

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Jefferson Davis, Jr.,

Plaintiff,

v.

Chad Connelly, Dave Wilson, Steven Kirkland,  
Tom Persons, Neil Mellen, E3 Software, LLC,  
Endurance International Group Holdings, Inc.,  
John Doe #1, John Doe #2, & John Does 3-40,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2020-CP-36-00382

**ORDER GRANTING DEFENDANTS  
CHAD CONNELLY, DAVE WILSON,  
TOM PERSONS, AND NEIL MELLEN'S  
MOTION FOR SANCTIONS AGAINST  
PLAINTIFF**

**RECEIVED**

**Oct 13 2023**

**SC Court of Appeals**

This matter came before the Court upon the Motion for Sanctions on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on December 17, 2021 (“Motion for Sanctions”). After the Court determined that the motion could readily be decided upon the motion and briefs submitted, the Court provided each party with an additional forty (45) days to submit any supplemental briefing, memoranda, submissions, or argument from the date of this Court’s Amended Bench Order filed on May 31, 2022. After careful review and consideration of the parties’ motions, briefs, memoranda, and other submissions, this Court grants the Motion for Sanctions on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on December 17, 2021.

**FINDINGS OF FACT**

Plaintiff, who, though an attorney licensed to practice law in the State of Georgia, prosecutes this action as a *pro se* litigant, filed the Summons and Complaint in this matter on September 10, 2020. Plaintiff shortly thereafter commenced the action against Defendants by serving the Summons and Complaint upon them individually between September 15, 2020, and September 18, 2020. In commencing this action, Plaintiff assumed full responsibility for complying with the substantive and

procedural requirements of the South Carolina Rules of Civil Procedure. State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003).

The Complaint asserts six causes of action against the various named and unidentified defendants collectively, including causes of action for (1) defamation per se and per quod, (2) defamation by innuendo, (3) invasion of privacy, (4) negligence, (5) intentional infliction of emotional distress, and (6) conspiracy. On March 26, 2021, this Court dismissed the causes of action for defamation by innuendo and negligence asserted against Defendants Connelly, Persons, Wilson, and Mellen.<sup>1</sup> The Court also recently granted summary judgment in favor of Defendants Connelly, Persons, Wilson, and Mellen as to Plaintiff's remaining causes of action against them for defamation per se and per quod, invasion of privacy, intentional infliction of emotional distress, and conspiracy.

On July 27, 2021, Defendants Connelly, Persons, Wilson, and Mellen each properly served Plaintiff with interrogatories, requests for production, and requests for admission.<sup>2</sup> Although Plaintiff admits proper service and timely receipt of these written discovery requests and the requests state on their respective front pages that they were being served in accordance with Rules 33, 34, and 36, SCRCF, respectively, Plaintiff failed to provide any response to any of the written discovery requests within the time periods expressly prescribed in the clear and unambiguous language of Rules 33, 34, and 36, SCRCF. Plaintiff also failed to make any effort to obtain an enlargement of time to respond to the written discovery requests, including either by requesting an

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<sup>1</sup> Plaintiff did not move for reconsideration, alteration, or amendment of the Order As To Motion to Dismiss Five Individual Defendants filed on March 26, 2021.

<sup>2</sup> These written discovery requests included Defendant Chad Connelly's First Set of Interrogatories to Plaintiff, Defendant Chad Connelly's First Set of Requests for Production to Plaintiff, Defendant Chad Connelly's First Set of Requests for Admission to Plaintiff, Defendant Dave Wilson's First Set of Interrogatories to Plaintiff, Defendant Dave Wilson's First Set of Requests for Production to Plaintiff, Defendant Dave Wilson's First Set of Requests for Admission to Plaintiff, Defendant Tom Persons' First Set of Interrogatories to Plaintiff, Defendant Tom Persons' First Set of Requests for Production to Plaintiff, Defendant Tom Persons' First Set of Requests for Admission to Plaintiff, Defendant Neil Mellen's First Set of Interrogatories to Plaintiff, Defendant Neil Mellen's First Set of Requests for Production to Plaintiff, and Defendant Neil Mellen's First Set of Requests for Admission to Plaintiff.

extension from the defendants who served the requests or by petitioning the Court for an enlargement of time to respond.

On September 8, 2021, Defendants notified Plaintiff by U.S. Mail and electronic mail that the deadline to respond to their written discovery requests had passed. In the correspondence, Defendants also sought to elicit voluntary responses to the interrogatories and requests for production and avoid judicial intervention to compel responses to those requests. After Plaintiff again failed to provide any response, Defendants filed a motion to compel responses from Plaintiff on September 27, 2021. Again, Plaintiff failed to provide any response or petition the Court for relief.

At the properly noticed hearing of the motion to compel on October 7, 2021, Plaintiff consented to respond to Defendants' interrogatories and requests for production on or before October 15, 2021. As a result, this Court filed an Order Compelling Discovery on October 15, 2021, which provided that "Plaintiff shall provide full and complete responses by 5:00 pm on October 15, 2021, to [Defendants'] discovery requests[.]" Plaintiff, however, failed to provide responses to Defendants' discovery requests in accordance with the Order Compelling Discovery. In fact, Plaintiff continues to violate the Order Compelling Discovery by having completely failed to respond to any written discovery served by Defendants Connelly, Persons, Wilson, and Mellen. In fact, the record before this Court shows that Plaintiff has totally refused to respond to any defendant's interrogatories and requests for production.

Nevertheless, Plaintiff has continued to employ this action to attempt to conduct discovery by issuing subpoenas to third parties. For example, on November 19, 2021, Plaintiff issued a subpoena to Endurance International Group Holdings, Inc. within two hours of receiving

correspondence from this Court indicating that a pending motion to quash a prior subpoena to Endurance International Group Holdings, Inc. would be granted.

### **LEGAL STANDARD**

“If a party . . . fails to obey an order to provide or permit discovery . . . , the court in which the action is pending may make such orders in regard to the failure as are just[.]” Rule 37(b)(2), SCRCF. Such orders may include the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]

Id. In a recent Administrative Order, the South Carolina Supreme Court “remind[ed] the circuit court judges that the seldom-utilized rule for awarding fees and imposing sanctions, SCRCF 37, is available to deter discovery abuses.” South Carolina Supreme Court Order No.: 2021-06-03-02, June 3, 2021.

“If a party . . . fails . . . (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just.” [.]” Rule 37(d), SCRCF. “In lieu of any order or in addition thereto, the court shall require the party failing to act . . . to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the

court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” Id.; see also Rule 37(b)(2), SCRCP.

“[S]anctions for discovery abuse are left to the sound discretion of the trial court.” McNair v. Fairfield County, 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008) (citing Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003)). “Under Rule 37(b)(2)(C), SCRCP, when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action.” Id., 379 S.C. at 465-66, 665 S.E.2d at 832 (citing Barnette, 355 S.C. at 593, 586 S.E.2d at 575). “[S]evere sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party’s rights.” Id. “In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice.” Id. (quoting Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct. App. 1999)).

### **ORDER**

Plaintiff has willfully disobeyed this Court’s Order Compelling Discovery filed on October 15, 2021, for approximately ten months. In fact, Plaintiff has shown a gross indifference to Defendants’ right to conduct discovery in accordance with the South Carolina Rules of Civil Procedure during the entire pendency of this action, including by ignoring all interrogatories, requests for production, and requests for admission served by Defendants. Plaintiff has willfully ignored any and all written discovery served upon him by any other party to this action yet continues to serve subpoenas and attempt to conduct discovery in violation of the South Carolina Rules of Civil Procedure and this Court’s indications that reiterations of previously served subpoenas may be

found violative of the South Carolina Rules of Civil Procedure. In addition, Plaintiff has forced Defendants to file unnecessary discovery motions that have required Defendants and this Court to expend undue time and resources resulting in discovery orders that Plaintiff has willfully ignored. Moreover, Plaintiff has admitted that his allegations are meritless.

As Plaintiff has shown a complete and total disregard for the South Carolina Rules of Civil Procedure and all other parties' rights to conduct discovery in the prosecution of his meritless allegations, this Court is required to take remedial, deterring, and punitive action against Plaintiff to uphold the integrity of South Carolina courts and the South Carolina Rules of Civil Procedure.<sup>3</sup> Accordingly, this Court strikes Plaintiff's Complaint and dismisses any and all causes of actions against Defendants for refusing to comply with this Court's Order Compelling Discovery filed on October 15, 2021. In addition, this Court sanctions Plaintiff by ordering Plaintiff to pay all of Defendants' reasonable expenses, including attorney's fees, incurred as a result of (1) Plaintiff's prosecution of these meritless allegations against Defendants, (2) Defendants being required to file discovery motions that Plaintiff has willfully ignored, and (3) Plaintiff's failure to comply with and Plaintiff's total refusal to participate in discovery in accordance with the South Carolina Rules of Civil Procedure during the pendency of this action. Defendants shall submit a petition seeking reimbursement for these reasonable expenses, including attorney's fees, incurred as a result of Plaintiff's prosecution of these meritless allegations against them within 30 days of the filing of this Order. This Court reserves the right to decrease any fee request or nullify any fee request.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Motion for Sanctions on Behalf of Chad Connelly, Tom Persons, Dave Wilson, and Neil Mellen filed on December 17, 2021 is hereby **GRANTED** in accordance with the above order and

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<sup>3</sup> There is a likelihood of repetition of this conduct as Plaintiff is currently prosecuting six other civil actions as a *pro se* litigant in South Carolina courts.

Plaintiff's Complaint is stricken with prejudice and Plaintiff is ordered to pay all of Defendants' reasonable expenses, including attorney's fees, incurred as a result of Plaintiff's prosecution of this action.

**AND IT IS SO ORDERED.**

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The Honorable Donald B. Hocker

September \_\_\_\_, 2022



Newberry Common Pleas

**Case Caption:** Jefferson Davis Jr VS Chad Connelly , defendant, et al

**Case Number:** 2020CP3600382

**Type:** Order/Sanctions

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167