Such use was without Plaintiffs' permission.

140. Such conversion arises out of the illegal actions and fraudulent and/or deceptive actions of Defendants by which they obtained possession of Plaintiffs' money.

141. Plaintiffs' money is capable of being identified in the discreet transactions of determinate sums.

142. Due to Defendants actions, Plaintiffs are entitled to damages, punitive damages plus costs.

AS A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices Act)

143. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim herein.

144. Defendants' action and conduct violated the Unfair Trade Practices Act, South Carolina Code Ann. §39-5-10 et seq.

145. Such unfair or deceptive acts were in the conduct of trade and commerce.

146. The unfair or deceptive acts or practices in Defendants' conduct of trade or commerce have an impact upon the public interest.

147. The Defendants' acts or practices have the potential for repetition.

148. Other trusting investors have lost their money through Defendants' unfair trade practices.

149. The same kind of actions occurred in the past and it is likely they will continue to occur or the Defendants' procedures create a potential for repetition of the unfair and deceptive acts.

150. As a proximate result of Defendants' violative actions, Plaintiffs have suffered damages.

151. Defendants actions and scheme were intentional, knowing and willful.

152. Plaintiffs should be awarded treble damages.

153. Plaintiffs are entitled to damages, treble damages, attorney fees and costs.

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Appendix 00079

WHEREFORE, as duly set forth in the Claims above, Plaintiffs prays for the following relief:

- 1) Damages, plus prejudgment interest;**
- 2) Punitive damages;**
- 3) Treble damages;**
- 4) Attorney's fees and costs;**
- 5) An accounting as requested; and**
- 6) Any other relief this Court deems just and reasonable.**

Respectfully submitted,



NATE FATA
NATE FATA, P.A.
Attorney for Plaintiffs
P. O. Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, SC
April 27, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barphill and GSB Enterprises, LLC,
Plaintiff(s)

vs.

J. Floyd Swilley, et al.
Defendant(s)

Submitted By: Nate Fata, Esquire
Address: P.O. Box 16620, The Courtyard, Suite 215,
Surfside Beach, SC 29587

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013 CP 26 2816

SC Bar #: 9866
Telephone #: 843-238-2676
Fax #: 843-238-0240
Other:
E-mail: nfata@fatalaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

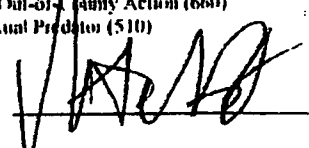
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 - CP - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Easement (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDC (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm. (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☒ Union Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: April 22, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

PAID

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

Nate Fata, P.A.

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

F. Miles Adler, Esq., Bar No. 70238

Address:

P.O. Box 4743

Pawleys Island, SC 29585

phone: 843-314-3204 fax: 843-314-3205

e-mail: miles@theadlerlawfirm.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiffs' Motion To Compel Discovery

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

July 1, 2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐ MOTION FEE COLLECTED:

25

7-3-13

☐ .CONTESTED - AMOUNT DUE: _____

PAID

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
COMPEL DISCOVERY**

**HORRY COUNTY
13 JUL -3 PM 2:35
MILANIE HUGGINS-WARD
CLERK OF COURT**

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC to respond to Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Request For Production and that Defendants J. Floyd Swilley and J. Floyd Swilley Investment Advisors respond to Plaintiffs' Supplemental Interrogatories.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Plaintiffs' Summons, Complaint, First Set of Interrogatories To Defendants and First Request for Production of Documents and were served on the above named Defendants on April 30, 2013 by Process Server Ken Hecker. The discovery requests are attached hereto as Exhibit "A."

2. Plaintiffs' Supplemental Interrogatories were served on Defendants J. Floyd Swilley and J. Floyd Swilley Investment Advisors on April 30, 2013. The discovery requests are attached hereto as Exhibit "B."

3. On May 28, 2013 counsel filed an Answer on behalf of the above Defendants.

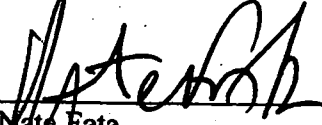
4. Although Defendants answered the Complaint on May 28, 2013, they have not answered the discovery set forth above.

5. Plaintiff's counsel requested Defendants' counsel to respond to the discovery requests by electronic mail and United States mail on June 18, 2013. No responses have been provided.

6. Plaintiff's counsel certifies that he has attempted to resolve this issue with opposing counsel prior to filing the instant motion.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, SMS Services, LP, and Heath Causey to produce all responsive documents and responsive information, award reasonable attorney fees in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37, SCRCP.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
July 1, 2013

EXHIBIT

A

000080

Appendix 00087

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

PLAINTIFFS' FIRST SET OF
REQUEST FOR PRODUCTION
OF DOCUMENTS TO THE
DEFENDANTS

TO: ALL DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendants respond, within thirty (30) days after the service hereof, to the following Requests and that the Defendants produce and permit the Plaintiff's counsel to inspect, copy, or photograph, at the office of Defendants' attorney, each of the following documents or things which may be in the possession, custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim or defense of the within cause.

DEFINITIONS

The term "documents" or "things" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, pleadings, papers filed with any court, municipality, county or administrative agency or

department, notes, diaries, statistics, letters, telegrams, minutes of meetings, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefaxes, invoice work sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records, representations of any kind, including, without limitation, photographs, charts, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, videos, or other records.

The term "all documents" means every document as defined above known to Defendant, Defendant's agents or counsel, and each document that can be located or discovered by reasonably diligent efforts.

DOCUMENTS

1. Copies of any and all statements given by parties, eyewitnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the Defendants or Defendants' counsel, whether written or recorded or on a tape recorder or otherwise.
2. Any and all work papers, notes, documents and/or reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' work papers, notes, documents, and/or reports.
3. Any and all documents identified or described in your Answers to Interrogatories.
4. Any and all documents you intend to introduce at trial.
5. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business might be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

6. Copies of any and all statements previously made by the Defendants concerning the subject matter of this lawsuit, including any written statement, signed or otherwise adopted or approved by the Defendants hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.
7. A copy of each and every correspondence sent to/by or received from any of the parties named in this lawsuit, which is not subject to the attorney-client privilege.
8. Any and all audits done at any time on 809 Holdings, LP or QC Financing, LLC.
9. Any and all submissions sent by you to the Attorney General's Office at any time from January 2010 to present concerning any offering or any investment.
10. A copy of the state and federal tax returns, with all schedules, for 809 Holdings, LP and QC Financing, LLC for each year beginning 2010 to present.
11. Any and all financial statements, balance sheets and ledgers relating to 809 Holdings, LP and QC Financing, LLC at any time from August 2010 to present.
12. All bank account statements for 809 Holdings, LP or for any bank account relating to any monies received or deposited to or for the benefit of 809 Holdings, LP at any time from August 2010 to present.
13. All computer software (e.g., Peachtree) registers or accounting statements relating to investor monies being invested in 809 Holdings, LP at any time from August 2010 to present or monies being repaid to such investors.
14. All sales tax filings relating to QC Financing, LLC at any time from August 2010 to present.
15. Any and all leases relating to QC Financing, LLC executed at any time from 2010 to present.
16. A complete copy of any documents bearing Gabriel Barnhill's signature or initials.
17. A copy of any complaints or lawsuits filed against you from 2008 to present relating to an investment or investment advice.

18. Your state and federal tax returns (including K-1) for 2010 to present.
19. Any loan documents for 809 Holdings or QC Financing at any time.
20. For the period 2008 to present, any account documents for either plaintiff relating to their investments or Gabriel Barnhill's IRA account(s).
21. All documents and emails to or from Equity Trust relating to Barnhill's account.
22. From August 2010 to present, any and all emails referencing or relating to Gabriel Barnhill or his investment.
23. A copy of your corporate book and corporate records, organizational papers, bylaws, meeting minutes, resolutions, consents, and operating and partnership agreements.

Respectfully submitted,



Nate Fata S.C. Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 US Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
April 29, 2013

EXHIBIT

B

000085

Appendix 00092

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

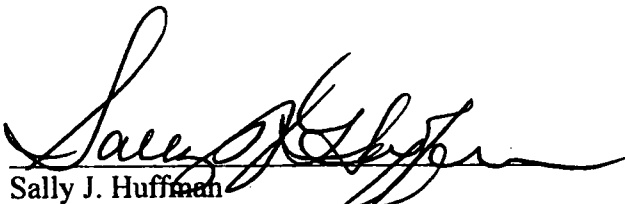
Defendants.

CERTIFICATE OF SERVICE

HORRY COUNTY
13 JUL -3 PM 2:35
HELANE HUGGINS-WARD
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on July 2nd, 2013 I did serve a copy of Plaintiff's Notice of Motion and Motion To Compel Discovery by mailing a copy of the same postage prepaid to:

F. Miles Adler, Esq.
The Adler Law Firm
P.O. Box 4743
Pawleys Island, SC 29484
Counsel for Defendants


Sally J. Huffman

1 000086

Appendix 00093

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26- 28112

PLAINTIFFS' SUPPLEMENTAL
INTERROGATORIES TO J. FLOYD
SWILLEY AND J. FLOYD SWILLEY
INVESTMENT ADVISORS

TO: J. FLOYD SWILLEY AND J. FLOYD SWILLEY INVESTMENT ADVISORS:

PLAINTIFF hereby requires the DEFENDANTS, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

000087

Appendix 00094

C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.
7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addresses, if any.
5. The present location, name, and present address and position of person or persons having custody.

INTERROGATORIES

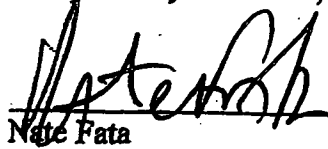
1. For the period 2003 to present, identify all documents submitted to the State of South Carolina Attorney General's Office in connection with a complaint or an investigation concerning an investment.
2. State in full detail all tax liens owed by you at any time from 2001 to present, and include the amount and reason for the lien and identify all lien papers.
3. Did you have a conflict of interest in promoting the 809 Holdings investment to Gabriel Barnhill?
4. How many investors in 809 Holdings complained to you about their monies being lost in 809 Holdings?



Nate Fata
Attorney for Plaintiffs
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Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, South Carolina
April 29, 2013

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

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Surfside Beach, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' ANSWER TO
COUNTERCLAIM

FILED
HORRY COUNTY
2013 AUG -5 PM 2:23
MELANIE HIGGINS-WARD
CLERK OF COURT

TO: Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

The Plaintiffs, by and through their attorney, respectfully responds to the Defendant's Counterclaims as follows:

Any allegation not specifically admitted herein is denied.

1. In response to the allegations set forth in paragraph 170 of Defendants' Counterclaim, Plaintiffs deny the same.
2. In response to the allegations set forth in paragraph 171 of Defendants' Counterclaim, Plaintiffs admit they reside in Horry County, that Barnhill is a timeshare salesman and that his work involves sales and contracts. The Plaintiffs deny the remaining allegations.
3. Plaintiffs admit the allegations contained in paragraph 172 of Defendants' Counterclaim.
4. Plaintiffs admit the allegations contained in paragraph 173 of the Defendants' Counterclaims.

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5. Plaintiffs lack sufficient information to either admit or deny the allegations contained in paragraph 174 of Defendants' Counterclaim and, therefore, deny the same and demand strict proof thereof as to Quick Cash Pawn being formed by David F. Wilkinson. The Plaintiffs deny the remaining allegations.

6. Plaintiffs admit the allegations contained in Paragraph 175 of the Defendants' Counterclaim.

7. Plaintiffs admit the allegations contained in Paragraph 176 of the Defendants' Counterclaim.

8. Plaintiffs admit the allegations contained in Paragraph 177 of the Defendants' Counterclaim.

9. Plaintiffs deny the allegations contained in Paragraph 178 of the Defendants' Counterclaim insofar as the term "partner" is used as there are limited partners and general partners. Plaintiffs deny the allegations that Barnhill was a "partner" in Quick Cash Pawn Shop.

10. Plaintiffs deny the allegations contained in Paragraph 179 of the Defendants' Counterclaim insofar as they allege QC Financing, LLC financed Quick Cash Pawn Shop.

11. Plaintiffs deny the allegations contained 180, 181, 182, 183, 184 and 185 of the Defendants' Counterclaim.

12. Plaintiffs lack sufficient information to either admit or deny the allegations contained in paragraph 186 of the Counterclaim and, therefore, deny the same and demand strict proof thereof.

13. Plaintiffs deny the allegations contained in Paragraphs 187, 188 and 189 of the Defendants' Counterclaim.

14. Plaintiffs deny the allegations contained in Paragraphs 190, 191, 192, 193, and 194 of the Defendants' Counterclaim and further assert the term "partner" is ambiguous.

15. Plaintiffs deny the allegations contained in Paragraphs 195, 196, 197, 198, and 199 of the Defendants' Counterclaim and further assert the term "partner" is ambiguous.

16. Plaintiffs deny the allegations contained in Paragraphs 200, 201, 202, 203, 204 and 205 of the Defendants' Counterclaim and further assert the term "partner" is ambiguous.

17. Plaintiffs deny the allegations contained in Paragraphs 206, 207, 208, 209, 210, 211, 212 and 213 of the Defendants' Counterclaim and further assert the term "partner" is ambiguous.

18. Plaintiffs deny the allegations contained in Paragraphs 214 and 215 of the Defendants' Counterclaim.

19. Plaintiffs admit the allegations in Paragraph 216 of the Defendants' Counterclaim.

20. Plaintiffs deny the allegations contained in Paragraphs 217 through 223 of the Defendants' Counterclaim.

21. Plaintiffs deny the propriety of any and all relief requested by the Defendants in any of the Counterclaims.

**AS A FIRST DEFENSE
S.C.R.C.P. 12(b)(2)**

22. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

23. The Defendants have failed to allege a cause of action, and pursuant to Rule 12(b)(6), the counterclaims should be dismissed. In addition, any allegations against the Plaintiffs are insufficient as a matter of law, and therefore, the claims should be dismissed.

**AS A SECOND DEFENSE
(Estoppel)**

24. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

25. The Defendants' claims should be dismissed with prejudice due to the doctrine of estoppel. Defendants' actions, involvement and omissions bar their claims.

**AS A THIRD DEFENSE
(Doctrine of Waiver)**

26. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

27. Defendants' claims are barred by the doctrine of waiver.

**AS A FOURTH DEFENSE
(Doctrine of Laches)**

28. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

29. Defendants' claims should be dismissed with prejudice due to the doctrine of laches.

**AS A FIFTH DEFENSE
(Mitigate Damages)**

30. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

31. Defendants' damages, if any, should be reduced and/or eliminated due to the Defendants' failure to mitigate damages.

**AS A SIXTH DEFENSE
(Investigation)**

32. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

33. Plaintiffs reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

**AS A SEVENTH DEFENSE
(Doctrine of Unclean Hands)**

34. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

35. The claims of Defendants are further barred by the doctrine of unclean hands due to Defendants' statements, actions, and omissions.

**AS AN EIGHTH DEFENSE
(Comparative Negligence)**

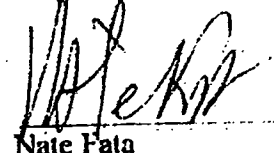
36. Plaintiffs incorporate herein each and every paragraph set forth above as if repeated herein verbatim.

37. To the extent Defendants assert a counterclaim sounding in negligence, the doctrine of comparative negligence bars the claim, in whole or in part.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court grant the following:

- A. That the Court enter an Order dismissing the Defendant's counterclaims with prejudice;
- B. That Plaintiffs be awarded costs;
- C. Award all relief requested in the Plaintiffs' Complaint; and
- D. Any other relief that this Court deems just.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 209

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC
July 24, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Investment
Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC, Heath Causey,
and Sage Financial Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Case No.: 2013-CP- 26 - 2816

DEFENSE COUNSEL'S MOTION TO WITHDRAW

FILED
HORRY COUNTY
13 DEC 11 AM 11:08
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE PLAINTIFFS GABRIEL BARNHILL AND GSB ENTERPRISES, LLC AND THEIR ATTORNEY NATE
FATA ESQUIRE:

F. Miles Adler moves this Court for an Order permitting withdrawal from representation of J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC. In support of this motion F. Miles Adler shows the following to this Court:

1. A concurrent conflict of interest exists in that there is a significant risk, in the opinion of counsel, that the representation of one or more clients will be materially limited by counsel's responsibilities to another client pursuant to Rule 407 (1.7(a)(2)), SCACR and counsel has been unable to obtain informed consent, confirmed in writing from all of the clients pursuant to Rule 407 (1.7(b)(4)). See attached Exhibit A. For the foregoing reasons, counsel believes continued representation will result in violation of the Rules of Professional Conduct or other law pursuant to Rule 407 (1.16(a)(1)).
2. Withdrawal is permitted under these circumstances pursuant to Rule 407 (1.16(a)(1)), SCACR.
3. Counsel has requested on multiple occasions for the clients to meet with counsel at his office to discuss the conflict of interest and resolving the issue but the clients have failed to do so. The clients have been given reasonable notice that counsel would withdraw unless a signed waiver of conflict was obtained. See attached Exhibit B.
4. A proposed order allowing the withdrawal is attached as Exhibit C.

The undersigned counsel therefore moves this Court for an Order to allow undersigned counsel to withdraw from representation of J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K.

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2013-CP-26-2816

Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC in the above captioned matter.

Respectfully submitted,



F. Miles Adler
SC Bar No.: 70238
P.O. Box 4743
Pawleys Island, SC 29585
T: 843-314-3204
F: 843-314-3205
miles@theadlerlawfirm.com

October 28, 2013
Pawleys Island, SC

000098

Appendix 00105

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
SANCTIONS FOR DEFENDANTS'
FAILURE TO COMPLY WITH
DISCOVERY ORDERS

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, L.P., William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order entering the appropriate relief against Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial
failure to comply with the Court's Orders filed on September 20, 2013 and on Jan.

Plaintiffs by and through their attorney, Nate Fata, pursuant to South Car Civil Procedure 37, in support of their Motion, state as follows:

1. On September 20, 2013 the Court ordered full and complete responses to the Plaintiffs' discovery requests which were the subject of Plaintiffs' Motion to Compel. The discovery requests were served in April, 2013.

2. The Defendants did not provide full and complete responses, as outlined in counsel's letter dated October 21, 2013, a copy of which was attached as Exhibit "A" to Plaintiffs' October 2013 Motion for Sanctions.

3. At the hearing on January 13, 2014, the Defendants agreed to provide supplemental responses to address the deficiencies. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees. The Court further held any privilege claims were waived.

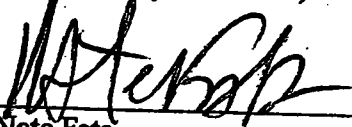
4. Defendants' supplemental responses did not comply with the Court's Order filed on September 20, 2013 or the Order filed on January 16, 2014. Subsequently Plaintiffs requested the responses be supplemented in two letters dated January 22, 2014 and January 30, 2014 attached hereto as Exhibit "B". Defendants have not responded. The discovery responses are incomplete as outlined in the letters. Clearly relevant, responsive materials have not been provided.

5. The Court should strike the Answer of Defendants, award attorney fees and costs and enter all other appropriate relief.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order striking the Answer of Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, SMS Services, LP, and Heath Causey, enforcing the September 20, 2013 Order and the

January 16, 2014 Order, awarding reasonable attorney fees in connection with this Motion and hearing, and granting all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
February 11, 2014

EXHIBIT

A

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

October 21, 2013

F. Miles Adler, Esq.
The Adler Law Firm
P.O. Box 4743
Pawleys Island, SC 29484
miles@theadlerlawfirm.com

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear Miles:

I am in receipt of the Defendants' Responses to Interrogatories and Requests For Production. The responses do not comply with the Court's Order filed on September 20, 2013. Under the Order, the Defendants were to provide responsive documents and complete responses to all Interrogatories and Request For Production of Documents which are the subject of the Motion to Compel no later than October 15, 2013. Instead, I received incomplete answers and a myriad of objections. The time to object to any of the Interrogatories was prior to the hearing. I am addressing some of the incomplete and inadequate responses below.

Interrogatories

Interrogatory 1. Addresses have not been provided. Please provide a complete address so that subpoenas may be sent.

Interrogatory 5. No summary sufficient to inform the Plaintiffs of the important facts known or observed by the witnesses have been provided. The phrase "actions of Plaintiffs relative to QC Pawn" or "inventory issues relative to QC Pawn" do not provide any important facts known or observed by the witness. Please provide complete answers to the Interrogatory.

Interrogatory 6. No disclosure of any amounts provided to 809 Holdings, LLP by Defendants Piner, Atkinson, Swilley have been disclosed. If any Defendants made any

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"investments" into 809 Holdings or QC Financing, please disclose the same in accordance with the Interrogatory.

Interrogatory 7. A complete answer has not been provided. Please review the Interrogatory and provide the amount of compensation and responsibilities for each Defendant relating to QC Financing or 809 Holdings. For example, and not by way of limitation, what was Sage Tax's arrangement and how much was it paid?

Interrogatory 11. (Second Number 11). The number of persons who invested in 809 Holdings and their investment amounts are all included in response to Interrogatory 9. However, Interrogatory 11 asks for the total amount of investor money that was lost or not repaid to these investors. Please state the amount of money that has not been repaid to the investors. My clients do not have access to 809 Holdings' information and do not know the amount of money invested in 809 Holdings. Again, full and complete answers are required to be provided under the Order. This information is readily available to your client.

Interrogatory 15. Please set forth all facts that support your contention that Gabriel Barnhill and/or Dave Wilkinson's actions caused the failure of 809 Holdings or any losses realized by 809 Holdings.

Interrogatory 16. Please provide the identity of any company in which any of the Defendants share common interests. For example, Secured Asset Factoring Exchange, Inc. might be owned by both Bill Piner and Floyd Swilley. If that is the case, during the relevant time period requested, please disclose those ownership interests.

Interrogatory 18. Please identify the terms of any loan any of the Defendants contend were made to 809 Holdings or QC Financing and identify all loan documents. No loan documents have been provided based on my review.

Interrogatory 19. Please set forth the mathematical formula used to assign ownership interest to Gabriel Barnhill. If no mathematical formula was used, please state the same.

Supplemental Interrogatories

With respect to responses to Supplemental Interrogatories you have not provided full and complete answers.

Supplemental Interrogatory 1. Documents submitted to the State of South Carolina are not subject to the attorney client privilege. Please immediately provide all such documents.

Supplemental Interrogatory 2. same.

Please identify all lien papers and provide a copy of the

Supplemental Interrogatory 3. whether a conflict of interest existed.

Please answer Interrogatory 3. You have not stated

Request For Production of Documents

Request for Production 3.

You have not supplied responsive documents to this request.

Request for Production 6.

Please respond to this Request.

Request for Production 7.

Please respond to this Request.

Request for Production 10.

Request for Production number 10 is not confidential and proprietary. My client is entitled to 809 Holdings tax returns and QC Financing tax returns. Please produce the same.

Request for Production 11.

Please produce financial statements related to 809 Holdings and QC Financing, including the recent years of 2012 and 2013.

Request for Production 12.

Please ensure all bank statements of 809 Holdings LLP to present have been provided, including the recent years of 2012 and 2013.

Request for Production 13.

Please ensure all software registers or accounting statements to present have been provided. I do not see recent years in the documents produced, including the recent years of 2012 and 2013.

Request for Production 16.

Please produce any and all documents bearing Gabriel Barnhill's signature or initials. The response that Plaintiff already has possession of the same is inadequate.

Request for Production 18.

Please produce documents responsive to this Request.

Request for Production 19.

Please produce any and all loan documents to the extent you are claiming loans were made.

Request for Production 20.

Please produce documents relating to the Plaintiff. Your response that Plaintiff has these documents is inadequate.

F. Miles Adler, Esq.
October 21, 2013
Page 4

Request for Production 21. Please produce documents relating to the Plaintiff. Your response that Plaintiff has these documents is inadequate.

Request for Production 22. Please produce all the corporate records of any of the Defendants.

Please provide the requested documents and information no later than October 28, 2013. If we do not receive the same by then, we will file the appropriate motion asking the Court to enter the appropriate relief including striking the answer and counterclaim for failure to provide discovery under the Order, attorney fees and costs.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.



Nate Fata

NF/sh

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Appendix 00113

EXHIBIT

B

000107

Appendix 00114

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

²²
January 20, 2014

John M. Leiter, Esq.
jleiter@48th.com
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Further to the hearing last week, I am working through the documents provided by you in Court to determine whether the Defendants have complied with the Court's Order. Please provide within the next seven days the base amount of the tax lien, the date and the lien papers. The response thus far does not include the base amount of the lien and no lien papers have been identified/provided.

As for tax returns, I have not received a copy of the 2011 or 2012 WCP Limited, LLC tax returns, the 2010, 2012 Sage Financial tax returns, or any returns for SMG Partners, LLC and/or SMS Services, L.P. Please provide the documents to me. If those returns have never existed (were never prepared) please advise of the same.

I will continue to review the production and responses.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh

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NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

January 30, 2014

John M. Leiter, Esq.
jleiter@48th.com
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Further to the Court's Orders on January 16, 2014 and September 20, 2013, responsive documentation has still not been produced as set forth in the items below. In an effort to resolve this matter within the next ten days, I have set forth below the deficient responses. I have previously written on several other matters. If you believe the documents have been produced and I have overlooked them, then please identify the production in which they were produced.

Request For Production:

Number 6: Please produce any statements made by any of the Defendants concerning the subject matter. No privilege applies.

Number 11: As mentioned previously in my October 21, 2013 letter, I do not believe I have received the 2012, 2013 and now the 2014 documents relating to 809 Holdings, LP or QC Financing, LLC. 809 Holdings, LP documentation is at your clients' disposal and must be produced under the Court's Orders. If you have any QC Financing, LLC documentation, please provide that as well.

Number 12: I have not received 809 Holdings, LP bank statements for 2012, 2013 or 2014. Please provide these.

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John M. Leiter, Esq.
January 30, 2014
Page 2.

Number 13: I do not see any software documentation, accounting registers or accounting/financial statements for 809 Holdings, LP for a majority of 2012, 2013, and 2014. Those documents would reflect, in part, investors' monies being invested or repaid during that period. If some investors have been repaid, there should be payment records and some accounting of the same in the 809 Holdings, LP records which your client controls.

Interrogatory:

Number 16: This Interrogatory still has not been responded to. There are certain common entities in which the Defendants have an interest. For each Defendant, please identify all such holdings.

Please provide the requested information within the next ten days.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.



Nate Fata

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Appendix 00117

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

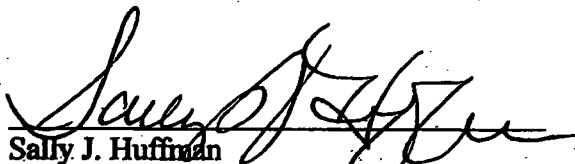
CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 17, 2014 I did serve a copy of Plaintiff Notice of Motion and Motion For Sanctions For Defendants' Failure To Comply With Discovery Orders by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
COMPEL J. FLOYD SWILLEY
INVESTMENT ADVISORS, SMG
PARTNERS, LLC, SMS SERVICES,
LP, WCP LIMITED, LLC, 809
HOLDINGS, LP AND SAGE
FINANCIAL GROUP, LLC
RESPONSE TO SUPPLEMENTAL
INTERROGATORIES TO
DEFENDANTS

TO: Defendants J. Floyd Swilley Investment Advisors, SMG Partners, LLC, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants J. Floyd Swilley Investment Advisors, SMG Partners, LLC, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, and Sage Financial Group, LLC (collectively referred to as the "Company Defendants") to respond to Plaintiffs' Supplemental Interrogatories to Defendants.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Company Defendants were served through their counsel, F. Miles Adler, with Supplemental Interrogatories on November 18, 2013.

2. By Court Order dated December 13, 2013, Miles Adler was relieved as counsel. That Order required the Defendants to comply with discovery.

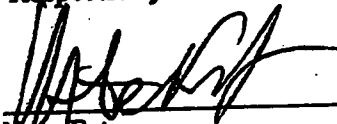
3. On December 23, 2013 Defendants J. Floyd Swilley, Pro Se, Laurel K. Swilley, Pro Se, Heath Causey, Pro Se and William C. Piner, Pro Se filed their responses to the Supplement Interrogatories with the Horry County Clerk of Court.

4. The Company Defendants have not provided any responses to the outstanding discovery requests.

5. Plaintiff's counsel certifies that any attempt to resolve this issue would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order striking Defendants J. Floyd Swilley Investment Advisors, SMG Partners, LLC, WCP Limited, LLC, 809 Holdings, LP and Sage Financial Group, LLC's counterclaims for failure to comply with discovery, award reasonable attorney fees in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
January 9, 2013

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC.,
809 Holdings, LP, QC Financing LLC.,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

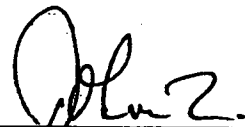
IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

NOTICE OF APPEARANCE

FILED
COUNTY
2014 JAN 13 AM 9:13
MELANIE HUGGINS-WARD
CLERK OF COURT

Notice is hereby given of the entry of the undersigned as counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC in the above-entitled action. All further notice and copies of pleadings, papers and other material relevant to this action should be directed to and served upon John M. Leiter at the address shown below.



John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: January 12, 2014

000114

Appendix 00121

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC

☒ Plaintiff

v.

J. Floyd Swilley, Et Al.

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Nate Fata, Esq., Bar No. 09866
Address:
Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, SC 29587
phone: 843-238-2676 fax: 843-238-0240
e-mail: nfata@fatalaw.com other:

Defendant's Attorney:
John M. Leiter, Esq, Bar No.
Address:
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
phone: fax:
e-mail: jleiter@48th.com other:

HORRY COUNTY
FEB 19 PM 1:55
MELANIE HUGGINS-NEED
CLERK OF COURT

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiffs' Motion For Sanctions For Defendants' Failure to Comply With Discovery Orders

Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

February 11, 2014
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: JFB

Date Filed: 2-19-14

☐ MOTION FEE COLLECTED: 25

Appendix 00122

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
SANCTIONS FOR DEFENDANTS'
FAILURE TO COMPLY WITH
DISCOVERY ORDERS

HORRY COUNTY
FEB 19 PM 1:54
HELANIE HUGHES-WARD
CLERK OF COURT

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, L.P., William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order entering the appropriate relief against Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC for failure to comply with the Court's Orders filed on September 20, 2013 and on January 16, 2014.

Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion, state as follows:

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)
Defendants.)

PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
SANCTIONS FOR DEFENDANTS'
FAILURE TO COMPLY WITH
DISCOVERY ORDERS

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, L.P., William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order entering the appropriate relief against Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC for failure to comply with the Court's Orders filed on September 20, 2013 and on January 16, 2014.

Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion, state as follows:

1. On September 20, 2013 the Court ordered full and complete responses to the Plaintiffs' discovery requests which were the subject of Plaintiffs' Motion to Compel. The discovery requests were served in April, 2013.

2. The Defendants did not provide full and complete responses, as outlined in counsel's letter dated October 21, 2013, a copy of which was attached as Exhibit "A" to Plaintiffs' October 2013 Motion for Sanctions.

3. At the hearing on January 13, 2014, the Defendants agreed to provide supplemental responses to address the deficiencies. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees. The Court further held any privilege claims were waived.

4. Defendants' supplemental responses did not comply with the Court's Order filed on September 20, 2013 or the Order filed on January 16, 2014. Subsequently Plaintiffs requested the responses be supplemented in two letters dated January 22, 2014 and January 30, 2014 attached hereto as Exhibit "B". Defendants have not responded. The discovery responses are incomplete as outlined in the letters. Clearly relevant, responsive materials have not been provided.

5. The Court should strike the Answer of Defendants, award attorney fees and costs and enter all other appropriate relief.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order striking the Answer of Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, SMS Services, LP, and Heath Causey, enforcing the September 20, 2013 Order and the

January 16, 2014 Order, awarding reasonable attorney fees in connection with this Motion and hearing, and granting all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
February 11, 2014

EXHIBIT

A

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NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

October 21, 2013

F. Miles Adler, Esq.
The Adler Law Firm
P.O. Box 4743
Pawleys Island, SC 29484
miles@theadlerlawfirm.com

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear Miles:

I am in receipt of the Defendants' Responses to Interrogatories and Requests For Production. The responses do not comply with the Court's Order filed on September 20, 2013. Under the Order, the Defendants were to provide responsive documents and complete responses to all Interrogatories and Request For Production of Documents which are the subject of the Motion to Compel no later than October 15, 2013. Instead, I received incomplete answers and a myriad of objections. The time to object to any of the Interrogatories was prior to the hearing. I am addressing some of the incomplete and inadequate responses below.

Interrogatories

Interrogatory 1. Addresses have not been provided. Please provide a complete address so that subpoenas may be sent.

Interrogatory 5. No summary sufficient to inform the Plaintiffs of the important facts known or observed by the witnesses have been provided. The phrase "actions of Plaintiffs relative to QC Pawn" or "inventory issues relative to QC Pawn" do not provide any important facts known or observed by the witness. Please provide complete answers to the Interrogatory.

Interrogatory 6. No disclosure of any amounts provided to 809 Holdings, LLP by Defendants Piner, Atkinson, Swilley have been disclosed. If any Defendants made any

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"investments" into 809 Holdings or QC Financing, please disclose the same in accordance with the Interrogatory.

Interrogatory 7. A complete answer has not been provided. Please review the Interrogatory and provide the amount of compensation and responsibilities for each Defendant relating to QC Financing or 809 Holdings. For example, and not by way of limitation, what was Sage Tax's arrangement and how much was it paid?

Interrogatory 11. (Second Number 11). The number of persons who invested in 809 Holdings and their investment amounts are all included in response to Interrogatory 9. However, Interrogatory 11 asks for the total amount of investor money that was lost or not repaid to these investors. Please state the amount of money that has not been repaid to the investors. My clients do not have access to 809 Holdings' information and do not know the amount of money invested in 809 Holdings. Again, full and complete answers are required to be provided under the Order. This information is readily available to your client.

Interrogatory 15. Please set forth all facts that support your contention that Gabriel Barnhill and/or Dave Wilkinson's actions caused the failure of 809 Holdings or any losses realized by 809 Holdings.

Interrogatory 16. Please provide the identity of any company in which any of the Defendants share common interests. For example, Secured Asset Factoring Exchange, Inc. might be owned by both Bill Piner and Floyd Swilley. If that is the case, during the relevant time period requested, please disclose those ownership interests.

Interrogatory 18. Please identify the terms of any loan any of the Defendants contend were made to 809 Holdings or QC Financing and identify all loan documents. No loan documents have been provided based on my review.

Interrogatory 19. Please set forth the mathematical formula used to assign ownership interest to Gabriel Barnhill. If no mathematical formula was used, please state the same.

Supplemental Interrogatories

With respect to responses to Supplemental Interrogatories you have not provided full and complete answers.

Supplemental Interrogatory 1. Documents submitted to the State of South Carolina are not subject to the attorney client privilege. Please immediately provide all such documents.

Supplemental Interrogatory 2. Please identify all lien papers and provide a copy of the same.

Supplemental Interrogatory 3. Please answer Interrogatory 3. You have not stated whether a conflict of interest existed.

Request For Production of Documents

Request for Production 3. You have not supplied responsive documents to this request.

Request for Production 6. Please respond to this Request.

Request for Production 7. Please respond to this Request.

Request for Production 10. Request for Production number 10 is not confidential and proprietary. My client is entitled to 809 Holdings tax returns and QC Financing tax returns. Please produce the same.

Request for Production 11. Please produce financial statements related to 809 Holdings and QC Financing, including the recent years of 2012 and 2013.

Request for Production 12. Please ensure all bank statements of 809 Holdings LLP to present have been provided, including the recent years of 2012 and 2013.

Request for Production 13. Please ensure all software registers or accounting statements to present have been provided. I do not see recent years in the documents produced, including the recent years of 2012 and 2013.

Request for Production 16. Please produce any and all documents bearing Gabriel Barnhill's signature or initials. The response that Plaintiff already has possession of the same is inadequate.

Request for Production 18. Please produce documents responsive to this Request.

Request for Production 19. Please produce any and all loan documents to the extent you are claiming loans were made.

Request for Production 20. Please produce documents relating to the Plaintiff. Your response that Plaintiff has these documents is inadequate.

F. Miles Adler, Esq.
October 21, 2013
Page 4

Request for Production 21. Please produce documents relating to the Plaintiff. Your response that Plaintiff has these documents is inadequate.

Request for Production 22. Please produce all the corporate records of any of the Defendants.

Please provide the requested documents and information no later than October 28, 2013. If we do not receive the same by then, we will file the appropriate motion asking the Court to enter the appropriate relief including striking the answer and counterclaim for failure to provide discovery under the Order, attorney fees and costs.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.



Nate Fata

NF/sh

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EXHIBIT

B

000127

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NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

²²
January 20, 2014

John M. Leiter, Esq.
ileiter@48th.com
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Further to the hearing last week, I am working through the documents provided by you in Court to determine whether the Defendants have complied with the Court's Order. Please provide within the next seven days the base amount of the tax lien, the date and the lien papers. The response thus far does not include the base amount of the lien and no lien papers have been identified/provided.

As for tax returns, I have not received a copy of the 2011 or 2012 WCP Limited, LLC tax returns, the 2010, 2012 Sage Financial tax returns, or any returns for SMG Partners, LLC and/or SMS Services, L.P. Please provide the documents to me. If those returns have never existed (were never prepared) please advise of the same.

I will continue to review the production and responses.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh

Appendix 00135

000128

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA EMAIL

January 30, 2014

John M. Leiter, Esq.
jleiter@48th.com
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Further to the Court's Orders on January 16, 2014 and September 20, 2013, responsive documentation has still not been produced as set forth in the items below. In an effort to resolve this matter within the next ten days, I have set forth below the deficient responses. I have previously written on several other matters. If you believe the documents have been produced and I have overlooked them, then please identify the production in which they were produced.

Request For Production:

Number 6: Please produce any statements made by any of the Defendants concerning the subject matter. No privilege applies.

Number 11: As mentioned previously in my October 21, 2013 letter, I do not believe I have received the 2012, 2013 and now the 2014 documents relating to 809 Holdings, LP or QC Financing, LLC. 809 Holdings, LP documentation is at your clients' disposal and must be produced under the Court's Orders. If you have any QC Financing, LLC documentation, please provide that as well.

Number 12: I have not received 809 Holdings, LP bank statements for 2012, 2013 or 2014. Please provide these.

John M. Leiter, Esq.
January 30, 2014
Page 2.

Number 13: I do not see any software documentation, accounting registers or accounting/financial statements for 809 Holdings, LP for a majority of 2012, 2013, and 2014. Those documents would reflect, in part, investors' monies being invested or repaid during that period. If some investors have been repaid, there should be payment records and some accounting of the same in the 809 Holdings, LP records which your client controls.

Interrogatory:

Number 16: This Interrogatory still has not been responded to. There are certain common entities in which the Defendants have an interest. For each Defendant, please identify all such holdings.

Please provide the requested information within the next ten days.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.



Nate Fata

NF/sh

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)

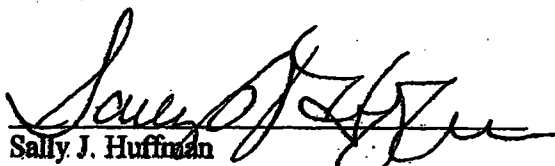
vs.)

CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)
Defendants.)

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 17, 2014 I did serve a copy of Plaintiff Notice of Motion and Motion For Sanctions For Defendants' Failure To Comply With Discovery Orders by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

FILED
2014 FEB 17 PM 4:00
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
SANCTIONS AS TO DEFENDANTS

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, L.P., William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order awarding sanctions and striking the Answer and Counterclaim of Defendants.

Despite Court Orders concerning discovery entered on September 20, 2013 and January 16, 2014, Defendants continue to engage in discovery abuse. Truthful answers to discovery requests are required to ferret out the misdeeds of a fairly complex Ponzi scheme. Discovery abuse is just another leg of the scheme in which Defendants further misrepresent and defraud not only the Court, but its litigants of the truth.

A. False Denial of Request to Admit

In its January 16, 2014 Order, the Court ordered Defendants to comply with the discovery rules, provide responses and produce documents, and awarded attorney fees to Plaintiffs. The Court should now grant sanctions and award fees and costs due to Defendants' continuing disregard of the Court's Orders and discovery rules. In their response to Plaintiffs' Request to Admit, Defendants falsely denied that any payments were made to investors, such as Joyce Kaufman, after 2011.

Plaintiff Request to Admit Dated April 22, 2014:

1. Since January 1, 2012, at least one person disclosed in your response to Plaintiffs' Interrogatory Number 9 to be an 809 Holdings' investor, including but not limited to a note purchaser or limited partner, received a payment in connection with the 809 Holdings investment.

Defendants' Response: Denied.

Joyce Kaufman, an investor, testified in her deposition on May 22, 2014 and June 9, 2014 that she received payments from her account on multiple occasions, including a payment just before her deposition. Defendants refuse to produce a copy of the checks to Joyce Kaufman. At least one investor has received a payment after 2011. The Court should find the Plaintiffs have proven the Request to Admit, strike the Answer and Counterclaim of Defendants, award attorney fees and costs and enter all other appropriate relief.

B. Failure to disclose payments

In their Supplemental Response to Interrogatories dated January 12, 2014, Defendants failed to disclose various payments to themselves or their companies.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS
AND/OR TO DISMISS COUNTERCLAIMS

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, L.P., William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order dismissing the counterclaims or granting judgment on the pleadings. No duties are owed to Defendants by the Plaintiffs as a matter of law. In addition, the Defendants have failed to allege or state a cause of action.

The undersigned certifies further consultation would serve no useful purpose.

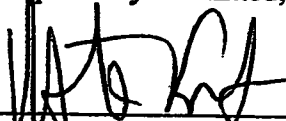
WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order dismissing or granting judgment on the pleadings concerning all the

1
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counterclaims of the Defendants. This Motion will be based on the pleadings, the record and all other matters to be presented at the hearing.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
July 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

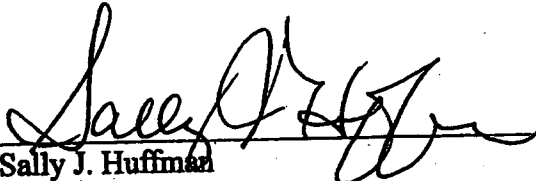
CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Claudia M. Heaton, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on July 11, 2014 I did serve a copy of Plaintiffs Notice of Motion and Motion For Judgment on the Pleadings and/or to Dismiss Counterclaims on Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-26-3362

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

**AMENDED
COMPLAINT**

(Derivative Action)

Jury Trial Demanded

The Plaintiffs, by and through their attorney, would respectfully allege and show unto this Court as follows:

THE PARTIES

1. The Plaintiff Gabriel Barnhill (hereinafter "Barnhill") is a citizen and resident of the County of Horry, State of South Carolina.

2. GSB Enterprises, LLC (hereinafter "GSB") is a South Carolina limited liability company owned Barnhill.

3. J. Floyd Swilley was an investment advisor and he is a resident of and conducts business in Horry County, South Carolina.

4. In 2010 and 2011 J. Floyd Swilley was Barnhill's investment advisor.

5. In 2009, 2010 and 2011 J. Floyd Swilley was Barnhill's accountant.

6. In the fall of 2010, Barnhill was 26 years old and trusted J. Floyd Swilley.

7. William C. Piner and Alicia A. Piner (collectively referred to as "Piner") are residents of Horry County, South Carolina.
8. Defendant WCP Limited, LLC (hereinafter "WCP") is a South Carolina Limited Liability Company doing business in Horry County owned by Piner. Upon information and belief, Alicia Piner and William C. Piner formed WCP to operate their illicit investment schemes including 809 Holdings and SAFE.
9. Upon information and belief, WCP is the alter ego of Piner.
10. Upon information and belief, Defendant SMG Partners, LLC, (hereinafter "SMG") is a South Carolina Limited Liability Company doing business in Horry County owned by Laurel K. Swilley.
11. Upon information and belief, SMG is the alter ego of Laurel K. Swilley.
12. Laurel K. Swilley is J. Floyd Swilley's wife.
13. Upon information and belief, at all relevant times Laurel K. Swilley is/was a general partner of SMG Partners.
14. Defendant 809 Holdings, LP (hereinafter "809 Holdings") is a South Carolina Limited Partnership doing business in Horry County.
15. Upon information and belief, Laurel K. Swilley of SMG Partners and Piner of WCP Limited are/were general partners of 809 Holdings.
16. Heath Causey is a resident of Horry County, South Carolina.
17. SMS Services, LP (hereinafter "SMS") is a South Carolina limited partnership doing business in Horry County, South Carolina.
18. Upon information and belief, SMS is the alter ego of Laurel K. Swilley and/or J. Floyd Swilley.
19. Upon information and belief, SMS Services is an accounting, management and financial consulting group affiliated with Sage, established and controlled by the principals of Sage.

20. Upon information and belief, SMS Services was to implement accounting, financial, compliance and reporting systems for companies such as 809 Holdings.

21. Upon information and belief, Sage Financial Group, LLC (hereinafter "Sage") is a limited liability company doing business in Horry County, South Carolina. The Sage principals are J. Floyd Swilley and/or Laurel K. Swilley. Upon information and belief, Sage is the alter ego of J. Floyd Swilley and/or Laurel K. Swilley.

22. Upon information and belief, Sage was to establish accounting systems, financial structures and compliance systems to assure compliance with state and federal securities laws and establish reporting systems to provide feedback to investors and owners of 809 Holdings.

23. Upon information and belief, Sage Advisory Group, L.P., Sage Private Equity Group, LLC, and Sage Finding, L.P. are South Carolina companies owned or controlled by Swilley, and were used to siphon or divert funds from 809 Holdings and/or 809 Holdings investors/limited partners. The Sage entities shall all be referred to collectively as "Sage".

24. 9-1-1 Plumbing, LLC is a South Carolina company which siphoned funds from 809 Holdings in September 2011.

25. Digics, LLC is a South Carolina company which siphoned funds from 809 Holdings in August 2011. Upon information and belief, Christopher Pitcock is the owner of Digics and it is the alter ego of Pitcock.

26. Secured Asset Factoring Exchange, Inc. is an entity controlled by Piner, Swilley and/or Causey which siphoned funds in August, September, October and November 2011.

27. J. Floyd Swilley, SMS, Laurel K. Swilley, SMG Partners, and Sage are owned or operated by J. Floyd Swilley and/or Laurel K. Swilley and are collectively referred to herein as the "Swilley Defendants".

28. Piner, WCP and the Swilley Defendants formed 809 Holdings which then was used to solicit hundreds of thousands of dollars from investors for "factoring receivables."

29. QC Financing, LLC, (hereinafter "QC Financing") is a South Carolina Limited Liability Company which did business in Horry County.

30. The Defendants raised money to loan to an entity, QC Financing, in which they had control and in which they were required to perform all bookkeeping.

THE SCHEME

31. The Defendants worked in concert to promote an "investment" which was nothing more than loans from trusting investors which were then used as startup funds to start a pawnshop, without adequate security or financial controls.

32. The Defendants marketed and promoted the investment in 809 Holdings as a "Factoring Investment," with ample procedures in place to reduce risk.

33. The Defendants had a direct and indirect interest in the investment themselves, getting paid from initiating the "investment", managing the "investment" and being or owning the controlling interest in the "investment."

34. The Defendants had a direct or indirect interest in the pawn shop – QC Financing – which was receiving money from 809 Holdings and which was ostensibly required to pay back sums to 809 Holdings with interest.

35. The Defendants joined in concert to make various misrepresentations and omissions of material facts to obtain investor monies. Defendants received payments, diverted monies for their own use, and had an ownership interest in the investment they were touting.

36. Swilley and Piner prepared the 809 Holdings legal documents,

37. In the Partnership Agreement, Piner and Swilley agreed and warranted as General Partners that they have unlimited liability for the repayment, satisfaction and discharge of all 809 Holdings liabilities to the full extent of their assets.

38. Upon information and belief, the Defendants solicited "investments" in 809 Holdings from at least seven (7) investors.

39. Defendants took, siphoned or diverted monies from 809 Holdings to Sage Private Equity Group, Secure Asset Factoring Exchange, LLC, Sage Advisory Group, 9-1-1 Plumbing, Digic, LLC, and/or other entities.

THE REPRESENTATIONS AND MATERIAL OMISSIONS

40. In the late summer of 2010, J. Floyd Swilley, Barnhill's financial advisor, began touting a big investment opportunity that Gabriel Barnhill could become involved in. Barnhill had monies in an Individual Retirement Account. Swilley knew Barnhill's financial situation and that Barnhill was looking for an investment.

41. In the early fall of 2010, Floyd Swilley stated to Barnhill that the investment opportunity pays fifteen percent (15%) annually with a return of principal and with an opportunity to get involved in the pawn shop.

42. In the fall of 2010, Floyd Swilley told Barnhill that the pawn shop was doing well and that Barnhill can get involved through the Notes Payable Program which earns fifteen percent (15%) annually, 1% per cent per month the first six months and 1.5% per month the next six months.

43. Floyd Swilley told Barnhill that the pawn shop is where the big money is. However, the pawnshop was not doing well and had little, if any, sales.

44. Upon information and belief, in 2010, Floyd Swilley, unbeknownst to Barnhill, was completing a negotiated settlement with the Internal Revenue Service on a \$698,000 federal tax lien. Upon information and belief, in addition, Laurel Knuckles Swilley and Floyd Swilley owed a federal court confession of judgment in a principal amount of \$300,000 relating to investments and/or securities. Floyd Swilley did not inform Barnhill of these material facts when Swilley was encouraging Barnhill to invest in Swilley's investment scheme.

45. Toward the end of 2010 Floyd Swilley told Barnhill that there is an opportunity for ownership in the investment but that Barnhill would have to talk others in the partnership and Swilley would need \$250,000. Floyd Swilley and Piner represented to Barnhill that there

were \$400,000-\$500,000 of assets in the pawn shop. There were not.

46. In the early months of 2011, Floyd Swilley and William C. Piner, solicited and marketed the investment in 809 Holdings, LP to Barnhill. They represented they along with Dave Wilkerson were the only owners.

47. The stated purpose of the investment was to fund a factoring arrangement whereby 809 Holdings, LP would loan money to entities, obtain collateral in connection with the loans and receive a high interest rate for the loan monies.

48. The Plaintiffs relied on the Swilley Defendants and Piner and Plaintiffs did expend substantial amounts of money from a retirement account and savings. Plaintiffs were limited partners and investors in 809 Holdings, L.P.

49. Upon information and belief, 809 Holdings, LP and the Defendants raised more than \$400,000 from investors.

50. In March 2011 Barnhill invested under the direction of the Defendants.

51. In April 2011 Barnhill made a further investment.

52. In May 2011 Barnhill made a further investment.

53. The total investment by Plaintiff exceeds \$115,000.

54. The Defendants orchestrated a Ponzi scheme in which they would raise money for their own startup company, get paid for doing it, divert funds to their companies, and then leave the investors with next to nothing.

55. Plaintiffs lost all their money except for a little less than \$3,000. Other investors have not been paid their money as well.

AS A FIRST CAUSE OF ACTION
(Derivative Action)

56. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim.

57. Plaintiffs assert this claim as oppressed limited partners and in a derivative capacity.

58. Laurel K. Swilley and Piner organized 809 Holdings as the general partners. 809 Holdings has failed to look out for the interests of the limited partners and investors. 809 Holdings has been manipulated by Piner and Swilley to disadvantage limited partners and investors such as Barnhill.

59. Piner, Swilley and 809 Holdings have diverted funds from 809 Holdings to other Defendants which Piner, Swilley and Pitcock control. They have treated limited partners inequitably, and have ensured they reap the benefits of 809 Holdings while the investors or limited partners lose their investments.

60. Demand has been duly made by Plaintiffs of 809 Holdings via written correspondence to 809 Holdings, but 809 Holdings has failed to act.

61. 809 Holdings refuses to attempt to recover the wrongfully siphoned monies or pursue claims against the general partners and continues to allow itself to be manipulated.

62. Piner, Swilley and 809 Holdings are liable to the Plaintiffs for the manipulation of the partnership structure to disadvantage and oppress Plaintiffs.

63. Plaintiffs have suffered damages as a result of the actions and omissions of Defendants and they are liable for the same, plus liable for punitive damages, interest and attorney fees as allowed by law or contract, plus costs.

AS A SECOND CAUSE OF ACTION
(Breach of Contract with Fraudulent Conduct and Fraudulent Intent)

64. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim.

65. Swilley and Piner used the ruse of an investment to obtain Plaintiffs' money under false pretenses.

66. Swilley and Piner had fraudulent intent when making misrepresentations to obtain Plaintiffs' money.

67. Barnhill was to be paid for his investment. Barnhill was to receive interest and principal repayment on his investment. Defendants did not make such payments.

68. Barnhill has not been paid for his investment.

69. Piner and Swilley, under the Partnership Agreement drafted by them, agreed to pay all debts of 809 Holdings. Piner and Swilley guaranteed the debts of 809 Holdings.

70. Piner and Swilley must pay Barnhill under the Partnership Agreement but have failed to do so.

71. Piner and Swilley have used various transfers and siphoning of funds constituting fraudulent conduct to thwart the repayment of amounts owed to Barnhill. Piner and Swilley have manipulated 809 Holdings for their benefit to the detriment of Plaintiffs.

72. Defendants have breached their agreement, the Partnership Agreement, the Subscription Agreement, and the terms of the notes investment, with fraudulent intent and with fraudulent conduct.

73. Barnhill suffered damages and is entitled to damages, interest, punitive damages plus costs.

AS A THIRD CAUSE OF ACTION
(Tortious Interference with Contract and/or Contractual Relations)

74. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim.

75. Obligations were owed by 809 Holdings to Plaintiffs under various documents drafted by Piner and Swilley.

76. Upon information and belief, Defendants knew of those obligations and the Agreement, including the Partnership Agreement, Subscription Agreement, notes payable agreements, and their terms, and procured the breach of the agreements with the Plaintiffs, all to the benefit of the Defendants.

77. Defendants' siphoning of funds, diversion of funds, or acquiescence to the same has caused damages to be suffered by Plaintiffs.

78. Plaintiffs suffered losses and damages as a result of Defendants' conduct.

79. Plaintiffs are entitled to damages, interest, punitive damages plus costs.

AS A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

80. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim.

81. The Defendants through their conduct, manipulation, diversion of funds and siphoning, have been unjustly enriched to the detriment of Plaintiffs.

82. It would be inequitable to allow Defendants to benefit from their conduct and siphoning tactics. It would be inequitable for Defendants to keep any sums received by them when they breached their duties of loyalty and fiduciary obligations.

83. Plaintiffs have suffered damage as a result of this unjust and detrimental conduct.

84. Any sums paid to Defendants should be disgorged.

85. Plaintiffs are entitled to damages, interest plus costs.

AS A FIFTH CAUSE OF ACTION
(Fraudulent Conveyance)

86. Not inconsistent herewith, Plaintiffs incorporate each and every paragraph above as if repeated verbatim.

87. The Defendants have manipulated, diverted, siphoned, and fraudulently conveyed assets and monies of 809 Holdings to insiders and others, without valid consideration.

88. Pursuant to S.C. Code Ann. § 27-23-10, the conveyances were not for any proper purpose and were used to deceive and harm limited partners and to siphon or divert funds and assets from 809 Holdings to SAFE, the Defendants or their companies they control, and other persons.

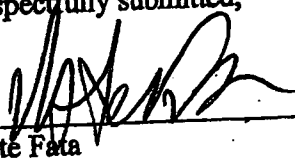
89. Pursuant to S.C. Code Ann. § 27-23-20, all such conveyances should be voided. In addition, any and all conveyances uncovered during the discovery in the litigation of this matter which are also fraudulent should be voided as well.

90. In addition, pursuant to S.C. Code Ann. § 27-23-30, all parties to any such fraudulent conveyances should be subject to the statutory penalty and should be ordered to repay damages to Plaintiffs, jointly and severally, with such penalty, including prejudgment interest to Plaintiffs.

WHEREFORE, as duly set forth in the Claims above, Plaintiffs prays for the following relief:

- 1) Damages, statutory damages, plus prejudgment interest;
- 2) Punitive damages;
- 3) Attorney's fees and costs;
- 4) Any other relief this Court deems just and reasonable.

Respectfully submitted,



Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
P. O. Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, SC
August 25, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-3362

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

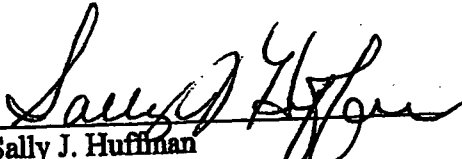
CERTIFICATE OF SERVICE

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., counsel for the Plaintiffs Gabriel Barnhill and GSB Enterprises and that on August 27, 2014 I serve a copy of Summons and Amended Complaint upon Counsel of record via U.S. mail postage prepaid as follows:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Jarrett S. Calder, Esq.
Grand Strand Law Group, LLC
P.O. Box 3237
Myrtle Beach, SC 29578
Counsel for 9-1-1 Plumbing, LLC


Sally J. Huffman
Legal Assistant to Nate Fata

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-26-3362

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

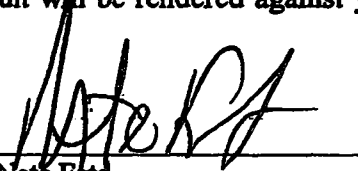
SUMMONS

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

TO THE DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Amended Complaint upon the subscribers, at the addresses shown below, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the Amended Complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.


Nate Fata

Attorney for Plaintiffs

NATE FATA, P.A.

P.O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel.(843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
August 25, 2014

000149

Appendix 00156

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

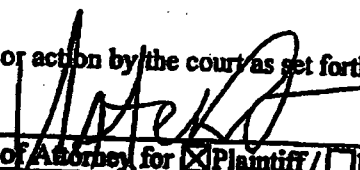
v.

J. Floyd Swilley, Et Al.
☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Nate Fata, Esq., Bar No. 09866 Address: Nate Fata, P.A. P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:		Defendant's Attorney: John M. Leiter, Esq., Bar No. Address: 1203 48 th Avenue N, Suite 109 Myrtle Beach, SC 29577 phone: 843-449-1451 fax: 843-449-4884 e-mail: jleiter@48th.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Plaintiff's Motion To Compel Discovery Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO		FILED Horry County. 2014 SEP -5 PM 3:48 MELANIE HUGGINS CLERK OF COURT	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed  Signature of Attorney for ☒ Plaintiff / ☐ Defendant September 3, 2014 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____			

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

PLAINTIFFS' NOTICE OF
MOTION AND MOTION
COMPEL DISCOVERY

FILED
HURRY COUNTY.
2014 SEP -5 PM 3:48
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants to respond to Plaintiff's Supplemental Interrogatories to Defendants.

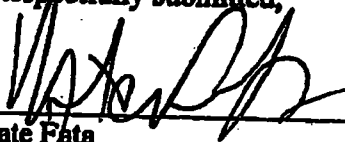
The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Plaintiffs' Supplemental Interrogatories To Defendants were served on the above named Defendants or their counsel on July 17, 2014 by U.S. Mail. The discovery requests are attached hereto as Exhibit "A."

2. No responses have been provided by Defendants.
3. Plaintiff's counsel certifies that he has attempted to resolve this issue with opposing counsel prior to filing the instant motion.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, SMS Services, LP, and Heath Causey to provide full and complete answers, award reasonable attorney fees in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
September 3, 2014

EXHIBIT "A"

COUNTY OF HORRY

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

Gabriel Barnhill and GSB Enterprises, LLC,

Plaintiffs,

VI.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**PLAINTIFFS' SUPPLEMENTAL
INTERROGATORIES TO
DEFENDANTS**

TO: ALL DEFENDANTS AND THEIR COUNSEL:

PLAINTIFF hereby requires the **DEFENDANTS**, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.
7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged; including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addresses, if any.
5. The present location, name, and present address and position of person or persons having custody.

INTERROGATORIES

1. Describe in detail the difference between QC Financing, LLC and the pawn shop in 2010 and 2011 and identify all documents which support your contention that Plaintiff was an owner in the pawn shop.
2. For each QC Financing and the pawn shop, at the end of each month beginning August 2010 to December 2011, describe with particularity each item of inventory or collateral, its value and the identity of the individual who determined the value.
3. Identify all documents which you contend creates a lien on any pawn shop asset.
4. Since 2003 to present, have you ever, directly or indirectly (through ownership in limited liability companies or other related entities in which you have an ownership interest), been involved in or participated in soliciting sums from investors? If yes, describe your involvement and the dates of involvement, the investment, the amount of money raised for that investment from investors, and state how much has been repaid to those investors.



Nate Fata
Attorney for Plaintiffs
NATE FATA, P.A.
P.O. Box 16620
1500 U.S. Hwy. 17 North
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Fax (843) 238-0240

Surfside Beach, South Carolina
July *He* 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

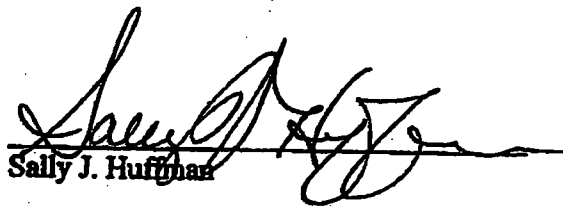
CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on July 17, 2014 I did serve a copy of Plaintiffs' Supplemental Interrogatories To Defendants upon counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, P.A.
1203 48th Avenue, North, Suite 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
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Defendants.

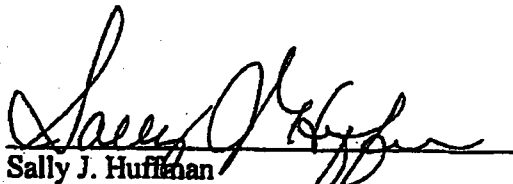
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

CERTIFICATE OF SERVICE

FILED
HURRY COUNTY.
2014 SEP -5 PM 3:48
CLERK OF COURT
JELANIE HUGGINS-WARD

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on September 4, 2014 I did serve a copy of Plaintiffs Notice of Motion and Motion to Compel Discovery upon Counsel on Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-26-2816

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Nate Fata, Esq., Bar No. 09866 Address: P.O. Box 16620 Surfside Beach, SC 29587 phone: 843-238-2676 fax: 843-238-0240 e-mail: nfata@fatalaw.com other:		Defendant's Attorney: John M. Leiter, Esq, Bar No. 27110 Address: 1203 48 th Avenue, North, Ste. 109 Myrtle Beach, SC 29577 phone: fax: e-mail: jleiter@48th.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)		☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Plaintiffs' Motion to Compel Discovery Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant September 4, 2014 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☒ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

FILED
HORRY COUNTY
2013 SEP 15 PM 3:28
METANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
COMPEL DISCOVERY

FILED
HORRY COUNTY
2014 SEP -5 PM 3:28
MEANIE HUGGINS-WARD
CLERK OF COURT

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants to respond to Plaintiff's Supplemental Interrogatories to Defendants.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Plaintiffs' Supplemental Interrogatories To Defendants were served on the above named Defendants or their counsel on November 18, 2013 by U.S. Mail. The discovery requests are attached hereto as Exhibit "A."

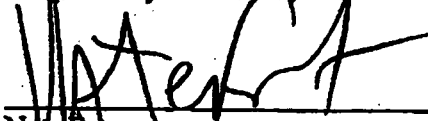
2. On August 5, 2014 counsel served Defendants' Supplemental Answers to Plaintiffs' (Second) Supplemental Interrogatories on behalf of the above Defendants, which are attached hereto as Exhibit "B."

3. Defendants have not provided responses to Supplemental Interrogatories Number 3 and Number 4.

4. Plaintiff's counsel certifies that he attempted to resolve this matter with opposing counsel prior to filing the motion and that any further attempts would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, SMS Services, LP, and Heath Causey to provide full and complete responses to Supplemental Interrogatories Number 3 and Number 4, award reasonable attorney fees in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,


Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
P. O. Box 16620
1500 U.S. Hwy. 17 N., Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, South Carolina
September 4, 2014

EXHIBIT "A"

COUNTY OF HORRY

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**PLAINTIFFS' SUPPLEMENTAL
INTERROGATORIES TO THE
DEFENDANTS**

TO: ALL DEFENDANTS

PLAINTIFF hereby requires the DEFENDANTS, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

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C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.
7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

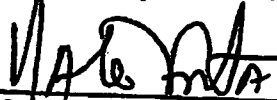
1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addresses, if any.
5. The present location, name, and present address and position of person or persons having custody.

SUPPLEMENTAL INTERROGATORIES

1. In connection with the allegations contained in your Counterclaim paragraphs from 192 to 194, please itemize any and all time and resources for which you are claiming an offset.
2. In connection with the allegations contained in paragraphs 196 through 199 of your Counterclaim, please identify each and every partner of 809 Holdings, LP who owes or owed 809 Holdings, LP duties of utmost good faith and loyalty and the factual basis for such contention.
3. In connection with the allegations contained in paragraph 198 of your Counterclaim, please identify the funds which you claim were misappropriated by the Plaintiff, including the date and the amount of any alleged misappropriation.
4. Set forth in detail any and all calculations of damages for each of your Counterclaims.
5. In connection with the allegations in paragraph 203 of your Counterclaim, please state the duty of care owed by 809 Holdings, LP partners and state why you have not filed a claim against those partners and identify the persons who made such decision(s) to file or not file claims against any partner(s).
6. In connection with the allegations in paragraph 209 of your Counterclaim, describe in detail how Gabriel Barnhill interfered with financial arrangements to the detriment of 809 Holdings, LP.
7. In connection with the allegations contained in paragraph 212 of your Counterclaim, state all duties you contend were owed by Gabriel Barnhill, when they arose, and how they were breached.
8. In connection with the allegations contained in paragraph 218 of your Counterclaim, please identify any and all loan documents.

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Respectfully submitted,



Nate Fata

Attorney for Plaintiffs

NATE FATA, P.A.

P.O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel.(843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
November 19, 2013

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Page - 5

Appendix 00176

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on November 18, 2013 I did serve a copy of Plaintiffs' Supplemental Interrogatories To the Defendants by mailing a copy of the same postage prepaid to:

F. Miles Adler, Esq.
The Adler Law Firm
P.O. Box 4743
Pawleys Island, SC 29484
Counsel for Defendants

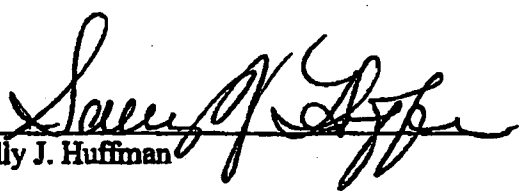

Sally J. Huffman

EXHIBIT "B"

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANTS' SUPPLEMENTAL
ANSWERS TO PLAINTIFFS'
(SECOND) SUPPLEMENTAL
INTERROGATORIES (originally served
November 13, 2013)

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

Defendants J. Floyd Swilley, J. Floyd Swilley, Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings,
LP, QC Financing LLC, Heath Causey, and Sage Financial supplement their Answers to the
(Second) Supplemental Interrogatory from Plaintiffs as follows:

3. In connection with the allegations contained in paragraph 198 of your
Counterclaim, please identify the funds which you claim were misappropriated by the
Plaintiff, including the date and the amount of alleged misappropriations.

ANSWER: The discovery process is ongoing. The Defendants reserve the right
to supplement this answer.

4. Set forth in detail any and all calculations of damages for each of your Counterclaims.

ANSWER: The Defendants reserve the right to amend and/or supplement this response as discovery is ongoing.

5. In connection with the allegations in paragraph 203 of your Counterclaim, please state the duty of care owed by 809 Holdings partners and state why you have not filed a claim against those partners and identify the persons who made such decision(s) to file or not file claims against any partner(s).

ANSWER: WCP Enterprises is the only general partner of 809 Holdings. Its principal is William C. Piner.



John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1208 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: July 31, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 5th day of July, 2014, as follows:

august
J.

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587

Suzy Pettipas

Suzy Pettipas

~~July 1, 2014~~
aug. 5, 2014
J.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

CERTIFICATE OF SERVICE

FILED
HURRY COUNTY
2014 SEP -5 PM 3:29
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on September 4, 2014 I did serve a copy of Plaintiffs Notice of Motion and Motion to Compel Discovery upon Counsel on Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
Counsel for Defendants

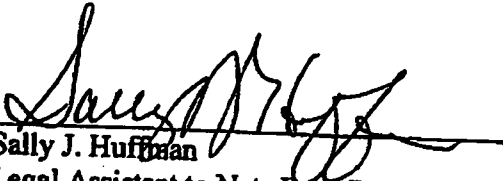

Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

EXHIBIT "B"

Appendix 00184

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANTS' SUPPLEMENTAL
ANSWERS TO PLAINTIFFS'
(SECOND) SUPPLEMENTAL
INTERROGATORIES (originally served
November 13, 2013)

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

Defendants J. Floyd Swilley, J. Floyd Swilley, Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings,
LP, QC Financing LLC, Heath Causey, and Sage Financial supplement their Answers to the
(Second) Supplemental Interrogatory from Plaintiffs as follows:

3. In connection with the allegations contained in paragraph 198 of your
Counterclaim, please identify the funds which you claim were misappropriated by the
Plaintiff, including the date and the amount of alleged misappropriations.

ANSWER: The discovery process is ongoing. The Defendants reserve the right
to supplement this answer.

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4. Set forth in detail any and all calculations of damages for each of your Counterclaims.

ANSWER: The Defendants reserve the right to amend and/or supplement this response as discovery is ongoing.

5. In connection with the allegations in paragraph 203 of your Counterclaim, please state the duty of care owed by 809 Holdings partners and state why you have not filed a claim against those partners and identify the persons who made such decision(s) to file or not file claims against any partner(s).

ANSWER: WCP Enterprises is the only general partner of 809 Holdings. Its principal is William C. Piner.



John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: July 31, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF THEIR MOTION FOR
SANCTIONS AS TO DEFENDANTS

Plaintiffs respectfully submit this Memorandum in support of their Motion for Sanctions

filed on June 27, 2014.

INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013. Barnhill alleges Defendants engaged in a Ponzi scheme in which Barnhill, who was Swilley's client, invested no less than \$115,000 and received approximately \$2,000 in return. Barnhill invested in the Notes and is a limited partner per the records of 809 Holdings, LP.

FACTS

Defendants have failed to comply with Court Orders and the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs have served discovery requests upon the Defendants. From the onset, Plaintiffs have been forced to file motions to compel

discovery.¹ Plaintiffs' filed three (3) Motions for Sanctions: November 4, 2013, February 19, 2014 and most recently on June 27, 2014.

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees by Order filed January 16, 2014.

Defendants continue to ignore the Court's orders and ignore their duties to be honest in discovery. Defendants have made false statements in discovery. Despite being asked to revisit inaccurate discovery responses on multiple occasions, Defendants failed to respond.

THE DISCOVERY ABUSE

A. False Denial of Request to Admit.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013:

Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013, January 8, 2014, January 10, 2014 and September 5, 2014.

Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11
J. Floyd Swilley	\$47,500.00	8/2/11

See Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, Exhibit A.

Excluding Swilley's purported investment, defendants obtained more than \$360,000 from investors in less than one year.

Plaintiffs' Supplemental Interrogatory Number 2, dated February 25, 2014 requested,

For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in response to Interrogatory Number 9, identify the bank name, address, payee, amount, date of payment and reason for payment.

Defendants responded, "None". Exhibit B, Defendants' Response to Supplemental Interrogatories dated April 4, 2014.

To clarify any potential oversight, on April 7, 2014 counsel wrote defense counsel and stated the response did not appear to be accurate. Exhibit C, April 7, 2014 Fata letter. Yet, no supplemental information was provided by defendants.

Plaintiffs' Supplemental Request for Admissions sought similar information concerning payments to investors:

Since January 1, 2012, at least one person disclosed in your response to Plaintiffs' Interrogatory Number 9 to be an 809 Holdings' investor, including but not limited to a note purchaser or limited partner, received a payment in connection with the 809 Holdings investment.

Defendants denied the request in their Response to Plaintiffs' Supplemental Requests for Admission served on April 22, 2014. Exhibit D, Plaintiffs' Supplemental Request to Admit and Defendants' Response.

In May, 2014, a deposition was taken of an investor, Joyce Kauffman. She testified that she had received multiple payments from Floyd Swilley on her investment. May 22, 2014 Kauffman Deposition Transcript, Page 7, lines 20 to 23; Page 8, line 17; Page 19, line 7. Exhibit E. Kauffman was deposed again on June 9, 2014. In the June deposition, Kaufman reiterated that she received payments from Swilley. June 2014 Kauffman Deposition Page 24 and Pages 49 - 50. Exhibit F. The undersigned then wrote defense counsel and again requested a copy of any payments to investors as well as Ms. Kauffman. See Fata letter dated June 11, 2014, Exhibit G. Again, no response was provided.

Investor Robert Twigg was paid \$25,000.00 in 2012 for his 25 shares of 809 Holdings, LP.² This payment was not disclosed. See a copy of former defense counsel's letter and check, Exhibit H.

Twigg was paid in 2012. Kaufman was paid in at least 2013 and 2014. Upon information and belief, Tamrin Baggett was paid as well. Yet, Defendants refuse to admit the same or to disclose these payments to some investors despite a Motion for Sanctions, a check to an investor, deposition testimony from an investor, and requests from counsel.

B. Failure to provide accurate discovery responses subject to Court Order.

Defendants were required to produce full and complete responses to Plaintiffs' First Set of Interrogatories served in April 2013 under the September 20, 2013 Order. Defendants

² Twigg has filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Seilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP. Civil Action No. 2013-CP-26-5711

supplemented their responses in January 16, 2014, before the hearing on the Plaintiffs' Motion for Sanctions. Exhibit I, Defendant's Supplemental Response to Plaintiffs' Interrogatories dated January 16, 2014. The Motion for Sanctions was partially granted. As set forth below, Defendants continue to ignore their duty to disclose basic information. Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000.

Interrogatory 6 to Plaintiffs' First Set of Interrogatories dated April 29, 2013 seeks to uncover all the payments Defendants received, including through their companies, from either 809 Holdings or QC Financing.

Interrogatory 6. For the period August 2010 to the present, set forth each and every amount you provided to or received from 809 Holdings, or QC Financing and for each amount state:

- a. The date of the remittance;
- b. The form of remittance (cash, money order, check, etc.); and
- c. The reason for remittance (investment, loan, repayment, dividend, etc.)

Defendants' January 12, 2014 Supplemental Response failed to disclose substantial payments. See Exhibit I. Some of the non-disclosed payments are enumerated below.

1. Sage Financial Group – No payments disclosed by Defendants.

However per bank records, Sage Financial received:

12/01/2010	Check #1031	\$2,000.00
04/13/2011	Check #1041	\$5,000.00
06/08/2011	Check #1087	\$10,000.00

See Exhibit J.

2. Swilley Financial – No payments disclosed by Defendants.

However per bank records, Swilley Financial received:

01/11/2011	Check #1019	\$2,000.00

See Exhibit J.

4. William C. Piner – No payments disclosed by Defendants.

However per bank records, William C. Piner received:

01/11/2011	Check #1017	\$4,000.00

See Exhibit J.

This information was only uncovered after hours were spent reviewing bank records.

ARGUMENT

Defendants are knowingly disregarding their obligations to comply with discovery and to not make false statements. The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. OZO, Inc. v. Moyer, 594 S.E. 2d 541, 546 (S.C. App. 2004). Hoping to hide payments to themselves while the investors receive close to nothing, Defendants have engaged in a pattern of obstruction and deceit while responding to discovery requests. Defendants have frustrated the discovery process for over sixteen months. Counsel cannot prepare for trial when defendants misrepresent basic facts of payments to themselves and others.

The March 2012 payment to Twigg for his 809 Holdings, LP investment and multiple undisclosed payments to themselves are irrefutable examples of Defendants' willingness to ignore their duty under the rules of discovery and the Court's September 2013 Order. Even with counsel's request that Defendants revisit their responses, no information was provided.

Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is an accountant. William Piner and Heath Causey are businessmen. By Defendants' own financial statements produced in response to Court Order, Plaintiffs are investors and limited partners in 809 Holdings. Exhibit K. The information sought is extremely relevant for the claims asserted in the pleadings – to wit – Defendants reap the financial benefits of a Ponzi scheme while investors lose over \$300,000 of retirement monies. Defendants are attempting to conceal this relevant information in the face of Court Orders and discovery rules.

If a party fails to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, or rendering a default judgment. Rule 37(b)(c), SCRCP. See also Griffin Grading and Cleamy, Inc. v. Tire Service Equipment Manufacturing Company, Inc., 511 S.E.2d 716, 718 (S.C. App. 1999). Sanctions are appropriate in this instance. In addition, pursuant to Rule 37(a)(4) and Rule 37 (c), the Court should order the Request to Admit was proven and award attorney fees and costs to Plaintiffs. In addition, truthful information was not provided in responses to the Request to Admit or in Defendants' responses to Interrogatory No. 6, which was subject to a previous Order and an Order partially granting sanctions.

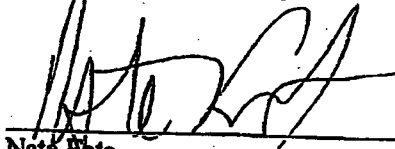
The Court should order that Plaintiffs have proven the Supplemental Request for Admission, award attorney fees and costs, strike all pleadings of the Defendants and order all other appropriate relief.

CONCLUSION

Defendants have repeatedly demonstrated gross indifference to the discovery rules, the Court's Orders, and the truth when responding to discovery. The appropriate relief is to strike all

Defendants' pleadings, award attorney fees and costs to Plaintiffs and enter all other appropriate relief.

Respectfully submitted,



Nate Fata

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Surfside Beach, South Carolina
September 29, 2014

BARNHILL V. SWILLEY ET AL

EXHIBITS TO MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS

Exhibit	Description
A	Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013 and Defendants' Responses to Interrogatories dated October 15, 2013
B	Plaintiffs' Supplemental Interrogatories and Request for Production dated February 25, 2014 and Defendants' Response to Supplemental Interrogatories dated April 4, 2014
C	April 7, 2014 Fata Letter
D	Plaintiffs' Supplemental Request to Admit and Defendants' April 22, 2014 Response to Request to Admit
E	May 22, 2014 Kauffman Deposition Transcript pages
F	June 9, 2014 Kaufmann Deposition Transcript pages
G	June 11, 2014 Fata Letter
H	March 5, 2012 \$25,000 Check to Twigg with counsel letter
I	Defendants' January 16, 2014 Supplemental Response to Plaintiffs' First Set of Interrogatories
J	Evidence of Payments to Defendants or their Companies
K	809 Holding Financial Statements

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Investment
Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC, Heath Causey,
and Sage Financial Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Case No.: 2013-CP- 26 - 2816

DEFENDANTS' RESPONSE TO INTERROGATORIES

TO PLAINTIFFS GABRIEL BARNHILL AND GSB ENTERPRISES, LLC AND THEIR ATTORNEY:

The Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC (properly called WCP Enterprises, LLC), 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC (hereinafter collectively "Defendants") respond to Plaintiff Gabriel Barnhill and GSB Enterprises, LLC (hereinafter "Plaintiff" or "Barnhill") First Set of Interrogatories.

The discovery process in this action is in its infancy. In each of the following answers, Defendants reserve the right to supplement their responses as information becomes available throughout the discovery process.

Each of Defendants' responses to Plaintiffs' Interrogatories herein are subject to the following objections:

a) Defendants object on the grounds that Plaintiffs' Interrogatories are overly broad, burdensome, ambiguous, and unreasonable as to time and scope.



b) Defendants object on the grounds that Plaintiffs' Interrogatories seek information that is proprietary and confidential.

c) Defendants object on the grounds that Plaintiffs' Interrogatories seek information that is protected by work-product doctrine and attorney-client privilege.

Subject to the forgoing objections and without waiver, Defendants' responses are as follows:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- A. Christopher Pitcock: address not known at this time.
 - B. Danny Robinson: address not known at this time.
 - C. David Wilkinson: address not known at this time.
 - D. Sieglinde Chambliss: address not known at this time.
 - E. Laurel K. Swilley: 1317 - B Third Avenue Conway, SC 29526.
 - F. J. Floyd Swilley: 350 Hilton Road- Suite 100 Myrtle Beach, SC 29572.
 - G. William C. Piner: 606 Calhoun Road Myrtle Beach, SC 29577
 - H. Sharon "Doe": address not known at this time.
 - I. Kevin Singletary: address not known at this time.
 - J. Gabriel Barnhill: address not known at this time.
 - K. Heath Causey: 350 Hilton Road - Suite 100 Myrtle Beach, SC 29572.
- No statements taken have been taken at this time.

2. Set forth a list of photographs, plans, sketches or other prepared documents in possession of the party that relates to the claim or defense in the case.

ANSWER: See Defendants' Responses to Plaintiffs' Requests to Produce.

3. Set forth names and addresses of all insurance companies which have liability insurance coverage relating to claim and set forth the number or numbers of the policies and the amount or amounts involved and the amounts.

ANSWER: No liability insurance.

4. List the names and address of any expert witnesses who the party proposes to use as a witness at the trial of the case and for each such expert identify all documents you or your counsel provided to the expert and provide a summary of all opinions and the basis for all opinions.

ANSWER: No expert witnesses.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

- A. Christopher Pitcock: Actions of Plaintiffs relative to QC Pawn and QC Financing.
- B. Sieglinde Chambliss: Inventory issues relative to QC Pawn, actions of Plaintiffs.
- E. Danny Robinson: Actions of Plaintiff relative to management of QC Pawn.
- F. Heath Causey: Plaintiffs' financial dealings with 809 Holdings and QC Pawn.

- G. William C. Piner: Plaintiffs' relationship with Defendants.
 - H. J. Floyd Swilley: Plaintiffs' relationship with Defendants.
 - I. Kevin Singletary: address not known at this time.
 - J. Gabriel Barnhill: address not known at this time.
6. For the period August 2010 to the present, set forth each and every amount you provided to or received from 809 Holdings, or QC Financing and for each amount state:

- a. The date of remittance;
- b. The form of remittance (cash, money order, check, etc.); and
- c. The reason for remittance (investment, loan, repayment, dividend, etc.)

ANSWER: See Note Payable Report of 809 Holdings, LP dated 10/2/2012 and served with Defendants' Responses to Plaintiffs' Requests to Produce.

7. For the period August 2010 to present, describe in full detail all compensation arrangements you had with any other defendant herein relating to QC Financing or 809 Holdings and state your responsibilities and the amount of compensation received and the dates of such receipts.

ANSWER: SAGE Tax provided accounting and tax services to 809 Holdings.

8. Identify each person who performed any audits on 809 Holdings and the dates of each audit.

ANSWER: Sieglinde Chambliss performed an inventory on QC Pawn. No audits have been performed on 809 Holdings.

9. State the number of persons who invested in 809 Holdings from its inception to present and the date and amount of each such investment amount.

ANSWER:

<i>Name</i>	<i>Amount</i>	<i>Date</i>
Raymond LaForest	\$50,000	9/22/10
John Teska	\$6,000	9/22/10
Tamrin Bagget	\$68,900	11/8/10
	\$6,100	12/1/10
Joyce M. Kauffman	\$48,000	1/11/11
Scott Mogal	\$17,000	3/11/11
Robert Twigg	\$25,000	8/12/11
Mark Sarvis	\$40,000	8/12/11
Gabriel Barnhill	\$49,000	5/26/11
	\$41,000	3/28/11
GSB Enterprises	\$25,000	4/11/11
J. Floyd Swilley	\$47,500	8/2/11

10. For the period August 2010 to present, identify the individuals) who was responsible for the day to day affairs 809 Holdings.

ANSWER: Heath Causey

11. For the period August 2010 to present identify the individuals responsible for the financial affairs of 809 Holdings.

ANSWER: William C. Piner

11. State the total amount of investor money lost in connection with 809 Holdings as of April 15, 2013.

ANSWER: 809 Holdings invested solely in QC Pawn through QC Financing, LLC. The losses suffered by 809 Holdings are a direct and proximate result of Gabriel Barnhill's actions, one of the two members of QC Financing, LLC. Barnhill has full access to the books of QC Pawn and as such knows the total amount of investor money lost. 809 Holdings does not have such access and therefore cannot answer this interrogatory.

12. From August 2010 to the present, state whether any 809 Holdings investor money was repaid or returned, in whole or in part, to an investor (limited partner or general partner) and provide the date and amount of each such remittance to an investor.

ANSWER: None returned.

13. State the month and year you first learned that QC Financing had not timely paid its sales taxes to the South Carolina Department of Revenue.

ANSWER: Defendants learned sales tax was unpaid in May 2011 when SAGE Tax took over QC Pawn's book-keeping at which time one or more Defendants caused the sales tax to be brought current. Sales tax was kept current until Plaintiff Barnhill and his partner took control of the QC Pawn accounts from SAGE Tax August 11, 2011.

14. Describe by full name and description any other non-publicly traded investment or "factoring" investment product you have promoted, marketed, offered or sold from January 1, 2010 to present.

ANSWER:

809 Holdings, LP

Secured Asset Factoring Exchange, Inc.

15. If you contend any individual or person was/is responsible for or caused the failure of 809 Holdings, please identify such individual or person and set forth all facts that support your contention.

ANSWER: 809 Holdings, LP has not failed. Any losses realized by 809 Holdings, are the direct and proximate result of Gabriel Barnhill and David Wilkinson's actions.

16. For the individual Defendants herein, at any time during the period August 2010 to present, identify all ownership interests in a company (LLC, Inc., L.P., G.P., etc.) with any other Defendant herein.

ANSWER: Defendants ask Plaintiffs to clarify question; cannot be answered as currently written.

17. For any time during the period August 2010 to April, 2013, identify any and all bank accounts (by full name, address, bank account number) in which amounts were remitted to or from 809 Holdings or QC Financing.

ANSWER:

With respect to 809 Holdings:

Anderson Brothers Bank
890000953
First Federal Bank n/k/a SCBT
0060028424

With respect to QC Financing, LLC up to August 2011:

BB&T Bank
0005221122048
0005221115130

18. If you content you loaned any monies to 809 holdings or QC Financing, identify the date, amount and all terms of the loan and identify all loan documents.

ANSWER: See Note Payable Report of 809 Holdings, LP dated 10/2/2012 and served with Defendants' Responses to Plaintiffs' Requests to Produce.

19. Identify the individual who calculated Plaintiff's ownership interest in 809 Holdings for each plaintiffs' investments and set forth the mathematical formula which was used.

ANSWER: The ownership interest was negotiated between Gabriel Barnhill and William C. Piner.



F. Miles Adler

SC Bar No.: 70238

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Pawleys Island, SC 29585

T: 843-314-3204

F: 843-314-3205

October 15, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-26- 2816

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)

Defendants.)

**PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO THE
DEFENDANTS**

TO: ALL DEFENDANTS

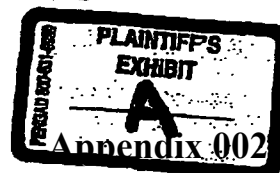
PLAINTIFF hereby requires the **DEFENDANTS**, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

000197



C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.
7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addressees, if any.
5. The present location, name, and present address and position of person or persons having custody.

INTERROGATORIES

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relates to the claim or defense in the case.
3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case and for each such expert identify all documents you or your counsel provided to the expert and provide a summary of all opinions and the basis for all opinions.
5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
6. For the period August 2010 to present, set forth each and every amount you provided to or received from either 809 Holdings or QC Financing and for each such amount state:
 - a. the date of the remittance;
 - b. the form of the remittance (cash, money order, check, etc); and
 - c. the reason for the remittance (investment, loan, repayment, dividend, etc).
7. For the period August 2010 to present, describe in full detail all compensation arrangements you had with any other defendant herein relating to QC Financing or 809 Holdings and state your responsibilities and the amount of compensation received and the dates of such

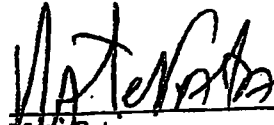
receipts.

8. Identify the person who performed any audits on 809 Holdings and the dates of each audit.
9. State the number of persons who invested in 809 Holdings from its inception to present and the date and amount of each such investment amount.
10. For the period August 2010 to present, identify the individual(s) who was responsible for the day to day affairs of 809 Holdings.
11. For the period August 2010 to present identify the individuals responsible for the financial affairs of 809 Holdings.
11. State the total amount of investor money lost in connection with 809 Holdings as of April 15, 2013.
12. From August 2010 to present, state whether any 809 Holdings investor money was repaid or returned, in whole or in part, to an investor(limited partner or general partner) and provide the date and amount of each such remittance to an investor.
13. State the month and year you first learned that QC Financing had not timely paid its sales taxes to the South Carolina Department of Revenue.
14. Describe by full name and description any other non-publicly traded investment or "factoring" investment product you have promoted, marketed, offered or sold from January 1, 2010 to present.
15. If you contend any individual or person was/is responsible for or caused the failure of 809 Holdings, please identify such individual or person and set forth all facts that support your contention.
16. For the individual Defendants herein, at any time during the period August 2010 to present, identify all ownership interests in a company (LLC, Inc., L.P., G.P., etc.) with any other Defendant herein.
17. For any time during the period August 2010 to April, 2013, identify any and all bank accounts (by full name, address, bank account number) in which amounts were remitted to

or from 809 Holdings or QC Financing.

18. If you contend you loaned any monies to 809 Holdings or QC Financing, identify the date, amount and all terms of the loan and identify all loan documents.

19. Identify the individual who calculated Plaintiff's ownership interest in 809 Holdings for each of plaintiffs' investments and set forth the mathematical formula which was used.



Nate Fata

Attorney for Plaintiffs

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Surfside Beach, South Carolina
April 29, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' FIRST SET OF
REQUEST FOR PRODUCTION
OF DOCUMENTS TO THE
DEFENDANTS

TO: ALL DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendants respond, within thirty (30) days after the service hereof, to the following Requests and that the Defendants produce and permit the Plaintiff's counsel to inspect, copy, or photograph, at the office of Defendants' attorney, each of the following documents or things which may be in the possession, custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim or defense of the within cause.

DEFINITIONS

The term "documents" or "things" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, pleadings, papers filed with any court, municipality, county or administrative agency or

department, notes, diaries, statistics, letters, telegrams, minutes of meetings, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefaxes, invoice work sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records, representations of any kind, including, without limitation, photographs, charts, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, videos, or other records.

The term "all documents" means every document as defined above known to Defendant, Defendant's agents or counsel, and each document that can be located or discovered by reasonably diligent efforts.

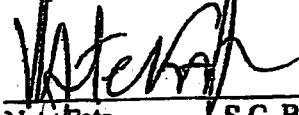
DOCUMENTS

1. Copies of any and all statements given by parties, eyewitnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the Defendants or Defendants' counsel, whether written or recorded or on a tape recorder or otherwise.
2. Any and all work papers, notes, documents and/or reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' work papers, notes, documents, and/or reports.
3. Any and all documents identified or described in your Answers to Interrogatories.
4. Any and all documents you intend to introduce at trial.
5. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business might be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

6. Copies of any and all statements previously made by the Defendants concerning the subject matter of this lawsuit, including any written statement, signed or otherwise adopted or approved by the Defendants hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.
7. A copy of each and every correspondence sent to/by or received from any of the parties named in this lawsuit, which is not subject to the attorney-client privilege.
8. Any and all audits done at any time on 809 Holdings, LP or QC Financing, LLC.
9. Any and all submissions sent by you to the Attorney General's Office at any time from January 2010 to present concerning any offering or any investment.
10. A copy of the state and federal tax returns, with all schedules, for 809 Holdings, LP and QC Financing, LLC for each year beginning 2010 to present.
11. Any and all financial statements, balance sheets and ledgers relating to 809 Holdings, LP and QC Financing, LLC at any time from August 2010 to present.
12. All bank account statements for 809 Holdings, LP or for any bank account relating to any monies received or deposited to or for the benefit of 809 Holdings, LP at any time from August 2010 to present.
13. All computer software (e.g., Peachtree) registers or accounting statements relating to investor monies being invested in 809 Holdings, LP at any time from August 2010 to present or monies being repaid to such investors.
14. All sales tax filings relating to QC Financing, LLC at any time from August 2010 to present.
15. Any and all leases relating to QC Financing, LLC executed at any time from 2010 to present.
16. A complete copy of any documents bearing Gabriel Barnhill's signature or initials.
17. A copy of any complaints or lawsuits filed against you from 2008 to present relating to an investment or investment advice.

18. Your state and federal tax returns (including K-1) for 2010 to present.
19. Any loan documents for 809 Holdings or QC Financing at any time.
20. For the period 2008 to present, any account documents for either plaintiff relating to their investments or Gabriel Barnhill's IRA account(s).
21. All documents and emails to or from Equity Trust relating to Barnhill's account.
22. From August 2010 to present, any and all emails referencing or relating to Gabriel Barnhill or his investment.
23. A copy of your corporate book and corporate records, organizational papers, bylaws, meeting minutes, resolutions, consents, and operating and partnership agreements.

Respectfully submitted,



Nate Fata S.C. Bar #9866

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Attorney for Plaintiffs

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Surfside Beach, South Carolina
April 29, 2013

4-4-14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANT 809 HOLDINGS'
ANSWERS TO SUPPLEMENTAL
INTERROGATORIES

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

The Defendant, 809 Holdings, LP (hereinafter "Defendant" or "809 Holdings"), by and through its undersigned attorney, hereby answers the Plaintiffs' Supplemental Interrogatories, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure:

ANSWERS TO INTERROGATORIES

1. For 2010 to the present, identify each person who drafted, in whole or in part, the Limited Partnership Agreement, Partnership Resolution(s), Confidential Private Placement Memorandum, Subscription Agreements, and identify the document and portion drafted by such person.

ANSWER:

Floyd Swilley ("Swilley") and William C. Piner ("Piner") modified previously used



000207

documents for preparing the 809 Holdings, LP Limited Partnership Agreement, 809 Holdings, LP Partnership Resolution, Confidential Private Placement Memorandum for 809 Holdings, LP Units, Subscription Agreement for 809 Holdings, LP. The template for the following documents was modified in the following manner.

A. 809 Holdings, LP Limited Partnership Agreement

1. Swilley and/or Piner inserted the name 809 Holdings, LP in the document where appropriate.
2. In section 3.01, Swilley and/or Piner inserted dates where appropriate.

B. 809 Holdings, LP Partnership Resolution

1. Swilley and/or Piner inserted 809 Holdings, LP in the document where appropriate
2. Swilley and/or Piner identified William C. Piner on behalf of WCP Enterprises, Inc. as the general partner.
3. Swilley and/or Piner inserted \$200,000.00.
4. Inserted the date in the document where appropriate.

C. Confidential Private Placement Memorandum for 809 Holdings, LP Units

1. Swilley and/or Piner inserted 809 Holdings, LP in the document where appropriate.
2. Swilley and/or Piner may have inserted reference to the "Units" or the "Notes".
3. Swilley and/or Piner inserted the memorandum date (September 21,

2010) and the termination date (October 15, 2011) on page 1.

4. On page 2, Swilley and/or Piner may have added J. Floyd Swilley and his address and Heath Causey and his telephone number.
5. Piner may have added to the summary of offering on page 9.
6. Swilley and/or Piner added the sections headed The Business of the Issuer and possibly Factoring Procedures on pages 11-12 and Risk Management on page 12.
7. David Wilkinson provided information on the Business Process section on page 12, and Piner provided the information for Capital Sought or the Use of Proceeds sections on page 13.
8. On page 14, Swilley, Piner and Wilkinson provided information for Management, Advisors and Key Affiliations.
9. Swilley and Piner provided the information for How to Participate, page 16.

D. 809 Holdings, LP Subscription Agreement

1. Swilley and/or Piner provided and inserted 809 Holdings, LP where appropriate.
2. Swilley and/or Piner provided the name and address of the bank where appropriate.
3. David Wilkinson and Piner provided the information contained in the 809 Holdings, LP Pro Forma Cash Flow Projections.

2. For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in response to Interrogatory Number 9, identify the bank name, address, payee, amount, date of payment and reason for payment.

ANSWER: None.



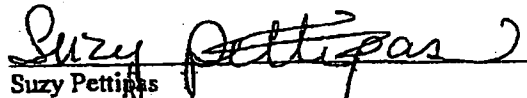
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: April 2, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 4 day of April, 2014, as follows:

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587


Suzy Pettipas

April 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANT 809 HOLDINGS'
RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

The Defendant, 809 Holdings, LP (hereinafter "Defendant" or "809 Holdings"), by and through its undersigned attorney, hereby responds to the Requests for Production of Documents propounded by the Plaintiff, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure:

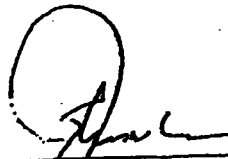
RESPONSES

1. A copy of any payment made after 2011 to any person disclosed by you to be a note purchaser, investor, equity holder or limited partner.

RESPONSE: None.

Appendix 00218

000211



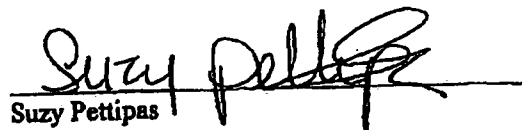
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: April 4, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 4th day of April, 2014, as follows:

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587



Suzy Pettipas

April 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

PLAINTIFFS' SUPPLEMENTAL
INTERROGATORIES TO
809 HOLDINGS, LP

TO: 809 Holdings, LP and its counsel John M. Leiter, Esq.

PLAINTIFF hereby requires the DEFENDANT, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendant be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed.

000213



nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.
7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document

identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendant, then describe with particularity how the Defendant discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

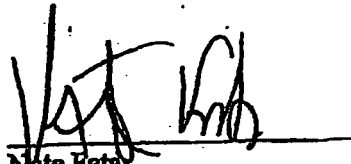
1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addressee, if any.
5. The present location, name, and present address and position of person or persons having custody.

SUPPLEMENTAL INTERROGATORIES

1. For 2010 to present, identify each person who drafted, in whole or in part, the Limited Partnership Agreement, Partnership Resolution(s), Confidential Private Placement Memorandum, Subscription Agreements, and identify the document and portion drafted by such person.

2. For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in response to Interrogatory Number 9, identify the bank name, address, payee, amount, date of payment and reason for payment.

Respectfully submitted,



Nate Fata

Attorney for Plaintiffs
NATE FATA, P.A.
P.O. Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, South Carolina
February 25, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

) PLAINTIFFS' SUPPLEMENTAL
) REQUEST FOR PRODUCTION TO
) 809 HOLDINGS, LP

TO: 809 Holdings, LP and its counsel John M. Leiter, Esq.

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendant respond, within thirty (30) days after the service hereof, to the following Requests and that the Defendant produce and permit the Plaintiff's counsel to inspect, copy, or photograph, at the office of Defendant's attorney, each of the following documents or things which may be in the possession, custody, or control of the Defendant or Defendant's attorneys which constitutes or contains evidence relating to the claim or defense of the within cause.

DEFINITIONS

The term "documents" or "things" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, pleadings, papers filed with any court, municipality, county or administrative agency or department, notes, diaries, statistics, letters, telegrams, minutes of meetings, contracts, reports,

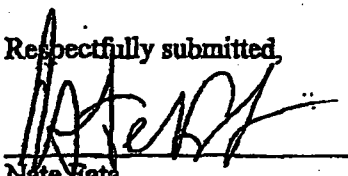
~~studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses,~~
interoffice and intraoffice communications, offers, notations of any sort of conversations,
telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts,
teletypes, telefaxes, invoice work sheets; all drafts, alterations, modifications, changes, and
amendments of any of the foregoing graphic or aural records, representations of any kind,
including, without limitation, photographs, charts, microfilm, videotape, recordings, and motion
pictures; and electronic, mechanical, or electrical records or representations of any kind,
including, without limitation, tapes, cassettes, discs, videos, or other records.

The term "all documents" means every document as defined above known to Defendant,
Defendant's agents or counsel, and each document that can be located or discovered by
reasonably diligent efforts.

SUPPLEMENTAL REQUEST FOR PRODUCTION

1. A copy of any payment made after 2011 to any person disclosed by you to be a
note purchaser, investor, equity holder, or limited partner.

Respectfully submitted,



Nate Fata

Attorney for Plaintiffs

NATE FATA, P.A.

P.O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
February 25, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

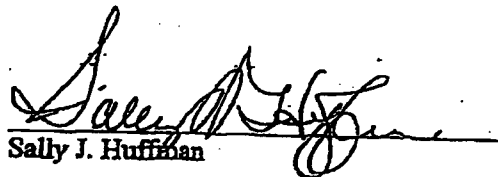
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

CERTIFICATE OF SERVICE

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 24, 2014 I did serve a copy of Plaintiffs' Supplemental Interrogatories to 809 Holdings, LP and Plaintiffs' Supplement Request For Production to 809 Holdings, LP to counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, P.A.
1203 48th Avenue, North, Suite 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA FACSIMILE

April 7, 2014

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Thank you for Defendant's 809 Holdings Answer to Supplemental Interrogatories. With respect to payments to other investors or note holders etc., the responses do not appear to be accurate. Please supplement the responses to Interrogatory Number 2 and Request for Production Number 1 with accurate information concerning payments to investors from any source.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata

NF/sh



000220

Appendix 00227

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANTS' RESPONSE
TO PLAINTIFFS' SUPPLEMENTAL
REQUEST FOR ADMISSIONS OF FACT

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

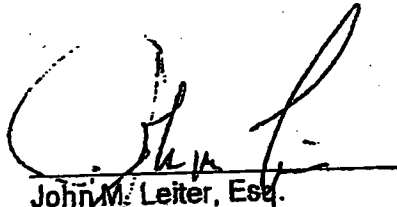
Defendants J. Floyd Swilley, J. Floyd Swilley, Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings,
LP, QC Financing LLC, Heath Causey, and Sage Financial answer the Requests for
Admissions from Plaintiffs as follows:

1. Since January 1, 2012, at least one person disclosed in your response to Plaintiffs' Interrogatory Number 9 to be an 809 Holdings' investor, including but not limited to a note purchaser or limited partner, received a payment in connection with the 809 Holdings investment.

ANSWER: Denied.

000221





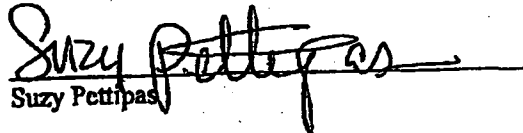
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: May 22, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 22 day of May, 2014, as follows:

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587


Suzy Pettipas

May 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

PLAINTIFFS' SUPPLEMENTAL
REQUEST FOR ADMISSIONS
OF FACT TO ALL DEFENDANTS

TO: ALL DEFENDANTS AND THEIR COUNSEL:

Pursuant to the South Carolina Rules of Civil Procedure, Rule 36, you are hereby served with this written Request for the Admissions of Fact. Such Requests for Admissions, unless otherwise provided pursuant to the Rule, shall be deemed admitted unless within thirty (30) days from the date of service hereof the undersigned at their address shall receive a written answer or objection. If an objection is made, the reasons therefore shall be stated. The answer to these Requests shall specifically deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. Any such denial shall fairly meet the substance of the requested admissions, and when good faith required that you qualify an answer or deny only part of the matter which is requested to be admitted, you shall specify so much of the Request as being true, and qualify or deny the remainder. Please take notice that you may not give lack of information or knowledge as a reason for failure to admit or deny, unless you shall

000223



state that you have made a reasonable inquiry into the information known or readily obtainable by you and it is insufficient to enable you to admit or deny.

In addition, please take notice that if you fail to admit the truth of any matter requested below, and if the Plaintiffs thereafter prove the truth of the matter, the Plaintiffs may apply to the Court for an order requiring you to pay them the reasonable expenses incurred in making that proof, including a reasonable attorney fee.

1. Since January 1, 2012, at least one person disclosed in your response to Plaintiffs' Interrogatory Number 9 to be an 809 Holdings' investor, including but not limited to a note purchaser or limited partner, received a payment in connection with the 809 Holdings investment.

Respectfully submitted,



Nate Fata

Attorney for Plaintiffs

NATE FATA, P.A.

P.O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
April 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Cansey, and Sage Financial
Group, LLC,

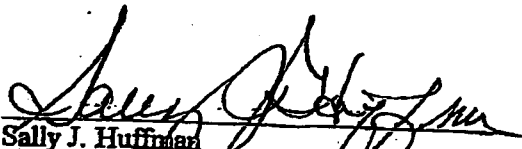
Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

CERTIFICATE OF SERVICE

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on April 23, 2014 I did serve a copy of Plaintiffs' Supplemental Request for Admissions of Fact to All Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Ste. 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA :
COUNTY OF HORRY : SS:

IN THE COURT OF COMMON PLEAS

GABRIEL BARNHILL and GSB
Enterprises, LLC,
Plaintiffs,

vs.

J. FLOYD SWILLEY, ET AL,
Defendants.

Case Number
2013-CP-26-2816

Deposition of JOYCE L. KAUFHAM, the Witness
herein, called for the purpose of Discovery
Examination by the Defendants, pursuant to the South
Carolina Rules of Civil Procedure, taken before
James C. Grady, a Notary Public for South Carolina,
at the offices of Nate Fata, Suite 215 The
Courtyard, 1500 Highway 17 North, Surfside Beach,
South Carolina, on Tuesday, May 22nd, 2014,
commencing at 11:15 a.m..

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
-843-238-5053



APPEARANCES:ON BEHALF OF THE PLAINTIFFS

NATE FATA, Esq. and
Suite 215 The Courtyard
1500 Highway 17 North
Surfside Beach, SC 29575

ON BEHALF OF THE DEFENDANTS:

JOHN M. LEITER, Esq.
1203 48th Avenue
Suite 109
Myrtle Beach, SC 29577

- - - - -

STIPULATIONS

This deposition was taken pursuant to proper
Notice and pursuant to Circuit Rule 30, to be
used for the purpose of discovery and/or
evidence at trial, or for any other purpose
permitted by Circuit Rule 30; all objections
except as to the form of the question were
reserved until the time of trial; reading and
signing of the deposition was not waived.

- - - - -

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

- 1 Mrs. Swilley last?
- 2 A. I don't know. Maybe a week or two ago. I
- 3 don't know.
- 4 Q. Who did you speak to maybe a week or two ago?
- 5 A. Well, I just talked to her outside as I was
- 6 waiting. And him, Floyd, probably about two
- 7 weeks ago.
- 8 Q. What did you talk to them about?
- 9 A. I'm trying to think. Oh. First of all I
- 10 received this letter, but before that, I mean,
- 11 basically my own interests.
- 12 Q. Let's start here: Did you call either Mr. or
- 13 Mrs. Swilley?
- 14 A. When? I frequently call them or in touch with
- 15 them. That's all.
- 16 Q. Why is that?
- 17 A. Sometimes I need to -- I might need some money.
- 18 Q. Do you borrow money from them?
- 19 A. I don't borrow. I try to take out of my funds.
- 20 Q. When was the last time you received money from
- 21 your funds through them, the Swilleys?
- 22 A. I'm saying approximately maybe three weeks ago.
- 23 I don't know. Somewhere in there.
- 24 Q. And did you talk to Laurel Swilley about
- 25 getting money out of your account or your

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053-

- 1 funds?
- 2 A. Floyd.
- 3 Q. How much did you get out?
- 4 A. A thousand.
- 5 Q. Pardon me?
- 6 A. 1,000.
- 7 Q. What account did it come out of?
- 8 A. I don't know what account it came out of. I
- 9 don't know.
- 10 Q. Does Swilley manage your account?
- 11 A. Yes.
- 12 Q. Do you only have one account with Floyd Swilley
- 13 or do you have more than one account with Floyd
- 14 Swilley?
- 15 A. I just let him manage my money. Okay? When I
- 16 invested this I turned it over to him. I know
- 17 nursing. I do not know financing.
- 18 Q. So you trust Floyd to manage your --
- 19 A. Definitely.
- 20 Q. Do you trust Laurel Swilley?
- 21 A. Yes.
- 22 Q. Why were you talking to Laurel Swilley?
- 23 A. I was just waiting. I was outside. I was just
- 24 waiting.
- 25 Q. Outside of?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

000229

Appendix 00236

1 ~~Q~~ The subpoena?

2 A. Yes. I'm saying I can't really remember and I
3 want to -- I'm truly honest. Sometimes I need
4 a cushion because between expenses coming up.

5 Q. Did you get a check from Mr. Swilley or did you
6 get cash?

7 A. No. I got a check.

8 Q. Was the check from 809 Holdings, SAFE?

9 A. No.

10 Q. Who was it from?

11 A. I guess it was from the organization or whoever
12 runs the place because it was written as a
13 loan.

14 Q. So the money to you is a loan?

15 A. I don't know. I was -- he needs another
16 napkin.

17 -----
(Thereupon, discussion was had
18 off the record)
19 -----

20
21 Q. So Mrs. Kaufman, within the last month or so
22 you received a \$1,000 check from Mr. Swilley?

23 A. Yeah. Somewhere about a month -- this is the
24 end of May. It was probably the beginning of
25 May. I'm bad with figures. I'm bad with

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843-238-5053

1 times.

2 Q. And then after you received the check you went
3 to Mr. Swilley's office to pick up some
4 documents?

5 A. Yes. Because I couldn't find mine.

6 Q. And at that time you talked to Laurel Swilley?

7 A. Just outside about Disney, where they went.
8 That's all.

9 Q. How long have you known the Swilleys

10 A. I think I met them at the end of December,
11 2010.

12 Q. How did you meet the Swilley's at the end of
13 December, 2010?

14 A. My daughter recommended -- my daughter and
15 son-in-law had them as tax advisors.

16 Q. Who is your daughter?

17 A. Carla Tyree and Sean Tyree, T-Y-R-E-E

18 Q. And where do they live?

19 A. 3310 I believe Kin Lane, Conway. Same address.

20 - - - - -

21 (Thereupon, a recess was had)

22 - - - - -

23 Q. So you met the Swilleys at the end of 2010?

24 A. Right.

25 Q. Okay. Mrs. Kaufman, you met the Swilleys,

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1 A. Yeah.

2 Q. It appears that you invested about \$48,000 in
3 809 Holdings; does that sound about right?

4 A. Yes.

5 Q. How much money have you received back to you in
6 cash like a check?

7 A. I would have to go through the file. Four
8 years? I can say approximately maybe around
9 maybe ten -- I don't know -- thousand. I
10 can't, you know, give you a figure.

11 MR. FATA. Let's adjourn. Mr. Court
12 Reporter, we are going to adjourn. We have the
13 two exhibits. We will get the other document.
14 Can you reschedule this?

15 MR. LEITER: We are off the record.

16 MR. FATA: If you could prepare the
17 transcript and just a copy of the exhibit.

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STATE OF SOUTH CAROLINA :
COUNTY OF HORRY : SS:

IN THE COURT OF COMMON PLEAS

GABRIEL BARNHILL and GSB :
Enterprises, LLC, :
Plaintiffs, :
vs. : Case Number :
J. FLOYD SWILLEY, ET AL, : 2013-CP-26-2816
Defendants. :

Deposition of JOYCE L. KAUFHAM, the Witness
herein, called for the purpose of Discovery
Examination by the Defendants, pursuant to the South
Carolina Rules of Civil Procedure, taken before
James C. Grady, a Notary Public for South Carolina,
at the offices of Nate Fata, Suite 215 The
Courtyard, 1500 Highway 17 North, Surfside Beach,
South Carolina, on Tuesday, May 22nd, 2014,
commencing at 11:15 a.m..

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Surfside Beach, SC 29587
-843-238-5053



1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS

3 NATE FATA, Esq. and
4 Suite 215 The Courtyard
5 1500 Highway 17 North
6 Surfside Beach, SC 29575

7 ON BEHALF OF THE DEFENDANTS:

8 JOHN M. LEITER, Esq.
9 1203 48th Avenue
10 Suite 109
11 Myrtle Beach, SC 29577

12 STIPULATIONS

13 This deposition was taken pursuant to proper
14 Notice and pursuant to Circuit Rule 30, to be
15 used for the purpose of discovery and/or
16 evidence at trial, or for any other purpose
17 permitted by Circuit Rule 30; all objections
18 except as to the form of the question were
19 reserved until the time of trial; reading and
20 signing of the deposition was not waived.
21
22
23
24
25

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1 ~~Mrs. Swilley~~ last?

2 A. I don't know. Maybe a week or two ago. I
3 don't know.

4 Q. Who did you speak to maybe a week or two ago?

5 A. Well, I just talked to her outside as I was
6 waiting. And him, Floyd, probably about two
7 weeks ago.

8 Q. What did you talk to them about?

9 A. I'm trying to think. Oh. First of all I
10 received this letter, but before that, I mean,
11 basically my own interests.

12 Q. Let's start here: Did you call either Mr. or
13 Mrs. Swilley?

14 A. When? I frequently call them or in touch with
15 them. That's all.

16 Q. Why is that?

17 A. Sometimes I need to -- I might need some money.

18 Q. Do you borrow money from them?

19 A. I don't borrow. I try to take out of my funds.

20 Q. When was the last time you received money from
21 your funds through them, the Swilleys?

22 A. I'm saying approximately maybe three weeks ago.

23 I don't know. Somewhere in there.

24 Q. And did you talk to Laurel Swilley about
25 getting money out of your account or your

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- 1 funds?
- 2 A. Floyd.
- 3 Q. How much did you get out?
- 4 A. A thousand.
- 5 Q. Pardon me?
- 6 A. 1,000.
- 7 Q. What account did it come out of?
- 8 A. I don't know what account it came out of. I
- 9 don't know.
- 10 Q. Does Swilley manage your account?
- 11 A. Yes.
- 12 Q. Do you only have one account with Floyd Swilley
- 13 or do you have more than one account with Floyd
- 14 Swilley?
- 15 A. I just let him manage my money. Okay? When I
- 16 invested this I turned it over to him. I know
- 17 nursing. I do not know financing.
- 18 Q. So you trust Floyd to manage your --
- 19 A. Definitely.
- 20 Q. Do you trust Laurel Swilley?
- 21 A. Yes.
- 22 Q. Why were you talking to Laurel Swilley?
- 23 A. I was just waiting. I was outside. I was just
- 24 waiting.
- 25 Q. Outside of?

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843-238-5053-

1 ~~Q~~ The subpoena?

2 A. Yes. I'm saying I can't really remember and I
3 want to -- I'm truly honest. Sometimes I need
4 a cushion because between expenses coming up.

5 Q. Did you get a check from Mr. Swilley or did you
6 get cash?

7 A. No. I got a check.

8 Q. Was the check from 809 Holdings, SAFE?

9 A. No.

10 Q. Who was it from?

11 A. I guess it was from the organization or whoever
12 runs the place because it was written as a
13 loan.

14 Q. So the money to you is a loan?

15 A. I don't know. I was -- he needs another
16 napkin.

17 - - - - -

18 (Thereupon, discussion was had
19 off the record)

20 - - - - -

21 Q. So Mrs. Kaufman, within the last month or so
22 you received a \$1,000 check from Mr. Swilley?

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24 end of May. It was probably the beginning of
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3 to Mr. Swilley's office to pick up some
4 documents?

5 A. Yes. Because I couldn't find mine.

6 Q. And at that time you talked to Laurel Swilley?

7 A. Just outside about Disney, where they went.
8 That's all,

9 Q. How long have you known the Swilleys

10 A. I think I met them at the end of December,
11 2010.

12 Q. How did you meet the Swilley's at the end of
13 December, 2010?

14 A. My daughter recommended -- my daughter and
15 son-in-law had them as tax advisors.

16 Q. Who is your daughter?

17 A. Carla Tyree and Sean Tyree, T-Y-R-E-E

18 Q. And where do they live?

19 A. 3310 I believe Kin Lane, Conway. Same address.

20 - - - - -

21 (Thereupon, a recess was had)

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23 Q. So you met the Swilleys at the end of 2010?

24 A. Right.

25 Q. Okay. Mrs. Kaufman, you met the Swilleys,

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Surfside Beach, SC 29587
843-238-5053

1 A. Yeah.

2 Q. It appears that you invested about \$48,000 in
3 809 Holdings; does that sound about right?

4 A. Yes.

5 Q. How much money have you received back to you in
6 cash like a check?

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8 years? I can say approximately maybe around
9 maybe ten -- I don't know -- thousand. I
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11 MR. FATA. Let's adjourn. Mr. Court
12 Reporter, we are going to adjourn. We have the
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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,
 Plaintiffs,

COPY

vs.

CIVIL ACTION NO.
 2013-CP-26-2816

J. Floyd Swilley, J. Floyd
 Swilley, Investment Advisors,
 Laurel K. Swilley, SMG Partners, LLC,
 SMS Services, LP, William C. Piner,
 WCP Limited, LLC, 809 Holdings, LP,
 QC Financing, LLC, Heath Causey, and
 Sage Financial Group, LLC,

Defendants.

DEPOSITION OF:

JOYCE M. KAUFFMAN

DATE:

Monday, June 9, 2014

TIME:

2:00 p.m. - 3:10 p.m.

LOCATION:

Law Offices of Nate Fata
 1500 Highway 17 North,
 The Courtyard, Suite 215
 Surfside Beach, South Carolina

TAKEN BY:

Attorney for Plaintiffs

COURT REPORTER:

Michele E. Starkey
 Certified Shorthand Reporter

STARKEY COURT REPORTING
 (843) 293-8424
 mstarkey@sc.rr.com



Appendix 00247

000240

1 free. Do you work for free? I mean, nobody does.

2 Q. Did Mr. Swilley ever give you any money?

3 A. What do you mean, give me money?

4 Q. Well, I mean, have you ever received a check
5 from his office or from him? Has he ever handed you
6 or had someone hand you a check?

7 A. Yes, but I can't remember how many -- when
8 and how often because quite a few times I would need
9 some money, had financial needs or whatever.

10 Q. And when was the last time you needed money
11 where Mr. Swilley was involved?

12 A. It wasn't too long ago. Trying to remember.
13 Couple months ago, I think.

14 Q. And how much money did you ask for?

15 A. It was a thousand dollars.

16 Q. And what did you need the money for?

17 A. I don't even know now. Taxes. I don't know.
18 Because I have to pay taxes on my property in
19 Pennsylvania.

20 Q. And did you want the money to come out of
21 your investment company?

22 A. Yes, I would think.

23 Q. Is that where the money came out of, a
24 thousand dollars?

25 A. I don't know. I do not know.

1 Q. I'm trying to help you.

2 A. Or cars.

3 Q. Or cars. No more cars. And you never met
4 with Mr. Bill Piner?

5 A. No.

6 Q. Have you ever talked to Laurel Swilley?

7 A. Very -- no, just once about Disney, once
8 about going, losing weight, and that was only because
9 she walked in to give him a drink or something and he
10 introduced me.

11 Q. And the money that Mr. Swilley or his office
12 has given to you since 2010 in various payments, if
13 you add all those payments together, would come out
14 to about nine or \$10,000?

15 A. Yes, I'd say, at least. At least.

16 Q. And who would have a record of all those
17 payments?

18 A. I don't know.

19 Q. And have you asked for any more money from
20 your account or from Mr. Swilley?

21 A. I need to pay off my car --

22 Q. Have you asked --

23 A. -- but --

24 Q. -- for any more money from your account?

25 A. Yes.

1 Q. And when did you recently ask for more?

2 A. Whenever I found my vehicle but I haven't
3 received any, and I -- I haven't received any and I
4 don't expect to and I don't need it until July.

5 Q. So in July you need to receive how much
6 money?

7 A. 16,000 to 17,000.

8 Q. And did you make that request from Mr. --

9 A. Just a verbal.

10 Q. When did you do that?

11 A. When I found my vehicle.

12 Q. When was that, ma'am?

13 A. Two weeks ago today.

14 Q. So between the last deposition and today, you
15 asked Mr. Swilley at some point in that two-week
16 period --

17 A. Yes, but I'm not in a hurry.

18 Q. And you need the 16- or 17,000 because of
19 your vehicle?

20 A. I wanted to pay off my vehicle.

21 Q. Okay.

22 A. My car.

23 Q. And is your vehicle currently financed?

24 A. Yes. I just did it.

25 Q. And are you expecting that \$16,000 in the

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA FACSIMILE

June 11, 2014

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

In Ms. Kaufman's deposition she testified repeatedly that she had received multiple payments from Mr. Swilley and most recently received a payment within the last month or so, sometime after she received the subpoena and prior to her first deposition at the end of May. Please produce a copy of that payment record.

In discovery we requested documentation concerning payments after 2011 to investors and Defendants' response was none. Certainly this is a payment which should be disclosed. Please produce the copy of the check and any other payments to her or any other investors since 2011 within the next seven (7) days.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata

NF/sh



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Appendix 00251

MORGAN ADLER

MORGAN ADLER BUXTON JETEL

RECEIVED MAR 14 2012

Reply to:
F. Miles Adler
madler@morganadler.com
Direct Tel: 843-314-3204
Facsimile: 843-314-3205

HILLS & HILLS, PC
Ms. Jessica E. Knard, Esquire
4704 Oleander Drive
Myrtle Beach, SC 29577

Re: Robert L Twigg, Jr. and SAGE Financial
Ref: SAFE, Inc check #10045 (\$25,000.00)

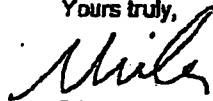
Dear Jessica,

Please find enclosed herewith a check from Secure Asset Factoring Exchange Inc., as hereabove described, made payable to your client. These funds represent liquidation value of Mr. Twigg's 25 shares of 809 Holdings LLC.

Further amounts will follow in accord with our earlier conversations and your correspondence.

Thanking you, I am

Yours truly,


F Miles Adler

3/10/12

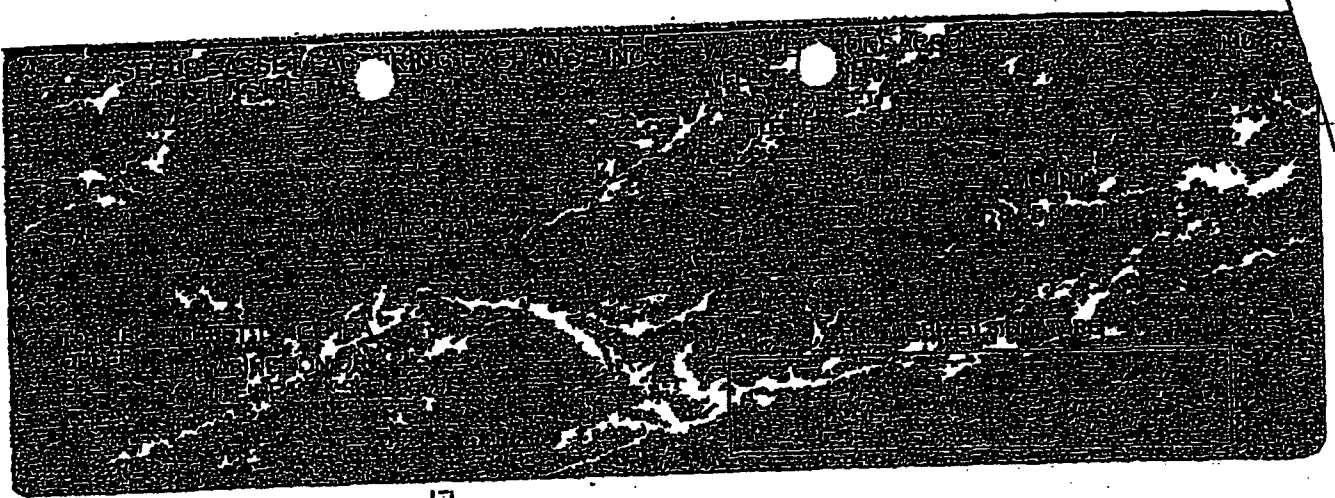
FMA/cct
Enclosures as stated.

P.O. Box 21073
Charleston, South Carolina 29413

100 Congress Avenue, 22nd Fl
Austin, Texas



000245



0010045# 053207766# 9919251190#

Date	Invoice Number	Invoice Description	Account	Invoice Amount	Amount Paid
03/05/12	0005/2012	25 SHARES OF SDA HOLDINGS LLC	2010-000-01	\$25,000.00	\$25,000.00

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

v.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC.,
809 Holdings, LP, QC Financing LLC.,
Heath Causey, and Sage Financial
Group, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

DEFENDANTS' SUPPLEMENTAL
RESPONSE TO PLAINTIFFS'
INTERROGATORIES

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nata Fata, Esq.:

Supplemental Answers to Interrogatories

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Christopher Pitcock - 24242 Branchwood Court, Lutz, Florida 34668

Danny Robinson - 601 Calhoun Road, Myrtle Beach, SC 29577

Harry Montgomery - 222 Laron Street, Scranton, SC 29591

David Wilkinson - 13755 State Hwy. 68 E, Ten Mile, TN 37880

Sieglinde Chambliss - 129 Wyandot Court, Myrtle Beach, SC 29579

000247



Laurel K Swilley - 1317 - B Third Avenue, Conway, SC 29526

Jennifer Yaeger - 4021 Kerri Circle, Conway, SC 29526

J. Floyd Swilley - 350 Hilton Road, Suite 100, Myrtle beach, SC 29577

Sharon Hall - address not know at this time

Gabriel Barnhill - c/o Nate Fata, Esq.

Heath Causey - 350 Hilton Road, Suite 100, Myrtle Beach, SC 29577

William C. Piner - 606 Calhoun Drive, Myrtle Beach, SC 29577

Any witnesses identified by the Plaintiffs.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

Christopher Pitcock is knowledgeable about the operations of the Quick Cash Pawnshop ("QC Pawn"), 809 Holdings, LP ("809 Holdings") and QC Financing, LLC ("QCF").

He is also knowledgeable about the actions taken by the Plaintiff in meeting with David F. Wilkinson ("Wilkinson") on numerous occasions prior to acquiring his limited partnership position and the Plaintiff's management of QC Pawn and QCF.

Danny Robinson was the assistant manager of QC Pawn and is knowledgeable about his meetings with the Plaintiff and Wilkinson prior to the Plaintiff acquiring his limited partnership positions. He is also knowledgeable about the Plaintiff's management of QC Pawn.

Harry Montgomery is knowledgeable about information provided to the Plaintiffs and conversations he had with the Plaintiff prior to the Plaintiff's purchase of the limited partnership position in 809 Holdings and his interest in QCF.

David Wilkinson is knowledgeable about the Plaintiff's purchase of limited partnership positions in 809 Holdings and his obtaining an interest in QCF, as well as the meetings with the Plaintiff prior to becoming a limited partner member. He is also knowledgeable about the Plaintiff's management of QCF and QC Pawn.

Sieglinde Chambliss is knowledgeable about the review performed of the inventory of QCF as well as systems processes, ownership in QCF, management decisions, accounting and business operations, and about the information provided to the Plaintiff.

Laurel Swilley is knowledgeable regarding the facts and circumstances contained in the Answer and Counterclaims filed in this case.

Jennifer Yaeger assisted Sieglinde Chambliss regarding the review of inventory at QCF.

J. Floyd Swilley is knowledgeable regarding the facts and circumstances contained in the Answer and Counterclaims filed in this case.

Sharon Hall is knowledgeable about the Plaintiff's knowledge regarding his investment as a limited partner in 809 Holdings.

Gabriel Barnhill is knowledgeable regarding the facts and circumstances contained in the Complaint filed in this case.

William C. Piner is knowledgeable regarding the facts and circumstances contained in the Answer and Counterclaims filed in this case.

Heath Causey is knowledgeable regarding the facts and circumstances contained in the Answer and Counterclaims filed in this case.

Affidavits of Heath Causey, William C. Piner and David Wilkinson are attached. Other than these three affidavits, no witness statements have been taken.

6. For the period August 2010 to the present, set forth each and every amount you provided to or received from 809 Holdings, or QC Financing and for each amount state:

- a. The date of the remittance;
- b. The form of remittance (cash, money order, check, etc.); and
- c. The reason for remittance (investment, loan, repayment, dividend, etc.)

ANSWER:

08/13/10	A deposit in the total amount of \$7,000 was paid into 809 Holdings by check or cash provided by William C. Piner and/or WCP Enterprises and Sage Advisory Group. These were a loan for start-up costs.
09/23/10	\$3,500.00 was paid to WCP Enterprises, LLC by check #1001 to reimburse start-up costs. \$3,500.00 was paid by check #1002 to Sage Advisory Group LP to reimburse start-up costs.
08/19/11	\$4,000.00 was paid by check #10109 to Sage Advisory Group LP (not a defendant) for \$500/month for accounting (see funding directive #40 page 44).
08/27/11	\$1,000.00 was paid by check #10119 to Sage Advisory Group LP (not a defendant) for \$500/month for accounting (see funding directive #45 page 49).
09/30/11	\$2,300.00 was paid by check #10120 to Sage Advisory Group LP (not a defendant) to reimburse for Chris Pitcock salary (see funding directive page 41).
07/22/11	\$264.00 was paid by check #1036 to Heath Causey to reimburse for Series 27 Guide (see funding directive #32 page 37).

- 10/22/11 \$216.00 was paid by check #1038 to Heath Causey to reimburse for purchase of Crystal Report v.10 purchased from CYMA for the car lot and pawn shop expanded deal.
- 11/02/11 \$1,500.00 was paid by check #10128 to Sage Advisory Group LP to as reimbursement for payments to Sieglinde Chambliss and Jennifer Yaeger for the review of the inventory (partial payment).
- 11/23/11 \$1,634.72 was paid by check #10131 to Jennifer Yaeger for the review of the inventory.

See also the 809 Holdings LP QCF Note Receivable Report attached hereto and previously provided in Exhibit C.

7. For the period August 2010 to the present, describe in full detail all compensation arrangements you had with any other defendant herein relating to QC Financing or 809 Holdings and state your responsibilities and the amount of compensation received and the dates of such receipts.

ANSWER: See response to Interrogatory #6 above.

8. Identify each person who performed any audits on 809 Holdings and the dates of each audit.

ANSWER: Sieglinde Chambliss, with the assistance of Jennifer Yaeger, performed a review of the inventory of QC Pawn. No audits have been performed on 809 Holdings.

9. State the number of persons who invested in 809 Holdings from its inception to present and the date and amount of each such investment amount.

Secured Promissory Note Purchases:

Raymond LaForest	\$50,000.00	09/22/10
John Teska	\$ 6,000.00	09/22/10
Tamrin Bagget	\$68,900.00	11/08/10
	\$ 6,100.00	12/01/10
Joyce M. Kauffman	\$48,000.00	01/11/11
Scott Mogal	\$17,000.00	03/11/11
Robert Twigg	\$25,000.00	08/12/11
Mark Sarvis	\$40,000.00	08/12/11

Purchase of Limited Partnership Share:

Gabriel Barnhill	\$49,000.00	05/06/11
	\$41,000.00	03/28/11
GSB Enterprises	\$25,000.00	04/11/11

Loans:

J. Floyd Swilley	\$47,500.00	08/02/11

10. For the period August 2010 to present, identify the individual(s) responsible for the day-to-day affairs of 809 Holdings.

ANSWER: William C. Piner

(First) 11. For the period August 2010 to present, identify the individual(s) responsible for the day-to-day affairs of 809 Holdings.

ANSWER: William C. Piner, Heath Causey was responsible for the checkbook and the bookkeeping of 809 Holdings.

(Second) 11. State the total amount of investor money lost in connection with 809 Holdings as of April 15, 2013.

ANSWER: The Defendants have not concluded that the investors' money has been lost. 809 Holdings obtained a judgment against QCF and David Wilkinson, individually, and dba QC Pawn in the amount of \$785,595.01. 809 Holdings is actively pursuing collection and recovery efforts.

16. For the individual Defendants herein, at any time during the period August 2010 to present, identify all ownership interests in a company (LLC, Inc., G.P., etc.) with any other Defendant herein.

ANSWER: See Defendants' response to Interrogatory #14.

17. For any time during the period August 2010 to April 2013, identify any and all bank accounts (by full name, address, bank account number) in which amounts were remitted to or from 809 Holdings or QC Financing.

ANSWER: With respect to 809 Holdings:

- A. Anderson Brothers Bank, PO Box 310, Mullins, SC 29754 (Account #890000953)
- B. First Federal Bank n/k/a SCBT, PO Box 996, Wilson, NC 27894 (Account #0060028424)

With respect to QC Financing, LLC up to August 2011:

A. BB&T Bank, 2619 Oak Street, Myrtle Beach, SC 29577 (Account #0005221122048 and #0005221115130).

18. If you contend that you loaned any monies to 809 Holdings or QC Financing, identify the date, amount and all terms of the loan and identify all loan documents.

ANSWER: See response to Interrogatory #6 and #9 above. Upon information and belief, there are no loan documents except for the accounting records of 809 Holdings and checks written.

19. Identify the individual who calculated Plaintiff's ownership interest in 809 Holdings for each plaintiffs' investments and set forth the mathematical formula which was used.

ANSWER: The ownership interest was negotiated between the Plaintiffs and William C. Piner, who agreed that for an investment of \$115,000.00 from the Plaintiffs, they would receive a one-sixth limited partnership interest in 809 Holdings.


John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
Date: January 12, 2014

Payments to Sage Financial

From QC Financing Account #...5130

Date	Check #	Amount
12/1/2010	1031	\$2,000.00
4/13/2011	1041	5,000.00
6/8/2011	1087	10,000.00

Payments to Sage Financial

17,000.00

000255



QC FINANCING LLC
338 JESSE STREET
SUITE A
MYRTLE BEACH, SC 29575

BB&T CHECKING
2619 N OAK ST
MYRTLE BEACH, SC 29577

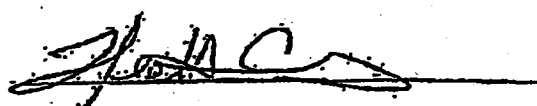
1031

PAY TWO THOUSAND AND 00/100

DATE 12/01/2010
AMOUNT \$ 2,000.00

TO THE ORDER OF SAGE FINANCIAL
338 JESSE STREET
SUITE A
MYRTLE BEACH, SC 29575

AUTHORIZED SIGNATURE



⑆001031⑆ ⑆053201607⑆ 0005221115130⑆

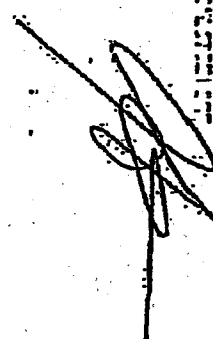
⑆0000200000⑆

OFFICIAL RESERVE DEPOSIT OF DEPOSITORS ONLY

7300882004 9650

DEPOSIT OF DEPOSITORS ONLY
MYRTLE BEACH, SC 29577
2010

⑆000037574⑆



000253

QC FINANCING LLC
338 JESSE STREET
SUITE A
MYRTLE BEACH, SC 29577

BB&T CHECKING
2619 N OAK ST.
MYRTLE BEACH, SC 29577

1041

PAY "FIVE THOUSAND AND XX / 100"

DATE 04/12/2011 AMOUNT \$ 5,000.00

TO THE ORDER OF SAGE FINANCIAL
338 JESSE STREET
SUITE A
MYRTLE BEACH, SC 29575

AUTHORIZED SIGNATURE

Heath Causey

⑈001041⑈ ⑈053201607⑈ 000522115130⑈

⑈0000500000⑈

DO NOT
Credited To The Account Of THIS LINE
The Within Named Payee
Endorser(s) Guaranteed
Bank of America, N.A.

Address Name

[Signature]

4004 07454

BANK OF AMERICA, N.A. CEN
1011001004 17311 94 P03
04/12/11
0000000000

000257

Appendix 00264
QC Financing BB&T Account XX 01 00122

QC FINANCING LLC
1801 LEGION STREET
MYRTLE BEACH, SC 29577

BB&T CHECKING
2519 N OAK ST
MYRTLE BEACH, SC 29577

1087

PAY *TEN THOUSAND AND 00/100*

DATE AMOUNT
06/08/2011 \$ 10,000.00

TO THE ORDER OF SAGE FINANCIAL
338 JESSE STREET
SUITE A
MYRTLE BEACH, SC 29575

AUTHORIZED SIGNATURE

Heath Gray

⑈001087⑈ ⑈053201607⑈ 0005221115130⑈

⑈0001000000⑈

VOID WHEN RECUT BY A QUALIFIED PERSON OR A JCB

THE PAYEE'S SIGNATURE IS REQUIRED FOR ALL CHECKS
IN EXCESS OF \$100.00. IF THE PAYEE'S SIGNATURE IS NOT
PRESENT, THE CHECK IS VOID.

11-2-11

AT THE BANK OF AMERICA, N.A.
AT THE MYRTLE BEACH, SC
06/08/11

5398 21155

ENDORSE HERE
CREDIT TO THE ACCOUNT OF
THE PAYEE'S INSTRUCTIONS
ACCORDANCE WITH THE INSTRUCTIONS
ABSENCE OF SIGNATURE GUARANTEED
BANK OF AMERICA, N.A.
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
IN THE PAYEE'S AREA

000258

QC Financing BB&T Account XX30 00189

Appendix 00265

Payments to Swilley Financial

From QC Financing Account #...2048

Date	Check #	Amount
1/11/2011	1019	\$2,000.00

Payments to Swilley Financial

2,000.00

Quick Cash Payee
 EDDIE J. KING HAY
 ALB. SC. 29577
 BY CASH \$1000.00
 Five Thousand & 00/100
 HRET * 522112648
 SHANE R. HILL
 00551011714

CHECK#: 0 \$1,000.00

Quick Cash Payee
 CASH
 One Thousand & 00/100
 HRET
 SHANE R. HILL

Quick Cash Payee
 The Daily Roman
 Four Hundred & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1009 \$400.00

Quick Cash Payee
 CASH
 Four Hundred & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1010 \$1,200.00

Quick Cash Payee
 The Daily Roman
 One Thousand Two Hundred & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1011 \$1,000.00

Quick Cash Payee
 CASH
 One Thousand & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1013 \$70.01

Quick Cash Payee
 The Vietnam Canal
 Seventy & 01/100
 HRET
 SHANE R. HILL

CHECK#: 1014 \$900.00

Quick Cash Payee
 The Daily Roman
 Nine Hundred & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1015 \$130.50

Quick Cash Payee
 Bill Ruder
 One Hundred Thirty & 50/100
 HRET
 SHANE R. HILL

CHECK#: 1016 \$400.00

Quick Cash Payee
 Shirley Fennell
 Four Hundred & 00/100
 HRET
 SHANE R. HILL

CHECK#: 1017 \$4,000.00

CHECK#: 1019 \$2,000.00

Payments to William C. Piner

William C. Piner

From QC Financing - BB&T Account # ...2048

1/11/2011 1017 4,000.00

Payments to William C. Piner

4,000.00

000261

Appendix 00268

OVER CASH Paid
 EDDIE R. KATZ Nov
 ALB. SC 29377
 BY CASH \$1000.⁰⁰
 ONE THOUSAND & 00/100
 RBST
 * 642112208
 51
 11/11/47
 0053 10112K

CHECK#: 0 \$1,000.00

[illegible]

CHECK# : 1009 \$400.00

CHECK# : 0 \$7,000.00

GUTHRIE BANK
1000 1st Ave S.E.
Tulsa, Oklahoma 74106-9999

DATE 01-21-11

PAY TO THE ORDER OF Mr. Cash - \$ 7,000.00

SEVEN THOUSAND & NO/100 DOLLARS

[Signature]

VOIDED FOR DEPOSIT ONLY

CHECK# : 1010 \$1,200.00

CHECK # 1009 \$400.00
 3091
 1-4-11
 CASH \$100.00
 DEPOSITED 2/3/11
 3091
 2/3/11

CHECK# : 1011 \$1,000.00

[illegible]

CHECK#: 1013 \$70.01

CHECK# 1011 \$1,000.00

CASH ON HAND
DATE 1-7-11
1011

Cash 1-7-11
Nine Hundred 0009
\$ 900.00

900.00 - Cash 900.00

CHECK#: 1014 \$900.00

CHECK# : 1073 \$70.01

WESTERN UNION
TELEPHONE
CORPORATION

DATE 1-10-68

PAY TO THE ORDER OF Mrs. Victoria Carol Smith

\$70.01

SEVEN AND NO/100

Signed [Signature]

1073

CHECK# : 1015 \$130.50

CHECK# : 1074 \$900.00

1986

DATE WHEN PAID

1-10-2011

Pay to the order of Danny Robinson \$400.00

For balance of \$500.00

100

Signature Shirley D. Robinson

1000 1000 1000 1000 1000 1000 1000 1000 1000 1000

CHECK#: 1016 \$400.00

[illegible]

CHECK#: 1017 \$4,000.00

CHECK# : 1076 \$400.00

GUTHRIE CREDIT SERVICE
1897 EIGHTH AVE.
SEATTLE WA 98101

PAY TO THE ORDER OF _____
Sutton Financial

\$ 400.00

Date December 1

Memo [Signature]

AMOUNT IN FIGURES ONLY TWO HUNDRED AND NO /100 DOLLARS

RECEIVED BY [Initials] DATE DEC 22 1977

CHECK#: 1019 \$2,000.00

000262

2/26/14
3:28:22 PM

809 HOLDINGS LP
Balance Sheet
As of 12/31/2010
Un-Audited

Assets

Current Assets

CHECKING ACCT 0953
FACTORED NOTES RECEIVABLE
FACTORED INTEREST RECEIVABLE
Total Current Assets

\$359.00
130,500.00
5,430.00

\$135,289.00

Total Assets

\$135,289.00

Liabilities and Equity

Current Liabilities

ACCOUNTS PAYABLE
INV-NOTES(LAFOREST, RAYMOND)-50
INV-NOTES(TEGA, JOHN)-6
INV-NOTES(BAGGET, TAMM)-76
Total Current Liabilities

\$2,000.00
51,500.00
6,180.00
75,750.00

\$135,430.00

Total Liabilities

\$135,430.00

Equity

DEFAULT RETAINED EARNINGS
PSE - SMG PARTNERS, LLC
PSE - WCP ENTERPRISES, INC
Current Year Profit/Loss
Total Equity

\$(859.00)
429.60
429.60
859.00

859.00

Total Liabilities and Equity

\$135,289.00

000263

809 Holdings Balance Sheet

Appendix 00270



2/25/14
3:29:04 PM

809 HOLDINGS LP
Balance Sheet
As of 12/31/2011
Un-Audited

Assets

<u>Current Assets</u>		
CHECKING ACCT 0953	6520.32	
FF-CHECKING ACCT 8424	601.07	
AM OWED TO FROM SAFE	28,850.75	
AM CONTRUST DEAL	289.58	
FACTORED NOTES RECEIVABLE	534,182.20	
FACTORED INTEREST RECEIVABLE	(89,227.02)	
LOAN TO MARK BARVIS	20,017.00	
PROMISSORY NOTE-011	5,000.00	
Total Current Assets		\$480,228.00
Total Assets		\$480,228.00

Liabilities and Equity

<u>Current Liabilities</u>		
ACCOUNTS PAYABLE	53,240.00	
CAM FEES	(2,820.38)	
INV-NOTES(LAFOREST, RAYMOND)-50	52,750.00	
INV-NOTES(TESKA, JOHN)-8	8,338.00	
INV-NOTES(BAGGET, TAMRIN)-75	78,375.00	
INV-NOTES(JOYCE N KAUFFMAN)-48	50,160.00	
INV-NOTES(SCOTT A MOGEL)-17	17,785.00	
INV-NOTES(GSB ENTERPRISES)-25	27,125.00	
INV-NOTES(GAB BARNHILL IRA)-80	93,620.00	
INV-NOTES(ROBERT TWISS)-23	25,125.00	
J FLOYD SWILLEY	49,875.00	
INV-NOTES(MARK BARVIS)-40	40,800.00	
Total Current Liabilities		\$445,244.62
Total Liabilities		\$445,244.62

<u>Equity</u>		
DEFAULT RETAINED EARNINGS	5(31,122.40)	
PSE-SMG PARTNERS, LLC	13,642.93	
PSE-WCP ENTERPRISES, INC	13,642.93	
PSE-GSB ENTERPRISES (3.5%)	883.00	
PSE-GABRIEL BARNHILL IRA(12.5%)	3,153.54	
Current Year Profit/Loss	44,883.38	
Total Equity		44,883.38
Total Liabilities and Equity		\$480,228.00

2/25/14
3:29:44 PM

809 HOLDINGS LP
Balance Sheet
As of 12/31/2012
Un-Audited

Assets

Current Assets

CHECKING ACCT 0853	5524.32	
FF-CHECKING ACCT 8424	2,680.07	
A/R OWED TO FROM SAFE	18,850.75	
A/R COMTRUST DEAL	269.88	
FACTORED NOTES RECEIVABLE	534,192.20	
FACTORED INTEREST RECEIVABLE	(89,227.02)	
LOAN TO MARK SARVIS	20,017.00	
PROMISSORY NOTE-911	8,000.00	
Total Current Assets		5482,187.00
Total Assets		5482,187.00

Liabilities and Equity

Current Liabilities

ACCOUNTS PAYABLE	55,740.00	
CAM FEES	(2,820.38)	
INV-NOTES(LAFOREST, RAYMOND)-50	61,760.00	
INV-NOTES(TESSA, JOHN)-8	7,410.00	
INV-NOTES(BAGGET, TAMM)-75	90,531.00	
INV-NOTES(JOYCE M KAUFFMAN)-48	58,800.00	
INV-NOTES(SCOTT A MOSEL)-17	20,825.00	
INV-NOTES(GSB ENTERPRISES)-25	47,450.00	
INV-NOTES(GAB BARNHILL IRA)-90	100,000.00	
INV-NOTES(ROBERT TWIGG)-29	25,125.00	
J R DOD SWILEY	57,950.00	
INV-NOTES(MARK SARVIS)-40	44,100.00	
Total Current Liabilities		5517,880.62
Total Liabilities		5517,880.62

Equity

DEFAULT RETAINED EARNINGS	5(31,122.40)	
PSE-SMG PARTNERS, LLC	13,542.93	
PSE-WCP ENTERPRISES, INC	13,542.93	
PSE-GSB ENTERPRISES (2.5%)	883.00	
PSE-GABRIEL BARNHILL IRA(12.5%)	13,558.54	
Current Year Profit/Loss	(35,693.62)	
Total Equity		(35,693.62)
Total Liabilities and Equity		5482,187.00

000265

2/25/14
2:20:07 PM

809 HOLDINGS LP
Balance Sheet
As of 12/31/2013
Un-Audited

Assets

Current Assets

WF - Checking Acct

AM OWED TO FROM SAFE

AM CONTRUST DEAL

FACTORED NOTES RECEIVABLE

FACTORED INTEREST RECEIVABLE

LOAN TO MARK SARVIS

PROMOSORY NOTE-911

Total Current Assets

52,039.39

17,325.75

259.66

534,182.20

(89,227.02)

20,017.00

5,000.00

8479,817.00

Total Assets

8479,817.00

Liabilities and Equity

Current Liabilities

ACCOUNTS PAYABLE

CAM FEES

INV-NOTES(LAFOREST,RAYMOND)-50

INV-NOTES(TESKA,JOHN)-8

INV-NOTES(BAGGET,TAMRIN)-75

INV-NOTES(JOYCE M KAUFFMAN)-48

INV-NOTES(SCOTT A MOGEL)-17

INV-NOTES(GSB ENTERPRISES)-25

INV-NOTES(GAB BARNHILL IRA)-90

INV-NOTES(ROBERT TWIGG)-25

J FLOYD SWILLEY

INV-NOTES(MARK SARVIS)-40

Total Current Liabilities

53,240.00

(2,820.88)

70,750.00

8,480.00

99,889.00

57,440.00

23,885.00

68,150.00

104,520.00

25,125.00

55,600.00

47,700.00

5583,978.62

Total Liabilities

5583,978.62

Equity

DEFAULT RETAINED EARNINGS

PSE-EMG PARTNERS,LLC

PSE-WCP ENTERPRISES,INC

PSE-GSB ENTERPRISES (3.5%)

PSE-GABRIAL BARNHILL IRA (12.5%)

Current Year Profit/Loss

Total Equity

5(31,122.40)

19,542.93

13,542.93

1,883.00

1,153.54

(104,881.62)

(104,361.62)

Total Liabilities and Equity

8479,817.00

2/26/14
3:31:08 PM

809 HOLDINGS LP

Balance Sheet

As of 1/31/2014

Un-Audited

Assets

Current Assets

WF - Checking Acct	\$2,025.38	
A/R OWED TO FROM SAFE	17,825.75	
A/R COMTRUST DEAL	263.68	
FACTORED NOTES RECEIVABLE	534,192.20	
FACTORED INTEREST RECEIVABLE	(59,227.02)	
LOAN TO MARK GARVIS	20,077.00	
PROMISORY NOTE-811	8,000.00	
Total Current Assets		\$479,803.00
Total Assets		\$479,803.00

Liabilities and Equity

Current Liabilities

ACCOUNTS PAYABLE	53,240.00	
GAM FEES	(2,820.38)	
INV-NOTES(LAFOREST, RAYMOND)-50	71,500.00	
INV-NOTES(TESKA, JOHN)-8	8,580.00	
INV-NOTES(BAGGET, TAMRIN)-75	100,788.00	
INV-NOTES(JOYCE M KAUFFMAN)-48	58,160.00	
INV-NOTES(SCOTT A MOGEL)-17	24,140.00	
INV-NOTES(GSB ENTERPRISES)-25	59,875.00	
INV-NOTES(GAB BARNHILL IRA)-50	104,895.00	
INV-NOTES(ROBERT TWIGG)-28	28,125.00	
J FLOYD SWILLEY	57,212.50	
INV-NOTES(MARK GARVIS)-40	48,000.00	
Total Current Liabilities		\$588,695.12
Total Liabilities		\$588,695.12

Equity

DEFAULT RETAINED EARNINGS	5(31,122.40)	
PSE - SMG PARTNERS, LLC	13,542.83	
PSE - WCP ENTERPRISES, INC	13,542.93	
PSE - GSB ENTERPRISES (3.5%)	883.00	
PSE - GABRIEL BARNHILL IRA (12.5%)	8,192.54	
Current Year Profit/Loss	(110,082.12)	
Total Equity		(110,082.12)
Total Liabilities and Equity		\$479,803.00

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) ~~FIFTEENTH JUDICIAL CIRCUIT~~
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

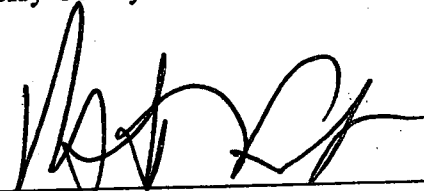
vs.

CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on September 30, 2014 I did serve a copy of Plaintiffs' Memorandum In Support of Their Motion for Sanctions As To Defendants upon Counsel for Defendants via hand-delivery upon John M. Leiter Counsel for Defendants at the Horry County Courthouse, Third Floor.


Nate Fata, Esquire
NATE FATA, P.A.
Post Office Box 16620
1500 U.S. Hwy. 17 North
The Courtyard, Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

September 30, 2014

000288

Appendix 00275

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

Plaintiffs,

vs.

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
COMPEL DEPOSITIONS**

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
99 Holdings, LP, QC Financing, LLC,
North Causey, and Sage Financial
Group, LLC,**

Defendants.

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, SMS Services, LP, Heath Causey and Sage Financial Group, LLC, and their Counsel:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Depositions of the Defendants. The Notices of Depositions are attached as Exhibit A.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Depositions, state as follows:

1. Notice of Deposition of Heath Causey was served upon counsel for Defendants on June 24, 2014, see attached Exhibit "A."

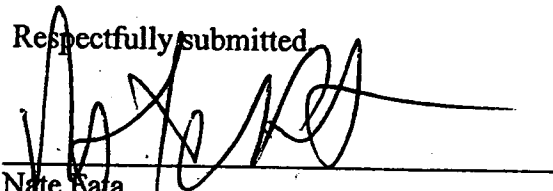
2. Amended Notice of Deposition of Heath Causey was served upon counsel for Defendants on August 4, 2014, see attached Exhibit "B."

3. Second Amended Notice of Deposition of Heath Causey, Notice of Deposition of Laurel K. Swilley, Notice of Deposition of J Floyd Swilley and Notice of Deposition of William C. Piner was served upon counsel for Defendants on September 4, 2014, see attached Exhibit "C." Defendants would not and did not appear for depositions.

4. Plaintiff's counsel certifies that he has attempted to resolve this issue with opposing counsel prior to filing the instant motion.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, Laurel K. Swilley, William C. Piner, and Heath Causey to appear for a deposition, award reasonable attorney fees in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
October 15, 2014

EXHIBIT

A

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA U.S. MAIL

June 23, 2014

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Please see enclosed a copy of the Notice of Deposition of Heath Causey for Thursday, July 17, 2014 at 10:00 a.m. here in my office.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata

NF/sh

Enclosures

cc: Starkey Court Reporting

000272

Appendix 00279

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

NOTICE OF DEPOSITION
OF
HEATH CAUSEY

TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 10:00 a.m. on Thursday, July 17, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of Heath Causey upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Respectfully submitted,



Nate Fata

SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
June 23, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

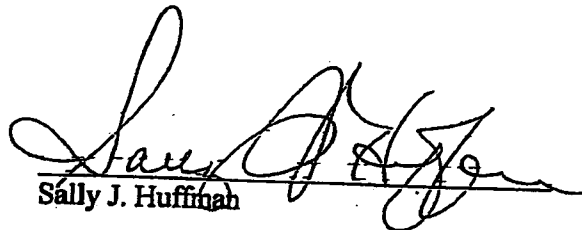
Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

CERTIFICATE OF SERVICE

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on June 24, 2014 I did serve a copy of the Notice of Deposition of Heath Causey to counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, P.A.
1203 48th Avenue, North, Suite 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman

EXHIBIT

B

NATE FATA, P.A.
ATTORNEY AT LAW

P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA U.S. MAIL

August 8, 2014

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Please see enclosed a copy of the Amended Notice of Deposition of Heath Causey for Friday, August 15, 2014 at 10:00 a.m. here in my office.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata

NF/sh

Enclosures

cc: Starkey Court Reporting

000277

Appendix 00284

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

AMENDED
NOTICE OF DEPOSITION
OF
HEATH CAUSEY

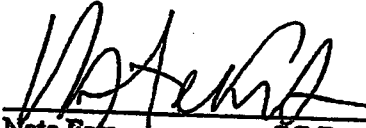
TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 10:00 a.m. on Friday, August 15~~4~~, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of Heath Causey upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Respectfully submitted,



Nate Fata

SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
August 15, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

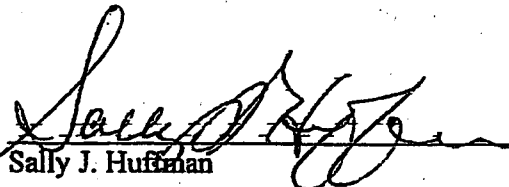
CERTIFICATE OF SERVICE

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on August 4, 2014 I did serve a copy of the Amended Notice of Deposition of Heath Causey to counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, P.A.
1203 48th Avenue, North, Suite 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman

EXHIBIT

C

000281

Appendix 00288

NATE FATA, P.A.
ATTORNEY AT LAW
P.O. Box 16620
THE COURTYARD, SUITE 215
SURFSIDE BEACH, SOUTH CAROLINA 29587
TELEPHONE (843) 238-2676
TELECOPIER (843) 238-0240
NFATA@FATALAW.COM

VIA U.S. MAIL

September 3, 2014

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et al.
Civil Action No. 2013-CP-26-2816

Dear John:

Enclosed see a copy of the following Notices of Depositions:

1. Second Amended Notice of Deposition of Heath Causey for Wednesday, October 1, 2014 at 10:00 a.m.;
2. Notice of Deposition of Laurel K. Swilley for Wednesday, October 1, 2014 beginning at 2:00 p.m.;
3. Notice of Deposition of J. Floyd Swilley for Thursday, October 2, 2014 beginning at 10:00 a.m.; and
3. Notice of Deposition of William C. Piner for Thursday, October 2, 2014 beginning at 2:00 p.m.

Also enclosed is a copy of the Certificate of Service verifying service of the above Notices of Deposition on this date.

With best regards, I remain

Very truly yours,
NATE FATA, P.A.


Nate Fata
NF/sh
Enclosures

000282

Appendix 00289

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

NOTICE OF DEPOSITION
OF
LAUREL K. SWILLEY

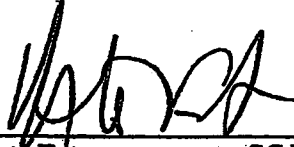
TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 2:00 p.m. on Wednesday, October 1, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of Laurel K. Swilley upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
September 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816

NOTICE OF DEPOSITION
OF
J. FLOYD SWILLEY

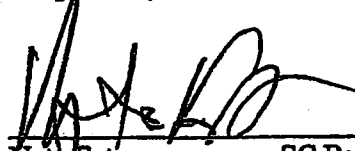
TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 10:00 a.m. on Thursday, October 2, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of J. Floyd Swilley upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Respectfully submitted,



Nate Fata

SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
September __, 2014

COUNTY OF HORRY

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

VS.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**NOTICE OF DEPOSITION
OF
WILLIAM C. PINER**

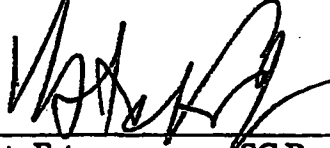
TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 2:00 p.m. on Thursday, October 2, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of William C. Piner upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Respectfully submitted,



Nate Fata

SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
September __, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-26-2816**

**SECOND AMENDED
NOTICE OF DEPOSITION
OF
HEATH CAUSEY**

TO THE DEFENDANTS:

PLEASE TAKE NOTICE that beginning at 10:00 a.m. on Wednesday, October 1, 2014, at the law offices of Nate Fata, P.A., The Courtyard, Suite 215, 1500 U.S. Highway 17 North, Surfside Beach, South Carolina Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC will take the deposition of Heath Causey upon oral examination pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public authorized by law to administer oaths.

The oral examination will continue from day to day until completed. This deposition is being taken for the purpose of discovery, for use at trial, and for all other purposes as are permitted under the rules of this Court and all applicable statutes and laws.

The Court Reporter: Michelle Starkey.

Appendix 00296

000289

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
September 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

CERTIFICATE OF SERVICE

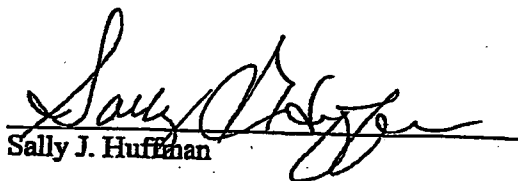
J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on September 4, 2014 I did serve a copy of the following to opposing counsel by mailing a copy of the same postage prepaid as follows:

1. Second Amended Notice of Deposition of Heath Causey;
2. Notice of Deposition of Laurel K. Swilley;
3. Notice of Deposition of J. Floyd Swilley; and
4. Notice of Deposition of William C. Piner

John M. Leiter, Esq.
Law Offices of John M. Leiter, P.A.
1203 48th Avenue, North, Suite 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-26-2816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

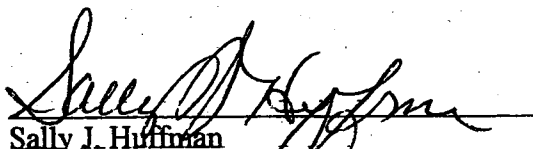
J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

CERTIFICATE OF SERVICE

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on October 15, 2014 I did serve a copy of Plaintiffs Notice of Motion and Motion to Compel Depositions upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
Counsel for Defendants


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-26-08367 AND ITS
) PREDECESSOR BEFORE 40(J)
) 2013-CP-26-02816

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTIONS TO BE
HEARD ON APRIL 20, 2015

RECEIVED
CLERK OF COURT

2015 APR 20 PM 12:54

HORRY COUNTY

Plaintiffs respectfully submit this Memorandum in Support of their Motions to be heard April 20, 2015 which include Discovery Motions, Plaintiffs' Motions for Judgment on the Pleadings and Summary Judgment on Defendants' Counterclaims, and Plaintiffs' Motion to Disqualify Counsel.

INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. Barnhill was 26-27 years of age at the time. The Swilley and Piner Defendants

established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In essence, Swilley and Piner took investor/client retirement monies to fund their own startup businesses.

PROCEDURAL HISTORY

Defendants have failed to comply with multiple Court Orders and have and continue to obstruct the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs served discovery requests upon the Defendants. From the onset, Defendants forced Plaintiffs to file motions to compel discovery.¹ Plaintiffs' filed three (3) Motions for Sanctions: November 4, 2013, February 19, 2014 and on June 27, 2014 for Defendants' failure to comply with discovery.

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014 the Court again entered an Order for Sanctions. In that Order, the Court found, "Defendants have been sandbagging in their discovery responses... . The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013; January 8, 2014; January 10, 2014, September 5, 2014 and September 5, 2014; and October 5, 2014.

discovery process".² Defendants produced some information demonstrating that 809 Holdings has been manipulated for the benefit of the other Defendants and to the detriment of Barnhill, an investor and limited partner. The evidence uncovered demonstrates a conflict clearly exists with John Leiter's ("Leiter") representation of all Defendants, including 809 Holdings.

Plaintiffs' Motions to be heard are:

1. Motion to Disqualify Counsel filed August 6, 2014.
2. Motion to Compel Discovery filed September 5, 2014;
3. Motion for Judgment on the Pleadings and/or To Dismiss Counterclaims filed October 3, 2014;
4. Motion for Summary Judgment filed October 3, 2014;
5. Motion to Quash Subpoena and for Protective Order filed October 15, 2014.
6. Motion to Compel Depositions filed October 20, 2014;

FACTS

In 2011 at the direction of Swilley and Piner, Barnhill's retirement monies were invested in the 809 Holdings' Notes and Barnhill became a limited partner. See Capital Structure produced by Defendants as Exhibit A. 809 Holdings was a partnership created and owned by the Swilley and Piner Defendants and their companies. Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is an accountant/financial advisor. William Piner and Heath Causey are businessmen. Swilley has been involved with other investment schemes. Floyd Swilley and Laurel Knuckles Swilley agreed to confess judgment in an Oklahoma federal case in which \$100,000,000 was allegedly lost by investors. The Court

² Twigg has filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey; Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

should take judicial notice of Judge Waites' Order in In Re: John F. Swilley, 02-09234-W, Adv. Pro. No. 02-80347-W., United States Bankruptcy Court, (D.S.C. 2003), attached as Exhibit B.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013³:

Investor	Amount	Date
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11
Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Plaintiffs' Supplemental Interrogatory Number 2, dated February 25, 2014 requested,

For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in response to Interrogatory Number 9, identify the bank name, address, payee, amount, date of payment and reason for payment.

³ Floyd Swilley's purported loan is not referenced below.

At the hearing on September 30, 2014, Judge Hyman Ordered Defendants to produce the requested information and ordered Defendants to pay Plaintiffs' attorney fees of \$2,700.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, attached as Exhibit C. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE. Set forth below are some payments to Defendants.

1. Sage Financial Group

12/01/2010	Check #1031	\$2,000.00
04/13/2011	Check #1041	\$5,000.00
06/08/2011	Check #1087	\$10,000.00

2. Swilley Financial

01/11/2011	Check #1019	\$2,000.00

3. William C. Piner

01/11/2011	Check #1017	\$4,000.00

ARGUMENT

A. Due to the previous ruling on Defendants' sandbagging and discovery obstruction, the Court should award discovery sanctions.

Plaintiffs were forced to file Motion to Compel Interrogatory responses on September 5, 2014 and a Motion to Compel Defendants' depositions. Defendants should be sanctioned for

failure to provide discovery responses and delaying discovery. In the two years since this action was filed, Defendants have not provided information on their Counterclaims' allegations which are the subject of Plaintiffs' Motions to Compel Discovery Responses. Their Counterclaims should be dismissed and attorney fees should be awarded. In addition, Defendants should be sanctioned for failing to appear for their depositions.

B. Defendants Counterclaims fail as a matter of law.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants assert counterclaims for:

1. South Carolina Frivolous Proceeding Act;
2. Quantum Meruit;
3. Usurpation of Partnership Opportunity;
4. Negligent Misrepresentation;
5. Breach of Fiduciary Duties; and
6. Breach of Loan Agreements.

Defendants' Counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Barnhill to any of the Defendants. Barnhill had no legal relationship in which he owed duties to Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Heath Causey, and Sage Financial Group, LLC. Second, material facts are not in dispute, requiring judgment as a matter of law. No duty was breached by Plaintiffs and Defendants have no evidence of damages caused by Plaintiffs.

1. No legal duty is owed to any Defendant.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any Defendants. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill as a limited partner is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC which owned the pawn shop inventory. See Exhibit C, Defendants' Answers to Supplemental Interrogatory Number 1. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC. Moreover, Defendants were not in privity with Barnhill.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Heath Causey, and Sage Financial Group, LLC. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Heath Causey, Sage Financial Group, LLC., and 809 Holdings, LP.

2. Defendants have not pled a cause of action.

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the statutory sections cited above. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-44-303 and S.C. Code Ann. § 33-42-430, respectively.

The allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Ct. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 2013, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Moreover, if 809 Holdings were to proceed with this claim, then it must sue the general partners, Swilley and Piner.

C. The Motion to Disqualify Leiter should be granted.

The evidence substantiates that 809 Holdings has been used by the non-809 Holdings' Defendants to siphon money from Barnhill and other investors. 809 Holdings has claims against these Defendants but will not assert them because Leiter has a conflict. Leiter cannot provide loyalty and independent judgment to 809 Holdings. Plaintiffs Motion to Disqualify Leiter should be granted. 809 Holdings owes duties to its limited partners to not disfavor them while it attempts to benefit the general partners.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

JUL 28 2017

SC Court of Appeals

Case No. 2014-CP-26-8367 (Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC.....
Respondents

V.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC Financing, LLC, Heath Causey, and Sage Financial Group, LLC, J. Floyd Swilley SMG Partners, LLC, Alicia A. Piner, Heath Causey, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1, Plumbing, LLC, and Sage Funding, L.P., Christopher Pitcock, Defendants,

I
Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Wendell Causey are the
Appellants

THE RECORD ON APPEAL

VOLUME II of II

Nate Fata, Esq. (SC Bar No. 009866)
Nate Fata, P.A.
Post Office Box 16620
Surfside Beach, SC 29587
843-238-2676

Attorney for Respondents

Heath Causey,
4612 Oleander Drive Suite 201
Myrtle Beach, SC 29577
(843) 424-9258
Pro Se Appellant

F. Miles Adler, Esquire ADLER
LAW FIRM, LLC SC Bar No.:
70238
Post Office Box 4743 Pawleys
Island, SC 29585
843.314.3204
Appendix 00308
miles@adlerlaw.partners
Attorney for Appellants

Rule 1.7 Conflict of Interest, Comments, provide:

[1] **Loyalty and independent judgment are essential elements in the lawyer's relationship to a client.** Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. (Emphasis added).

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests.

The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

The Comments to 1.7 Conflict of Interest further provide:

[21] A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.

The Court should disqualify Leiter due to the conflict. As stated in the March 2012

Article from Los Angeles Lawyer:

Dual representation of the corporation and individual defendants in a derivative proceeding which asserts a claim of serious wrongdoing by those in control of the corporation is considered improper because a potential conflict of interest exists between counsel's duty to the corporate entity and counsel's relationship with the individual defendants. Citing 13 Fletcher, Cyclopedia of Corporations, §6025.

The allegations in this action are serious and include claims of misappropriation of funds and diverting funds to the benefit of the general partners and the detriment of the limited partners. These payments have been documented. The Court should disqualify Leiter from representation. Furthermore, any 809 Holdings' counsel should not represent other Defendants in this or a related action as that dual representation will necessarily interfere with the lawyer's duty of loyalty and independent judgment.

CONCLUSION

Based on the foregoing, Plaintiffs' Motions should be granted in their entirety.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

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Surfside Beach, South Carolina
April 20, 2015

EXHIBIT

A

**Sage Financial Group LLC
Capital Structure for Pawn Deal
3/8/2012**

<u>809 Holdings LP</u>			
~~Partnership & Notes Structure~~			
<u>6/10/2009</u>			
SMG Partners, LLC	GP	50%	
WCP Enterprises LLC	GP	50%	
		100%	
<u>3/23/2011</u>			
SMG Partners, LLC	GP	42.0%	
WCP Enterprises LLC	GP	42.0%	
GSB Enterprises LLC	LP	3.5%	
Gabe Barnhill IRA	LP	12.5%	
		100%	
<u>Note Holders @1% / 1.5% INTEREST</u>		<u>LP-NOTES</u>	
10/2/2010	\$ 56,000.00		
11/2/2010	\$ 56,000.00		
12/2/2010	\$ 131,000.00		
1/2/2011	\$ 131,000.00		
2/2/2011	\$ 179,000.00		
3/2/2011	\$ 179,000.00		
4/2/2011	\$ 196,000.00	\$ 41,000.00	
5/2/2011	\$ 196,000.00	\$ 66,000.00	
6/2/2011	\$ 196,000.00	\$ 115,000.00	
7/2/2011	\$ 196,000.00	\$ 115,000.00	
8/2/2011	\$ 196,000.00	\$ 162,500.00	
9/2/2011	\$ 196,000.00	\$ 162,500.00	
10/2/2011	\$ 196,000.00	\$ 162,500.00	
11/2/2011	\$ 196,000.00	\$ 162,500.00	
12/2/2011	\$ 196,000.00	\$ 162,500.00	
1/2/2012	\$ 196,000.00	\$ 162,500.00	
2/2/2012	\$ 196,000.00	\$ 162,500.00	
3/2/2012	\$ 196,000.00	\$ 162,500.00	

<u>QC Financing LLC</u>			
~~Partnership & Notes Structure~~			
<u>9/13/2010</u>			
David Wilkinson	GP	50%	
SMG Partners, LLC	GP	25%	
WCP Enterprises LLC	GP	25%	
		100%	
<u>8/11/2011</u>			
David Wilkinson	GP	75%	
GSB Enterprises LLC	LP	25%	
		100%	
<u>Factored Notes & Interest Holders</u>			
9/1/2010	\$ 6,180.00		
10/1/2010	\$ 6,360.00		
11/1/2010	\$ 49,285.00		
12/1/2010	\$ 126,930.00		
1/1/2011	\$ 139,845.00		
2/1/2011	\$ 189,080.00		
3/1/2011	\$ 195,427.40		
4/1/2011	\$ 228,278.20		
5/1/2011	\$ 293,728.50		
6/1/2011	\$ 319,806.15		
7/1/2011	\$ 354,161.75		
8/1/2011	\$ 439,302.40		
9/1/2011	\$ 460,628.65		
10/1/2011	\$ 462,476.50		
11/1/2011	\$ 490,987.98		
12/1/2011	\$ 513,088.15		
1/1/2012	\$ 535,131.33		
2/1/2012	\$ 566,959.03		
3/1/2012	\$ 580,288.43		

<u>Quick Cash Pawn</u>			
~~Partnership & Notes Structure~~			
<u>10/19/2010</u>			
David Wilkinson	GP	100%	
		100%	
<u>Factored Notes & Interest Holders</u>			
9/1/2010	\$ 6,180.00		
10/1/2010	\$ 6,360.00		
11/1/2010	\$ 49,285.00		
12/1/2010	\$ 126,930.00		
1/1/2011	\$ 139,845.00		
2/1/2011	\$ 189,080.00		
3/1/2011	\$ 195,427.40		
4/1/2011	\$ 228,278.20		
5/1/2011	\$ 293,728.50		
6/1/2011	\$ 319,806.15		
7/1/2011	\$ 354,161.75		
8/1/2011	\$ 439,302.40		
9/1/2011	\$ 460,628.65		
10/1/2011	\$ 462,476.50		
11/1/2011	\$ 490,987.98		
12/1/2011	\$ 513,088.15		
1/1/2012	\$ 535,131.33		
2/1/2012	\$ 566,959.03		
3/1/2012	\$ 580,288.43		
Holds Pawn License, Firearms License & Retail License.			

PAY

PAY

LEND @ 3%

LEND

000304

EXHIBIT

B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at O'clock & min M
APR 17 2003

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (1)

IN RE:

John F. Swilley, a/k/a
Floyd Swilley,

Debtor.

Shadow Factory Films Ltd., Co.,
an Oklahoma Limited Liability Company,

Plaintiff,

v.

John F. Swilley, a/k/a
Floyd Swilley

Defendant.

C/A No. 02-09234-W

Adv. Pro. No. 02-80347-W

ENTERED

ORDER

APR 17 2003

R. S. S.

Chapter 7

THIS MATTER comes before the Court upon the Motion for Summary Judgment (the "Motion") filed by Shadow Factory Films Ltd., Co. ("Plaintiff"). Plaintiff urges the Court to apply the principles of res judicata, collateral estoppel, or judicial estoppel to bar John F. Swilley ("Debtor" or "Defendant") from asserting that the debt arising from prior litigation with Plaintiff is dischargeable. With Defendant thus estopped, Plaintiff asks the Court to grant its Motion pursuant to Federal Rule of Bankruptcy Procedure 7056 and declare that the debt at issue is excepted from discharge pursuant to 11 U.S.C. §523(a)(2) and §523(a)(4).¹ In response, Defendant argues that res judicata does not apply in this case because the judgment resolved a tort action and not the issue of dischargeability. Defendant also argues that collateral estoppel cannot be applied because the prior

¹ Further references to the Bankruptcy Code shall be by section number only.

judgment does not contain an actual finding of fraud and because there is no unity of parties. Finally, Defendant argues that the District Court for the Western District of Oklahoma lacked jurisdiction to consider the dischargeability of the debt because only bankruptcy courts can decide this issue. After considering the pleadings filed in the adversary proceeding, the attached materials from the prior litigation presented in support of the Motion, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. On December 29, 2000, Plaintiff filed a Complaint against Defendant, Protocol Asset Management Trust, Laurel Knuckles ("Ms. Knuckles"), Antony Abirached, A. Abira Financial Associated Ltd., and Loli Trade & Finance Establishment, Ltd in the United States District Court for the Western District of Oklahoma (the "Oklahoma litigation"). Generally, the Oklahoma litigation arose from a dispute concerning a venture capital agreement whereby the above-listed defendants agreed to lend or participated in an agreement to lend Plaintiff \$125,000,000 over a ten year period.
2. On March 7, 2002, Defendant, in both an individual capacity and as Trustee for Protocol Asset Management Trust, and Ms. Knuckles executed a Settlement Agreement (the "Settlement Agreement") with Plaintiff to resolve the Oklahoma litigation. In the Settlement Agreement, the parties stipulate to three initial points. First, they agree that Plaintiff's causes of action include a

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

claim for money acquired by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny. Next, the parties stipulate that they seek to settle all claims asserted or that could have been asserted in the Oklahoma litigation. Finally, the defendants stipulate "that one or more of Plaintiff's claims are of such character and nature that they cannot be discharged in bankruptcy."

3. Based upon these initial stipulations in the Settlement Agreement, the parties then agree to have a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000 on Plaintiff's claims that are not dischargeable in bankruptcy. The Settlement Agreement provides that the journal entry of the judgment shall reflect that the pleadings in the Oklahoma litigation are deemed to have been amended to assert claims of such character and nature that they cannot be discharged in bankruptcy. The Settlement Agreement then provides that the journal entry of judgment shall "recite agreement and stipulation of the Parties and a factual finding by the Court that, *inter alia*, the judgment is entered on one or more of those claims that are of such character and nature that they cannot be discharged in bankruptcy and that as a result thereof the judgment is not dischargeable in bankruptcy."

4. On March 8, 2002, Plaintiff, Defendant, and Ms. Knuckles participated in a settlement conference before the Honorable Magistrate Gary Purcell of the United States District Court for the Western District of Oklahoma. Judge Purcell thoroughly reviewed the terms of settlement and announced his understanding of the parties' settlement on the record. Specifically, Judge Purcell stated that the parties agree to have findings and a judgment entered against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, on Plaintiff's claims that are not dischargeable in bankruptcy in the amount of \$300,000. Judge Purcell also indicated that the

parties agree that any pleadings should be amended to assert claims that cannot be discharged in bankruptcy, and he found that it was clear that the agreement anticipates that no part of the judgment is capable of being discharged in bankruptcy.

5. During the settlement conference, Judge Purcell asked Defendant and his counsel if they understood and agreed to the terms of the Settlement Agreement. Both Defendant and his counsel responded affirmatively. Defendant also indicated that he was not threatened or forced to enter into the Settlement Agreement.

6. On March 11, 2002, the Honorable Stephen P. Friot, United States District Judge for the Western District of Oklahoma, entered the Journal Entry of Judgment (the "Oklahoma Judgment") resolving the Oklahoma litigation. The court recognized that Defendant, Ms. Knuckles, and Protocol Asset Management Trust stipulated to certain facts, and, based upon these facts, the court found that the claims Plaintiff asserted against them were of such character and nature that they cannot be discharged in bankruptcy. The court further found that, to the extent the pleadings were ambiguous, the court deemed them amended to assert claims of such nature and character that they cannot be discharged in bankruptcy. The court then entered the Oklahoma Judgment against Defendant and Ms. Knuckles on one or more of the nondischargeable claims and accordingly held that the Oklahoma Judgment was excepted from discharge. The Court entered a judgment against Defendant, Ms. Knuckles, and Protocol Asset Management Trust, jointly and severally, in the amount of \$300,000. Attorneys for Plaintiff and Defendant, Ms. Knuckles, and Protocol Asset Management Trust provided consensual signatures indicating that they agreed to and approved of the Oklahoma Judgment.

7. The Oklahoma Judgment is final, and there was no appeal of it.

8. On August 5, 2002, Defendant filed his Voluntary Petition seeking Chapter 7 relief.

CONCLUSIONS OF LAW

A. Standard for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure, applicable to adversary proceedings under the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 7056, provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. Summary judgment is appropriate "if the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether summary judgment is appropriate, the court must view all evidence in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The moving party has the initial burden to show that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Celotex Corp v. Catrett, 477 U.S. 317, 332 (1986). Once this initial showing is made, the burden of production shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324; see also Fed. R. Civ. P. 5(e). In meeting this burden, the nonmoving party "must do more than simply show that there is some metaphysical

doubt as to the material facts and must demonstrate there is a genuine issue for trial.” Matsushita, 475 U.S. at 586-87; see also Campbell v. Deans (In re J.R. Deans Co.), 249 B.R. 121, 128 (Bankr. D. S.C. 2000) (quoting Dunes Hotel Assoc. v. Hyatt Corp. (In re Dunes Hotel Assoc.), 194 B.R. 967, 976 (Bankr. D. S.C. 1995)) (“[T]he party opposing summary judgment may not merely rely on his pleadings but must set forth specific facts which controvert the moving party’s facts and which show the existence of a genuine issue for trial.”). The Court should grant summary judgment “against a party who fails to make a showing sufficient to establish the evidence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Dunes Hotel Assoc., 194 B.R. at 976 (citing Celotex, 477 U.S. at 322).

B. Application of the Summary Judgment Standard to the Motion

Res judicata

Res judicata is a broad principle that prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. See Brown v. Felson, 442 U.S. 127, 131 (1979); In re The Roof Doctor, C/A No. 97-01648-W, slip op. at 3 (Bankr. D. S.C. Aug. 26, 1998) (citing In re Varat Enterprises, Inc., 81 F.3d 1310 (4th Cir. 1996)). The elements of res judicata are the following: (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits. See Grausz v. Englander, 321 F.3d 467, 472 (4th Cir. 2003); Keith v. Aldridge, 900 F.2d 736, 739 (4th Cir. 1990). “On the merits” is a term of art and does not necessarily mean that the issues were actually litigated and is substantially different and broader than the “actually litigated” element of collateral estoppel.

See Fed. Ins. Co. v. Gilson (In re Gilson), 250 B.R. 226, 236 (Bankr. E.D. Va. 2000). To determine whether the claim was previously available to a party in the earlier suit, the Fourth Circuit has adopted a transactional approach whereby it considers whether the roots of both actions arise from the same series of operative facts. See Grausz, 321 F.3d at 473; Keith, 900 F.2d at 739.³

In dischargeability proceedings, however, the use of res judicata is limited. In Felson, the Supreme Court held that bankruptcy courts are not confined to reviewing the judgment and record of a prior state court proceeding when considering the dischargeability of debt. See 442 U.S. at 139. The Court supported this conclusion by reasoning that allowing state courts to determine the dischargeability of a debt undercuts statutory policy that favors resolving dischargeability issues in bankruptcy courts. See id. at 136. Moreover, the Court questioned the merit of requiring parties to address dischargeability issues in state court and preserve them for subsequent determination by a bankruptcy court when the issues are not yet ripe because no bankruptcy case has been filed. See id. at 137; see also Tatge v. Tatge (In re Tatge), 212 B.R. 604, 608-09 (B.A.P. 8th Cir. 1997) (declining to apply res judicata to a prepetition state court judgment incorporating the parties' settlement agreement that classified debts as dischargeable and reasoning that, at the time of the decree, no bankruptcy petition had been filed and no cause of action under §523 existed). Accordingly, the Court held that bankruptcy courts could consider all the evidence, including a plaintiff's failure to pursue allegations of fraud and deceit during the prior state court proceeding, and look beyond the judgment and record of the prepetition state court proceeding to determine

³ The Court notes that, in Keith, the Fourth Circuit found that consent judgments can have preclusive effect if the parties intended to foreclose litigation of a claim through a settlement agreement. See 900 F.2d at 741; see also Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 487 (4th Cir. 1981).

whether a debt is excepted from discharge. See Felson, 442 U.S. at 139.

Felson effectively prohibits the blanket application of res judicata to prepetition state court determinations regarding the dischargeability of debts, and this principle has seemingly been applied to prepetition federal cases as well. See Gilson, 250 B.R. at 238. For example, in Strube Celery & Vegetable Co., Inc. v. Zois (In re Zois), 201 B.R. 501, 511 (Bankr. N.D. Ill. 1996), the bankruptcy court found that a federal district court's classification of a debt owed as nondischargeable was not res judicata as to the dischargeability of the debt. In Zois, the court reasoned that the district court lacked jurisdiction to reach this conclusion because, when it found that the debt was nondischargeable, no bankruptcy case had been filed. See also Coopers & Lybrand, Ltd. v. Gibbs (In re Gibbs), 107 B.R. 492, 497 (Bankr. D. N.J. 1989) (finding that a federal district court lacked subject matter jurisdiction to define a debt owed under a judgment as nondischargeable where no bankruptcy case had been filed). Moreover, the bankruptcy court found that the issue of dischargeability had not been litigated in the prior proceeding but was simply included in the language of the order. Cf. Saler v. Saler (In re Saler), 217 B.R. 166, 170 (E.D. Pa. 1998) (holding that a stipulation approved by a bankruptcy court that classified debts as excepted from discharge barred a redetermination of the issue of dischargeability in a subsequent bankruptcy case); Policemen's & Firefighters' Ret. Fund of Covington v. Tranter (In re Tranter), 245 B.R. 419, 420 (Bankr. S.D. Fla. 2000) (finding that a prior determination by a bankruptcy court that a debt was excepted from discharge was binding in another proceeding to except the same debt from debtor's discharge in debtor's subsequent bankruptcy case).

Based upon Felson's principles limiting the blanket application of res judicata to prepetition cases addressing the issue of dischargeability and because of other provisions of this Order, the Court

denies this aspect of Plaintiff's Motion. This Court is given the opportunity to look beyond the Oklahoma Judgment and the record of the Oklahoma litigation to decide whether Defendant's actions render his obligation excepted from discharge pursuant to §§523(a)(2) and (a)(4).

Collateral Estoppel

While the application of res judicata has been limited in dischargeability proceedings, the narrower concept of collateral estoppel can be applied more easily. See Grogan v. Garner, 498 U.S. 279, 285 n. 11 (1991); Pahlavi v. Ansari (In re Ansari), 113 F.3d 17, 19 (4th Cir. 1997). Collateral estoppel precludes relitigation of an issue decided previously in judicial or administrative proceedings provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceeding. See Hagan v. McNallen (In re McNallen), 62 F.3d 619, 624 (4th Cir. 1995). When applying the principle of collateral estoppel, the Court typically looks to the forum state's law of collateral estoppel; however, this case deals with a prior judgment from a federal court. See McNallen, 62 F.3d at 624. In this situation, the Court must consider the principles of federal collateral estoppel. See Nestorio v. Associates Commercial Corp., 250 B.R. 50, 55 (D. Md. 2000); Shearer v. Dunkley (In re Dunkley), 221 B.R. 207, 212 (Bankr. N.D. Ill. 1998); Federal Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 8 (Bankr. D. S.C. Apr. 22, 1999). For federal collateral estoppel to apply, the proponent must establish the following elements: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum. See

Sec. & Exch. Comm'n v. Zandford, 238 F.3d 559, 562 (4th Cir. 2001), rev'd on other grounds by 535 U.S. 813 (2002); Sedlack v. Braswell Services Group, Inc., 134 F.3d 219, 224 (4th Cir. 1998).

The undisputed material facts indicate that some of these elements are satisfied. First, there is no dispute as to the identity of issues. In the Oklahoma Judgment, the court considered allegations of acquiring money by false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement, and larceny, the presumptive grounds for a debt to be declared nondischargeable pursuant to §523(a)(2) and §523(a)(4), and the court found that the amount of the judgment was not dischargeable in bankruptcy. Likewise, the issue in this proceeding is whether the debt is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). Second, the undisputed material facts also demonstrate that the Oklahoma Judgment is final and was not appealed. Third, the record of the Oklahoma litigation reflects that Defendant was represented by counsel and that he participated in a sophisticated legal setting in two levels of the Federal District Court for the Western District of Oklahoma. Moreover, the transcript of the Settlement Conference reflects that Judge Purcell meticulously reviewed and announced the terms of the Settlement Agreement and asked Defendant if he understood and agreed to the terms. Defendant clearly agreed to the terms and had a full and fair opportunity to defend against Plaintiff's causes of action.

There is a question whether the Oklahoma Judgment satisfies the actually determined element.⁴ The Oklahoma Judgment is a consent order that settles the Oklahoma litigation. Ordinarily, when a case is settled rather than litigated to a judgment, the settlement does not give rise to collateral estoppel unless it is clear that the parties intended the settlement to have such an effect.

⁴ Several cases refer to the this element as "actually litigated." The Court will use actually litigated and actually determined synonymously.

See Arizona v. California, 530 U.S. 392, 414 (2000) (“[S]ettlements ordinarily occasion no issue preclusion (sometimes called collateral estoppel), unless it is clear . . . that the parties intended their agreement to have such an effect.”); Halpern v. First Georgia Bank, 810 F.2d 1061, 1064 (11th Cir. 1987) (“[T]he central inquiry in determining the preclusive effect of a consent judgment is the intention of the parties as manifested in the judgment or other evidence.”). Generally, courts have examined the parties’ intent in two ways. One approach focuses on whether the settlement or consent judgment includes sufficient facts to support a finding that a debt is excepted from discharge. See, e.g., Levinson v. United States, 969 F.2d 260, 264 (7th Cir. 1992) (declining to apply collateral estoppel where the consent judgment did not include sufficient facts to support a finding that the debtor’s fraud rendered the debt excepted from discharge); Halpern, 810 F.2d at 1064-65 (finding that the parties intended a prior state court consent order to operate as a final adjudication where the order included detailed factual findings sufficient to satisfy §523(a)(2)(A) as well as specific language providing that liability under the judgment will be excepted from discharge in any bankruptcy case); Giaimo v. Detrano (In re Detrano), 266 B.R. 282, 291 (E.D. N.Y. 2001) (affirming the bankruptcy court’s decision to decline to apply collateral estoppel where the settlement order did not contain stipulated facts that would establish that a debt was nondischargeable under §523(a)(4)); Kohlenberg v. Baumhaft (In re Baumhaft), 271 B.R. 517, 522-23 (Bankr. E.D. Mich. 2001) (applying collateral estoppel and granting summary judgment where the settlement agreement related to a consent judgment listed specific facts allowing the court to conclude a debt was excepted from discharge pursuant to §523(a)(2)(A) and (B) and where the agreement provided that the parties would not object to the dischargeability of the debt in any subsequent bankruptcy proceeding); Mustaine v. Kennedy (In re Kennedy), 243 B.R. 1, 12 (Bankr. W.D. Ky. 1997) (finding that the

consent order did not manifest an intent for the judgment to be conclusive where the judgment at issue was a blanket entry of judgment on the fraud counts of a complaint and contained no discussion of culpability); Estate of Samson v. Ward (In re Ward), 194 B.R. 53, 58 (Bankr. D. S.C. 1995) (denying summary judgment motion because the form order entered resolving a trial after the parties reached a settlement was silent as to the exact terms of settlement or the basis for the judgment but suggesting that collateral estoppel could be appropriate if the evidence indicated that a party confessed to committing a particular type of fraud or defalcation that would preclude discharge); Pasada Del Rey v. Pearson (In re Pearson), 120 B.R. 396, 399 (Bankr. N.D. Tex. 1990) (declining to apply collateral estoppel because there were insufficient facts in the consent order to establish that the debt was excepted from discharge); Fisher v. Heatly (In re Fisher), C/A No. 92-73995, Adv. Pro. No. 92-8250, slip op. at 8 (Bankr. D. S.C. Feb. 1, 1993) ("Without the legal basis for the court's findings or a discussion or record of the elements constituting the plaintiff's burden of proof, this Court is unable to determine whether the plaintiff in the state court proved and whether that court properly considered the elements and issues of fraud as are required for a finding of non-dischargeability pursuant to 11 U.S.C. section 523. Therefore, the issues raised by 11 U.S.C. section 523(a)(2) and this lawsuit were not actually litigated."); see also Nissan v. Weiss (In re Weiss), 235 B.R. 349, 358-59 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000) (finding that a confession of judgment satisfied the actually litigated requirement and applied collateral estoppel to find that the debts at issue in the judgment were excepted from discharge where the confession of judgment represented a confession to each claim in the complaint, including fraud and breach of fiduciary duty). Other courts review prior consent or settlement orders to determine if it is clear that the parties intended the prior litigation to have a collateral estoppel effect. Courts using this

approach have applied collateral estoppel even if the prior judgment does not contain specific stipulated or court-found facts to support a conclusion that a debt would be excepted from discharge pursuant to §523. See, e.g., Peoples Bank of Dickson v. Duke (In re Duke), 172 B.R. 575, 579 (M.D. Tenn. 1994) (applying collateral estoppel to bar the debtor from arguing that her debt at issue was discharged when she asserted in a prior criminal matter that the debt would be excepted from discharge); Doughty v. Hill (In re Hill), 265 B.R. 270, 279 (Bankr. M.D. Fla. 2001) (concluding that a consent judgment without specific factual findings but with a specific stipulation to an amount of fraud damages satisfied the actually litigated element in a subsequent proceeding regarding dischargeability); Buglione v. Berlinger (In re Berlinger), 246 B.R. 196, 201 (Bankr. D. N.J. 2000) (applying collateral estoppel to a prior settlement order declaring that certain debts arising from a divorce proceeding would be excepted from discharge where it was evident the parties intended to settle an intentional tort claim and intended the settlement to survive a bankruptcy discharge); Smith v. Smith (In re Smith), 189 B.R. 240, 244 (Bankr. D. N.H. 1995) (declining to apply collateral estoppel because the prior judgment contained neither findings that the court could rely on to determine dischargeability or a statement indicating that the judgment would be excepted from discharge); Smith v. Beeson (In re Smith), 128 B.R. 488, 491 (Bankr. S.D. Fla. 1991) (finding the issue of the debtor's fraud was sufficiently litigated in the prior state court proceeding to invoke collateral estoppel from language in the settlement agreement treating the judgment against the debtor as excepted from discharge).

Upon reviewing the Oklahoma Judgment, the Settlement Agreement, and the settlement conference transcript, the Court concludes that the parties clearly intended the Oklahoma Judgment to have preclusive effect as to the dischargeability of the amount owed under the judgment. The

language of the Oklahoma Judgment is unequivocal and thoroughly describes the judgment amount as nondischargeable, and the language is much more than a mere statement that the debt would be excepted from discharge. Cf. Klingman v. Levinson, 831 F.2d 1292, 1296 (7th Cir. 1987) (finding that language in a consent decree providing that the debt at issue would not be dischargeable in a bankruptcy proceeding illustrated the parties' intent for the decree to have preclusive effect). Indeed, the Oklahoma Judgment indicates that the parties intended to conclusively resolve the issue of dischargeability by agreeing that (1) the pleadings are deemed amended to assert claims that cannot be discharged in bankruptcy, (2) the Oklahoma Judgment is entered on one or more of the claims that are of such character and nature that they cannot be discharged in bankruptcy, (3) the Oklahoma Judgment is based upon a factual finding by the Court, and (4) the Oklahoma Judgment is not dischargeable in bankruptcy. Moreover, during the settlement conference, Judge Purcell carefully reviewed all of the terms of the Settlement Agreement, and he asked the parties whether they agreed to and understood these terms, including terms that indicated the judgment would be based upon factual findings. Defendant clearly acknowledged that he willingly accepted the terms, including the provisions concerning the nondischargeability of the debt. To this Court, the settlement materials clearly illustrate that the parties intended the Oklahoma Judgment to be the final resolution of the dispute, including the future dischargeability of the debt, and this Court will honor and enforce that intent. While the Oklahoma Judgment does contain a detailed enumeration of findings of fact, this step is not necessary when it is clear that the Oklahoma court relied on the factual basis that Defendant, Ms. Knuckles, and Protocol Asset Management Trust acknowledged and stipulated to prior to the entry of the Oklahoma Judgment in finding that the debt it represents would be excepted from discharge. In other words, the Oklahoma Judgment is based on factual findings that were

agreed upon and established in an unappealed order and record. For these reasons, the Court finds that the Oklahoma Judgment satisfies the actually litigated element of collateral estoppel.⁵

The Court also finds that the issue of dischargeability was a necessary part of the Oklahoma litigation. The original complaint includes specific allegations of acquiring money under false pretenses, false representation or actual fraud, fraud and defalcation while acting in a fiduciary capacity, embezzlement and larceny, and the Oklahoma court and the settlement materials recognize these allegations and buttress them further by a specific provision amending the complaint to ensure the allegations are pled sufficiently to support a finding of nondischargeability. This specificity leads the Court to conclude that the determination that the elements of §523(a)(2) and §523(a)(4) on which the Oklahoma Judgment was found to be nondischargeable were a necessary part of the proceeding. See Nissan v. Weiss (In re Weiss), 235 B.R. 349, 359 (Bankr. S.D. N.Y. 1999), aff'd by 255 B.R. 115 (S.D. N.Y. 2000).

For the above stated reasons, the Court concludes that all of the elements of federal collateral estoppel are satisfied. Accordingly, the Court applies the principle to bar Defendant from arguing

⁵ Although the Court's prior cases involving collateral estoppel in the context of a dischargeability proceeding are slightly different from the case at bar, the finding that the Oklahoma Judgment was actually litigated is consistent with rulings in prior cases. For example, the Court previously applied collateral estoppel to default judgments where the judgments resulted in implicit findings satisfying the elements of subsections of §523. See, e.g., Stroud v. Read (In re Read), C/A No. 98-08285-W, Adv. Pro. No. 98-80295-W, slip op. at 9-10 (Bankr. D. S.C. Jul. 1, 1999); Brown v. Evans (In re Evans), C/A No. 98-05148-W, Adv. Pro. No. 98-80212-W, slip op. at 11 (Bankr. D. S.C. Apr. 26, 1999); Fed. Trade Comm'n v. Harrell (In re Harrell), C/A No. 98-06980-W, Adv. Pro. No. 98-80266-W, slip op. at 15 (Bankr. D. S.C. Apr. 23, 1999). Arguably, a default judgment is less "actually litigated" than a settlement or consent order that both parties participate in drafting and then in presenting to a court for approval. Further, the Court has previously held that a prior judgment could clearly establish that a punitive damages award was based upon actions that were willful and malicious without making specific findings of willfulness or maliciousness. See Read, at 6.

that the debt represented by the Oklahoma Judgment is dischargeable and grants Plaintiff's Motion.

Judicial Estoppel

"Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process." John S. Clark Co. v. Faggert & Frieden, P.C., 65 F.3d 26, 28-29 (4th Cir. 1995); see also In re Brown, C/A No. 01-12506-B, slip op. at 5-6 (Bankr. D. S.C. Jun. 4, 2002); Dunes Hotel Associates v. Hyatt Corp. (In re Dunes Hotel Associates), C/A No. 94-75715-W, Adv. Pro. No. 95-8042-W, slip op. at 8-9 (Bankr. D. S.C. Feb. 12, 1997). "Acting on the assumption that there is only one truth about a given set of circumstances, the courts apply judicial estoppel to prevent a party from benefitting itself by maintaining mutually inconsistent positions regarding a particular situation. As we have previously observed, the doctrine is invoked to prevent a party from 'playing fast and loose with the courts,' from 'blowing hot and cold as the occasion demands,' or from attempting 'to mislead the courts to gain unfair advantage.'" King v. Herbert J. Thomas Mem'l Hosp., 159 F.3d 192, 196 (4th Cir. 1998). "Because the rule is intended to prevent improper use of judicial machinery, judicial estoppel is an equitable doctrine invoked by a court at its discretion." 1000 Friends of Maryland v. Browner, 265 F.3d 216, 226 (4th Cir. 2001).

In the Fourth Circuit, there is no specific formula for applying judicial estoppel; however, the presence of the following factors is generally required: (1) the party to be estopped must be asserting a position that is factually incompatible with a position taken in a prior judicial or administrative proceeding and the position sought to be estopped must be one of fact rather than law or legal theory; (2) the prior inconsistent position must have been accepted by the tribunal; and (3)

the party to be estopped must have taken inconsistent positions intentionally for the purpose of gaining unfair advantage. See 1000 Friends, 265 F.3d at 226-27; Lowery v. Stovall, 92 F.3d 219, 224 (4th Cir. 1996); Dunes Hotel, at 9. Of these factors, the third is the most critical. See Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co., 232 F.3d 383, 390 (4th Cir. 2000) (citing Lowery, 92 F.3d at 224). Judicial estoppel, however, will not be applied where the party's inconsistent positions results from inadvertence or mistake. See King, 159 F.3d at 196-97.

In this case, the inconsistent position is that Defendant previously agreed to settlement terms and the entry of the Oklahoma Judgment based upon his stipulation and agreement to facts that rendered that debt excepted from discharge. Now, only a few months after consenting to the Oklahoma Judgment, Defendant attempts to deny this prior position, reject these facts, and argue that the Oklahoma Judgment is dischargeable. The elements are present to invoke judicial estoppel as Defendant asserts an inconsistent factual position that was accepted by the Oklahoma federal court during the settlement conference and by entry of the Oklahoma Judgment. While it has been held that judicial estoppel does not apply to the settlement of an ordinary civil suit because there is no judicial acceptance of anyone's position, in this case the federal court undertook a thorough effort to ensure the judgment was voluntary, complete and fully agreeable and therefore, there is sufficient judicial acceptance. See Lowery, 92 F.3d at 225 and Reynolds v. Commissioner of Internal Revenue, 861 F.2d 469, 473 (6th Cir. 1988). Moreover, these inconsistent positions are an attempt to gain an unfair advantage as Defendant previously resolved litigation, which sought a recovery of \$125,000,000 against him, for a significantly lesser amount conditioned upon its nondischargeability. In March 2002, Defendant adopted one position on dischargeability and less than five months later upon his filing bankruptcy, he argues a directly contrary position. In similar circumstances, other

courts applied judicial estoppel in the bankruptcy context to bar a debtor who previously agreed that certain debts were excepted from discharge from subsequently asserting that the debts were dischargeable. See Dunkley, 221 B.R. at 213 (applying judicial estoppel to bar the debtor from adopting the inconsistent legal position that debts incurred pursuant to his divorce or separation were dischargeable when the debtor had, in a prior bankruptcy case, entered into a stipulated settlement order that treated the debt as excepted from discharge); see also In the Matter of Cassidy, 892 F.2d 637, 642 (7th Cir. 1990) (applying judicial estoppel to bar the debtor from relitigating the issue of the dischargeability of his tax debts where the debtor previously urged the Seventh Circuit Court of Appeals to address the issue of discharge of his tax debts on appeal after his Tax Court proceeding, but, after receiving a ruling that the tax debts were excepted from discharge, the debtor returned to the bankruptcy court and argued that the Tax Court lacked jurisdiction to consider dischargeability). Likewise, because Defendant's position in the Oklahoma litigation was unequivocal and relied upon by Plaintiff and the court and he has now entirely reversed his position, this Court applies judicial estoppel in this case to bar Defendant from asserting that the underlying facts supporting the Oklahoma Judgment are insufficient to establish that the debt represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4). The Court has serious concerns about what appears to be Defendant's manipulation of the judicial process, and it will not countenance such gamesmanship.⁶

CONCLUSION

For the above stated reasons, the Court grants Plaintiff's Motion and

⁶ The Court also believes equitable estoppel or promissory estoppel may be additional principles that bar Defendant from disputing the agreed-upon facts supporting the determination that the debt represented by the Oklahoma Judgment is excepted from discharge.

ORDERS that the debt Defendant owes represented by the Oklahoma Judgment is excepted from discharge pursuant to §523(a)(2) and §523(a)(4).

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 17, 2003.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at **Clock & min**
APR 17 2003

IN RE:

John F. Swilley, a/k/a
Floyd Swilley,

Debtor.

Shadow Factory Films Ltd., Co.,
an Oklahoma Limited Liability Company,

Plaintiff,

v.

John F. Swilley, a/k/a
Floyd Swilley

Defendant.

C/A No. 02-09234-W

Adv. Pro. No. 02-80347-W

BRENDA K. ARGENT, CLERK
United States Bankruptcy Court
Columbia, South Carolina (13)

ENTERED

APR 17, 2003

R.S.S.

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion for Summary Judgment is granted and the debt John F. Swilley ("Debtor") owes as represented by the Journal Entry of Judgment entered by the United States District Court for the Western District of Oklahoma is excepted from discharge pursuant to 11 U.S.C. §§523(a)(2) and (a)(4).


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
April 17, 2003.

000325

Appendix 00333

EXHIBIT

C

000326

Appendix 00334

1.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and
GSB Enterprises, LLC)

Plaintiff,)

v.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing LLC,
Heath Causey, and Sage Financial
Group, LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-26-2813

**DEFENDANTS' ANSWERS TO
SUPPLEMENTAL INTERROGATORIES**

TO: THE ABOVE-NAMED PLAINTIFFS AND THEIR ATTORNEY, Nate Fata, Esq.:

Defendants J. Floyd Swilley, J. Floyd Swilley, Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, Heath Causey, and Sage Financial Group, LLC supplement their Answers to Supplemental Interrogatories from Plaintiffs as follows:

1. Describe in detail the difference between QC Financing, LLC and the pawn shop in 2010 and 2011 and identify all documents which support your contention that Plaintiff was an owner in the pawn shop.

RESPONSE: These Defendants object to this interrogatory on the grounds that is vague and unduly confusing and it is combining two questions into one. Subject to the foregoing, these Defendants would show that QC Financing, LLC owned the inventory of

Appendix 00335

000327

the pawn shop and the lease was in the name of QC Financing, LLC. Generally, Quick Cash Pawn was the trade name of QC Financing, LLC, except that David Wilkinson, the General Manager of QC Financing, LLC and Quick Cash Pawn, maintained the license in the pawn shop and the federal firearm license in his own name.

As to the Plaintiffs' ownership in QC Financing, SMG Partner, LLC conveyed its ownership in QC Financing, LLC to the Plaintiff, Gabriel Barnhill, through a Transfer of Membership Interest, a copy of which is attached. There are emails from David Wilkinson referencing Gabriel Barnhill's ownership in QC Financing, LLC, copies of which are attached. There is an affidavit from David Wilkinson submitted in 2012-CP-26-3104 that refers to Gabriel Barnhill being an owner in QC Financing, LLC, a copy of which is attached. Copies of correspondence from William W. DesChamps, III to Nate Fata, attorney for the Plaintiffs, indicate the Plaintiffs' relationship to QC Financing, LLC, a copy of which is attached.

2. For each QC Financing and the pawn shop, at the end of each month beginning August 2010 to December 2011, describe with particularity each item of inventory or collateral, its value and the identity of the individual who determined the value.

RESPONSE: The Defendants object to this interrogatory on the grounds that it is vague and unduly burdensome to request that each item of inventory or collateral be described with particularity. The information sought by the Plaintiffs can be found in the Point of Sale system that is the possession, custody and control of QC Financing, LLC, of which the Plaintiff, Gabriel Barnhill, is a member. Subject to the foregoing, the

Defendants would refer the Plaintiffs to the full inventory report prepared on or about August 10, 2011, which identifies, with particularity, each item of inventory, a copy of which is attached. This is the only itemized list of inventory in these Defendants' possession. These Defendants would also refer Plaintiffs to the documents previously provided, identified as Quick Cash Pawn Sep 2001 - March 2012 ledger income/expense synopsis, 00001 through 00007 and QC Financing No. 164. These Defendants have previously produced the week ending reports but are attaching the same as Week Ending Reports attached. Valuation of the inventory or collateral was determined by David Wilkinson. On information and belief, Mr. Wilkinson would determine the lowest market value based on information he obtained from the internet or his own sources.

809 Holdings LP had an inventory audit done in November and December, 2011. See the Memo to J. Floyd Swilley 809 Holdings LLC from Seigmund "Siggy" Chandliss subpoenaed documents 0016 through 0011 and the accompanying email from Bill Piner to Floyd Swilley, January 7, 2012.

These Defendants reserve the right to supplement this response.

3. Identify all documents which you contend creates a lien on any pawn shop asset.

RESPONSE:

- A. Master Factoring Agreement
- B. Confidential Private Placement Memorandum
- C. Letter of Intent
- D. Emails from David Wilkinson and Defendants (see attached)

E. Judgment obtained by 809 Holdings, LP against QC Financing, LLC in Civil Action No. 2012-CP-26-3104.

F. Canceled checks showing payment by QC Financing, LLC in accordance with the Master Factoring Agreement.

(i) Check #1098 on 9/02/11 in the amount of \$11,429.40 (see Plaintiffs' Bates # QC Financing BB&T Account xx48 0049).

(ii) Check #1129 on 10/17/11 in the amount of \$9,907.80 (see Plaintiffs' Bates # QC Financing BB&T Account xx48 0055).

These Defendants reserve the right to amend as discovery is ongoing.

4. Since 2003 to present, have you ever, directly or indirectly (through ownership in limited liability companies or other related entities in which you have an ownership interest), been involved in or participated in soliciting sums from investors? If yes, describe your involvement and the dates of involvement, the investment, the amount of money raised for that investment from investors, and state how much has been repaid to those investors.

RESPONSE:

A. William C. Piner, through WCP Enterprises, Inc. was involved in soliciting investors for 809 Holdings, LP beginning on or about September 1, 2010 through approximately March, 2011. Piner performed management functions for 809 Holdings, LP.

B. William C. Piner, through WCP Enterprises, Inc. was involved in soliciting

investors for Secured Asset Factoring Exchange, Inc. ("SAFE"), beginning on or about September 2, 2011 through approximately August 30, 2013. Piner performed management functions for SAFE.

C. J. Floyd Swilley, as J. Floyd Swilley Investment Advisors, was involved in soliciting investors for 809 Holdings, LP, beginning on or about September 1, 2010 through approximately March 2011. Swilley provided guidance and investor relations for 809 Holdings, LP.

D. J. Floyd Swilley, as J. Floyd Swilley Investment Advisors or Sage Private Equity Group, LLC, was involved in soliciting investors for SAFE, beginning on or about September 2, 2011 through approximately August 30, 2013. Swilley provided guidance and investor relations for SAFE.

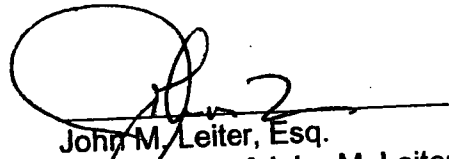
E. J. Floyd Swilley, through J. Floyd Swilley Investment Advisors, provided guidance and investor relations, for ComTrust, approximately in 2008. Mr. Swilley does not remember the exact dates.

F. Heath Causey did not directly solicit investors but had an indirect role as a financial officer for both 809 Holdings, LP and SAFE.

G. (1) \$197,500.00 was raised for 809 Holdings, LP; \$42,000.00 has been repaid.

(2) \$896,325.00 was raised for SAFE; \$533,659.00 has been repaid.

(3) \$45,000.00 was raised for ComTrust; it is not known how much has been repaid.



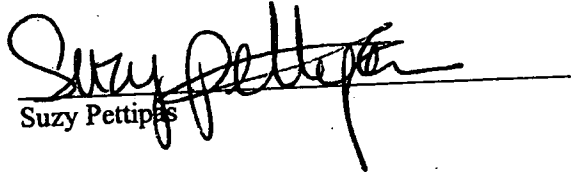
John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451; (843) 449-4884 fax

Myrtle Beach, South Carolina
October 30, 2014

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, certify the foregoing document was served via U.S. First Class Mail, postage prepaid, to the counsel of record on this 30th day of October, 2014, as follows:

Nate Fata, Esq.
Nate Fata, PA
PO Box 16620
Surfside Beach, SC 29587


Suzy Pettipas

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2014-CP-26-08367
	)	(Formerly 2013-CP-26-02816)

Gabriel Barnhill and GSB Enterprises,)
 LLC,)
 Plaintiffs,)

vs.)

**PLAINTIFFS' NOTICE OF MOTION
 MOTION TO CONSOLIDATE**

J. Floyd Swilley, J. Floyd Swilley)
 Investment Advisors, Laurel K. Swilley,)
 SMG Partners, LLC, SMS Services, LP,)
 William C. Piner, WCP Limited, LLC,)
 809 Holdings, LP, QC Financing, LLC,)
 Heath Causey, and Sage Financial)
 Group, LLC,)
 Defendants.)

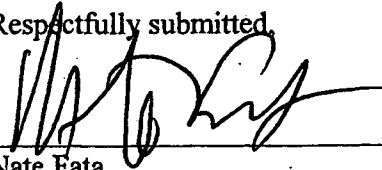
YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order to consolidate both this action with the derivative action styled Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, J. Floyd Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, 9-1-1 Plumbing, LLC, Sage Funding, L.P., and Christopher Pitcock, Case No. Civil Action No. 2014-CP-26-3362. Many of the issues are overlapping and to promote judicial economy, one trial should be heard on these issues as most of the parties are identical in both cases.

Opposing counsel Jarrett S. Calder counsel in 2014-CP-26-3362 for Defendant 911 Plumbing, LLC consents to this request.

The undersigned certifies he has consulted with opposing counsel and cannot resolve the instant motion.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order consolidating both cases 2013-CP-26-2816 and 2014-CP-26-3362 for discovery and trial. All counsel consent to this request.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
February 10, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
DISCOVERY

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order compelling the Defendants to respond to Plaintiff's First Interrogatories to All Defendants and Plaintiffs' First Request for Production of Documents To All Defendants.

The Plaintiffs by and through their attorney, Nate Fata, pursuant to South Carolina Rule of Civil Procedure 37, in support of their Motion to Compel Discovery, state as follows:

1. Plaintiffs' First Set of Interrogatories To All Defendants and Plaintiffs' Request for Production To All Defendants were served on the above named Defendants via personal service in June of 2014. The discovery requests are attached hereto as Exhibit "A."

2. Defendants have not provided responses to the Interrogatories and Request for Production of Documents.

4. Plaintiff's counsel certifies that he attempted to resolve this matter with opposing counsel prior to filing the motion and that any further attempts would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter an Order requiring Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock to provide full and complete responses to Plaintiff's First Set of Interrogatories and First Request For Production of Documents, award reasonable attorney fees

in connection with this Motion and hearing, and all other appropriate relief pursuant to Rule 37,
SCRCP.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
May 11, 2015

EXHIBIT

A

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1 Plumbing,)
LLC, and Sage Funding, L.P., and)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-3362

PLAINTIFFS' FIRST SET OF
INTERROGATORIES TO ALL
DEFENDANTS

TO: ALL DEFENDANTS

PLAINTIFF hereby requires the **DEFENDANTS**, within thirty (30) days after service hereof, to answer the Interrogatories hereinafter set forth, in accordance with South Carolina Rules of Civil Procedure. These Interrogatories shall be deemed to continue until the time of the trial in the case pursuant to Rule 33(b).

INSTRUCTIONS

A. Every Interrogatory herein shall be deemed a continuing Interrogatory, and you are to supplement your answers promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial answer to any such Interrogatory, in accordance with Rule 33(b) of the South Carolina Rules of Civil Procedure.

B. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Defendants be unable, for reasons

other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

C. If you object to any portion of an Interrogatory on the ground that it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

D. If you object to an Interrogatory on the ground that it is too broad, provide such information which is concededly relevant and available.

E. If you object to an Interrogatory on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any Interrogatory to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

F. When an Interrogatory requests the name of a natural person, the answer should contain the following:

1. The full name of the person.
2. The employer and job title of such person at the time of the event, transaction, or occurrence to which the Interrogatory relates.
3. The present employer and job title of the person, if known and if not known, the answer shall so state and shall state in addition the last known address of such person and the last known date that such person resided at that address.

G. When the Interrogatory asks for a description of a document, the answer should contain the following:

1. The title heading or caption of the document.
2. Identify numbers, letters, or combination thereof, if any, and an explanation of the significance of such numbers, letters, or any combination thereof.
3. All dates appearing on the document as dates that such document was dictated, prepared, mailed, received, or any combination thereof; or if no date appears thereon, the answer should so state and should give the exact or proximate date that such document was prepared.
4. A description of the general nature of the document and the number of pages that it consists of.
5. The name of each person known to have participated in the preparation the document.
6. The name of the addressee of the document. The names of all persons to whom such document or a copy was sent.

7. The name of the person whom has custody of the original document and the name of each person with custody over a copy.

The foregoing information shall be given in sufficient detail to enable a person to whom a subpoena is directed to identify fully the document to be produced and to enable this party to determine that the document produced in response to such subpoena is, in fact, the document identified in the answer to the Interrogatory. The document itself may be produced as an alternative to providing such description.

H. When the Interrogatory asks for any "representations" or "statements," the answer should contain the following:

1. The speaker or originator of the statement or representation.
2. The recipient of the statement or representation.
3. All documents which evidence the statement or representation.
4. The time, date, and location of the statement or representation.
5. If the statement or representation was not made to the Defendants, then describe with particularity how the Defendants discovered the representation or statement.

DEFINITIONS

A. As used in this request, the term "document" means any handwritten, typewritten, printed, recorded, or graphic matter, including all copies of the above, however produced or reproduced in the possession, custody, or control of your counsel and whether or not claimed to be privileged, including, but not limited to, correspondence, written instructions, owner's manuals, receipts, reports, meeting minutes, memoranda, notes, schedules, photographs, ledgers, requisitions, journals, books of account, contracts, drawings, blueprints, checks, and diaries.

B. "Identify" or "identity," when used in reference to a person, means state his full name, his present or last known address, telephone number, and his present or last known position or business affiliation.

C. "Describe" or "description," if used in reference to a person, means to identify each individual person and, when used in reference to a document, means to state the following as to each document:

1. Nature and contents.
2. Date.
3. Name, present address, and position of the author and signer.
4. The name, address, and position of the addresses, if any.
5. The present location, name, and present address and position of person or persons having custody.

INTERROGATORIES

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relates to the claim or defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case and for each such expert identify all documents or emails you or your counsel provided to or received from the expert and provide a summary of all opinions and the basis for all opinions.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

6. For the period August 2010 to present, set forth each and every amount you provided to or received from either 809 Holdings, Secured Asset Factoring Exchange, SAFE or QC Financing and for each such amount state:

- a. the date of the remittance;
- b. the form of the remittance (cash, money order, check, etc); and
- c. the reason for the remittance.

7. For the period August 2010 to present, describe in full detail all compensation arrangements you had with any other defendant herein relating to QC Financing or 809 Holdings

and state your responsibilities and the amount of compensation received and the dates of such receipts.

8. Identify the persons who invested in 809 Holdings or Secured Asset Factoring Exchange, Inc. or SAFE from August 2010 to present and the date and amount of each such investment.

9. For the period August 2010 to present, identify the individual(s) who was responsible for the day to day affairs of 809 Holdings and SAFE and Secured Asset Factoring Exchange.

10. For the period August 2010 to present identify the individuals responsible for the financial affairs of 809 Holdings and SAFE and Secured Asset Factoring Exchange..

11. For each SAFE, Secured Asset Factoring Exchange and 809 Holdings, state the total amount of investor money owed as of April 15, 2014.

12. From August 2010 to present, state whether any 809 Holdings or SAFE or Secured Asset Factoring Exchange investor money was repaid or returned, in whole or in part, to an investor(limited partner or general partner) and provide the date and amount of each such remittance to an investor.

13. Describe by full name and description any other non-publicly traded investment or "factoring" investment product you have promoted, marketed, offered or sold from January 1, 2010 to present.

14. If you contend any individual or person was/is responsible for or caused the failure of 809 Holdings, LP, Secured Asset Factoring Exchange or SAFE to repay investors, please identify such individual or person and set forth all facts that support your contention.

15. For the individual Defendants herein, at any time during the period August 2010 to present, identify all ownership interests in a company (LLC, Inc., L.P., G.P., etc.) with any other Defendant herein.

16. For any time during the period August 2010 to April, 2013, identify any and all bank accounts (by full name, address, bank account number) in which amounts were remitted to

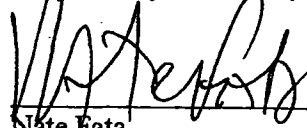
or from 809 Holdings or SAFE or Secured Asset Factoring Exchange.

17. For any payment made after 2011 to any investor, including, but not limited to, those persons disclosed by you to be a note purchaser or limited partner in SAFE and/or Secured Asset Factoring Exchange, identify the bank name, address, payee, amount, date of payment and reason for payment.

18. Identify by date, amount and bank identity, all payments made to or for the benefit of Tamrin Baggett in connection with her 809 Holdings investment. In addition set forth the reason for each payment.

19. For any sums paid to an 809 Holdings, SAFE or Secured Asset Factoring Exchange investor or limited partners or partner since 2011, identify the individual who made the decision to pay such person and the basis why such payment was made, and why other investors or partners were not similarly paid.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC
June 4, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2014-CP-26-3362

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1 Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

PLAINTIFFS' FIRST REQUEST
FOR PRODUCTION TO ALL
DEFENDANTS

TO: ALL DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel hereby requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Defendants respond, within thirty (30) days after the service hereof, to the following Requests and that the Defendants produce and permit the Plaintiff's counsel to inspect, copy, or photograph, at the office of Defendants' attorney, each of the following documents or things which may be in the possession, custody, or control of the Defendants or Defendants' attorneys which constitutes or contains evidence relating to the claim or defense of the within cause.

DEFINITIONS

The term "documents" or "things" means all writings of any kind, including the originals and all nonidentical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda,

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000345

pleadings, papers filed with any court, municipality, county or administrative agency or department, notes, diaries, statistics, letters, telegrams, minutes of meetings, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefaxes, invoice work sheets; all drafts, alterations, modifications, changes, and amendments of any of the foregoing graphic or aural records, representations of any kind, including, without limitation, photographs, charts, microfilm, videotape, recordings, and motion pictures; and electronic, mechanical, or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, videos, or other records.

The term "all documents" means every document as defined above known to Defendant, Defendant's agents or counsel, and each document that can be located or discovered by reasonably diligent efforts.

DOCUMENTS

1. Copies of any and all statements given by parties, eyewitnesses or other witnesses to the incidents and matters complained of herein which are in the possession of the Defendants or Defendants' counsel, whether written or recorded or on a tape recorder or otherwise.
2. Any and all work papers, notes, documents and/or reports prepared by any witnesses concerning this litigation and specifically any expert witnesses' work papers, notes, documents, emails sent to or received from experts, and/or reports.
3. Any and all documents identified or described in your Answers to Interrogatories.
4. Any and all documents you intend to introduce at trial.
5. Any and all insurance agreements or policies under which any person or entity carrying on an insurance business might be liable to satisfy part or all of a judgment which may be rendered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

6. Copies of any and all statements previously made by the Defendants concerning the subject matter of this lawsuit, including any written statement, signed or otherwise adopted or approved by the Defendants hereto and any stenographic, mechanical, electrical or other type of recording or any transcription thereof.
7. A copy of each and every correspondence sent to/by or received from any of the parties named in this lawsuit, which is not subject to the attorney-client privilege.
8. A copy of the state and federal tax returns, with all schedules for each year beginning 2010 to present.
9. Any and all financial statements, balance sheets and ledgers relating to 809 Holdings, LP, QC Financing, LLC, SAFE, or Secured Asset Factoring Exchange, Inc. at any time from August 2010 to present.
10. All bank account statements for the individual Defendants and 809 Holdings, LP, SMG Partners, LLC, SMS Services, LP, WCP Limited, LLC, Sage Advisory Group, L.P., Sage Private Equity Group, Digics, LLC, 9-1-1 Plumbing, LLC and Sage Funding, LP for any bank account relating to any monies received from or deposited to or for the benefit of 809 Holdings, LP at any time from August 2010 to present.
11. All computer software (e.g., Peachtree) registers or accounting statements relating to investor monies being invested in SAFE/Secured Asset Factoring Exchange, Inc., and 809 Holdings, LP at any time from August 2010 to present or monies being paid to such investors.
12. A copy of any formal or informal complaints or lawsuits filed against you from 2008 to present relating to an investment or investment advice.
13. Your state and federal tax returns (including K-1) for 2010 to present.
14. Any loan documents relating to 809 Holdings or SAFE or Secure Asset Factoring Exchange at any time since August 2010 at any time.
15. Any assignments between SAFE or Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP.

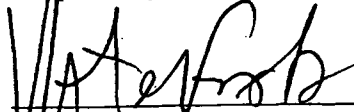
16. From August 2010 to present, any and all emails referencing or relating to Gabriel Barnhill or his investment.

17. A copy of your corporate book and corporate records, organizational papers, bylaws, meeting minutes, resolutions, consents, and operating and partnership agreements.

18. Any and all investigations and documentations from any state office of any state including, but not limited to, any and all security's commissions, attorney generals' office in any way relating to any claim, complaint, investigation, sensor, reprimand, punishment, fine, withdrawal, suspension or revocation of any license or security's filings or security sale or investment sale by you at any time from 2000 to present.

19. A copy of any payment made after 2011 to any person for any reason who is a note purchaser, investor, equity holder, or limited partner in SAFE, 809 Holdings, LP or Secured Asset Factoring Exchange, Inc.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC
June 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-26-8367

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

John M. Leiter, Bar No.

Address:

1203 48th Avenue, N., Suite 109

Myrtle Beach, SC 29577

phone: 843-449-1451 fax: 843-449-4884

e-mail: jleiter@48th.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiffs' Notice of Motion and Motion to Compel Discovery

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

May 11, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

- (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☒ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

Appendix 00357

000349

***STATE OF SOUTH CAROLINA**

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

CERTIFICATE OF SERVICE

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May 11, 2015 I did serve a copy of Plaintiffs' Notice of Motion and Motion to Compel Discovery

upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.

Law Offices of John M. Leiter, PA

1203 48th Avenue, North, Ste. 109

Myrtle Beach, SC 29577

Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,

Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,

William C. Piner, WCP Limited, LLC, Alicia A. Piper,

Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP

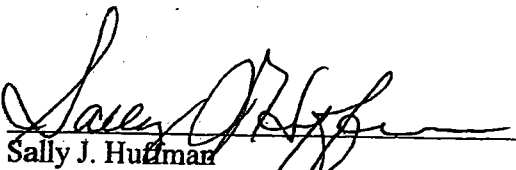
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.

Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

Counsel for 809 Holdings, LP



Sally J. Huffman
Legal Assistant to Nate Pata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and
GSB Enterprises, LLC

Plaintiff,

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS
Services, LP, William C. Piner, WCP
Limited, LLC, 809 Holdings, LP, QC
Financing, LLC, Heath Causey, and
Sage Financial Group, LLC

Defendants

Gabriel Barnhill and GSB Enterprises,
LLC

Plaintiffs,

v.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, and Sage Financial
Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P., and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-26-3362
(formerly 2013-CP-26-02816)

MOTION TO BE RELIEVED AS COUNSEL
FOR J. FLOYD SWILLEY, J. FLOYD
SWILLEY INVESTMENT ADVISORS,
LAUREL K. SWILLEY, SMG PARTNERS,
LLC, SMS SERVICES, LP, WILLIAM C.
PINER, WCP LIMITED, LLC, ALICIA A.
PINER, 809 HOLDINGS, LP, HEATH
CAUSEY, SAGE FINANCIAL GROUP,
LLC, SAGE PRIVATE EQUITY GROUP,
SECURED ASSET FACTORING
EXCHANGE, INC., DIGICS, INC., SAGE
FUNDING, L.P. AND CHRISTOPHER
PITCOCK

FILED
HORRY COUNTY
2015 OCT 27 AM 10:12
MELANIE HUGGINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before this
Honorable Court ten (10) days after the service hereof or as soon thereafter as counsel may
be heard, at the Horry County Courthouse in Conway, South Carolina, for an Order relieving

000352

Appendix 00360

John M. Leiter, Esquire and the Law Offices of John M. Leiter, PA as counsel for the Defendants, J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, 809 Holdings, LP, Heath Causey, Sage Financial Group, LLC, Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., Digics, Inc., Sage Funding, L.P. and Christopher Pitcock, in the above-captioned matter.

This Motion is based on South Carolina Rules of Professional Conduct pursuant to Rule 1.16(b)(5), the Defendants have failed to fulfill their obligation to pay the Law Offices of John M. Leiter, PA for their professional services rendered in this matter, despite having been given reasonable warning of its intent to withdraw unless the obligation is fulfilled; and Rule 1.16(b)(6), the representation will result in an unreasonable financial burden on the lawyer.

Counsel further states that he has given these Defendants reasonable notice of Counsel's intent to withdraw.

Presently before the Court are several Motions on the October 29, 2015 court roster. Counsel moves for a stay of all proceedings in this matter for thirty (30) days following the Court's order on this motion to allow Defendants to retain new counsel.

Counsel has complied with his duty to consult before filing this motion.

Respectfully submitted by

LAW OFFICES OF JOHN M. LEITER, PA

By:


John M. Leiter, Esquire
1203 48th Avenue North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451

Myrtle Beach, South Carolina
October 20, 2015

CERTIFICATE OF SERVICE

I, Suzy Pettipas, an employee of the Law Offices of John M. Leiter, PA, hereby certify that I have served this date the individuals named below in this action with the foregoing Motion to be Relieved as Counsel by causing a copy of the same to be sent via email and first class United States Mail with sufficient postage attached as follows:

J. Floyd Swilley & Laurel K. Swilley
J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577
jfs@sagesc.com
lks@swilleydisability.com

William C. Piner & Alicia Piner
WCP Limited, LLC
606 Calhoun Street
Myrtle Beach, SC
bill.piner@gmail.com

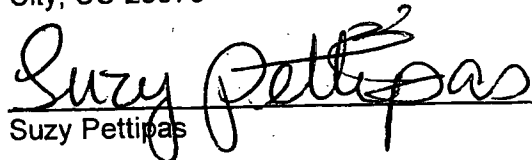
Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
heath@clear-acct.com

Christopher Pitcock
Digics, LLC
24242 Branchwood Court
Lutz, FL 33559
pitcockchris@gmail.com

and via first class U.S. Mail with sufficient postage attached as follows:

Nate Fata, Esquire
PO Box 16620
Surfside Beach, SC 29587

Mark D. Neill, Esquire
Neill Law Firm
671 Jamestowne Drive, Suite 207
Garden City, SC 29576


Suzy Pettipas

October 22, 2015
Myrtle Beach, South Carolina

FILED
HURRY COUNTY
2015 OCT 27 AM 10:12
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT AND FOR
JUDGMENT ON THE PLEADINGS

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter as counsel may be heard for

000355

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summary judgment and judgment on the pleadings on all of Defendants' counterclaims. There is no issue of material fact. Defendants have failed to state a claim. Plaintiffs are statutorily shielded from liability for any alleged company debt. Moreover, Defendants have no evidence of Plaintiffs' misappropriating any sums or any damages allegedly caused by Plaintiffs. As more fully set forth in the accompanying Memorandum, Plaintiffs are entitled to judgment on all counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 North

The Courtyard, Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, SC.
December 16, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' MEMORANDUM
IN SUPPORT OF THEIR MOTION
FOR JUDGMENT ON THE
PLEADINGS AND/OR SUMMARY
JUDGMENT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

CASE NO. 2014-CP-26-3362

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

Plaintiffs' submit this Memorandum in Support of Their Motion for Judgment on the
Pleadings and for Summary Judgment.

INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. Barnhill was 26-27 years of age at the time. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In essence, Swilley and Piner took investor/client retirement monies to fund their own startup businesses. In 2014, Barnhill filed a companion case asserting derivative claims.

PROCEDURAL HISTORY

Defendants have failed to comply with mandatory mediation, multiple Court Orders, and have and continue to obstruct the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs served discovery requests upon the Defendants. From the onset, Defendants forced Plaintiffs to file motions to compel discovery.¹

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013; January 8, 2014; January 10, 2014, September 5, 2014 and September 5, 2014; and October 5, 2014.

November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and Judge Culbertson awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014 the Court again entered an Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses.... "The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process".²

The Motion for Sanctions filed May 4, 2015 and the Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015 granting Plaintiffs' relief and awarded attorney fees. This Motion for Summary Judgment follows two years of discovery practice and multiple motions to compel Defendants to disclose their information and any evidence they have which support their claims.

FACTS

In 2011 at the direction of Swilley and Piner, Barnhill's \$115,000, including retirement monies, were invested in the 809 Holdings' Notes and Barnhill became a limited partner. 809 Holdings was a partnership created and owned by the Swilley and Piner Defendants and their companies. Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is a bookkeeper/financial advisor. William Piner and Heath Causey are businessmen. Swilley has been involved with other investment schemes. Floyd Swilley and Laurel Knuckles Swilley agreed to confess judgment in an Oklahoma federal case in which

² Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

\$100,000,000 was allegedly lost by investors. The Court should take judicial notice of Judge Waites' Order in In Re: John F. Swilley, 02-09234-W, Adv. Pro. No. 02-80347-W., United States Bankruptcy Court, (D.S.C. 2003), previously attached as Exhibit B to Plaintiff's Memorandum filed on April 20, 2015.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013³:

Investor	Amount	Date
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
Mark Sarvis	\$40,000.00	8/12/11
Gabriel Barnhill	\$49,000.00	5/26/11
	\$41,000.00	3/28/11
GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other

³ Floyd Swilley's purported loan is not referenced below.

investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, previously attached as Exhibit C to Plaintiffs' Memorandum filed on April 20, 2015. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
3. Usurpation of Partnership Opportunity (809 Holdings only);
4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by the Defendants indicated above. Defendants were required to identify alleged misappropriated funds by Barnhill under Court Order filed September 10, 2015. After two years of discovery delays, Defendants were unable to identify any date or amount of a misappropriation by Barnhill. It is undisputed plaintiffs never had access to any bank accounts and that Plaintiffs never received any personal property.

ARGUMENT

Defendants' counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Plaintiffs to any of the Defendants. Second, Defendants have no evidence of damages caused by Plaintiffs. Plaintiffs were not signatories to any bank account of QC Financing or 809 Holdings. Any alleged financial improprieties would only fall on the account signatories and not on the plaintiffs.

A. No legal duty is owed to any Defendant.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC, which owned the pawn shop inventory. See Defendants' Answers to Supplemental Interrogatory Number 1, previously filed with the Court. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley or 809 Holdings, LP. All claims should be dismissed. Similarly any claim that Floyd Swilley loaned money to QC Financing, LLC or the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

B. Defendants have not pled a cause of action.

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Defendants already sued the person they believe is at fault, David Wilkinson, and received a judgment against him.

C. Defendants have no evidence to support the elements of any of their claims.

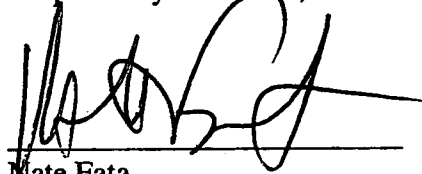
Defendants must come forward with some evidence to support each element of each cause of action. They do not have any evidence to support any cause of action. Furthermore, Defendants have no evidence showing Plaintiffs caused any damages. Plaintiffs invested

\$115,000 and lost approximately \$113,000. Defendants have no claim against Plaintiffs. Defendants' discovery abuse should come to an end with the Court dismissing their Counterclaims.

CONCLUSION

Defendants have no evidence that that any alleged damage was caused by Plaintiffs or that Plaintiffs owed any duty or breached any duty owed to any Defendant. Summary judgment and/or judgment on the pleadings should be granted against Defendants on their counterclaims.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Surfside Beach, South Carolina
December 16, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC,)
Heath Causey, and Sage Financial)
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

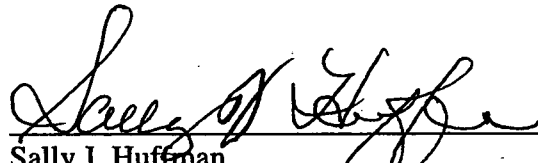
I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on

000365

December ~~11~~ 2015 I did serve a copy of Plaintiffs' Memorandum in Support of Motion for Judgment on the Pleadings and/or Summary Judgment upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF HEARING

HORRY COUNTY
FEB -9 AM 9:14
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled for Tuesday,
February 16, 2016 at 9:30 a.m., on the undersigned's previously filed Motion To Compel and

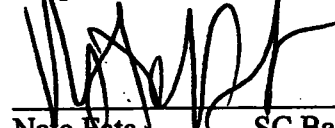
Appendix 00375

000367

Motion for Summary Judgment before the Honorable R. Lawton McIntosh. This hearing will be held on the third floor of the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina.

Please be present if so minded.

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
February 3, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

HORRY COUNTY
2016 FEB -9 AM 9:14
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 3, 2016 I did serve a copy of Plaintiffs' Notice of Hearing upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

000369

Appendix 00377

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576

QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

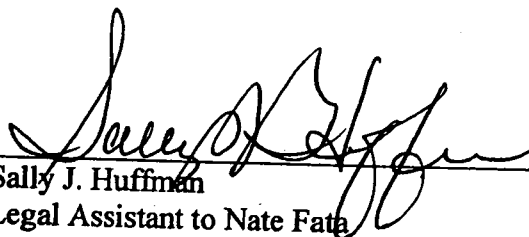
• Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559


Sally J. Huffman
Legal Assistant to Nate Fata

000372

F. MILES ADLER

ATTORNEY AT LAW

April 19, 2016

VIA U.S. Mail

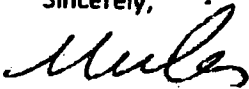
**The Honorable Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29526**

**Re: Barnhill et al. v. J. Floyd Swilley et al.
C/A No. 2014-CP-26-08367**

Dear Ms. Huggins:

Enclosed please find one original and a conforming copy of my Notice of Appearance on behalf of the named defendants identified in my notice. I would ask that you please file same, returning the clocked copy to my office in the enclosed SASE.

Sincerely,



F. Miles Adler

Enclosures: as stated

cc: Nate Fata (w/ enc.)

**ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island South Carolina 29585
T 843.314.3204
F 843.314.3205
adlerlaw.partners**

000373

Appendix 00381

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC,
Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Advisors, Laurel K.
Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited LLC, 809 Holdings,
LP, QC Financing, LLC, Heath Causey, and Sage
Financial Group, LLC

Defendants.

Gabriel Barnhill and GSB Enterprises, LLC,
Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley Advisors, SMG
Partners, LLC, SMS Services, LP, William C. Piner,
WCP Limited LLC, Alicia A. Piner, 809 Holdings, LP,
QC Financing, LLC, Heath Causey, and Sage
Financial Group, LLC, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc., SAFE,
Inc., Digics, LLC, 9-1-1 Plumbing, LLC, and
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-3362
(formerly 2013-CP-26-02816)

NOTICE OF APPEARANCE

NOTICE OF APPEARANCE OF ADLER LAW FIRM, LLC

Please enter the appearance of Adler Law Firm, LLC as counsel on behalf of the defendants: J. Floyd Swilley, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, Sage Financial Group, LLC, and Sage Private Equity Group, LLC in this action.

000374

Appendix 00382

Notice of Appearance
Adler Law Firm, LLC
C/A: 14-CP-26-3362

Pawleys Island, SC
April 19, 2016



F. Miles Adler
ADLER LAW FIRM LLC
SC Bar No.: 70238
P.O. Box 4743
Pawleys Island, SC 29585
T: 843-314-3204
F: 843-314-3205
miles@adlerlaw.partners

Notice of Appearance
Adler Law Firm, LLC
C/A: 14-CP-26-3362

CERTIFICATE OF SERVICE

I certify that on April 19, 2016, the foregoing Notice of Appearance of Adler Law Firm, LLC on behalf of Defendants J. Floyd Swilley, Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP, Sage Financial Group, LLC, and Sage Private Equity Group, LLC was served by first class mail on opposing counsel as follows:

Nate Fata, P.A.
P.O. Box 16620
Surfside Beach, South Carolina 29587
Attorney for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC



F. Miles Adler

000376

Appendix 00384

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF HEARING

CASE NO. 2014-CP-26-3362

HORRY COUNTY
2016 FEB -9 AM 9:14
CLERK OF COURT

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled for Tuesday,
February 16, 2016 at 9:30 a.m., on the undersigned's previously filed Motion To Compel and

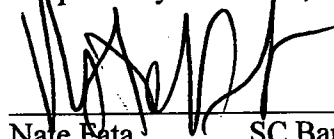
000377

Appendix 00385

Motion for Summary Judgment before the Honorable R. Lawton McIntosh. This hearing will be held on the third floor of the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina.

Please be present if so minded.

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
February 3, 2016

INTRODUCTION

Gabriel Barnhill and GSB Enterprises, Inc. ("Barnhill") commenced this action by filing a Summons and Complaint on April 25, 2013, asserting causes of action, inter alia, for violation of the South Carolina Investment Act, breach of fiduciary duty, fraud, misrepresentation, and violation of the Unfair Trade Practices Act. Barnhill alleges that in 2011 Defendants engaged in a Ponzi scheme in which Barnhill, who was Floyd Swilley's accounting and financial advisory client, invested no less than \$115,000 in 809 Holdings, LP, and received approximately \$2,000 in return. Barnhill was 26-27 years of age at the time. The Swilley and Piner Defendants established 809 Holdings in 2010. 809 Holdings was a startup company that would loan money to companies in a "factoring" arrangement. The borrower company was QC Financing, LLC, a pawn shop entity established by Piner and Swilley. In essence, Swilley and Piner took investor/client retirement monies to fund their own startup businesses. In 2014, Barnhill filed a companion case asserting derivative claims.

PROCEDURAL HISTORY

Defendants have failed to comply with mandatory mediation, multiple Court Orders, and have and continue to obstruct the discovery process. In their attempts to ferret out this complex Ponzi scheme, Plaintiffs served discovery requests upon the Defendants. From the onset, Defendants forced Plaintiffs to file motions to compel discovery.¹

A discovery Order was entered on September 20, 2013 concerning defendants' failure to respond to the April 2013 discovery requests. Thereafter, defendants failed to provide responsive information and lodged objections. A subsequent Motion for Sanctions was filed on

¹ Plaintiffs filed Motions to Compel on the following dates: July 3, 2013; January 8, 2014; January 10, 2014, September 5, 2014 and September 5, 2014; and October 5, 2014.

November 4, 2013. The Court partially granted Plaintiffs' Motion for Sanctions and Judge Culbertson awarded attorney fees by Order filed January 16, 2014.

On September 30, 2014 the Court again entered an Order for Sanctions. In that Order, Judge Hyman found, "Defendants have been sandbagging in their discovery responses.... "The March 2012 payment to Twigg for his 809 Holdings, LP investment and the multiple undisclosed payments to Defendants are examples of Defendants' sandbagging and obstruction in the discovery process".²

The Motion for Sanctions filed May 4, 2015 and the Motion for Sanctions filed June 12, 2015 were for failure to comply with Court ordered mediation and discovery, respectively. The Court entered an Order on September 10, 2015 granting Plaintiffs' relief and awarded attorney fees. This Motion for Summary Judgment follows two years of discovery practice and multiple motions to compel Defendants to disclose their information and any evidence they have which support their claims.

FACTS

In 2011 at the direction of Swilley and Piner, Barnhill's \$115,000, including retirement monies, were invested in the 809 Holdings' Notes and Barnhill became a limited partner. 809 Holdings was a partnership created and owned by the Swilley and Piner Defendants and their companies. Defendants are clever and sophisticated litigants. Laurel Swilley is an attorney. Floyd Swilley is a bookkeeper/financial advisor. William Piner and Heath Causey are businessmen. Swilley has been involved with other investment schemes. Floyd Swilley and Laurel Knuckles Swilley agreed to confess judgment in an Oklahoma federal case in which

² Twigg filed a separate action Robert L. Twigg and Twigg Enterprises, LLC vs. J. Floyd Swilley; Heath Causey, Laurel Swilley; Sage Financial Group, LLC; Secured Asset Factoring Exchange, Inc. and 809 Holdings, LP, Civil Action No. 2013-CP-26-5477. The Defendants in Twigg are represented by Mark Neill, Esq.

\$100,000,000 was allegedly lost by investors. The Court should take judicial notice of Judge Waites' Order in In Re: John F. Swilley, 02-09234-W, Adv. Pro. No. 02-80347-W., United States Bankruptcy Court, (D.S.C. 2003), previously attached as Exhibit B to Plaintiff's Memorandum filed on April 20, 2015.

Defendants disclosed the following 809 Holdings investors in their Court ordered response to Interrogatory Number 9 of the Plaintiffs' Interrogatories dated April 29, 2013³:

Investor	Amount	Date
Raymond LaForest	\$50,000.00	9/22/10
John Teska	\$ 6,000.00	9/22/10
Tamrin Baggett	\$68,900.00	11/8/10
	\$ 6,200.00	12/1/10
Joyce Kauffman	\$48,000.00	1/11/11
Scott Mogal	\$17,000.00	3/11/11
Robert Twigg	\$25,000.00	8/12/11
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GSB Enterprises	\$25,000.00	4/11/11

Defendants' Responses dated October 15, 2013 to Plaintiffs' First Set of Interrogatories and Request for Production dated April 29, 2013, were previously filed with the Court.

Defendants obtained more than \$360,000 from investors in less than one year.

Thereafter, Defendants disclosed that only \$42,000 has been repaid to 809 Holdings' investors. In addition Swilley and Piner created another Ponzi vehicle, Secured Asset Factoring Exchange ("SAFE"), in late 2011. Defendants raised \$896,325 in SAFE offerings to other

³ Floyd Swilley's purported loan is not referenced below.

investors and only \$533,659 has been repaid. See Defendants' Answers to Supplemental Interrogatories dated October 30, 2014, previously attached as Exhibit C to Plaintiffs' Memorandum filed on April 20, 2015. Thus, between 809 Holdings and SAFE, Defendants bilked investors out of more than \$650,000.

Defendants have paid themselves and their companies thousands of dollars while 809 Holdings' investors have lost more than \$300,000. In addition, 809 Holdings has transferred assets to SAFE.

On June 26, 2013 Defendants filed their Amended Answer with Counterclaim. Defendants asserted counterclaims for:

1. South Carolina Frivolous Proceeding Act (all Defendants);
2. Quantum Meruit (809 Holdings only);
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4. Negligent Misrepresentation (809 Holdings only);
5. Breach of Fiduciary Duties (809 Holdings only); and
6. Breach of Loan Agreements (Floyd Swilley only).

As set forth in the Court's Order filed May 22, 2015, Defendants have stipulated the claims were asserted only by the Defendants indicated above. Defendants were required to identify alleged misappropriated funds by Barnhill under Court Order filed September 10, 2015. After two years of discovery delays, Defendants were unable to identify any date or amount of a misappropriation by Barnhill. It is undisputed plaintiffs never had access to any bank accounts and that Plaintiffs never received any personal property.

ARGUMENT

000382

Appendix 00390

Defendants' counterclaims fail as a matter of law for two reasons. First, no legal duties are owed by Plaintiffs to any of the Defendants. Second, Defendants have no evidence of damages caused by Plaintiffs. Plaintiffs were not signatories to any bank account of QC Financing or 809 Holdings. Any alleged financial improprieties would only fall on the account signatories and not on the plaintiffs.

A. No legal duty is owed to any Defendant.

The determination of the existence of a duty is solely the responsibility of the court. Ellis v. Niles, 324 S.C. 223, 479 S.E.2d 47 (1996). Whether the law recognizes a particular duty is an issue of law to be decided by the Court. Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997). An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstances. Id.

Barnhill owes no legal duty to any defendant. He is a limited partner in 809 Holdings, LLP. Barnhill's status as limited partner does not create any duty under any cause of action. To the contrary, pursuant to statute Barnhill is expressly shielded from liability. S.C. Code Ann. § 33-42-430.

Similarly, Barnhill's status as a member of a limited liability company, QC Financing, LLC, does not create duties to any Defendant. According to Defendants, Quick Cash Pawn was the trade name of QC Financing, LLC, which owned the pawn shop inventory. See Defendants' Answers to Supplemental Interrogatory Number 1, previously filed with the Court. No duty is owed by Barnhill to any Defendant pursuant to S.C. Code Ann. § 33-44-303. Barnhill is not obligated for any debts of QC Financing, LLC.

Defendants have not alleged or demonstrated the basis for any duty, requiring a finding that Barnhill owed no duty to Floyd Swilley or 809 Holdings, LP. All claims should be dismissed. Similarly any claim that Floyd Swilley loaned money to QC Financing, LLC or the pawn shop prior to Barnhill's membership status in QC Financing, LLC fails under the statutory section cited above.

B. Defendants have not pled a cause of action.

The Counterclaims for usurpation of corporate opportunity, quantum meruit and breach of loan agreements are barred by the above cited statutory sections. Barnhill is not liable as a member of a limited liability company or as a limited partner pursuant to S.C. Code Ann. § 33-42-430 and S.C. Code Ann. § 33-44-303.

In addition, the allegations of negligent misrepresentation also fail as a matter of law. Paragraph 201 alleges Barnhill made a promise that he would comply with the terms of the partnership. A broken promise is not legally sufficient for a negligent representation claim. Allegro, Inc. v. Scully, 409 S.C. 392, 418, 762 S.E.2d 54 (Crt. App. 2014).

The claim of breach of fiduciary duty in Paragraphs 206 – 213, to-wit that 809 Holdings did not get paid by other entities, is insufficient. As a limited partner, Barnhill is not liable for 809 Holdings not getting paid. Defendants already sued the person they believe is at fault, David Wilkinson, and received a judgment against him.

C. Defendants have no evidence to support the elements of any of their claims.

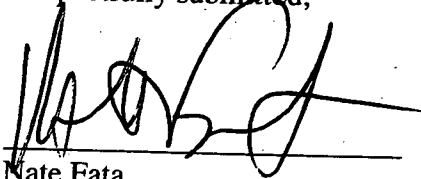
Defendants must come forward with some evidence to support each element of each cause of action. They do not have any evidence to support any cause of action. Furthermore, Defendants have no evidence showing Plaintiffs caused any damages. Plaintiffs invested

\$115,000 and lost approximately \$113,000. Defendants have no claim against Plaintiffs. Defendants' discovery abuse should come to an end with the Court dismissing their Counterclaims.

CONCLUSION

Defendants have no evidence that that any alleged damage was caused by Plaintiffs or that Plaintiffs owed any duty or breached any duty owed to any Defendant. Summary judgment and/or judgment on the pleadings should be granted against Defendants on their counterclaims.

Respectfully submitted,



Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
P. O. Box 16620
1500 U.S. Hwy. 17 N., Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676

Surfside Beach, South Carolina
December 16, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-26-3362

HORRY COUNTY
2016 FEB -9 AM 9:14
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on February 3, 2016 I did serve a copy of Plaintiffs' Notice of Hearing upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

000386

Appendix 00394

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576

QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

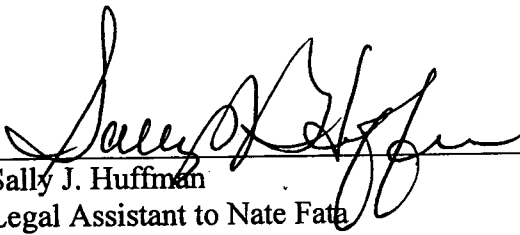
• Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



Sally J. Huffman
Legal Assistant to Nate Fata

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

PLAINTIFFS' NOTICE OF HEARING

HORRY COUNTY
2016 APR 24 PM 1:21
MELANIE J. BROWN - WARD
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

TO: ALL DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled for Monday,
April 25, 2016 at 1:00 p.m..

000389

Appendix 00397

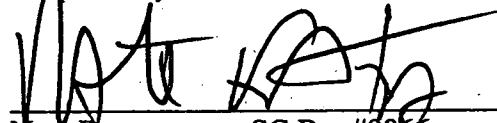
Under the Courts previous Order of February 16, 2016 a hearing will be held on the following:

1. Plaintiffs' Notice of Motion and Motion for Attorney Fees filed on February 23, 2016; and
2. Plaintiffs Notice of Motion and Motion for Entry of Default and Striking the Pleadings of All Company Defendants filed on February 25, 2016.

This hearing will be held on the third floor of the Horry County Government and Justice Center, located at 1301 Second Avenue, Conway, South Carolina before the Honorable Benjamin Culbertson.

Please be present if so minded.

Respectfully submitted,



Nate Fata

SC Bar #9886

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
April 20, 2016

000390

Appendix 00398

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

HORRY COUNTY
2016 APR 21 PM 1:21
MELANIE HUBBARD
CLERK OF COURT

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on April 20, 2016 did serve a copy of Plaintiffs' Notice of Hearing on Defendants and counsel by

000391

Appendix 00399

mailing a copy of the same postage prepaid to:

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

J. Floyd Swilley Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577

Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

WCP Limited, LLC
c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

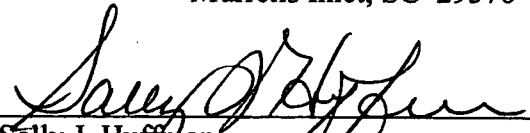
Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577

Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

Digics, LLC
c/o Chris Pitcock
Registered Agent
472 Mooreland Drive
Myrtle Beach, SC 29588

Digics, LLC
c/o Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559

809 Holdings
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576


Sally J. Huffman
Legal Assistant to Nate Fata

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB)
Enterprises, LLC,)

Plaintiffs)

vs.)

809 Holdings, LP, 9-1-1 Plumbing,)

LLC, Heath Causey, Digics, LLC, J.)

Floyd Swilley Investment Advisors,)

J Floyd Swilley SMG Partners LLC,)

Alicia A Piner, William C. Piner,)

Christopher Pitcock, QC Financing,)

LLC, SAFE, Inc., Sage Advisory)

Group, LP, Sage Financial Group,)

LLC, Sage Funding, LP, Sage)

Private Equity Group, Secured)

Asset Factoring Exchange, Inc.,)

SMG Partners, LLC, SMS Services,)

LP, J. Floyd Swilley, Laurel K.)

Swilley, and WCP Limited, LLC,)

Defendants,)

IN THE COURT OF COMMON PLEAS

FIFTEENTH CIRCUIT COURT

CASE NO: 2014-CP-26-3362

(formerly 2013-CP-26-02816)

DEFENDANT, HEATH CAUSEY'S,
NOTICE OF MOTION AND
MOTION TO SET ASIDE
SUMMARY JUDGMENT

HELAHIL, HARRIS-WARD
CLERK OF COURT

2016 APR -6 PM 4:52

HORRY COUNTY

TO: THE DEFENDANTS NAMED ABOVE AND IT'S ATTORNEY ~~REDACTED~~ NATE FATA
~~REDACTED~~, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof,
or as soon thereafter as may be heard, the Defendant, Heath Causey, Pro Se, will move
before this Honorable Court:

For an order setting aside summary judgment that was entered against Defendant
Heath Causey, on February 16, 2016 pursuant to Rule 55(c) and 60(b) of the South
Carolina Code of Civil Procedure.

FACTS

copy

000393

Appendix 00401

1. The Defendant, Heath Causey was represented by John M. Leiter, Esquire but on or about January 4, 2016 Mr. Leiter went before the Honorable William H. Seals, Jr. for a Motion to be Relieved as Counsel where his Motion was granted.

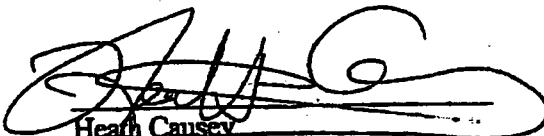
2. On or about January 14, 2016 a Motion Hearing was scheduled for February 16, 2016. Notice of this hearing was sent to Frederick Miles Adler, Esquire, former counsel of the Defendant, Heath Causey. Defendant, Heath Causey was never notified of this hearing.

3. On or about February 9, 2016 the Plaintiff, Gabriel Barnhill, by and through his attorney filed a Notice of Hearing with the Horry County Clerk of Court. Defendant, Heath Causey received said notice the day of the hearing after the hearing had been heard.

4. On or around March 31, 2016, Defendant, Heath Causey received a copy of the Order for the February 16, 2016 hearing where the Honorable R. Lawton McIntosh Ordered that the Answer, Counterclaim and other pleadings of the Defendant, Heath Causey, be stricken. It was also Ordered that all Counterclaims be dismissed with prejudice; the Affidavit of William Piner be stricken.

WHEREFORE, PREMISES CONSIDERED, Defendant, Heath Causey, prays that upon hearing of this matter, that this Court will issue an order setting aside summary judgment under Rule 55(c) and 60(b) of the South Carolina Code of Civil Procedure.

April 6, 2016
Myrtle Beach, South Carolina


Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
Phone: (843) 424-9258
Email: heath.causey@mac.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC

Plaintiff,

vs.

809 Holdings, LP, 9-1-1 Plumbing, LLC,
Heath Causey, Digics, LLC, J. Floyd Swilley
Investment Advisors, J. Floyd Swilley SMG
Partners LLC, Alicia A Piner, William C.
Piner, Christopher Pitcock, QC
Financing, LLC, SAFE, Inc., Sage Advisory,
Group, LP, Sage Financial Group, LLC, Sage
Funding, LP, Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc., SMG
Partners, LLC, SMS Services, LP, J. Floyd
Swilley, Laurel K. Swilley, and WCP
Limited, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-26-08367

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

HORRY COUNTY
2016 APR -6 PM 4:52
HEATH CAUSEY
CLERK OF COURT

Plaintiff's Attorney:

Nate Fata, Bar No. 9866

Address:

P.O. Box 16620, Surfside Beach, SC 29587

Phone: 843-238-2676 Fax 843-238-0240

E-mail: nfata@fatalaw.com Other:

Defendant's Attorney:

Heath Causey, Bar No. Pro Se

Address:

1035 Pinwheel Loop, Myrtle Beach, SC 29577

Phone: 843-424-9258 Fax

E-mail: heath.causey@mac.com Other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Set Aside

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

4/6/16

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

000395

☐ Other:

COPY
Appendix 00403

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: \$ _____	
☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

NOTICE OF BANKRUPTCY FILINGS

CASE NO. 2014-CP-26-3362

FILED
HORRY COUNTY
2016 APR 25 PM 12:45
MELANIE HUGGINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the following Defendants have filed a
Chapter 7 or 13 Bankruptcy:

000397

1

Appendix 00405

SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

SMS Services, LP
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577

Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach, SC 29577

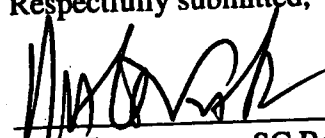
Sage Funding, L.P.
629 Hemlock Avenue
Myrtle Beach, SC 29577

William Piner
606 Calhoun Street
Myrtle Beach, SC 29577

Alicia Piner
606 Calhoun Street
Myrtle Beach, SC 29577

Secured Asset Factoring Exchange, Inc.
d/b/a SAFE, Inc.
606 Calhoun Road
Myrtle Beach, SC 29577

Respectfully submitted,



Nate Fata SC Bar #9866

NATE FATA, P.A.

Attorney for Plaintiffs

1500 US Highway 17 North, Suite 215

Post Office Box 16620

Surfside Beach, SC 29587

Telephone: 238-2676

Fax: 238-0240

Surfside Beach, South Carolina
April 7, 2016

000398

Appendix 00406

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CLERK OF COURT

2016 MAY 16 PM 2:08

HORRY COUNTY

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May
13, 2016 did serve a copy of the Notice of Bankruptcy Filings via U.S. Mail as follows:

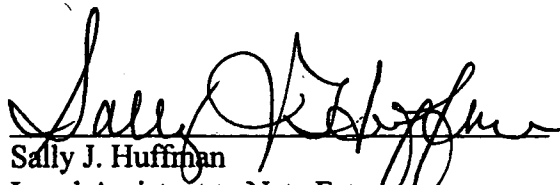
000399

Appendix 00407

Stefan Fiedler, Esq.
Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP

Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577
Pro Se

F. Miles Adler, Esq.
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
*Counsel for J. Floyd Swilley, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
Sage Financial Group, LLC and Sage Private Equity Group, LLC*


Sally J. Huffman
Legal Assistant to Nate Fata

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

AFFIDAVIT OF SALLY J. HUFFMAN

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

FILED
CLERK OF COURT
2016 APR 13 AM 9:11
JANIE HUGGINS-WALKER

Sally J. Huffman, being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to make this Affidavit.

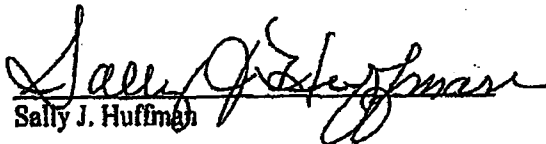
Copy

000401

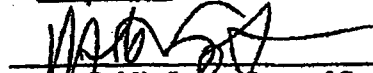
Appendix 00409

2. I am the legal assistant to Nate Fata, P.A.
3. That I served via U.S. Mail on February 3, 2016 the Notice of Hearing upon the Pro Se Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC, SMS Services, Sage Financial Group, LLC, Sage Advisory Group L.P., Sage Private Equity Group, Sage Funding, L.P. at their last known address of 629 Hemlock Avenue, Myrtle Beach, South Carolina 29577.
4. That on February 18, 2016 I served via U.S. Mail Plaintiffs' Affidavit for Attorney Fees and Motion for Attorney Fees above to the Pro Se Defendants at the above address.
5. That on February 24, 2016 a copy of the proposed Order sent to The Honorable R. Lawson McIntosh was mailed to the above Pro Se Defendants at the above address.
6. That on February 24, 2016 I mailed to Pro Se Defendants a copy of the Notice of Motion and Motion for entry of Default and Striking the Pleadings of All company Defendants to the above Pro Se Defendants at the above address.
7. That on March 29, 2016, I mailed to Pro Se Defendants a copy of the Order entered on March 21, 2016 to the above Pro Se Defendants at the above address.
8. That no mail sent by me to the 629 Hemlock Avenue, Myrtle Beach, South Carolina for the above mentioned Pro Se Defendants has been returned by the U.S. Post Office as being undeliverable.
9. Based on the fact the U.S. Post Office has delivered multiple Notices to the 629 Hemlock Avenue, Myrtle Beach address and the Swilleys' confirmation that they reside at such address, I continue to mail notices and pleadings to that address.

FURTHER AFFIANT SAYETH NAUGHT.


Sally J. Huffman

SWORN to before me this 13 day
of April, 2016.


Notary Public for the State of South Carolina
My Commission Expires: 12/16/2020

000402

Appendix 00410

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on May
13th, 2016 did serve a copy of the Affidavit of Sally J. Huffman via U.S. Mail as follows:

000403

Appendix 00411

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR SANCTIONS**

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, , Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel John Leiter, Esq.

000404

Appendix 00412

809 Holdings, LP and its Counsel Mark D. Neill, Esq.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter for an Order for sanctions due to Defendants failure to provide responses to discovery items which were addressed at the April 20, 2015 hearing and subject to the May 22, 2015 Order.

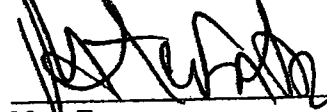
A hearing was held on April 20, 2015 with regard to, inter alia, Plaintiffs' Motion to Compel Discovery filed on September 5, 2014. Defendants were to provide complete responses by May 20, 2015. No responses were provided. By letter dated May 28, 2015, Plaintiff requested Defendants to provide responses under the Court's Order. To date Defendants have not provided responses to the outstanding discovery items in violation of the Court's Order. Due to Defendants' continued stonewalling, the Court should impose sanctions, award attorney fees and costs.

Plaintiff's counsel certifies that he attempted to resolve this matter with opposing counsel prior to filing the motion and that any further attempts would be futile.

WHEREFORE, Plaintiffs, Gabriel Barnhill and GSB Enterprises, LLC, request that this Court enter the appropriate Sanctions Order against Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P., Christopher Pitcock and 809 Holdings, LP, in connection with their failure to provide full and

complete discovery responses, award reasonable attorney fees in connection with this Motion and hearing, and award all other appropriate relief pursuant to Rule 37, SCRPC.

Respectfully submitted,



Nate Fata
NATE FATA, P.A.
Attorney for Plaintiffs
P. O. Box 16620
1500 U.S. Hwy. 17 N., Suite 215
Surfside Beach, SC 29587
Tel. (843) 238-2676
Fax (843) 238-0240

Surfside Beach, South Carolina
June 8, 2015

***STATE OF SOUTH CAROLINA**

COUNTY OF HORRY

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)**

CERTIFICATE OF SERVICE

**Gabriel Barnhill and GSB Enterprises,
LLC,**

Plaintiffs,

vs.

**J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,**

Defendants.

CASE NO. 2014-CP-26-3362

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on June 9, 2015 I did serve a copy of "Plaintiffs' Notice of Motion and Motion for Sanctions" upon

000407

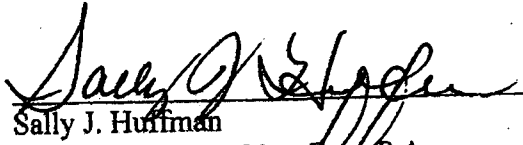
Appendix 00415

Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577

*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

000408

Appendix 00416

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises, LLC
☒ Plaintiff

v.

J. Floyd Swilley, Et Al.
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2014-CP-26-08367

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Nate Fata, Esq., Bar No. 09866

Address:

P.O. Box 16620

Surfside Beach, SC 29587

phone: 843-238-2676 fax: 843-238-0240

e-mail: nfata@fatalaw.com other:

Defendant's Attorney:

John M. Leiter, Bar No.

Address:

1203 48th Avenue, N., Suite 109

Myrtle Beach, SC 29577

phone: 843-449-1451 fax: 843-449-4884

e-mail: jleiter@48th.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Plaintiffs' Notice of Motion and Motion for Sanctions

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 8, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

- ☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☒ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2015 DEC 15 AM 9:08
MELAHIE HARRIS, CLERK OF COURT

PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO COMPEL
DEPOSITIONS OF DEFENDANTS

Gabriel Barnhill and GSB Enterprises,
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC,)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Sage Private Equity Group,)
Secured Asset Factoring Exchange, Inc.,)
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

CASE NO. 2014-CP-26-3362

TO: Defendants J. Floyd Swilley, J. Floyd Swilley Investment Advisors, SMG Partners, LLC, SMS Services, LP, William C. Piner, WCP Limited, LLC, Alicia A. Piner, , Heath Causey, Sage Financial Group, L.P., Sage Private Equity Group, Secured Asset Factoring Exchange, Inc., SAFE, Inc., Digics, LLC, Sage Funding, L.P. and Christopher Pitcock and their counsel John Leiter, Esq.

copy

000410

Appendix 00418

809 Holdings, LP and its Counsel Mark D. Neill, Esq.

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Gabriel Barnhill and GSB Enterprise, LLC, by and through their attorney, Nate Fata, will move this Honorable Court within ten (10) days after service hereof or as soon thereafter for an Order to compel Depositions of Defendants.

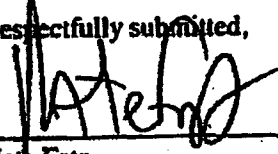
The following Notices of Deposition were served upon Defendants:

1. Plaintiffs' Notice of Deposition of WCP 30(b)(6) on November 16, 2015;
2. Plaintiffs' Amended Notice of Deposition of Heath Causey on November 23, 2015;
3. Plaintiffs' Amended Notice of Deposition of Laurel Swilley on November 23, 2015;
4. Plaintiffs' Amended Notice of Deposition of Floyd Swilley on November 23, 2015; and
5. Plaintiffs' Amended Notice of Deposition of 809 Holdings 30(b)(6) on November 23, 2015.

Defendants did not appear for deposition. Multiple discovery sanction orders have been entered in this case. Defendants are further delaying discovery. Further consultation would serve no useful purpose.

This Court should strike Defendants' Answer and Counterclaim, award attorney fees and costs and award all other appropriate relief.

Respectfully submitted,



Nate Fata

NATE FATA, P.A.

Attorney for Plaintiffs

P. O. Box 16620

1500 U.S. Hwy. 17 N., Suite 215

Surfside Beach, SC 29587

Tel. (843) 238-2676

Fax (843) 238-0240

Surfside Beach, South Carolina
December 14, 2015

000412

Appendix 00420

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
Investment Advisors, Laurel K. Swilley,
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
809 Holdings, LP, QC Financing, LLC,
Heath Causey, and Sage Financial
Group, LLC,

Defendants.

Gabriel Barnhill and GSB Enterprises,
LLC,

Plaintiffs,

vs.

J. Floyd Swilley, J. Floyd Swilley
SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC,
Alicia A. Piner, 809 Holdings, LP,
Heath Causey, Sage Financial Group,
LLC, Sage Advisory Group, L.P.,
Sage Private Equity Group,
Secured Asset Factoring Exchange, Inc.,
SAFE, Inc., Digics, LLC, 9-1-1, Plumbing,
LLC, and Sage Funding, L.P.,
Christopher Pitcock,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-26-08367
(formerly 2013-CP-26-02816)

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-26-3362

HORRY COUNTY
2016 DEC 15 AM 9:00
MELANIE HUFFMAN
CLERK OF COURT

I, Sally J. Huffman, Legal Assistant, do hereby certify that I am an employee of Nate
Fata, P.A., Counsel for Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC and that on

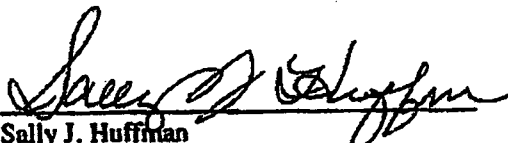
000413

Appendix 00421

December 15th, 2015 I did serve a copy of Plaintiffs' Notice of Motion and Motion to Compel Depositions of Defendants upon Counsel for Defendants by mailing a copy of the same postage prepaid to:

John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Avenue, North, Ste. 109
Myrtle Beach, SC 29577
*Counsel for J. Floyd Swilley, J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners, LLC, SMS Services, LP,
William C. Piner, WCP Limited, LLC, Alicia A. Piner,
Heath Causey, Sage Financial Group, LLC, Sage Advisory Group, LP
Sage Private Equity Group and Secured Asset Factoring Exchange, Inc.*

Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
Counsel for 809 Holdings, LP


Sally J. Huffman
Legal Assistant to Nate Fata, P.A.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)
Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, L.P.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:10
MELANIE J. SWILLEY
CLERK OF COURT

NOTICE OF MOTION AND MOTION
TO SET ASIDE ORDER OF MARCH 21, 2016

CASE NO. 2014-CP-3362

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

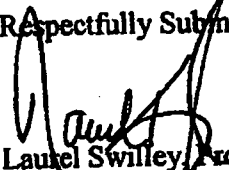
Comes now the undersigned Laurel Swilley, pro se (the "Movant"), and hereby moves this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in support thereof states as follows:

000415

copy
Appendix 00423

1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25th day of January 2016.
 2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
 3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate of service is dated March 29, 2016. The mailing was received March 31, 2016.
 4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk of Court that Movant was pro se with multiple other former clients of Attorney Leitner.
 - a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the Court erred by failing to properly notice the Movant.
 5. The Order is based upon errors of facts.
 6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.
- Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,


Laurel Swilley, Pro se
629 Hemlock Avenue
Conway, SC 29577
PH: 843-438-8413
Defendant

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:10
MEL ANNE...
CLERK OF COURT

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-3362

I, Laurel K. Swilley, do hereby certify that I on April, 1, 2016 did serve a
copy of Notice: Motion upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as
follows:

J. Floyd Swilley
629 Hemlock Avenue

000417

Appendix 00425

Myrtle Beach, SC 29577

**J. Floyd Swilley' Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMS Services. LP
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**WCP Limited, LLC c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577**

**809 Holdings, LP
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576**

**QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach. SC 29577**

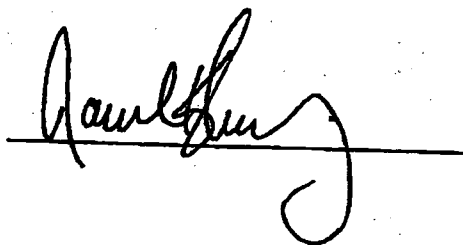
**Sage Funding. L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577**

Digics. LLC
c/o Chris Pitcock Registered Agent
472 Mooreland Drive
Myrtle Beach. SC 29588

Digics. LLC
c/o Christopher Pitcock 24242 Branchwood Court
Lutz. FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



STATE OF SOUTH CAROLINA

COUNTY OF

Horry

Gabriel Barnhill and GSB Ent, Inc.
Plaintiff,

vs.

J. Floyd Sulley, Et Al.
Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2014 -CP- 26- 8367

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Nate Fata, Esq.</u> , Bar No. <u>09866</u> Address: <u>P.O. Box 16629, Surfside Beach, SC 29587</u> Phone: <u>843-238-2676</u> Fax <u>843-238-0240</u> E-mail: <u>nfata@fata6.com</u> Other:		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Defendant's Motion to Set Aside Order of March 21, 2016</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>David K. Sulley</u> , <u>David K. Sulley</u> Apr. 1, 2016, 20____ Signature of Attorney for ☐ Plaintiff ☒ Defendant <u>2016</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION Collected by: <u>Jarb</u> Date Filed: <u>4-1</u> , 20 <u>16</u> ☐ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

copy

Appendix 00428

000420

J. Floyd Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577

April 1, 2016

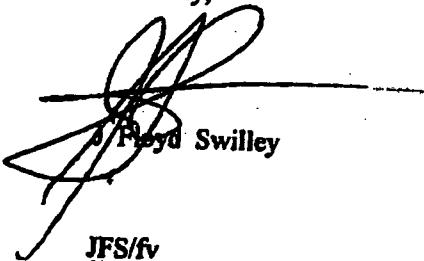
Via Hand Delivery
Horry County Clerk of Court
P. O. Box 677
Conway, SC 29526

Re: Gabriel Barnhill and GSB Enterprises, LLC vs. J. Floyd Swilley, et.al.
Civil Action No. 2014-CP- 26-08367

Dear Ms. Huggins:

Enclosed herein is an original and copy of the Motion to Set Aside March 21, 2016 AND Order Information Form. Also enclosed is a check in the amount of \$25.00 to cover the filing fee. Thanking you in advance for your assistance regarding this matter.

Sincerely,



JFS/fv
Enclosures

Copy to :
Nate Fata, esq.
Mark Neill, esq
Laurel K. Swilley
Heath W. Causey
Chris Pitcock
Other Defendants

Appendix 00429

000421

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Liabriel Bainhill BSB Ent. et al
Plaintiff,

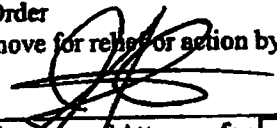
vs.

J. Floyd Sullley, Et. Al
Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: _____ -CP- _____

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: <u>Noted</u> , Bar No. <u>09866</u> Address: <u>P.O. Box 16620, Surfside Beach, SC 29581</u> Phone: <u>843-238-2676</u> Fax <u>843-238-0240</u> E-mail: <u>nlb@bbsat.net</u> Other: _____		Defendant's Attorney: Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Defendant motion to set aside order of March 21, 2016</u> Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant <u>Floyd Sullley</u> Date submitted <u>April 1, 2016</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____ JUDGE CODE _____ Date: _____, 20____			
CLERK'S VERIFICATION Collected by: <u>Jah</u> Date Filed: <u>4-1-16</u> , 20____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

000422

Appendix 00430

copy

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)

Defendants.)

Gabriel Barnhill and GSB Enterprises, LLC,)

Plaintiffs,)

vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

NOTICE OF MOTION AND MOTION
TO SET ASIDE ORDER OF MARCH 21, 2016

CASE NO. 2014-CP-3362

HORRY COUNTY
2016 APR -1 PM 4:12
MELANIE J. BUSH
CLERK OF COURT

TO: THE PLAINTIFFS ABOVE NAMED AND THEIR COUNSEL OF RECORD

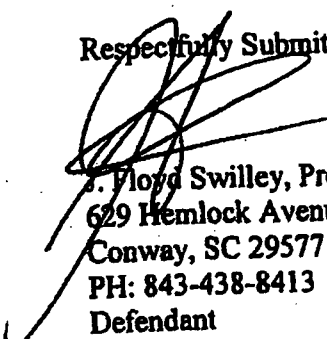
Comes now the undersigned J. Floyd Swilley, pro se (the "Movant"), and hereby moves this Honorable Court to set aside the Order entered on March 21, 2016 (the "Order"), and in support thereof states as follows:

copy
Appendix 00431

000423

1. At the time and date of the purported notice and of hearing this Movant was under the veil of protection of Order of the Court signed on the 25th day of January 2016.
 2. The Movant did not receive a copy of the motion or timely notice of the hearing that resulted in the Order.
 3. The Movant did not receive a copy of the March 21, 2016 Order except from attorney Nate Fata's paralegal and the certificate of service is dated March 29, 2016. The mailing was received March 31, 2016.
 4. The Movant contacted Horry County Clerk of Court's office and was advised that no mailings of any orders or notices have been sent to any of the pro se defendants including the Movant. The Movant advised the Clerk of Court that Movant was pro se with multiple other former clients of Attorney Leitner.
 - a. The clerk advised that there were only two attorneys (Neil and Fata) who were to receive any notices and that nothing had been sent to any of the pro se defendants. Pursuant to SCR 60 the Clerk of the Court erred by failing to properly notice the Movant.
 5. The Order is based upon errors of facts.
 6. It is submitted, the Plaintiff should not be permitted to prevail within the constraints of this Order in that same would subject the Movant to undue hardship and irreparable harm while bestowing unjust enrichment upon the Plaintiffs. Due to the timing of receipt of this Order Movant may follow with amendment or memorandum in more detail.
- Wherefore it is prayed the Order of March 21, 2016 be set aside and held for naught and for any and all proper relief to which the undersigned movant may appear to be entitled.

Respectfully Submitted,


J. Floyd Swilley, Pro se
629 Hemlock Avenue
Conway, SC 29577
PH: 843-438-8413
Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)
vs.)

J. Floyd Swilley, J. Floyd Swilley)
Investment Advisors, Laurel K. Swilley,)
SMG Partners, LLC, SMS SERVICES, LP,)
William C. Piner, WCP Limited, LLC,)
809 Holdings, LP, QC Financing, LLC)
Heath Causey, and SAGE Financial)
Group, LLC,)
Defendants.)

Gabriel Barnhill and GSB Enterprises,)
LLC,)
Plaintiffs,)
vs.)

J. Floyd Swilley, J. Floyd Swilley)
SMG Partners, LLC, SMS Services, LP,)
William C. Piner, WCP Limited, LLC)
Alicia A. Piner, 809 Holdings, LP,)
Heath Causey, Sage Financial Group,)
LLC, Sage Advisory Group, LP.,)
Secured Asset Factoring Exchange, Inc.)
SAFE, Inc. Digics, LLC, 91-1, Plumbing,)
LLC, and Sage Funding, L.P.,)
Christopher Pitcock,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-08367
(formerly 2013-CP-26-02816)

HORRY COUNTY
2016 APR -1 PM 4:13
MELANIE HUGHES
CLERK OF COURT

CERTIFICATE OF SERVICE

CASE NO. 2014-CP-3362

I, J. Floyd Swilley, do hereby certify that I on April, 1, 2016 did serve a copy of Notice of Motion and Motion To Set Aside Order of March 21, 2016 upon counsel and Pro Se Defendants via U.S. Mail postage prepaid as follows:

Laurel K. Swilley
629 Hemlock Avenue

000425

Appendix 00433

Myrtle Beach, SC 29577

**J. Floyd Swilley' Investment Advisors
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Laurel K. Swilley
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMG Partners, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**SMS Services. LP
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**WCP Limited, LLC c/o William Piner
606 Calhoun Street
Myrtle Beach, SC 29577**

**809 Holdings, LP
c/o Mark D. Neill, Esq.
Neill Law Firm
P.O. Box 2810
Murrells Inlet, SC 29576**

**QC Financing, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Financial Group, LLC
629 Hemlock Avenue
Myrtle Beach, SC 29577**

**Sage Advisory Group, L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Sage Private Equity Group
629 Hemlock Avenue
Myrtle Beach. SC 29577**

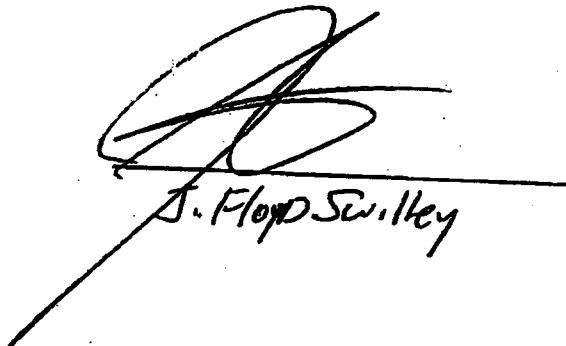
**Sage Funding. L.P.
629 Hemlock Avenue
Myrtle Beach. SC 29577**

**Heath Causey
1035 Pinwheel Loop
Myrtle Beach, SC 29577**

Digics. LLC
c/o Chris Pitcock Registered Agent
472 Mooreland Drive
Myrtle Beach. SC 29588

Digics. LLC
c/o Christopher Pitcock 24242 Branchwood Court
Lutz. FL 33559

Christopher Pitcock
24242 Branchwood Court
Lutz, FL 33559



J. Floyd Swilley

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2014-CP-26-3362

GABRIEL BARNHILL AND GSB
ENTERPRISES, LLC.

Plaintiffs,

vs.

J. FLOYD SWILLEY, J. FLOYD
SWILLEY INVESTMENT ADVISORS,
LAUREL K. SWILLEY, SMG
PARTNERS, LLC, SMS SERVICES,
LP, WILLIAM C. PINER, WCP
LIMITED, LLC, 809 HOLDINGS,
LP, QC FINANCING, LLC, HEATH
CAUSEY AND SAGE FINANCIAL
GROUP, LLC.

Defendants.

Transcript of Record

June 20, 2016

GABRIEL BARNHILL AND GSB
ENTERPRISES, LLC.

Plaintiffs,

vs.

J. FLOYD SWILLEY, J. FLOYD
SWILLEY SMG PARTNERS, LLC, SMS
SERVICES, LP, WILLIAM C. PINER
WCP LIMITED, LLC, ALICIA A.
PINER, 809, HOLDINGS, LP,
HEATH CAUSEY, AND SAGE
FINANCIAL GROUP, LLC, SAGE
PRIVATE EQUITY GROUP, SECURED
ASSET FACTORING EXCHANGE, INC.)
SAFE, INC., DIGICS, LLC, 9-1-1)
PLUMBING, LLC, AND SAGE
FUNDING, L.P., AND CHRISTOPHER
PITCOCK,

Defendants.

B E F O R E:

Honorable William H. Seals, Jr.
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Natale Fata, Esquire
Attorney for Plaintiffs

John M. Leiter, Esquire
Attorney for Defendants

Kay H. Richardson
Circuit Court Reporter

I N D E X

January 4, 2016

Pg.

Motions	4
Certificate of Court Reporter	6

E X H I B I T S

No.

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EV

1 (JANURAY 4, 2016)

2 THE COURT: Gabriel Barnhill versus Floyd Swilley.

3 Yes, sir?

4 MR. LEITER: We -- there are two motions on the roster.
5 One is a motion for reconsideration of the previous sanctions
6 ordered that you issued. And Mr. Fata reminds me that you
7 have denied that by an email to him, so that has been
8 resolved.

9 The second is my motion to be relieved as counsel, Your
10 Honor, for the usual reasons none payment of the fees. We
11 have -- we filed it and we've served the -- just to put on the
12 record who I represent, since it's a long list, I represent
13 the Defendants other than the 809 Holdings, LLC, and Mr.
14 Feidler is here who represents them. And, I also do not
15 represent Q.C. Financing, LLC that's listed as a Defendant.
16 But the other Defendants, I do represent and I am requesting
17 that I be relieved as counsel. I ask that they be given
18 thirty days in which to obtain new counsel.

19 THE COURT: All right.

20 MR. LEITER: I believe that Mr. Fata, representing the
21 Plaintiff, does not oppose that.

22 THE COURT: Is that correct?

23 MR. FATA: Thank you, Your Honor. Nate Fata on behalf of
24 the Plaintiffs. I don't have any objection to that; that's
25 fine. I would just ask that maybe on connection with possibly

1 counsel getting in or us moving forward with the Defendants
2 pro se, that we have maybe a trial not before the date of May
3 1st. Obviously, there's gonna be a lag now until February,
4 some time before I can do anything and I have to file motions
5 before the Court, I'll need to have time to get up to speed.

6 THE COURT: Any objections from you?

7 MR. FEIDLER: No, Your Honor, no objections.

8 THE COURT: All right. Why don't you go ahead and
9 prepare me an order, give them thirty days to find new counsel
10 and a trial will not be had before May 1st, 2016.

11 MR. FATA: Thank you, Your Honor.

12 MR. LEITER: Thank you, Your Honor.

13 THE COURT: Thank you. Y'all have a good day.

14 (ADJOURNED - 10:03 A.M.)
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Gabriel Barnhill, et al. versus J. Floyd Swilley, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 4, 2016.

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

Kay H. Richardson
Official Court Reporter

August 19, 2016.

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2014-CP-26-08367

3

4 Gabriel Barnhill and GSB)
5 Enterprises, LLC,) Transcript of Record

6 vs.)

7 J. Floyd Swilley)

8

9 February 16, 2016
Conway, South Carolina

10

11

BEFORE:

12

Honorable R. Lawton McIntosh, Judge.

13

14

APPEARANCES:

15

Natale Fata, Esq.
Attorney for the Plaintiff

16

17

Stefan B. Feidler, Esq.
Attorney for the Defendant
809 Holdings

18

19

20

21

Teresa J. F. Bautz, RPR
Official Court Reporter

22

23

24

25

E X H I B I T S

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NO. DESCRIPTION

ID EV

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No exhibits submitted.

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Appendix 00445

1 (The hearing commenced at approximately
2 10:07 a.m.)

3 THE COURT: This is Barnhill?

4 MR. FATA: Yes, Your Honor.

5 MR. FEIDLER: Yes, Your Honor.

6 THE COURT: This appears to be a motion to compel;
7 is that correct?

8 MR. FATA: Your Honor, yes, sir. Nate Fata on
9 behalf of the Plaintiffs, the Barnhill Plaintiffs.
10 There are actually two motions. One is a motion to
11 compel, slash, sanctions, and the second one is a
12 motion for summary judgment, judgment on the pleadings
13 for the counterclaims asserted by the Defendants in the
14 litigation.

15 THE COURT: Okay. Let's go over the motion to
16 compel first. You have the discovery that's in
17 dispute?

18 MR. FATA: Your Honor, I think with the motion we
19 had filed the discovery, notices of deposition, I think
20 I have an extra set here. If you want me to hand it
21 up, I would be more than happy to do so.

22 THE COURT: I have it.

23 MR. FATA: Okay.

24 THE COURT: Give me one second, let me look over
25 it, please.

1 MR. FATA: Sure.

2 THE COURT: So is WCP a party, Causey, Swilley,
3 Swilley and 809 Holdings, all of those are Defendants
4 in this case?

5 MR. FEIDLER: Yes, Your Honor. But I only
6 represent 809 Holdings, LP. In fact, Mr. John Leiter,
7 he's an attorney, he was representing the other
8 Defendants. And admin Judge Seals signed an order
9 relieving him on the 14th of January, giving them 13
10 days to find new counsel. So I'm only here on 809
11 Holdings, LP, Your Honor. As you can see, none of the
12 other Defendants are here today.

13 THE COURT: Are you here, sir, on the case of
14 Barnhill versus Swilley?

15 ATTORNEY: No, sir.

16 THE COURT: Okay.

17 ATTORNEY: Thank you.

18 THE COURT: Yes, sir.

19 MR. FATA: Your Honor?

20 THE COURT: Let's go to 809 first. And then as to
21 the other ones, I don't know what in the world -- why
22 you would not place somebody up to be a 30(b)(6)
23 witness for your corporation.

24 MR. FEIDLER: Well, Your Honor --

25 MR. FATA: I might be able to help --

1 THE COURT: Okay.

2 MR. FATA: -- just to catch you up with the
3 background.

4 THE COURT: Okay, sure.

5 MR. FATA: Because this case is odd for me. After
6 20 years of practicing I've had a case where I've had
7 to come repeatedly to the Court for help during
8 discovery. There are three sanctions orders that have
9 already been entered by Judge Culbertson, Judge Hyman
10 and Judge Seals in September of 2015. It was Judge
11 Seals' order. Judge Culbertson entered an order in
12 January 2014. As you can see from the docket number,
13 the case is kind of old.

14 So for two and a half years or so I've been trying
15 to move the case along, get discovery. This case
16 arises out of my 26-year-old client at the time using a
17 bookkeeper, Floyd Swilley, who said I've got a great
18 investment for you, let's take your retirement money
19 and put it in this investment, it's a pawn shop, new
20 business start-up. I call it the pawn shop Ponzi
21 scheme.

22 There are about \$400,000 of other investors'
23 money, retirees, 70 years old, all put in Mr. Swilley
24 and Mr. Piner's pawn shop. They wanted to start a
25 bunch of pawn shops on the beach. And they were using

1 all of the retiree monies or retirement monies from
2 different people that they knew to start and basically
3 fund their operations.

4 That all went south. 809 Holdings was the first
5 vehicle, if you will, the investment vehicle. Mr.
6 Barnhill put in 115,000, and I think he got one check
7 back for 2,000, nothing else. Mr. Swilley and
8 Mr. Piner then started another entity call SAF, Secured
9 Asset Factory, raised about eight or 900,000. About
10 another \$400,000 was lost.

11 So in total there's 700,000 or so dollars that
12 have been lost by investors mostly in the Myrtle Beach
13 area, a lot of it retiree money. We started down this
14 case in 2013, and then in 2014 in a derivative action,
15 Miles Adler was the first lawyer for all of the
16 Defendants. He then asked to get out of the case.

17 John Leiter stepped in, was counsel for about 15
18 months. Same problem with discovery, had a hard time
19 getting information, had to come here to the Court over
20 and over again. He then wasn't being paid, the
21 Defendants weren't communicating with him obviously.
22 They wouldn't show up for depositions, they wouldn't
23 provide dates for depositions, they wouldn't do
24 anything.

25 So I filed a motion to compel in December.

1 Mr. Leiter's motion to be relieved as counsel --

2 THE COURT: What was your motion to compel, what
3 were you seeking?

4 MR. FATA: My motion to compel that was filed in
5 December sought to strike the answer and counterclaim
6 of these Defendants.

7 THE COURT: Were you seeking the deposition of
8 these individuals or the 30(b)(6) depositions at that
9 point?

10 MR. FATA: At the time I sent the notices, yes,
11 sir, I was.

12 THE COURT: No, no, no, no. What I'm trying to
13 get in my mind, I'm sorry I'm not being very clear, you
14 have prior orders from three Circuit Court judges
15 granting discovery and issuing sanctions; correct?

16 MR. FATA: Yes, sir.

17 THE COURT: Were any of those orders to take the
18 depositions that you're requesting today?

19 MR. FATA: There was an order -- yes -- there was
20 an order, a consent order actually entered in May 2015
21 that said the parties, because I had moved to compel
22 depositions and discovery then, the parties agreed, Mr.
23 Leiter and I agreed that we would cooperate and get the
24 depositions done. And that's in that order, that
25 May 2015 order.

000442

Appendix 00450

1 THE COURT: The exact same individuals you're
2 seeking in this case?

3 MR. FATA: Yes, sir, Your Honor. I mean,
4 Mr. Causey, Mr. Piner. And Mr. Piner's since filed
5 bankruptcy so I can't get his deposition. I can as a
6 witness but not as a party, he's not a party. But
7 Mr. Swilley, yes, sir, okay.

8 And I don't know about WCP, I might have asked for
9 that deposition before, but certainly on 809 Holdings
10 you can see it's an amended notice. So I've been
11 trying to get -- these are the major players, the
12 principals, involved in the organizations that were
13 doing all the money getting, spending. And so that's
14 who the primary suit's against.

15 So yes, Your Honor, we had already addressed that
16 issue with the Court. The judge asked us to figure it
17 out. We tried to figure it out, I thought we had a
18 plan, it didn't work. We've got a trial not before
19 date of May 1 now. So now I am here two and a half
20 years after beginning the suit with a counterclaim I
21 know nothing about with no information, I have no
22 depositions yet.

23 The case has already been postponed by Judge
24 Seals. He understood that we needed some more time in
25 January when Mr. Leiter was getting out. He said,

1 okay, I'll give the Defendants 30 days to get new
2 counsel. And after that, you know, we need to take
3 off. So I haven't been able to take off.

4 So what I'm asking the Court is to strike the
5 answer and counterclaims at least of those Defendants
6 who are not here today. That was in the motion. I
7 sent each of those pro se defendants separate notice of
8 hearing that's been filed with the Clerk of the Courts.
9 I took care of that.

10 In addition, I'm sure Mr. Leiter notified them of
11 the upcoming hearing. But we would like the Court to
12 just address this issue because -- and I have an
13 affidavit for attorney's fees -- because I haven't
14 gotten anywhere. And I don't have any more information
15 now than when I first got the counterclaim back in like
16 2013.

17 And I've been here, this is the fourth or fifth
18 time, discovery, I would call discovery abuse. And
19 I've never had a case where I've had to ask the judge
20 to get involved three times and been given sanctions.
21 In fact, Judge Hyman said, and these are his words, you
22 know, you're sandbagging Mr. Fata. And that's in his
23 order, that wasn't my language, but he said that. And
24 I haven't had the judge say that to another litigant
25 while I've been practicing in Horry County for 21

1 years, sir.

2 So what I'm asking for is if I'm not going to
3 strike the answer and counterclaims, I would like to do
4 that and get an order for attorney's fees. If the
5 Court doesn't want to grant that, then my second
6 position would be make the Defendant show up at my
7 office when I send out the notice, these pro se
8 Defendants, because they're not here. And if they
9 don't show up, then their answer and counterclaim is
10 stricken, so I can just move forward and prepare for
11 trial.

12 THE COURT: That's Causey and the two Swilleys?

13 MR. FATA: Causey and the two Swilleys, yes, sir.
14 And then 809 Holdings I --

15 THE COURT: Yeah, we going to talk about 809 in
16 just one second. I'm inclined to grant your motion to
17 strike the pleadings and for fees.

18 MR. FATA: Yeah.

19 THE COURT: If you have prior orders of this Court
20 saying Heath Causey, Will Swilley -- am I pronouncing
21 that correctly?

22 MR. FATA: Swilley.

23 THE COURT: Floyd Swilley.

24 MR. FATA: Floyd.

25 THE COURT: You are to appear for a deposition or

1 you'll face sanctions, and they still haven't done
2 it --

3 MR. FATA: Well, the orders in the past were on
4 discovery, interrogatories, requests for production of
5 documents, not giving me any information. So I --

6 THE COURT: Well, that's what I was asking you
7 earlier, you know, specifically what were the prior
8 discovery orders concerning?

9 MR. FATA: Requests for production of documents,
10 interrogatory responses. There is a May 2015 order
11 that specifically addressed the depositions, because I
12 had filed motions to compel.

13 THE COURT: And that May order, that's the consent
14 order you entered into with the driver?

15 MR. FATA: Yes, it is, Your Honor. Yes.

16 THE COURT: Does it provide any alternatives in
17 the event they don't cooperate?

18 MR. FATA: No, it does not, Your Honor. I don't
19 believe it does. I believe it's Plaintiff's motion to
20 compel depositions and Defendant's motion to quash
21 deposition notices have been resolved. The parties
22 shall cooperate on the setting of the depositions.

23 THE COURT: And that's dated May of last year?

24 MR. FATA: May 22, 2015 is the filed date.

25 THE COURT: All right. I'm going to grant your

1 motion to strike the pleadings as to Causey and the
2 Swilleys.

3 MR. FATA: Yes, sir.

4 THE COURT: If they're not going to participate,
5 they obviously don't have or retained other counsel or
6 don't seem to want to participate in this action. I
7 think it's appropriate. You will need to prepare an
8 affidavit of attorney's fees as to those Defendants.
9 Have you noticed them on that affidavit yet?

10 MR. FATA: No, Your Honor.

11 THE COURT: Under the rules, I think you have to
12 give a ten-day notice.

13 MR. FATA: Okay.

14 THE COURT: Ten days. You can go ahead and give
15 it to me. Have you filed that?

16 MR. FATA: Yes, sir, at this point.

17 THE COURT: Yeah. Now, as to 809?

18 MR. FEIDLER: Yes, Your Honor.

19 THE COURT: Let me ask you, going back to May, was
20 809 addressed in that order as well?

21 MR. FATA: Your Honor, I believe it was because,
22 like I said, this notice in December was -- or November
23 that I said was an amended notice, and I believe this
24 809 notice has been kicking around, I just amend it
25 from time to time to try to get another date that might

1 work, it never worked. But I can't definitively answer
2 that question without looking through the whole file,
3 and I don't have the whole file here because it's
4 voluminous.

5 THE COURT: You're shaking your head that yes, 809
6 was in that consent order; is that correct?

7 MR. FEIDLER: I hope I was not, Your Honor. I
8 might have just been --

9 THE COURT: Well, let me ask you.

10 MR. FEIDLER: Yes, Your Honor.

11 THE COURT: Give me one good reason, one, why 809
12 hasn't participated in discovery like they're supposed
13 to in any case, one.

14 MR. FEIDLER: Well, Your Honor, I'm kind of new to
15 this. I did go over the file.

16 THE COURT: I understand that. I figured that you
17 must be.

18 MR. FEIDLER: This is just a complicated case.
19 There's a companion case that --

20 THE COURT: I understand it's complicated.

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: It's probably complex. But it's not
23 complicated to say this is the person who is going to
24 speak for this corporation, and they appear for a
25 deposition. That's not complicated.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: That's very straightforward.

3 MR. FEIDLER: Yes, Your Honor.

4 THE COURT: So at this juncture, how long you been
5 in this case?

6 MR. FEIDLER: I've been with the firm since
7 August 17th. And I believe this is one of the first
8 files I dealt with off and on until this date.
9 Mr. Neill obviously has been here before that on the
10 companion case.

11 THE COURT: So going back --

12 MR. FEIDLER: Yes, Your Honor.

13 THE COURT: -- tell me why. I mean, even once you
14 received the motion to compel at this juncture, what
15 have you done to say, hey, hang on, let me get my folks
16 to name and let's get them participating instead of
17 waiting until today and I guess saying mea culpa, I'm
18 not sure.

19 MR. FEIDLER: Your Honor, I don't know how to
20 phrase it, but I guess my ability to argue for my
21 clients is as good as whether they cooperate with me,
22 Your Honor.

23 THE COURT: Well, and I know that you're limited
24 to what you can or cannot say. Have you attempted to
25 have them name and designate somebody as a spokesperson

1 for the corporation?

2 MR. FEIDLER: I know the two members of the
3 corporation, I cannot clearly --

4 THE COURT: The question is you or your firm --
5 let me clarify that. Has any legal representative of
6 the corporation sought to have whoever name the
7 spokesperson for the corporation?

8 MR. FEIDLER: Your Honor, I cannot tell you yes or
9 no, I do not know that answer. I know that Mr. Swilley
10 and Mr. Piner are representatives of that corporation.
11 And they are the gentlemen that we have been in touch
12 with per 809. They were notified of this hearing, they
13 knew everything that's going on, and we are just --
14 we're trying to move -- 809 at this point is trying to
15 claim bankruptcy. Of course we've said that months ago
16 and that's just something we're waiting on them to do
17 is to get them out of here.

18 It's my understanding as to just 809 and the
19 depositions that they did not attend, that there was a
20 supposed gentleman's agreement between Mr. Fata and
21 Mr. Neill over the phone. Maybe that should have been
22 followed up by an e-mail or a letter that they would
23 continue those depositions until a later date.

24 THE COURT: Is that true?

25 MR. FATA: No, Your Honor. What the conversation

1 was, I need some dates, how about this date, that
2 doesn't work, give me some dates. And then I don't
3 hear anything. Mr. Neill is trying to work with
4 Mr. Piner and Mr. Swilley.

5 Mrs. Swilley is a lawyer, Your Honor. So she
6 practices disability law in Conway. So this is not
7 foreign to them. They've been in other, I call them
8 Ponzi scheme lawsuits before in federal court in
9 Oklahoma. There's a US Bankruptcy Court judge ruling
10 on Mrs. Swilley trying to discharge a confession in
11 judgment from the Oklahoma case.

12 And the judge, Judge Wade, said, you can't do
13 that, you agreed in front of that federal judge.
14 You're not going to try to discharge the securities
15 fraud related debt six months after you were in federal
16 court saying, okay, I'm not going to discharge the
17 debt.

18 So what I'm trying to tell the Court is there's a
19 history with the Swilleys for sure, it's in this brief
20 that was filed on April 22nd. I have an extra copy if
21 Your Honor would like to read it with the Swilleys.
22 Mr. Piner is kind of -- he went into bankruptcy, so
23 he's not going to talk to his counsel, this is not on
24 the front burner.

25 But there has been wave after wave after delay.

1 The Swilleys are very used to doing this, they've done
2 it before. And I'm at the ouch point where I've got
3 two months left to get ready for a trial and I've got,
4 you know --

5 THE COURT: Nothing.

6 MR. FATA: -- nothing. And I've been trying to
7 get something. And so there wasn't a gentleman's
8 agreement, it's -- there's radial silence, like what's
9 going on. I've been hearing 809 is filing bankruptcy
10 for three months. Well, that's another delay tactic.

11 So, you know, at this point if they have money to
12 pay the lawyer, then I guess we got to go to trial. If
13 they're going to file bankruptcy, great, then I don't
14 have to come bother the Court, get you to waste your
15 time. I apologize for that, but I don't have any other
16 choice. Judge Seals --

17 THE COURT: This is what I get paid for.

18 MR. FATA: I understand, Your Honor, but --

19 THE COURT: It's not a waste of your time.

20 MR. FATA: -- it's very frustrating.

21 THE COURT: Sure.

22 MR. FATA: Two and a half years. My client's out
23 \$113,000 he said he made. I'm getting sued for what.
24 I put 115 in, I got a \$2,000 check and I'm getting
25 sued. And I'm paying you, and I don't even know what I

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1 did. I didn't have access to the checkbook, I didn't
2 receive anything other than a \$2,000 check they sent to
3 me.

4 So, you know, and the case is complicated, but my
5 client didn't have access to any of the money. And
6 he's getting sued and I don't know no, so we can't move
7 forward, so --

8 THE COURT: Let me ask you, the representative of
9 the 809 --

10 MR. FEIDLER: Yes, sir.

11 THE COURT: -- is Mr. Swilley?

12 MR. FEIDLER: Yes, sir.

13 THE COURT: And what I think I'm hearing you say
14 is we've tried to get him to give us some names and
15 whatever, and we're just not getting anything back from
16 him; is that a fair statement?

17 MR. FEIDLER: Your Honor, we've asked him to give
18 us some dates on depositions. We signed a scheduling
19 order that gives us, I believe it's either March 2nd or
20 3rd to get those depositions done.

21 THE COURT: Right.

22 MR. FEIDLER: And, Your Honor, we've tried, we've
23 attempted, and it's just a --

24 THE COURT: I'm going to strike 809's pleadings as
25 well.

1 MR. FEIDLER: Yes, Your Honor.

2 THE COURT: I'm going to do the same as to
3 attorney fees, and you just need to send a copy over to
4 counsel. I want you to make sure that your order
5 provides -- from what I'm hearing, the attorney's for
6 809 have attempted to cooperate.

7 MR. FATA: Will do, Your Honor.

8 THE COURT: Also, I want to hear you on the
9 judgment for the pleadings because I might want to make
10 an alternative finding in this case as well. So go
11 ahead and ask or argue your motion for judgement on the
12 pleadings.

13 MR. FATA: Thank you. Will do, sir. Your Honor,
14 in the motion for judgment on the pleadings there are,
15 in essence, and I have a memorandum that was filed
16 December 21 with the Court.

17 THE COURT: I saw that in there. I have not read
18 it so...

19 MR. FATA: There are several causes of action in
20 the counterclaim. The first lawyer for the Defendants
21 raised frivolous proceeding act, quantum meruit,
22 usurpation of partnership opportunity, negligent
23 misrepresentation, breach of fiduciary duty and breach
24 of loan agreement.

25 THE COURT: Go over those again.

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1 MR. FATA: Sorry, Your Honor, I was a little fast.

2 THE COURT: Frivolous lawsuit?

3 MR. FATA: For all Defendants. And then quantum
4 meruit for 809 Holdings, usurpation of partnership
5 opportunity for 809 Holdings, negligent
6 misrepresentation as to 809 Holdings, breach of
7 fiduciary duty as to 809 Holdings, and breach of loan
8 agreements by Floyd Swilley.

9 THE COURT: Okay, sir. Well, the frivolous claim
10 is something that's just not right. I mean --

11 MR. FATA: Correct.

12 THE COURT: -- and it seems to me the cases say
13 you bring that up at the end of the day. I'll grant
14 your motion as to that. Go ahead and tell me about
15 quantum meruit.

16 MR. FATA: Quantum meruit, Your Honor, as to 809
17 Holdings, any claim 809 Holdings has as to Gabriel
18 Barnhill would be as to his status as a limited partner
19 in that investment, because that's what he was given, a
20 limited partnership interest.

21 Mr. Swilley and Mr. Piner, through their entities,
22 retained a general partnership interest, okay. So
23 under the limited partnership statute that I've cited
24 in the brief, limited partners aren't liable for
25 anything else other than whatever they contribute; in

1 other words, you can't sue a limited partner as if he
2 was a general partner. He's not obligated for any
3 partnership debt unless he signs off on a guarantee or
4 some type of written acknowledgement that, yes, I'm
5 going to be liable.

6 Similar to a member in an LLC, the statute's very
7 clear, members in LLC's, unless they --

8 THE COURT: Well, let me ask you this. Under the
9 Limited Partnership Act, doesn't that just cap your
10 liability but it doesn't cap your method of getting to
11 it?

12 MR. FATA: I think it's -- I don't think the
13 Limited Liability Act allows the partnership to sue you
14 for quantum meruit, to sue the limited partner. Maybe
15 you lose your membership interest or your limited
16 partnership --

17 THE COURT: But if they sued you for -- and I'm
18 asking, I'm going to read your brief -- if they sued
19 you for quantum meruit, equitable claim, and they seek
20 damages up to the amount of your investment in the
21 limited partnership based on that cause of action, you
22 say that's inappropriate?

23 MR. FATA: I say that's inappropriate. I don't
24 see how they get --

25 THE COURT: You have no equitable claim back

1 against the limited partners is what you're saying?

2 MR. FATA: No. You've got their -- the money is
3 there, that's the -- the limited partner doesn't get
4 paid back on his investment, that's what's lost. But
5 in this case 809 Holdings hasn't stated a claim or come
6 forth with any evidence as to what kind of quantum
7 merit it deserves.

8 THE COURT: Well, judgement pleadings are just
9 that.

10 MR. FATA: Yes.

11 THE COURT: I mean, I'm looking at the pleadings
12 themselves for the facts; right?

13 MR. FATA: Yes, sir. And it's also -- it's a
14 summary judgment motion as well.

15 THE COURT: Oh, it is?

16 MR. FATA: It's judgment on the pleadings and
17 summary judgment, because we're this far into the
18 two-and-a-half-year litigation. I don't have any
19 facts, there are no facts to support any of these
20 claims. And even if there were, statutorily under the
21 Limited Partnership Act, I think my client's shielded
22 from liability unless you signed off on something
23 saying I'm going to be liable as a partner for these
24 type of quasi partnership allegations, which they're
25 not. He's a limited partner.

1 So it's two motions in one, judgment on the
2 pleadings and/or summary judgement because there are
3 some issues of fact this late in the day.

4 THE COURT: I'm sorry, I didn't know, sir.

5 MR. FATA: Well, I didn't explain it well, Your
6 Honor. So the same would be true for any type of
7 claims with QC Financing, LLC. In the summer of 2011,
8 Mr. Swilley was getting investigated by the Attorney
9 General's office for a lot of this, and he had to get
10 out of the that limited liability company.

11 He gave his -- he gave like an interest, like a
12 25 percent membership interest to Barnhill. And QC
13 Financing, LLC is the entity that had the pawn shop,
14 that ran the pawn shop and that borrowed the money from
15 809 Holdings.

16 THE COURT: So your motions are directed to all of
17 the named original Defendants and I'm looking at not
18 the third party Defendants.

19 MR. FATA: That's correct, Your Honor. Only the
20 original Defendants filed counterclaims. And after the
21 counterclaims were filed, Mr. Leiter stipulated on
22 behalf of all of the Defendants that it was just 809
23 Holdings that was asserting the claims. It's not clear
24 from its counterclaim that it was the only one
25 asserting a counterclaim, with the exception of Floyd

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1 Swilley's counterclaim for breach of loan agreement.

2 THE COURT: Got you. Okay.

3 MR. FATA: So there is no duty owed as a member of
4 the limited liability company, QC Financing, that Mr.
5 Barnhill could allegedly have, or as a limited partner
6 of 809 Holdings he doesn't owe any duty. And even if
7 he did, there are no facts to support any of these
8 causes of action. There is no evidence. There is an
9 affidavit that was filed, I think, by Mr. Piner last
10 Friday I got it, Thursday or Friday.

11 THE COURT: And he's the gentleman that filed
12 bankruptcy?

13 MR. FATA: Yes, sir.

14 THE COURT: Got it.

15 MR. FATA: So I had filed the motion to strike
16 that affidavit because it doesn't comply with Rule 56.
17 The last two out of his six paragraphs talk about on
18 information and belief. That doesn't comply with Rule
19 56. I can hand up my motion that's already been filed
20 in, Your Honor.

21 And the other two or three paragraphs in his
22 affidavit, it's really only one page and -- I'm sorry.
23 Paragraphs two, three and the first four and the second
24 four just allege some conclusory statements stating
25 without any basis that Mr. Barnhill was involved in the

1 day-to-day operations of the pawn shop. He was not, he
2 has a full-time job. He's always had a full-time job.
3 He was just an investor, and he got stuck with the
4 wrong crowd, and this is where he is three years later.

5 THE COURT: And Mr. Piner is one that you've also
6 sought to have his deposition taken?

7 MR. FATA: Yes.

8 THE COURT: But he doesn't participate in it?

9 MR. FATA: Correct.

10 THE COURT: He gives an affidavit?

11 MR. FATA: That's right, that's right, Your Honor.

12 So as to the negligent -- I'm trying to move forward --
13 the negligent misrepresentation claim fails under the
14 pleading because it talks about a misrepresentation or
15 alleges a misrepresentation of what would happen in the
16 future. You have to misrepresent something, a current
17 fact that you know to be untrue today, not what you are
18 going to do in the future. It's kind of like a broken
19 promise is not enough to bring a fraud claim. So we
20 have a case cite of Allegro v. Scully, 762 S.E.2d 54, a
21 2014 case that supports that to strike that.

22 The breach of fiduciary duty claim, again, my
23 client's a limited partner. If anyone has a fiduciary
24 duty, it would be Piner and Swilley who are the general
25 partners. They set up QC Financing, they were the

1 original partners involved in that, And they sued their
2 former partner, Dave Wilkinson, who apparently took off
3 with some stuff, they sued him.

4 And so if there is any breach of fiduciary duty
5 claim, it would be as to those general partners, not a
6 limited partner or a member in an LLC that had no
7 signatory right to any checkbook, never got any money.
8 We asked in discovery, the judge did order this, Your
9 Honor, if you're going to allege misappropriation of
10 funds, you got to identify the funds.

11 So the response I get is, well, we don't really
12 know any specific dates, we just want you liable for
13 all the damages from our suit that we had against Dave
14 Wilkinson, a former partner. And that's simply not
15 compliant with discovery. So there is no evidence to
16 meet any of the elements for any of these claims.
17 That's why in the second suit they were never raised.
18 I think the second lawyer realized they weren't going
19 to go anywhere, they were a waste of time.

20 But at this point two years into the litigation,
21 we're asking for the Court to either by summary
22 judgment or a judgment on the pleadings or under the
23 motion for sanctions, depositions, just to strike them
24 or get rid of them so we don't have to deal with them,
25 Your Honor.

1 THE COURT: All right, sir.

2 MR. FEIDLER: Yes, Your Honor. It is our
3 understanding that Mr. Barnhill was in fact in that
4 pawn shop with Mr. Wilkinson, who he did find a
5 judgment against for \$785,000.

6 THE COURT: Say that again, please.

7 MR. FEIDLER: Mr. Wilkinson in the companion case
8 before this case, it is our impression that Mr.
9 Wilkinson and Mr. Barnhill were in that pawn shop
10 dealing with the assets --

11 THE COURT: Well, what do you base that impression
12 upon?

13 MR. FEIDLER: Well, Your Honor, we have an e-mail
14 where Mr. Wilkinson e-mails my clients and says, as far
15 as I'm concerned, Mr. Barnhill and I are partners in
16 this pawn shop. From what I've heard, they were in
17 this pawn shop, they were accepting assets.

18 The reason we can't pin this down with evidence is
19 because we don't know what was in that pawn shop.
20 Mr. Wilkinson in the companion case, and we have
21 pictures of this and I have affidavits, he actually
22 backed up a horse trailer and packed everything into
23 that horse trailer from the pawn shop and left for
24 Tennessee.

25 THE COURT: Who did?

1 MR. FEIDLER: Mr. Wilkinson, in a companion case.
2 It is our --

3 THE COURT: Did Barnhill and Wilkinson file K-1's
4 on the pawn shop?

5 MR. FEIDLER: I'm sorry, Your Honor, I honestly do
6 not --

7 THE COURT: That's a partnership return. Did they
8 ever file partnership returns or anything of that
9 nature indicating there was existence of a partnership?

10 MR. FEIDLER: Your Honor, I don't believe so.

11 MR. FATA: Your Honor, because Mr. Swilley handled
12 all the bookkeeping for QC Financing, the pawn shop, I
13 think the answer is no.

14 THE COURT: And how long was this pawn shop in
15 existence?

16 MR. FATA: Approximately end of 2010, early 2011,
17 till about August, I think, 2012. So 18, 20 months.

18 THE COURT: Okay. All right, go ahead. I don't
19 mean to interrupt you.

20 MR. FEIDLER: No, Your Honor, you're fine. I
21 think Mr. Fata's stuck on the limited partnership and
22 find a fiduciary duty there. I think this goes beyond
23 that. I know the Court may be able to find that there
24 was a legal duty, whether that's based on statute, the
25 limited partnership --

1 THE COURT: What statute?

2 MR. FEIDLER: Statute, yes, Your Honor, I'm sorry,
3 mispronounced that. Based on a relationship or
4 property interest or some special circumstances. And
5 we are under the impression --

6 THE COURT: Well, let me -- I'm going to give you
7 an opportunity.

8 MR. FEIDLER: Yes, Your Honor.

9 THE COURT: I want you to educate me. Give me
10 specifically factually the special circumstances that
11 have been proven to exist based on the discovery that's
12 taken place at this juncture.

13 MR. FEIDLER: To this juncture, none, Your Honor.
14 We were waiting to take Mr. Barnhill's deposition to
15 find that evidence, to find those facts, to find out if
16 he was in fact in that pawn shop dealing with the
17 day-to-day transactions, dealing with the assets.

18 They're taking in assets in this pawn shop, and
19 there's no bookkeeping of this, and also they're gone.
20 And that's where -- this is where the gap -- this is
21 where the gap is. This is what we're going to probably
22 be leaning on is whether or not we can prove how much
23 assets were in there, how much assets were taken out,
24 whether Mr. Wilkinson and Mr. Barnhill were together,
25 whether that's a limited partner or whether they are

1 just conducting business on a day-to-day basis. That's
2 where everything's kind of relying on.

3 And we've asked Mr. Fata, of course he's asked us
4 for -- to schedule these depositions, we asked him, we
5 would like to schedule Mr. Barnhill's deposition, we're
6 waiting on that. And as soon as we can depose
7 Mr. Barnhill, I believe that will open up a little bit
8 more for us to pin down exactly what was in that pawn
9 shop and what he had to do with that.

10 THE COURT: Has Mr. Fata not allowed you to take
11 Mr. Barnhill's deposition?

12 MR. FEIDLER: Your Honor, with all due respect to
13 Mr. Fata, I believe you asked him Thursday or Friday
14 for those dates.

15 THE COURT: So essentially what I'm hearing is
16 that the Defendants won't cooperate in any form or
17 fashion, although they've been ordered to. And at this
18 juncture because they haven't cooperated, we're
19 entitled not to have summary judgment issued against
20 us; is that a fair statement in some sense of the word?

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: You're being the sacrificial lamb here
23 today; aren't you?

24 MR. FEIDLER: I am, Your Honor.

25 THE COURT: All right, go ahead. I told you I

1 would let you argue, go ahead.

2 MR. FEIDLER: Your Honor, I really don't have
3 anything else to say other than we're just waiting to
4 take depositions.

5 THE COURT: I got you, okay.

6 MR. FEIDLER: We're just waiting to proceed on
7 this.

8 THE COURT: Mr. Fata, I'm going to read your
9 memorandum before I issue my order on that.

10 MR. FATA: Yes, sir.

11 THE COURT: My prior order striking the pleadings
12 on the Defendants that you asked for is granted. You
13 need to provide them and 809 your affidavit of
14 attorney's fees.

15 MR. FATA: Yes, sir.

16 THE COURT: Give them ten days to object. Now, as
17 far as the attorney's fees goes, if there is an
18 objection raised by your client, 809 or the other pro
19 se individual Defendants --

20 MR. FEIDLER: Yes, Your Honor.

21 THE COURT: -- it would seem to me more expedient
22 for you guys to consent at this juncture for another
23 circuit court judge to be able to hear it. Because I'm
24 from Anderson, and I can see the logistics of that
25 being a problem.

1 MR. FEIDLER: Yes, Your Honor.

2 MR. FATA: Your Honor, I consent to that. And by
3 the way, the affidavit of attorney's fees that I
4 submitted is about \$1,050, so it's not big.

5 THE COURT: It's not big.

6 MR. FATA: Yes, just for the Court's --

7 THE COURT: Do you have a problem consenting to
8 that?

9 MR. FEIDLER: No, Your Honor, not at all.

10 THE COURT: Just the fact just the amount of it.
11 In other words, attorney's fees is going to be
12 awarded -- are going to be awarded, excuse me. Just
13 the amount may be determined by another circuit court
14 judge just for logistical.

15 MR. FEIDLER: Absolutely.

16 THE COURT: Is that okay with you?

17 MR. FEIDLER: Yes, Your Honor.

18 THE COURT: Okay, all right. Anything further?

19 MR. FATA: No, Your Honor. Would you like the
20 proposed order in seven days or?

21 THE COURT: Just, yeah, if you would. Does that
22 give you enough time? Make sure you give me a copy of
23 the proposed order.

24 MR. FATA: Yes, sir.

25 THE COURT: Wait until I issue my order on the

1 summary judgment. I'm inclined to grant it, I'll tell
2 you, I'm sure you can tell.

3 MR. FATA: Yes, Your Honor.

4 THE COURT: But I want to read first to make sure
5 I'm not just missing the mark totally; okay?

6 MR. FEIDLER: Thank you, Your Honor.

7 MR. FATA: Thank you, Your Honor.

8 THE COURT: Thank you, guys. I appreciate it.

9 (The hearing concluded at approximately
10 10:41 a.m.)

11 (End of Transcript of Record.)
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Appendix 00476

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3 CERTIFICATE OF REPORTER4 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF HORRY)7 I, TERESA J.F. BAUTZ, Official Court
8 Reporter for the Fifteenth Judicial Circuit of the
9 State of South Carolina, do hereby certify that the
10 foregoing is a true, accurate and complete Transcript
11 of Record of the proceedings had and evidence
12 introduced in the trial of the captioned case, relative
13 to appeal, in the Court of Common Pleas for Horry
14 County, South Carolina, on the 19th day of April, 2016.15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17
18
1920 S/Teresa J. F. Bautz
21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2013-CP-26-2816

Gabriel Barnhill, et al.,)

Plaintiffs,)

Transcript of Record

vs.)

Hearing

J. Floyd Swilley, et al.,)

January 13, 2014

Defendants.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S :

Natale Fata, Esquire
Attorney for Plaintiffs

John M. Leiter, Esquire
Attorney for Defendants,
J. Floyd Swilley,

J. Floyd Swilley Investment Advisors,
Laurel K. Swilley, SMG Partners LLC,
SMS Services LP, William C. Piner, WCP Limited LLC,
809 Holdings LP, Heath Causey,
and Sage Financial Group LLC

Grace L. Hurley, CVR-CM
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, January 13, 2014.)

2 THE COURT: Okay. The next one is 2013-CP-26-2816,
3 Gabriel Barnhill and GSB Enterprises LLC versus J. Floyd
4 Swilley, J. Floyd Swilley Investment Advisors, Laurel K.
5 Swilley, SMG Partners LLC, SMS Services LP, William C. Piner,
6 WCP Limited LLC, 809 Holdings LP, QC Financing LLC, Heath
7 Causey and Sage Financial Group LLC. According to my roster
8 the matter is before the Court on a motion for sanctions.
9 Please give the court reporter your names and who you
10 represent.

11 MR. FATA: Your Honor, Nate Fata on behalf of the
12 Plaintiffs Gabriel Barnhill and GSB Enterprises, LLC.

13 THE COURT: All right.

14 MR. LEITER: Your Honor, John Leiter on behalf of all of
15 the Defendants except for QC Financing, LLC. So I represent
16 J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel
17 K. Swilley, SMG Partners LLC, SMS Services LP, William C.
18 Piner and WCP Limited LLC, 809 Holdings LP, Heath Causey and
19 Sage Financial Group LLC.

20 THE COURT: All right. All right. Mr. Fata, this is
21 your motion?

22 MR. FATA: Yes, Your Honor.

23 THE COURT: All right. Let me hear from you.

24 MR. FATA: Your Honor, this is a motion for sanctions for
25 failure to comply with discovery. We had filed the motion on

1 November 4th, 2013. That motion relates to a consent order on
2 discovery that was entered on September 20th, 2013. This
3 action arises out of a Ponzi scheme that the Defendants came
4 up with and solicited various investors, including my client.
5 Mr. Swilley was my client's accountant and came up with this
6 idea that he was going to make lots of money in the factoring
7 business and that he and his partners could set up a factoring
8 company, which would loan money to companies who would then
9 pay higher rates of interest on those loan monies and all
10 those loans would be secured by assets. It turned out to be a
11 pawn shop. About \$400,000 was raised by Mr. Swilley and Mr.
12 Piner and their related colleagues. In this action there's a
13 pending action, a parallel action against Mr. Swilley for
14 another \$200,000 in another investment company about the same
15 time.

16 We served discovery with the complaint in April. Mr.
17 Adler, prior counsel, was engaged by the Defendants. We
18 didn't hear anything from him. We didn't get any response to
19 discovery requests. We filed a motion in July of 2013 for the
20 discovery motion, gets heard or set for a hearing. In
21 September 2013, a day before the hearing, Mr. Adler calls me.
22 He says, "I'll give you, you know, what you need." I said,
23 "Here's a consent order." I think he gets 30 days for
24 complete answers, you know, the standard consent order to
25 resolve the discovery motion. We get that in place. He sends

1 in October, I think October 15th, 2013, he sends the discovery
2 and he's got objections to the interrogatories, and he's
3 partially answered some of the interrogatories, and these were
4 fairly detailed interrogatories. I call him up, and I said,
5 "You know, we would have gone through all these objections at
6 the first hearing and I've already been waiting five months
7 and now I've got this." I said, "I'm going to write you a
8 letter, but I need to get these, I need to get this
9 information." So I spend a good bit of time writing a four-
10 page letter, outlining, it's part of my motion, saying, "These
11 are all the deficiencies. You know, the time to object to
12 interrogatories is long gone. You already filed a consent
13 order. You signed it. The Judge entered it," and I don't, I
14 don't hear anything.

15 So a couple of weeks goes by. I file this motion for
16 sanctions asking for the relief that's under the law that I'm
17 entitled to ask for, and I guess I would hand up to the Court
18 two cases. One is the Ball case versus Canadian Express
19 which has a little section just that under motion to compel,
20 as the Court might know, under Rule 37(A) the prevailing party
21 can get attorney's fees, and I'm going to submit an affidavit
22 for attorney's fees, and also the OZO decision, which stands
23 for the proposition that in certain circumstances, if the
24 matter's bad enough, the Court can strike the answer or strike
25 the pleading of the non-compliant party for the discovery. So

1 I --

2 THE COURT: Is that what you're asking for? What are you
3 asking for?

4 MR. FATA: I've asked for both in my, in, in my pleading,
5 and I'll hand up my affidavit for attorney's fees.

6 THE COURT: All right.

7 MR. FATA: And in my affidavit, Your Honor, I, I'm sure I
8 have more than five hours, but I've asked for five hours of
9 time at my hourly rate.

10 THE COURT: Okay. Now, have they provided any discovery
11 since you've filed this motion?

12 MR. FATA: So, so Friday afternoon Mr. Leiter calls me,
13 and I've known Mr. Leiter for many years, and he says, "I've
14 just been engaged or retained by the Defendants, and I'll be
15 filing a notice of appearance, and I'm trying to get through
16 this discovery issue," and I said, "Well, it's Friday
17 afternoon. I got to go to the hearing. There's nothing I can
18 do at this point, and I've wasted a lot of time already. You
19 know, this is a long time coming." Mr. Adler was relieved
20 under the Court's order in December from being counsel because
21 he had a conflict or he couldn't resolve a conflict among the
22 parties, but in that order relieving him as counsel. The
23 Judge, I think it was Judge Hyman, ordered that the Defendants
24 had the obligation to comply with discovery. Of course, this

25 was ongoing.

1 THE COURT: Right.

2 MR. FATA: So but this morning I did get supplemental
3 responses with more information than I had had previously from
4 Mr. Leiter, and I think Mr. Leiter informed me that he has
5 some additional records, which I believe are --

6 MR. LEITER: They're here.

7 MR. FATA: -- voluminous. I don't know how many banker
8 boxes, that I didn't have up until this morning, and I haven't
9 received them yet, but I did get responses. I have not had an
10 opportunity to go through them to see what's still at issue.
11 I don't want to bore the Court with line by line going
12 through. At this point I don't think that's fair for me or
13 for the Court, but that's the status. So what we're asking
14 for is to strike the answer, and we understand that's a
15 drastic remedy, and, you know, it's in the Court's discretion,
16 and -- but there's some discussion about that in the OZO case,
17 that it is a drastic remedy. We understand that, but if
18 nothing else, for the attorney's fees for having to come here
19 to force an order that's already been mentioned in another
20 order, then to come to the Court, we believe the attorney's
21 fee request of \$1,500 plus the \$25 filing fee is fair and
22 reasonable. It's obviously not Mr. Leiter's fault, and we're
23 not saying that. It's, you know, the Defendant's had plenty
24 of time to get this stuff to me in December and early January
25 if they had wanted to, Your Honor.

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1 THE COURT: All right. Mr. Leiter?

2 MR. LEITER: Thank you, Your Honor. First, Mr. Fata's a
3 good trial lawyer. So let me start with his, his description
4 of the case as a Ponzi scheme. This is not -- he alleges
5 something that he would like to say is a Ponzi scheme. It's
6 not a Ponzi scheme. His clients were fully aware of what they
7 were getting into. They've lost money. They claim they've
8 lost money in it. We claim it's because of their own
9 wrongdoing in it, but they just want money out of this because
10 they didn't get what they wanted, and so that's what the case
11 is about, that's what we're going to prove.

12 In terms of the discovery, I need to, again, not correct
13 the record because Mr. Fata was accurate in what he said, but
14 expound on the record. My client, you know, how Mr. Adler
15 handled it I can't tell you, but the consent order enlarging
16 the discovery time was filed, was signed. So that is in
17 place. On the date required that the discovery be served, it
18 was served. My clients did file answers to the
19 interrogatories, did give, produce documents, and in fact,
20 produced over a thousand pages of documents.

21 THE COURT: When was this?

22 MR. LEITER: On October 15th.

23 THE COURT: Okay.

24 MR. LEITER: The day that it was due.

25 THE COURT: All right.

1 MR. LEITER: So I will say that my clients did not maybe
2 answer every question perfectly, but by no means did they
3 engage in bad faith or gross indifference or willfulness in
4 this, and to make matters worse, and just I say worse, I think
5 what sheds light on what is happening here, the discovery was
6 served on October 15th, the due date according to the consent
7 order. During this time, Mr. Adler's in the process of
8 withdrawing as counsel. So Mr. Fata's letter went out, I
9 believe it's dated October 21st, 2013. Mr. Adler filed his
10 motion to be withdrawn or his motion to withdraw as counsel on
11 October 28th. So at this time that this -- that more discovery
12 is being requested, Mr. Adler is withdrawing as counsel. A
13 hearing was held and the order granting Mr. Adler's motion to
14 withdraw was December 11th, 2013. Now, two days after, I
15 believe, well a few days after the motion for sanctions was
16 filed, the Court sent out its notice, notice of motions, that
17 this matter was on the motions roster. When it came time to
18 hear the motion to withdraw, apparently Mr. Adler was not
19 aware of that or did not inform the Court because when the --
20 I believe Judge Hyman signed the order allowing the
21 withdrawal, in it it states that there are no pending motions.
22 In fact, this motion was pending. Normally, I mean, I would
23 say the general practice is is that a clients whose attorneys
24 withdraw are allowed a certain amount of time to find new
25 counsel, usually let's say 30 days. That was not provided in

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1 this case. The clients did just recently retain me. We've
2 been working on -- I've been working on catching myself up to
3 speed with the case. It is a document-intensive case. When I
4 was then familiar with the facts, I did call Mr. Fata and say,
5 "You know, I, I see that we were not perfect in this, but I
6 don't see how this really rises to the level of sanctions, and
7 if you just give me time, we can work through this," and I
8 can't blame Mr. Fata, but the motion was on the roster and he
9 said, "No, I want to bring it to court."

10 Going to the October 21st letter, just to give you a
11 flavor, I agree with Mr. Fata that we don't want to go through
12 this line by line, but I am doing this to help address the
13 issue of why sanctions are not called for in this case.
14 Number one, Mr. Fata says in interrogatory number one, which
15 is the standard one saying, "Let us know who the witnesses
16 are," Mr. Fata notes that addresses have not been provided.
17 Some had been, but not all addresses had been provided. So
18 clearly, yes, technically, we have a duty to give addresses,
19 but we've provided the names of witnesses, and that's what's
20 important. When it came time to say what the witnesses were
21 going to testify to, apparently Mr. Adler would describe their
22 testimony as being quote, "Actions of Plaintiffs relevant to
23 QC Pawn", end quote, or quote "Inventory issues relative to QC
24 Pawn", end quote. Mr. Fata wasn't satisfied with those, and
25 again, I'm not blaming him. I might not be either, but the

1 point is is that when you're giving answers to what the people
2 are going to talk about, the witnesses, my experience is that
3 no matter who you are, no matter what you try to do, they
4 always come in broadly and very generalized. It's just the
5 practice, and so I believe they attempted in good faith to put
6 Mr. Fata on notice of what they were going to testify to.

7 In my answers, my amended answers, we did expound on
8 that, but we didn't change anything. I mean, I really do
9 think that he was given that kind of notice. Now, there are a
10 couple of things that we did not provide, for instance, tax
11 returns. When I talked to Mr. Fata on Friday, I said, "Would
12 you consent to these being put under a protective order, a
13 confidentiality order," and he said yes, and so, we have, we
14 have those returns now to provide to him.

15 There was an issue of, of an investigation done by the
16 Attorney General's Office, and he asked for those documents.
17 My client did not provide those, but Mr. Fata, I believe,
18 subpoenaed those documents. I have a, I mean, they didn't --

19 MR. FATA: Your Honor, those documents, the Attorney
20 General's Office would not release documents that were
21 submitted by his client. His client objected under attorney-
22 client privilege to producing documents given to the State.

23 MR. LEITER: I haven't --

24 MR. FATA: And that's -- that was a problem I had.

25 THE COURT: I got you --

1 MR. LEITER: I was just going to say that, you know, he
2 had the subpoena power, he pursued it, but we have those
3 documents to give. So I think there might be one or two minor
4 things, some documentation on liens that I still don't have,
5 but in the great scheme of things, that's minor, but if you
6 went through the answers or the responses provided to my -- by
7 my clients, they attempted in good faith to answer these, and
8 they did answer I'm going to say 90 percent of it.

9 THE COURT: Well, have you, in your responses that you've
10 provided, have you raised any objections based upon privilege
11 or anything of that nature?

12 MR. LEITER: No, Your Honor.

13 THE COURT: Okay. All right. Anything in reply?

14 MR. FATA: No. Other than I believe there's a bunch of
15 other documents that I haven't been given.

16 MR. LEITER: We have them.

17 MR. FATA: So just put that on the record, Your Honor. I
18 believe it's voluminous because there's three banker boxes
19 here.

20 MR. LEITER: Well, let me just explain the three. One
21 are I brought the documents that had already been provided and
22 that fills up one banker box. Then one of the banker boxes is
23 what I'm about to give you, but it's my set. So this includes
24 the Attorney General investigation, the tax returns.

25 MR. FATA: Okay.

1 MR. LEITER: And they're marked, Mr. Floyd's response to
2 the Attorney General's request, tax returns. So these are the
3 few document -- when I say few, I mean, they don't take up a
4 complete banker's box, but these are the documents that were
5 objected to originally, and we're not -- no longer objecting
6 to them.

7 THE COURT: All right. All right. I'm going to
8 partially grant the motion for sanctions in that they have
9 provided some discovery. I'm not going to strike their
10 responsive pleadings; however, after you have an opportunity
11 to go through these, if it's still deficient, you can file
12 your motion at that time. I am going to award attorney's fees
13 and costs of 1525. Defendants are to pay that within ten days
14 of today. Anything -- I can just do a form 4 that says it's
15 partially granted, they pay 1525 within ten days, that there
16 was voluminous materials provided, the Plaintiffs have -- had
17 not had opportunity to go through it. Once they complete
18 going through that discovery, if it still proves that it is
19 deficient in any way, then you can contact him for it or file
20 your motion for additional sanctions or whatever the case may
21 be.

22 MR. FATA: Thank you, Your Honor.

23 THE COURT: And we'll deal with it then. Okay?

24 MR. LEITER: Just so we're clear, Your Honor, on that,

25 the consultation rules are still in place. Mr. -- if Mr. Fata --

1 feels that something's incomplete, he would first contact me,
2 let me know what he thinks it is?

3 THE COURT: That would be my understanding. This isn't
4 on a trial roster or anything; is it?

5 MR. FATA: No, no, no.

6 THE COURT: Yeah. The one thing I wanted to make sure is
7 that given the prior discovery order, I think that the time
8 for raising any objections has passed. So I don't think that
9 your clients can oppose any discovery request at this late
10 date based upon privilege or whatever, that they're going to
11 have to produce it, give him the opportunity to go through and
12 see if they have, but yeah, he'll still need, if it's
13 deficient, he'll need to call you and say, "I need to get
14 this." However, this shouldn't be the case, but if he went
15 through something and the Defendants object to this
16 interrogatory based upon the fact that it violates the
17 attorney-client privilege, well, then he's not going to need
18 to contact them. He, he can go ahead and file his motion for
19 sanctions then. All right?

20 MR. LEITER: Thank you, Your Honor.

21 MR. FATA: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Adjourned.)

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I, the undersigned, Grace L. Hurley, 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 Gabriel Barnhill, et al. v. J. Floyd Swilley, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 13, 2014.

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

Grace L. Hurley, CVR-CM-M
Official Reporter

December 9, 2014.

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Appendix 00492

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2013-CP-26-02816
3 -----

4 September 30, 2014

5 **BEFORE:** The Honorable Larry Hyman
6 -----

7 GABRIEL BARNHILL, et al.,

8 Plaintiffs,

9 vs.

10 J. FLOYD SWILLEY, et al.,

11 Defendants.
12 -----

13 **APPEARANCES:**

14
15 Natale Fata, Esq.
16 Attorney for the Plaintiffs.

17 John M. Leiter, Esq.
18 Attorneys for the Defendant.

19 Official Court Reporter
20 Natalie Dahl, RPR
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Court's Exhibit

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Appendix 00494

1 PROCEEDINGS

2 THE COURT: Barnhill versus J. Floyd Swilley, et
3 al. Mr. Fata, you are moving for sanctions against
4 Mr. Leiter?

5 MR. FATA: Your Honor, it has happened very
6 rarely, but it's happened twice in this one case, and
7 it is not his fault.

8 THE COURT: Let me hear it.

9 MR. FATA: If I could hand up a memo and my
10 affidavit for attorney's fees now?

11 THE COURT: There is a motion for judgment on
12 pleadings; that is withdrawn?

13 MR. FATA: Yes, Your Honor. You had a long week,
14 Your Honor. I've handed up my memorandum in support
15 of the Barnhill Plaintiff's Motions for Sanctions and
16 Affidavit of Attorney's Fees. I would like to give
17 the Court a little background and then talk about this
18 particular motion and why it is appropriate.

19 Unfortunately, in this case this is a Ponzi
20 scheme case where Mr. Barnhill, along with seven other
21 investors, invested at Mr. Swilley and Mr. Piner's
22 urging or request for solicitation into a factoring
23 investment in 2011.

24 THE COURT: A what?

25 MR. FATA: They call it factoring. You give

1 \$115,000, like my client, and then you are going to
2 get a note that pays you back 1 percent per month on
3 your original investment the first six months,
4 6 percent, and then a percent-and-a-half for the next
5 six months, so it is a 15 percent return. During the
6 terrible interest rates we have had, a lot of people
7 bit on that, and my client was one of them. So he
8 jumped in, along with six, seven investors, to the
9 tune of \$360,000. Most of the investors were the
10 accounting clients of Mr. Swilley, who has an
11 accounting practice. Mr. Swilley is married to Laurel
12 Swilley, who has a Social Security Disability practice
13 in Conway. Mr. Piner is --

14 THE COURT: She's an attorney?

15 MR. FATA: She is, but I don't know if she's
16 South Carolina licensed. She might be listed in
17 another state, but her practice is federal disability
18 Social Security claims, I believe, Your Honor. In any
19 event --

20 THE COURT: What happened to the days where you
21 would get a pot holder, you know? That is before your
22 time, but like the chain letter. I bet Mr. Battle was
23 not even that old. No, we never did that.

24 MR. FATA: Yeah, like send \$50. In any event, my
25 client became an investor under the notes, and an

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1 equity -- he became a limited partner in 809 Holdings,
2 that is where all the investor money was funneled to.
3 809 Holdings was going to loan money that was to be
4 collateralized to a pawn shop that Mr. Swilley and
5 Mr. Piner were starting with a third gentleman. All
6 the collateral from the pawn shop was supposed to
7 secure the notes, but we don't have any lien
8 documents, and the pawn shop went out of business.
9 There was no collateral. There was a suit against QC
10 Financing, which is the pawn shop, and there was a
11 default judgment.

12 My client, somewhere in the relationship, knew
13 things was going downhill in August of 2011 and tried
14 to get involved with the pawn shop to see what he
15 could do.

16 THE COURT: Let me get this straight. A Ponzi
17 scheme constructed to finance a pawn shop?

18 MR. FATA: Yes.

19 THE COURT: And your clients bit that?

20 MR. FATA: Yes. Yes. And Mr. Swilley was going
21 to open a bunch of pawn shops and use his clients from
22 the accounting practice to fund that, because he
23 couldn't get a loan otherwise, I don't think. Be that
24 as it may, this lawsuit -- because only \$2,000 was
25 repaid to Mr. Barnhill out of the \$115,000 -- this

1 lawsuit was filed in April of 2013. That is
2 important, because we have a scheduling order that
3 says trial not before October 27th or 29th, 2014,
4 which is less than a month.

5 In April of 2013, I served discovery with summons
6 and complaint, and I didn't get any answers. So then
7 I went and got a consent order from the then opposing
8 counsel, Mr. Adler, saying he would provide full and
9 complete answers. I didn't get any responses, so I
10 filed a motion. On that September 2013 order, I filed
11 a motion to get discovery responses for everything
12 that I was asking for, and that was heard by Judge
13 Culbertson in January of this year, 2014. Judge
14 Culbertson partially granted the motion for sanctions
15 and ordered fees. I'll be honest, I've been
16 practicing for 21 years and only asked for discovery
17 sanctions twice, and it has been in this case.

18 THE COURT: How much did Judge Culbertson give
19 you?

20 MR. FATA: In fees?

21 THE COURT: Yeah.

22 MR. FATA: 1500 and the filing fee. So I'm
23 trying to prepare for trial. What I found is -- from
24 the records that I've been given, because we had to go
25 through all the bank statements because a lot of

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Appendix 00498

1 information was not provided -- a lot of money is
2 going out to the defendants to their companies or to
3 themselves. That was not disclosed to us. So while
4 the investors lose over \$300,000, the defendants have
5 made money on this whole project and moved onto, yet,
6 another investment scheme called "Safe." Safe is the
7 subject of Mr. Hills, who represents a plaintiff
8 investor, who Mr. Twig lost money in that Safe
9 investment and in 809 Holdings.

10 So I'm trying -- we're here because I'm trying to
11 get financial information on some very basic issues.
12 First, what payments did you make to investors in
13 2012, persons you've identified as investors. Under
14 Request to Admit, that request was denied, None. I
15 have a check that is in here, in the filings, Your
16 Honor, and it is a check to Mr. Twig for \$25,000 sent
17 to him with Mr. Adler's cover letter, Exhibit H, that
18 says, These funds represent liquidation value of Mr.
19 Twig's 25 shares of 809 Holdings, LLC. Mr. Twig was
20 disclosed as an investor in 809 Holdings --

21 THE COURT: Are you telling me Mr. Twig invested
22 in 809 Holdings and in Safe?

23 MR. FATA: Yes. Defendants are very good
24 salespeople, Your Honor. Be that as it may, it is
25 clear that a payment was made. I don't know why the

1 defendants choose to deny this request to admission.
2 I then took the deposition of Ms. Cauffman (phonetic),
3 who gave \$48- or \$49,000. She is retirement age. She
4 is still working. She gives this to Mr. Swilley, and
5 she says, From time to time he would pay me and give
6 me part of my money back. I said, How much has he
7 given you, and she said, Before this deposition, I
8 told him I needed a thousand dollars, so he gave me a
9 thousand dollars, but he's given me other money. My
10 deposition of Ms. Cauffman was in May, the first one.
11 We had to continue it. The first one was in May of
12 2014. I have asked counsel, Mr. Leiter, to provide
13 copies of those checks. I did not get a response. I
14 indicated to Mr. Leiter that I thought his answers or
15 his client's answers were not accurate, and I never
16 got a response. Ms. Cauffman comes back in June, and I
17 said, How much have you gotten, and she said, About
18 \$10,000, but I just asked Mr. Swilley before this last
19 deposition for \$13- or \$14,000 because I want to pay
20 off my car, and he said, okay, I just need til the end
21 of July.

22 So, Your Honor, in this Ponzi scheme it is
23 tracking money that is important. My client is left
24 with \$2,000 on a \$115,000 investment, and other people
25 are getting paid, and the defendants are getting paid.

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Appendix 00500