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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Circuit Court Case No. 2022-CP-26-01323

Appellate Case No. 2023-000192

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

v.

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

Of Whom Joel D. Barber is the Appellant.

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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

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

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

**ORDER GRANTING TEMPORARY
INJUNCTION**

Plaintiffs,)

v.)

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

Defendants.)

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

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

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

PROCEDURAL HISTORY

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

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

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

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

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

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

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

DISCUSSION¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

April 4, 2022
Conway, South Carolina

The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit



Horry Common Pleas

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

So Ordered

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

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

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

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

Plaintiffs,

v.

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

Defendants.

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

THE COURT ORDERS as follows:

1. The parties entered into a Stipulated Confidentiality and Protective Order, signed by the Court on May 16, 2022. The exhibits to Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp, d/b/a Century 21 The Harrelson Group, Kevin Mills, Mills, LLC, and Greg Harrelson's (collectively, "Plaintiffs") Motion for Contempt and Sanctions and forthcoming Memorandum in Support thereof consist of the documents produced by Homebot, Inc. in response to a subpoena, bates stamped "Homebot_000001—000833," as well as full and unredacted copies of Exhibits B, C, and E to Defendant Joel Barber's affidavit, bates stamped "Barber000611—001035." The parties have agreed, per the Stipulated Confidentiality and Protective Order, that the document production from Homebot, Inc., produced pursuant to

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

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

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

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

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

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

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

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

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

WE SO CONSENT:

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Dated: November __, 2022

AND IT IS SO ORDERED!

Presiding Judge, Court of Common Pleas
Fifteenth Judicial Circuit

ELECTRONICALLY FILED - 2022 Nov 08 9:55 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323



Horry Common Pleas

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

IT IS SO ORDERED

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

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

ELECTRONICALLY FILED - 2022 Nov 08 9:55 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2601323

HSS Barefoot LLC et al
PLAINTIFF(S)

Joel D Barber et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Plaintiff's Motion/Contempt and Sanctions Against Joel Barber is Granted. A Formal Order to Follow by Attorney Amanda Bailey.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/16/2022 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Electronic Form 4

IT IS SO ORDERED

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

Electronically signed on 2022-11-16 11:27:41 page 3 of 3

ELECTRONICALLY FILED - 2022 Nov 16 11:56 AM - HORRY - COMMON PLEAS - CASE#2022CP2601323

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

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

Plaintiffs,

v.

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

Defendants.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CONTEMPT AGAINST
DEFENDANT JOEL D. BARBER**

This matter was presented to the Court by Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp., d/b/a Century 21 The Harrelson Group (collectively, "Century 21"), Kevin Mills, Mills, LLC, and Greg Harrelson's (collectively, "Plaintiffs") Motion for Contempt Against Defendant Joel D. Barber, filed July 25, 2022. A virtual hearing was held regarding Plaintiffs' Motion on November 16, 2022. Present at the hearing were Plaintiffs Greg Harrelson and Kevin Mills, as well as Amanda A. Bailey, Esquire, and Taylor K. Voegel, Esquire, as counsel for Plaintiffs. Defendant Barber was also present, as was his counsel, Christian H. Staples, Esquire and Jason A. Daigle, Esquire. Lawrence M. Hershon, Esquire, counsel for Defendants Darcy Varney and eXp Realty, LLC, and Russell M. Racine, Esquire, counsel for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc., were also present. After

consideration of the submittals by Plaintiffs and Defendant Barber, the arguments of counsel, and the applicable law, the Motion is granted.

This civil action is premised upon the allegations that Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21 for his benefit and the benefit of other brokerage companies. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction (“the Injunction”). The Court held hearings on the matter and issued an oral ruling on March 31, 2022, granting Plaintiffs’ Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. The Injunction, which continues to be in effect until the resolution of this case, sets forth in pertinent part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

Inj., ¶ 23(c)-(e). Based upon this Court’s review of Rob Safa, Susan Brown, Defendant Barber, and Plaintiff Harrelson’s affidavits, Defendant Barber’s deposition testimony from November 15, 2022 represented by Plaintiffs’ counsel, and all arguments of counsel, this Court finds clear and

convincing evidence that Defendant Barber willfully, voluntarily, and intentionally violated the Injunction by using information, disclosing information, and initiating communication with leads, clients, prospects, and customers he gained access to or otherwise obtained during his time as an agent and independent contractor with Plaintiffs.

Accordingly, it is ORDERED that Defendant Barber is hereby held in contempt of court for failing to comply with the Injunction and otherwise acting with disregard for the judicial process. Therefore, this Court orders the following:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order;
2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;
4. Plaintiffs' request for attorneys' fees is denied at this time; and
5. The Injunction issued March 31, 2022 remains in full force and effect pending the trial of this case unless otherwise modified or terminated by Court order.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Presiding Judge of the 15th Judicial Circuit

Conway, South Carolina
Dated: November ____, 2022



Horry Common Pleas

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

Case Number: 2022CP2601323

Type: Order/Sanctions

IT IS SO ORDERED

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

Electronically signed on 2022-11-22 13:04:54 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2601323

HSS Barefoot LLC et al
PLAINTIFF(S)

Joel D Barber et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

It certainly appears the Defendant's Motion/Reconsider/Certificate of Service is relying on newly produced evidence and rule 69(d) is not fully complied with; however, Judge Seals is going to modify the original order to the extent any evidence obtained by the expert be distributed to Defense counsel first for issues pertaining to attorney-client privilege.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/05/2023 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Electronic Form 4

IT IS SO ORDERED

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

Electronically signed on 2023-01-05 10:36:01 page 3 of 3

the applicable law, the Motion for Contempt was granted. Defendant Barber filed a Motion to Reconsider on November 22, 2022, and a virtual hearing was held on January 3, 2023. The Court issued a Form 4 Order on January 9, 2023, and this formal Order follows. Although it appears Defendant Barber did not comply with Rule 59(g), SCRPC, and it also appears Defendant Barber's Motion to Reconsider relies upon newly produced evidence, the Court hereby modifies its previous Order entered on November 22, 2022, as it relates to the inspection of Defendant Barber's real estate business-related data devices and databases.

This civil action is premised upon the allegations that Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21 for his benefit and the benefit of other brokerage companies. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction ("the Injunction"). The Court held hearings on the matter and issued an oral ruling on March 31, 2022, granting Plaintiffs' Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. The Injunction, which continues to be in effect until the resolution of this case, sets forth in pertinent part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites,

website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

Inj., ¶ 23(c)-(e). Based upon this Court's review of Rob Safa, Susan Brown, Defendant Barber, and Plaintiff Harrelson's affidavits, Defendant Barber's deposition testimony from November 15, 2022 represented by Plaintiffs' counsel, and all arguments of counsel, this Court finds clear and convincing evidence that Defendant Barber willfully, voluntarily, and intentionally violated the Injunction by using information, disclosing information, and initiating communication with leads, clients, prospects, and customers he gained access to or otherwise obtained during his time as an agent and independent contractor with Plaintiffs.

Accordingly, it is ORDERED that Defendant Barber is hereby held in contempt of court for failing to comply with the Injunction and otherwise acting with disregard for the judicial process. Therefore, this Court orders the following:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, or some other third-party examiner as agreed upon by the parties, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order, provided that Mr. Walton or any other such examiner shall produce all information captured first to Defendant Barber's counsel for review and designation of any privileged material subject to the attorney-client privilege, the work product doctrine, or other claim of privilege. Defendant Barber shall have forty-five days from receipt of the results of the examination to conduct a privilege review and otherwise mark documents "Confidential" or "Attorneys' Eyes Only" pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and produce non-privileged results. If Defendant Barber withholds any documents from production on the basis of any claimed privilege, he shall produce a privilege log containing sufficient detail to inform Plaintiffs' counsel of the general nature of the document(s) withheld and the basis for the claim(s) of privilege. Such a privilege review will be at Defendant Barber's expense, and to the extent necessary for examination of these devices and databases, the parties shall have fifteen days from the date of this Order to agree upon an examination protocol. If the parties determine an examination protocol is necessary and such an agreement cannot be reached between the parties at the expiration of fifteen days from the date of this Order, Plaintiffs will submit a proposed examination protocol order to the Court. The Court affirms and acknowledges that in complying with this Order, Defendants are not

waiving any applicable privileges, and the parties' obligations pursuant to Rule 26(b)(5)(B), SCRCP, remain;

2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;
4. Plaintiffs' request for attorneys' fees is denied at this time; and
5. The Injunction issued March 31, 2022 remains in full force and effect pending the trial of this case unless otherwise modified or terminated by Court order.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Presiding Judge of the 15th Judicial Circuit

Conway, South Carolina
Dated: January _____, 2023



Horry Common Pleas

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

IT IS SO ORDERED

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

Electronically signed on 2023-01-25 21:19:13 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2601323

HSS Barefoot LLC et al
PLAINTIFF(S)

Joel D Barber et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2023 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al
Case Number: 2022CP2601323
Type: Order/Electronic Form 4

IT IS SO ORDERED

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

Electronically signed on 2023-03-24 14:42:10 page 3 of 3

ELECTRONICALLY FILED - 2023 Mar 24 3:31 PM - Horry - COMMON PLEAS - CASE#2022CP2601323

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

SUMMONS

Plaintiffs,

v.

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

Defendants.

TO: THE ABOVE NAMED DEFENDANTS

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

Signature on following page.

Dated: March 2, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185

2411 N. Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Email: abailey@burr.com

Attorneys for Plaintiffs

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

The Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, individually, (collectively referred to as "Plaintiffs") by and through their undersigned counsel, complaining of Defendants, Joel D. Barber, Darcy Varney, and EXP Realty, LLC, above named, would respectfully show and allege unto this Honorable Court as follows:

1. The Plaintiff, HSS Barefoot, LLC d/b/a Century 21 Barefoot, is a South Carolina Limited Liability Company (hereinafter "C21 Barefoot") doing business in Horry County, South Carolina. Margaret McBride is the broker-in-charge for C21 Barefoot.
2. The Plaintiff, R&G Corp d/b/a Century 21 The Harrelson Group, is a South Carolina Limited Liability Company (hereinafter "C21 Harrelson") doing business in Horry County, South Carolina. Margaret McBride is the broker-in-charge for C21 Harrelson.

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

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

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

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

7. Defendant Barber is currently, upon information and belief, an independent contractor with EXP Realty, LLC, from approximately February 7, 2022 to the present.

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

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

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

11. Defendant, EXP Realty, LLC (hereinafter "Defendant EXP"), is, upon information and belief, a South Carolina Limited Liability Company doing business in Horry County, South Carolina.

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

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

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

FACTUAL ALLEGATIONS

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

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

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

18. The Independent Contractor and Broker Agreement between C21 Harrison, by and through Margaret McBride, and Defendant Barber terminated on February 7, 2022.

19. On February 7, 2022, C21 Harrelson discovered that Defendant Barber had previously entered into the C21 Harrelson and C21 Barefoot office building, located at 4757 Hwy 17 Bypass S, Myrtle Beach, SC 29577, outside business hours and without authorization, and gained unauthorized access to electronic data, including proprietary information such as prospects, client lists, calendar entries, call notes, contacts and contact information, belonging to C21 Harrelson, C21 Barefoot, and/or Kevin Mills.

20. Specifically, C21 Harrelson learned that, upon information and belief, Defendant Barber had been entering the office building in the middle of the night, or very early hours of the morning, and gaining unauthorized entry into a locked office and password protected computer

utilized by Stacy Weaver, an employee of C21 Harrelson and/or a locked office and password protected computer utilized by Montana Hartsock, an employee of Mills, LLC.

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

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

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

24. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set forth above, Defendant Barber altered and manipulated electronic data, including copying, changing or deleting calendar entries for Kevin Mills from Montana Hartsock's computer, copying, changing or deleting, prospects, client lists, call notes, contacts and contact information owned and maintained by Kevin Mills.

25. Upon information and belief, during one or more of the events in which Defendant Barber gained the unauthorized access to the building, offices, and computers set

forth above, Defendant Barber altered and manipulated electronic data from Montana Hartsock's computer, including, copying, changing or deleting, marketing material and resources, or other intellectual or personal property owned and maintained by Kevin Mills.

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

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

28. Upon information and belief, Defendant Barber took the databases, proprietary information, and personal and intellectual property contained on the databases belonging to Kevin Mills, using information he acquired from the unauthorized access of Montana Hartsock's office and computer, for his own benefit and have used or attempted to use the electronic data, personal and intellectual property of Kevin Mills for Defendants' Barber, EXP Realty or Varney's listings or sales, to the detriment of C21 Harrelson, C21 Barefoot, and Kevin Mills.

FIRST CAUSE OF ACTION
(Breach of Contract)

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

30. The Independent Contractor and Broker Agreement is a valid and binding contract between Defendant Barber and C21 Harrelson, effective March 14, 2017 through February 7, 2022.

31. C21 Harrelson has performed its duties and obligations under the Independent Contractor and Broker Agreement.

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

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

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

33. Defendant Barber materially breached the Independent Contractor and Broker Agreement by interfering with the assignment of prospects and leads by C21 Harrelson to other

brokers or sales agents and by contacting prospects and leads after any assignment of such prospects and leads to Defendant Barber terminated.

34. Defendant Barber materially breached the Independent Contractor and Broker Agreement by using for his own advantage and the advantage of competing persons and entities, including EXP Realty and Varney, databases, prospects, and leads, and other marketing materials and listings belonging to C21 Harrelson and information gained from or from files or business of C21 Harrelson and not generally known.

35. As a result of Defendant Barber's material breaches of the Independent Contractor and Broker Agreement, C21 Harrelson has been and continues to suffer ongoing damage. While C21 Harrelson's damages include actual, compensatory and monetary damages, C21 Harrelson is also entitled to equitable relief, including a temporary restraining order, temporary injunction, and permanent injunctive relief ordering Defendant Barber to return all proprietary information and discontinue utilizing any information gained from C21 Harrelson or listings, marketing material, property, or intellectual property belonging to C21 Harrelson, and requiring strict compliance with Paragraphs 11 and 12 of the Independent Contractor and Broker Agreement.

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

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

37. Defendant Barber breached the Independent Contractor and Broker Agreement with C21 Harrelson.

38. By interfering with the assignment of prospects and leads to other brokers or sales agents, Defendant Barber fraudulently intended to take such prospects and leads from C21

Harrelson and to a competing real estate company and broker for his own personal benefit and to the detriment of C21 Harrelson, and for the benefit of EXP Realty and Varney.

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

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

THIRD CAUSE OF ACTION
(Restraining Order/Injunctive Relief)

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

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

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

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

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

- a. Entering or accessing the business office of the Plaintiffs;
- b. Accessing databases, systems, CRM's, software or cloudware, servers and computers connected to the internet, or copies of any information derived therefrom, belonging to Plaintiffs, and using log-in, account, and password information belonging to or derived from any of the Plaintiffs;
- c. Using, accessing, viewing, downloading, printing, altering, and deleting any electronic information, including but not limited to proprietary and competition sensitive information, on systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;
- d. Using certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;
- e. Selling or attempting to sell certain electronic information, including but not limited to proprietary and competition sensitive information, obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs;

- f. Contacting consumers, including clients, prospects and “leads” of Plaintiffs, obtained from contact information contained in certain electronic information obtained from systems, CRMs, software or cloudware, servers and computers connected to the internet belonging to or derived from Plaintiffs and without the Plaintiffs’ or consumers’ consent;
- g. Listing or selling property for listings belonging to or derived from Plaintiffs;
- h. Retaining commissions or referral fees owed to Plaintiffs;
- i. Retaining listings belonging to or derived from Plaintiffs and not belonging to Defendants;
- j. Using confidential and proprietary information gained for and derived from the files or business of Plaintiffs; and
- k. And such other and further equitable relief as may be just and proper.

FOURTH CAUSE OF ACTION
(Trespass)

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

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

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

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

FIFTH CAUSE OF ACTION
(Conversion)

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

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

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

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

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

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

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

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

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

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

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

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

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

61. Defendants, by and through the unauthorized access and use of property belonging to Plaintiffs, and as set forth herein as well as by and through Defendant Joel Barber’s

deceptive practices in violation of regulations related to timely notifying the licensing department of changes in real estate company affiliation and/or of truthfully communicating to consumers regarding real estate company affiliation, have engaged in unfair or unlawful methods of competition and unfair and deceptive acts in the conduct of trade and/or commerce.

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

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

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

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

65. Defendants intentionally interfered with the existing and prospective contractual relationships of Plaintiffs with third-parties, including but not limited to listing agreements or marketing agreements.

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

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

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

WHEREFORE, Plaintiffs pray for the following relief:

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

Dated: March 2, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

) VERIFICATION OF HSS BAREFOOT,
) LLC D/B/A CENTURY 21 BAREFOOT

) Plaintiffs,

) v.

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

) Defendants.

Greg Harrelson, being first fully sworn, deposes and says:

I have read the foregoing Complaint, and the same is true of my own knowledge, except to those matters and things stated upon information and belief, as to these things, I believe them to be true.

This 2nd day of ~~February~~, 2022.
March

HSS BAREFOOT, LLC, d/b/a CENTURY 21
BAREFOOT

By: Greg Harrelson
Its: Member

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

Christine Belame
Notary Public
My Commission Expires: April 16, 2024

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

)
)
)
)

Plaintiffs,

)
)
)
)

VERIFICATION OF R&G CORP, LLC
D/B/A CENTURY 21 THE HARRELSON
GROUP

v.

)
)
)
)

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

)
)
)

Defendants.

Greg Harrelson, being first fully sworn, deposes and says:

I have read the foregoing Complaint, and the same is true of my own knowledge, except to
those matters and things stated upon information and belief, as to these things, I believe them to
be true.

This 2nd day of ~~February~~, 2022.

March

R&G CORP, d/b/a CENTURY 21 THE
HARRELSON GROUP

By: Greg Harrelson

Its: Member

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

March

Christine Badami

Notary Public

My Commission Expires: April 16, 2029

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

VERIFICATION OF KEVIN MILLS

Plaintiffs,

v.

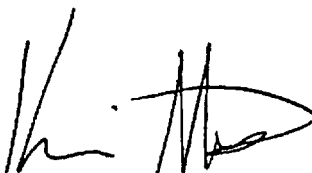
JOEL D. BARBER, individually and as licensed)
 realtor, DARCY VARNEY, individually and as)
 broker in charge, and EXP REALTY, LLC,)

Defendants.

Kevin Mills, being first fully sworn, deposes and says:

I have read the foregoing Complaint, and the same is true of my own knowledge, except to those matters and things stated upon information and belief, as to these things, I believe them to be true.

This 2nd day of ~~February~~, 2022.
 March


 KEVIN MILLS

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


 Notary Public
 My Commission Expires: April 16, 2029

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

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

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

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



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

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

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

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

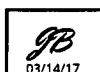
10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this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

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

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

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

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


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

INDEPENDENT CONTRACTOR


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

BROKER HAVE READ THIS PAGE

PAGE 2 OF 3

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

15. Joel Barber

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

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

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

FIRM NAME

Century 21 The
Harrelson Group

Margaret McBride dotloop verified
03/14/17 8:23 AM EDT
E95J-DRXZ-TDDW-ZJQA

Broker

Date

Witness

Date

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

Independent Contractor

Date

Witness

Date

PAGE 3 OF 3

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

SUMMONS

Plaintiffs,

v.

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

Defendants.

TO: THE ABOVE NAMED DEFENDANTS

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

Signature on following page.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185

2411 N. Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Email: abailey@burr.com

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

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

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

AMENDED COMPLAINT

Plaintiffs,

v.

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

Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION
(Restraining Order/Injunctive Relief)

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION
(Trespass)

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

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

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

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

FIFTH CAUSE OF ACTION
(Conversion)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

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

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

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

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

TENTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

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

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

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

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

WHEREFORE, Plaintiffs pray for the following relief:

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

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

Amanda A. Bailey, SC Bar # 70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
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Attorneys for Plaintiffs

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

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

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



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

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

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

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

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

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

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

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

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



INDEPENDENT CONTRACTOR



BROKER HAVE READ THIS PAGE

15. Joel Barber

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

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

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

FIRM NAME

Century 21 The
Harrelson Group

Margaret McBride

dotloop verified
03/14/17 8:23 AM EDT
E95J-DRXZ-TDDW-ZJQA

Broker

Date

Witness

Date

Joel Barber

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

Independent Contractor

Date

Witness

Date

PAGE 3 OF 3

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
2022-CP-26-01323

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

Plaintiffs,

vs.

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

Defendants.

**DEFENDANT JOEL D. BARBER'S
ANSWER TO AMENDED
COMPLAINT, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the allegations are denied.

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

denied.

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

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

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

FIRST CAUSE OF ACTION
(Breach of Contract)

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

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

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

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

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

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

denied.

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION
(Restraining Order/Injunctive Relief)

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

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

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

denied.

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

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

FOURTH CAUSE OF ACTION
(Trespass)

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

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

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

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

FIFTH CAUSE OF ACTION
(Conversion)

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

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

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

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

denied.

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

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

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

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

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

TENTH CAUSE OF ACTION
(Unjust enrichment/Constructive Trust)

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

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

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

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

Plaintiffs' prayer for relief is denied.

FIRST DEFENSE

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

SECOND DEFENSE

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

THIRD DEFENSE

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

FOURTH DEFENSE

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

FIFTH DEFENSE

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

SIXTH DEFENSE

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

SEVENTH DEFENSE

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

EIGHTH DEFENSE

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

NINTH DEFENSE

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

TENTH DEFENSE

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

**ANSWERING FURTHER AND BY WAY OF COUNTERCLAIMS AGAINST HSS
BAREFOOT, LLC d/b/a CENTURY 21 BAREFOOT; R&G CORP
d/b/a CENTURY 21 THE HARRELSON GROUP; KEVIN MILLS; MILLS, LLC, AND;
GREG HARRELSON**

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

Companies which does business in Horry County, South Carolina.

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

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

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

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

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

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

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

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

13. Upon information and belief the Agreement was terminated after February 7, 2022.

14. C21 and Harrelson have not paid Mr. Barber the commissions which he is due.

15. Mr. Barber is owed all the commissions earned for, including, but not limited to, his and his team's listings, sales, and closings.

16. C21 and Harrelson have collected commissions earned by and due to Mr. Barber

and have refused to pay such commissions pursuant to the Agreement.

FOR A FIRST CAUSE OF ACTION
(QUANTUM MERUIT as to C21 and Harrelson)

17. Mr. Barber realleges each and every allegation herein.

18. Mr. Barber conferred a benefit on C21 and Harrelson by laboring in his position with C21 and Harrelson resulting in significant profit.

19. C21 and Harrelson realized the benefit by enjoying the profit created by Mr. Barber and his team.

20. C21 and Harrelson retained the full amount of the profit after Mr. Barber's employment and did not pay to Mr. Barber the portions he was owed.

21. C21 and Harrelson have been unjustly enriched and failed to pay Plaintiff his fair rate of pay including commissions.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT as to C21 and Harrelson)

22. Mr. Barber realleges each and every allegation herein.

23. C21 and Harrelson entered into a contract with Mr. Barber.

24. The Agreement is a valid Contract between Mr. Barber and C21 and Harrelson supported by valuable consideration.

25. Under the Agreement and law, Mr. Barber is entitled to payment of commissions earned for, including, but not limited to, his and his team's listings, sales, and closings.

26. C21 and Harrelson breached the contract by failing to pay all wages and commissions due under the Agreement, failing to pay commissions within the time periods(s) allowed by the Agreement, and other breaches.

27. As a direct and proximate cause of Defendant's breach, Plaintiff has suffered

damages and is entitled to recover all actual, incidental, and consequential damages under this cause of action.

FOR A THIRD CAUSE OF ACTION
(VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT)

28. Mr. Barber realleges each and every allegation herein.

29. C21, Harrelson, and Mills, by and through their deceptive practices in violation of the industry standards and standard practices and procedures related to the real estate agencies and brokers have engaged in unfair or unlawful methods of competition and unfair and deceptive acts in the conduct of trade and/or commerce.

30. C21's, Harrelson's, and Mills' willful and knowing unfair and unlawful and deceptive trade practices have been repeated and are capable and likely to be repeated and/or otherwise have an adverse impact on the public interest.

31. As a result and proximate cause of C21's, Harrelson's, and Mills' unfair and unlawful and deceptive trade practices, Mr. Barber has been damaged and entitled to actual and statutory damages and attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(INTENTIONAL INTERFERENCE WITH EXISTING AND PROSPECTIVE CONTRACTUAL RELATIONSHIPS)

32. Mr. Barber realleges each and every allegation herein.

33. C21, Harrelson, and Mills intentionally interfered with the existing and prospective contractual relationships of Mr. Barber with third-parties, including but not limited to listing agreements, contracts, sales agreements, independent contractor and broker agreements, and marketing agreements.

34. C21, Harrelson, and Mills had and have actual knowledge and/or should have known of the existing and prospective contractual relationships of Mr. Barber with third-parties.

35. C21, Harrelson, and Mills intentionally, and without justification, interfered with the existing and prospective contractual relationship of Mr. Barber with third parties and procured the breach of such relationships.

36. As a result of C21's, Harrelson's, and Mills' intentional interference with the existing and prospective contractual relationships, Mr. Barber has been damaged, including actual damages and lost profit damages, and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(AMALGAMATION and/or PIERCING THE CORPORATE VEIL)

37. Mr. Barber realleges each and every allegation herein.

38. C21, Harrelson, and Mills have operated in such a manner that the distinctions between the entities and their activities have become blurred.

39. There is excessive interrelationship between the entities and their activities; a sharing of management and employees and other public assets; and an absence of delineation between the entities such that the public is unable to tell where one entity's activities stop and the next entity's activities start.

40. Upon information and belief, C21, Harrelson, and Mills has been set up as different legal entities so to protect fraud, exercise bad faith, justify wrong, and defeat public policy.

41. Upon information and belief, there is evidence that the blurred legal distinctions of these separate entities have resulted in bad faith, abuse, fraud, wrongdoing, and injustice.

42. Treating C21, Harrelson, and Mills as separate entities will perpetuate an injustice on Mr. Barber and others and allow C21, Harrelson, and Mills to unjustly enrich themselves by untoward means.

43. HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC should be amalgamated for purposes of any judgment in this

action and viewed as a single business enterprise.

44. HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC should be disregarded as it relates to Kevin Mills and Greg Harrelson as the corporate entities are used to protect fraud, justify wrong, and defeat public policy.

45. Upon information and belief, HSS Barefoot, LLC d/b/a Century 21 Barefoot; R&G Corp d/b/a Century 21 The Harrelson Group, and; Mills, LLC (1) were undercapitalized; (2) failed to observe corporate formalities; (3) paid no dividends; (4) were insolvent; (5) lacked corporate records; (6) had their corporate funds siphoned off by the dominant stockholder(s); and/or (7) were used as a mere facade for operations of their dominant stockholder(s).

46. A fundamental unfairness would result from recognition of the corporate entities.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to the Plaintiffs' Amended Complaint, and having asserted his Affirmative Defenses and Counterclaims, the Defendant Joel D. Barber respectfully prays for the following relief:

1. That Plaintiffs' Amended Complaint and all causes of action asserted therein against Defendant Barber be dismissed with prejudice;
2. That Defendant Barber have and recover judgment against the Plaintiffs pursuant to his Counterclaims;
3. That the costs of this action be taxed against the Plaintiffs;
4. For an award of Defendant Barber's reasonable attorneys' fees as allowed by contract or applicable law;
5. For a trial by jury on issues so triable; and
6. For such further relief as justice requires.

This the 3rd day of June, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

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

-and-

CLEMENT RIVERS, LLP

By: s/ Jason A. Daigle

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*Attorneys for Defendant
Joel D. Barber (as to the Counterclaims only)*

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the **DEFENDANT JOEL D. BARBER'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF** was electronically filed using the SC Courts' E-Filing portal which will send notice of filing to all counsel of record in this action, as follows:

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eXp Realty, LLC and Darcy Varney

This the 3rd day of June, 2022.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2022-CP-26-01323

HSS BAREFOOT, LLC d/b/a CENTURY 21 BAREFOOT,
R&G CORP d/b/a CENTURY 21 THE HARRELSON GROUP,
KEVIN MILLS, MILLS, LLC, and GREG HARRELSON, ...Respondents,
JOEL D. BARBER, ...Appellant.

NOTICE OF APPEAL

Joel D. Barber appeals the order of the Honorable William H. Seals, Jr. ("Judge Seals") dated November 22, 2022, granting Plaintiffs' Motion for Contempt, as modified after reconsideration by order of Judge Seals dated January 26, 2023. Appellant received written notice of entry of the modified order on January 26, 2023, so this appeal is timely filed.

[Signature on following page]

This the 7th day of February, 2023.

/s/ Christian H. Staples

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2022-CP-26-01323

HSS BAREFOOT, LLC, D/B/A)
CENTURY 21 BAREFOOT; R&G)
CORP, D/B/A CENTURY 21)
THE HARRELSON GROUP, AND)
KEVIN MILLS,)
INDIVIDUALLY,)

Plaintiffs,)

vs.)

JOEL D. BARBER,)
INDIVIDUALLY AND AS)
LICENSED REALTOR, DARCY)
VARNEY, INDIVIDUALLY AND)
AS BROKER-IN-CHARGE, AND)
EXP REALTY, LLC.)

Defendants.)

Transcript of Record

Motion for Temporary Restraining
Order and Temporary Injunction

March 31, 2022

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Amanda Bailey, Esquire
Attorney for Plaintiffs

David Daigle, Esquire
Attorney for Defendant Barber

Lawrence M. Hershon
Attorney for Defendants Varney and EXP

Kay H. Richardson
Circuit Court Reporter

BAREFOOT, ET AL. V. BARBER, ET AL. - 2022-CP-26-01323
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MARCH 31, 2022

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E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

BAREFOOT, ET AL. V. BARBER, ET AL. - 2022-CP-26-01323
MOTION HEARING

3

1 MARCH 31, 2022

2 ON THE RECORD - 9:55 A.M.

3 THE COURT: So, this is 2022-CP-26-1323, HSS Barefoot,
4 LLC, d/b/a Century 21 Barefoot, R&G Corporation, d/b/a Century
5 21 Harrelson Group, and Kevin Mills, individually versus Joel
6 D. Barber, individually and as licensed realtor, Darcy Varney,
7 individually, and as broker-in-charge, and EXP Realty, LLC.

8 All right. For the court reporter's benefit and for the
9 record, Counsel appearing, stand up, state your name and the
10 party you're representing, please.

11 MS. BAILEY: Your Honor, Amanda Bailey on behalf of all
12 plaintiffs.

13 THE COURT: All right.

14 MR. DAIGLE: Your Honor, Jason Daigle, on behalf of Joel
15 Barber.

16 THE COURT: All right. Very good.

17 MR. HERSHON: Your Honor, Lawrence Hershon on behalf of
18 EXP Realty and Darcy Varney.

19 THE COURT: All right. Very good.

20 COURT REPORTER: I'm sorry. Can you spell that for me,
21 please?

22 MR. HERSHON: My name?

23 COURT REPORTER: Yes, sir.

24 MR. HERSHON: H-E-R-S-H-O-N.

25 THE COURT: Thank you.

1 All right. We are here on behalf of the filing of the
2 plaintiff for temporary relief in this matter. The Court had
3 set today for that hearing on that request.

4 That being your request, Ms. Bailey, be glad to hear from
5 you, ma'am.

6 MS. BAILEY: Thank you, Your Honor.

7 Your Honor, I represent the plaintiffs in this matter who
8 are brokerage real estate companies, as well as an individual
9 licensed real estate agent or licensed independent contractor
10 with this brokerage real estate company. They have filed for
11 a motion for a temporary restraining order or temporary
12 injunction pursuant to 65 -- Rule 65(a) and (b). Service of
13 the summons and complaint was made on all defendants on March
14 3rd and a hearing notice was served on March 8th for EXP and
15 -- EXP Realty and Darcy Varney, and accepted by counsel for
16 Joel Barber, Jason Daigle on March 14th. As notice and
17 service of this motion has been provided and served on all
18 parties, we're requesting this Court proceed on the hearing of
19 this motion for a motion for temporary injunction. We have
20 provided the Court numerous affidavits. In addition to the
21 verified complaint, we have submitted the affidavit of Kevin
22 Mills; Greg Harrelson; Jimmy Recinos; Montana Hartsock; Stacey
23 Weaver; Clarke Walton, who is an expert forensic digital
24 forensic analyst; Lindsey Colbert; Kevin -- and a supplemental
25 affidavit of Kevin Mills and Greg Harrelson; and then an

1 affidavit of Vincent Bufano.

2 In addition, we have provided this Court with a memoranda
3 in support. Those documents have been filed and served on all
4 parties in this case prior to this hearing. Based on the
5 affidavits, the verified complaint, and the documents
6 submitted to this Court, temporary injunctive relief is proper
7 in this case. The plaintiffs have shown irreparable harm, a
8 likelihood of success on the merits on all causes of action,
9 and an absence of adequate remedy at law.

10 Temporary injunctive relief is also necessary and
11 reasonably necessary in this case to protect the legal rights
12 of the plaintiffs while this case is actioned. The
13 irreparable harm in this case is great to the plaintiffs. And
14 substantial equities fall in -- squarely in favor of the
15 plaintiffs in this case. By way of factual background and
16 supported by the verified complaint and affidavits that have
17 been filed and served on all parties in this case, Joel Barber
18 was an independent contractor with Century 21 Harrelson Group,
19 which is a brokerage firm through Margaret McBride the broker-
20 in-charge from March of 2017 through February 7th of 2022.
21 During that time, he gained access to valuable proprietary and
22 competitive data and information of Century 21 Harrelson
23 Group. This valuable proprietary competitive and confidential
24 information was acknowledged as having been received and
25 acknowledged as having been designated as confidential by Joel

1 Barber and by Joel Barber at the initiation of his independent
2 contractor back in 2017. The terms of this independent
3 contractor agreement and these acknowledgments are in the
4 affidavit of Greg Harrelson and the supplemental affidavit of
5 Greg Harrelson where it goes through in great detail the types
6 of proprietary information and the confidential nature of this
7 proprietary information. It further goes into great detail,
8 which Joel Barber acknowledged that Joel Barber agrees not to
9 disclose or use this information or data for competitive
10 advantage. And that he agrees not to remove, not to copy, and
11 to return. All of this is in signed acknowledgements that
12 Joel Barber signed at the initiation of his independent
13 contractor agreement through the terms of the independent
14 contractor agreement itself and the policies and manual of the
15 brokerage firm, also based on the affidavits and the verified
16 pleadings at least beginning in mid-2021. It could be
17 earlier, but as of right now, the affidavits of Jimmy Recinos
18 and Lindsay Colbert reflect that in mid-2021, probably June
19 2021, Joel Barber gained and used unauthorized access to Greg
20 Harrelson's administrative credentials to transfer leads and
21 use marketing resources for his personal benefit without the
22 authorization, without the knowledge, and without the
23 permission of Greg Harrelson. This was in deceit and was
24 indeed deceiving Century 21 Harrelson Group and Greg
25 Harrelson. The affidavits reflect at the very least this was

1 with a Homebot account and Century 21 Harrelson Group CRM
2 account. These are accounts that are used in the real estate
3 business for customer relationship management. Century 21
4 Harrelson Group and Greg Harrelson were unaware in mid-2021
5 that Joel Barber had gained unauthorized access and was using
6 these administrative credentials.

7 And then February 7th, 2022 happened. On February 7th,
8 2022, the early morning of February 7th, Kevin Mills'
9 assistant, Montana Hartsock -- and this is set forth in her
10 affidavit -- she entered her locked office and noticed her
11 computer and her wiring on her computer in her locked office
12 were out of place. She logged into that computer and
13 immediately saw on that computer screen a -- an alert that
14 said in the early morning hour, a device was improperly
15 ejected from that computer. She knew that was not her device,
16 and she was not there at 4:00 a.m. on the morning on February
17 7, 2022. She took a screenshot of that error, and she
18 notified Kevin Mills that her computer and her locked office
19 were accessed that morning. And that information, data, and
20 files on her computer and locked in the locked office were
21 deleted, modified, downloaded, or transferred without her
22 authorization, without her knowledge, and without her
23 permission. Montana Hartsock is an assistant to Kevin Mills,
24 who is a licensed real estate independent contractor with
25 Century 21 Barefoot.

1 As a result of what Montana Hartsock discovered, further
2 review and investigation incurred both by Kevin Mills and by
3 Greg Harrelson. You'll see this based on the affidavits of
4 Kevin Mills, Greg Harrelson, Montana Hartsock, and Stacey
5 Weaver, and the expert Clarke Walton.

6 Upon investigation, the office Ring camera footage was
7 reviewed. And on that Ring camera footage, the -- Kevin Mills
8 and Greg Harrelson observed, beginning on December 11th, 2021
9 all the way through February 7th, 2022, Joel Barber accessing
10 the building in the wee morning hours or the middle of the
11 night. This is outside regular business hours of the office.
12 It was during the exact same time that Joel Barber is observed
13 on the Ring camera footage that the computer records both
14 viewed by Montana Hartsock and Stacey Weaver, and also
15 reviewed by the expert Clarke Walton revealed that the
16 computer in the locked office of Montana Hartsock was accessed
17 without her permission or authorization, and without Kevin
18 Mills' permission or authorization, and also it was during
19 these same late night/early morning hours that Joel Barber is
20 witnessed accessing the building that the locked office of
21 Stacey Weaver, who is an assistant to Greg Harrelson, was
22 accessed. It appears to be -- have been accessed with some
23 force as there is damage to the door, and her computer in the
24 locked office was accessed. On that computer contained all of
25 Greg Harrelson's passwords and log-in information for his

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1 cloud and web-based accounts, which contained proprietary and
2 confidential business-related information. All this was
3 discovered as a result of what was observed on the morning of
4 February 7th, 2022, and was not known prior to this time.
5 There is, based on the affidavit, substantial unauthorized
6 access to both locked offices and password-protected
7 computers, websites, cloud accounts, during the time period
8 that Joel Barber had had access to the building in the middle
9 of the night.

10 In addition, there is substantial unauthorized access and
11 unauthorized deletions and modifications to Kevin Mills'
12 Chrome account or his Goggle account, which includes Gmail,
13 Google Calendar, Google Sheets. All of his personal
14 information was contained in this Google account, which was
15 hacked into, for lack of a better word, during these time
16 periods in which Joel Barber had access to the building and
17 gained access to the locked offices.

18 Kevin Mills, on his Google account, had not only work-
19 related information, leads, contact information, marketing
20 materials, communications with clients; he also had all of his
21 personal information. So, personal log-in information for
22 bank accounts, tax records, all of this based on the
23 affidavits of Clarke Walton and based on the affidavits of
24 Montana Hartsock were not only accessed, they were viewed,
25 much of it was downloaded, and much of it was deleted. So, it

1 was not only accessed, but then it was removed from Kevin
2 Mills' Google account and deleted. This is reflected on what
3 the investigation of -- occurred through Montana Hartsock, and
4 she has -- had reviewed the deletions on this Google account
5 and these things are verified through Clarke Walton.

6 Since February 7th, 2020, Joel Barber has -- the
7 independent contractor agreement with Century 21 Harrelson
8 Group, by and through Margaret McBride, has been terminated.
9 He -- after February 7th, 2022, he had continued to contact
10 customers, clients, and leads that belonged to Century 21
11 Harrelson Group or belonged to Kevin Mills, and were
12 information that was acquired through the unauthorized access.
13 Since February 7th, 2022, and you will see that in the
14 affidavit of Vincent Bufano, he has attempted to list and gain
15 business of clients and customers of Kevin Mills and caused
16 great confusion with the clients and customers of Kevin Mills,
17 because after his termin -- after the independent contractor
18 agreement was terminated, Joel Barber continued to represent
19 himself as a agent of Century 21 Harrelson Group. He told
20 Vincent Bufano that he was an extension of Kevin Mills. He
21 told Vincent Bufano that he was working with Kevin Mills, and
22 this caused great confusion to Vincent Bufano because this is
23 untrue. This is one individual that was contacted and that
24 has provided this information. We believe that there are
25 substantial others based on the scope and the access that he

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1 had both unauthorized and during the course and scope of his
2 -- his independent contractor agreement.

3 Your Honor, based on what was -- two things. One, there
4 is a set of information that is proprietary and confidential
5 that belongs to Century 21 Harrelson Group that he gained as
6 an independent contractor with the brokerage firm and the
7 broker-in-charge. Contractually, he agreed that this
8 information was confidential, proprietary, shouldn't be
9 removed, copied, or used against him before and after the
10 termination of the independent contractor agreement and should
11 be returned. That set of information is basically anything
12 that was developed from March 2017 to February 7th, 2022.
13 That's a contractual obligation that he agreed to. It's also
14 part of the licensing act, because the brokerage firm is
15 required to supervise those independent contractors, and the
16 brokerage firm is the actual supervisor and the actual person
17 that authorizes the independent contractor to act. So, both
18 under the contractual obligations and the South Carolina
19 Licensing Act, that information that Joel Barber gained access
20 to from the beginning of his independent contractor agreement
21 to the end of his independent contractor agreement belongs to
22 the brokerage firm. It belongs to the broker, and it's
23 confidential, proprietary, and needs to be returned.

24 In addition to that, however, Joel Barber also, by
25 breaking into locked offices, breaking into password-protected

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1 computers, and using log-in passwords and unauthorized
2 passwords and credentials to access websites, without
3 permission, without knowledge, without authority, he
4 improperly gained access to additional information that is
5 substantially outside the scope of his independent contractor
6 agreement, relates to third parties, relates to personal
7 information including bank accounts, tax returns. It relates
8 to unrelated brokerage firms like Century 21 Barefoot, which
9 he was not an independent contractor of, and potentially
10 relates to other independent brokerage firms that are not
11 parties. That information is unauthorized. That information
12 is outside the scope of his independent contractor agreement,
13 and that information is ill-gotten gain.

14 Based on both the contractual terms, the licensing act,
15 and the improper information he gained access to without
16 authorization or approval, both by accessing an office that
17 was locked and by accessing computer equipment and websites,
18 we're asking this Court to enjoin Mr. Barber, as well as the
19 full scope of anybody acting within his authority under Rule
20 65, and I'm -- bear with me just a moment -- so, any officers,
21 agents, service, employees, attorneys, and any persons in
22 active concert or participation with Joel Barber be enjoined
23 from using any of the information that was gained during this
24 course and scope of his independent contractor agreement from
25 March of 2017 to February 7th of 2022. As well as enjoin Joel

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1 Barber and all individuals that would be otherwise subject to
2 this injunction pursuant to Rule 65(d) from accessing,
3 contacting any individuals on that database, any systems that
4 were accessed or gained -- that he gained information from
5 during this time period. We are also asking for -- asking
6 this Court for some expedited inspections of any and all
7 devices accessed or used by Joel Barber from at least June 1,
8 2021 to the present.

9 Your Honor, very specifically, I will set forth what I
10 would ask an order to enjoin Mr. Barber from doing would be
11 from stepping foot on any of the property of the plaintiffs,
12 which includes 4757 Highway 17 Bypass South, Myrtle Beach,
13 South Carolina, 29577. It would enjoin him from accessing any
14 databases, systems, CRMs, software or cloudware, servers and
15 computers connected to the internet using any log-in account
16 or password information that would've belonged to or have been
17 derived from any of the plaintiffs. This would include any
18 Google accounts, Real Geek accounts, Homebot, InfusionSoft,
19 Homelight, Fastexpert.com, EffectiveAgents.com, UpNest.com,
20 Linbec.com (spelled phonetically), and Pipedrive. We'd ask
21 this Court to enjoin the use or access of copies of any of the
22 information. We would ask this Court to enjoin the defendants
23 from contacting any of the leads, prospects, and/or customers
24 identified in those -- in that subset of information. We'd
25 ask the defendants be enjoined from selling, publishing, or

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1 disclosing any of the data or information contained in that
2 subset of information. And, Your Honor, that is -- that is
3 important for a couple of reasons based on the verified
4 complaint. There are some -- historically, at least one
5 action by EXP Realty and Darcy Varney in which they reached
6 out to third-party realtors attempting to sell Joel Barber's
7 leads for a 25 percent referral fee. And that sale of those
8 leads would include leads that were derived from this improper
9 subset of information both in violation of the independent
10 contractor agreement and improperly obtained.

11 We'd ask this Court to require the defendants to
12 immediately notify the plaintiffs in writing any commissions
13 or referral fees obtained from any of those leads, prospects,
14 clients, or customers. And we'd ask this Court to issue an
15 order that would require the identification of all devices
16 used from June 1, 2021 to the present for Joel Barber but also
17 including any of his employees, agents, licensees, team
18 members, staff, LLC members, employees from June 1, 2021 to
19 the present for an expedited inspection. That inspection
20 should include a third-party expert that could inspect and
21 preserve the data contained thereon. And, Your Honor, we have
22 used Clarke Walton for our purposes. We would suggest that he
23 would be an independent third-party expert that could perform
24 that preservation. However, since we've used him in the past
25 related to our computer documents, we would also suggest Steve

1 Abrams for that purpose as well.

2 We would agree to once those devices are identified and
3 preserved, we would agree to meet and confer with defense
4 counsel to develop a protocol and a plan for inspection and
5 production of that data therein.

6 So, Your Honor, that's the scope of what we are asking
7 for today based on the affidavits that we've provided to you,
8 and we've provided to you a hard copy of all of the documents
9 filed, which include all of the service documents in this
10 case. There is substantial evidence -- substantial evidence
11 of the contractual arrangements of the bad acts of Mr. Barber
12 in accessing the locked offices and accessing the computers,
13 as well as substantial documentation and evidence related to
14 the impact that this has on the reputation and the goodwill
15 and the ongoing business operations of the plaintiffs. That,
16 Your Honor, is sufficient to reflect a irreparable harm and
17 inability to fully recover monetary damages. Now, I will tell
18 you that in the supplemental affidavit of Greg Harrelson, he
19 has set forth information that is able to show potentially the
20 monetary value that this set of data could have to a third
21 party. And that monetary value, that positive monetary value
22 is very low in comparison to the damage that's being caused to
23 these plaintiffs. And that's because the goodwill, the
24 investment, the time and the money that has gone into
25 developing this information doesn't necessarily transfer to a

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1 third party. So, Greg Harrelson's supplemental affidavit
2 estimates that the value of this to a third party in this case
3 and Joel Barber is approximately maybe \$1,250 per month. We'd
4 ask that the Court issue the injunction and that the bond be
5 set at that amount of \$1,250 because the harm caused to the
6 plaintiffs is great, but the value, the positive value to the
7 defendants is minimal. They can, in fact, have used this
8 information to harm plaintiffs, but the positive value is
9 minimal.

10 Your Honor, thank you.

11 THE COURT: All right.

12 All right. Mr. Daigle, let me hear from you, sir.

13 MR. DAIGLE: Your Honor, again, Jason Daigle for Joel
14 Barber.

15 Let's take care of the easy stuff first. Ms. Bailey has
16 requested that we not step foot on the property of Century 21.
17 We're fine with that. If you want to issue a temporary
18 restraining order or an injunction preventing us from doing
19 so, we'll agree to that.

20 Accessing the Century 21 databases that are connected to
21 the internet, we can agree; we won't do that.

22 Outside of that, we might have a little bit of a problem,
23 because the threshold matter in injunctions is they have to --
24 have to set forth facts sufficient in which the injunction can
25 be granted. And again, as a threshold matter here, we don't

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1 have the information they think we have. We don't have leads.
2 We don't have proprietary information. We do not have
3 anything that they think we have; we do not have. We don't
4 have electronic copies of it. We don't have hard copies of
5 it. We don't have cloud copies of it. We don't have access
6 to it at all. So, they are seeking to enjoin us from using
7 information we do not have. We have not used it. We are not
8 currently using it. We are not going to use it. And, we
9 don't have access to it even if we wanted to. So, there's a
10 problem with the factual allegations and that they are just --
11 they're just wrong. They are incorrect, because we do not
12 have the information they're seeking to enjoin us from using.
13 The other part of the facts that are just flat wrong are what
14 it is alleged that Joel Barber and EXP have done. One of
15 those is selling these databases to third parties. That's not
16 correct; that never happened.

17 Another thing that they are saying that we did is
18 publicly listing deals or publicly closing listings with this
19 information. That is also not true -- also incorrect; it's
20 wrong. There's allegations that those listings would only be
21 accessible or would only be known to Joel by misappropriating
22 certain information on those databases, which is also
23 incorrect. These leads are not -- you know, it's not the
24 Coca-Cola formula. It is -- they are people who may or may
25 not want to sell or buy real estate at some point. There are

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1 dozens of lead generators that give not only Century 21, not
2 only EXP, but all the dozens and hundreds or thousands of
3 realtors in the area access to those leads for a certain
4 amount of money a month. There are plenty of ways to get this
5 -- these information and these leads without using proprietary
6 or without using ill-gotten information from a former
7 employer.

8 The injunction is based on facts that simply aren't
9 there. The requirements for an injunction are to have had the
10 facts there to -- relief to be granted, and again they don't
11 exist here.

12 The other issue is that you have to show that there is a
13 substantial -- that there's a likelihood of success on the
14 merits. The very first thing that is mentioned in the memo to
15 support is a violation of the Trade Secrets Act. There is a
16 zero percent chance that they succeed on the merits of that.
17 Why is that? Because it is mentioned nowhere. Not one place
18 in their verified complaint is there a cause of action related
19 to the Trade Secrets Act. There is not a reference to the
20 Trade Secrets Act. There is no -- in any of the causes of
21 action, they do not reference trade secrets whatsoever that
22 were violated by Joel Barber. The factual allegations made,
23 again, they say that they were prospect leads or client lists
24 that were sold. That there were listings that were made
25 publicly. What we don't have here and what you haven't seen

1 from the plaintiff is what those leads are, who's on the
2 lists, what people, what leads, what prospects are in those
3 databases that we -- that we gained -- that we
4 misappropriated. They can't give us that list. What
5 closings, what listings, what contracts have been entered into
6 with ill-gotten leads? They can't give us a list of that
7 either. So, effectively what they're asking for is an open-
8 ended injunction to keep us from doing anything, to keep us
9 from working leads, to keep us from practicing real estate in
10 the Myrtle Beach area by giving this open-ended injunction
11 that is clearly gonna be weaponized in this case, and we're
12 gonna be back here every single month, every time that there's
13 a lead -- I'm sorry -- a closing, every time that there's a
14 contract, every time there's a listing, we are gonna be back
15 here on a motion for sanctions or a motion for contempt on
16 where that lead came from and how -- and how the lead was
17 used. That is how -- that is the gist of this case, that's
18 the crux of this case of what the litigation is for. These --
19 this information, this -- these facts as alleged, not only are
20 they wrong, they are not subject to such a broad injunction.
21 That is what is going to be discovered in this case. We are
22 going to -- we are disputing the vast majority of the factual
23 allegations in the complaint, we are disputing the
24 overwhelming majority of the facts that are in these
25 affidavits because they are factually incorrect. And basing a

1 injunction -- an injunction is not to be -- you can't allege
2 improper -- incorrect facts for an injunction. The facts have
3 to be correct, and they're just not in this case. They are
4 disputed. There's no -- there's no chance of irreparable harm
5 anyway because their argument for irreparable harm is that
6 we're using these misappropriated leads and misappropriated
7 information that we don't have. There can be no irreparable
8 harm because we don't have that information.

9 But, you know, the -- they have requested that we be
10 enjoined from contacting leads on these databases. We don't
11 know who those leads are. They can't provide us a list of the
12 leads we're not allowed to contact. Again, that's going to be
13 part of the discovery process. They're enjoining use from
14 selling, selling the leads that are improperly obtained.
15 Again, we need to know who those are. They can't provide
16 those lists. And, until they can provide those lists, you
17 can't -- the Court can't issue an open-ended injunction saying
18 that we're not allowed to do anything.

19 As far as the -- as far as the inspection of the devices
20 goes, that's a discovery issue that Ms. Bailey and I will deal
21 with, and I don't think we're gonna have an issue there but
22 that's certainly not part -- not part of an injunctive -- of a
23 temporary injunction.

24 And as far as immediately notifying for referral fees
25 from customers that were -- that they deem ill-gotten, if we

1 could have a list of those customers, then we'd be happy to do
2 that. But again, we -- they can't provide a list, so we don't
3 know who we're not supposed to contact or who we're supposed
4 to inform Century 21 if they contact us.

5 And the last issue is that the -- there's no appropriate
6 remedy at law. That's just not the case here, Your Honor.
7 The -- we have been sued for breach of contracts, trespassing,
8 conversion, unfair trade practices, among other things. Those
9 are not typically the types of causes of action that would
10 warrant an injunction. There's an employment contract or an
11 agency contract between Century 21 and Joel Barber. Those
12 issues will be taken care of in the litigation. The -- if
13 there's a breach of the contract, then they're certainly going
14 -- they have to prove their damages and they have to show what
15 those are and they're entitled -- they might be entitled to
16 money damages for that cause of action. But again, there's no
17 -- there's no chance of irreparable harm because we don't have
18 the information they say that we have. We just do not have
19 it, and we can't use it even if we wanted to.

20 And just to -- as an example of how common it is for
21 multiple real estate agencies to have these same leads, these
22 non-proprietary leads that no way would be part of the Trade
23 Secrets Act anyway, that is Joel Barber's parents, his
24 parents, got a solicitation email from Greg Harrelson saying
25 that they -- that he wants them to be part of the Century 21

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1 family and to sign on with them. That's how common it is for
2 the -- for multiple leads to be in multiple real estate
3 agencies and come from multiple lead providers in the field.
4 And for that reason, we -- with the exception of not stepping
5 foot onto the property, not accessing the databases, and we
6 would ask that all other requests for the injunction be
7 denied.

8 THE COURT: All right.

9 All right. Mr. Hershon?

10 MR. HERSHON: Thank you, Your Honor.

11 Lawrence Hershon. I represent EXP Realty, LLC and Darcy
12 Varney. EXP Realty is a local brokerage company, and Darcy
13 Varney is its managing broker in South Carolina. And Your
14 Honor, here I think there are distinctions to make -- while
15 some of my arguments are very similar to what was made on
16 behalf of Mr. Barber, I also do want to make the distinction
17 that, you know, that I do represent separately EXP and Darcy
18 Varney in that I think some arguments here and some positions
19 here are distinct from what may or may not happen in a court
20 ruling from -- as related to Mr. Barber.

21 As you've heard, many of the accusations are -- most of
22 the accusations are about activity that he took prior to
23 onboarding with EXP. There's been an affidavit submitted by
24 Darcy Varney that runs through that Mr. Barber was hired on
25 February 14th of this year, which is after the date of these

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1 alleged -- you know, alleged activities in the offices of the
2 plaintiffs, and that he again was just -- you know, just as he
3 was at Century 21, he is with EXP as an independent
4 contractor, as that works throughout the real estate industry
5 in South Carolina. I do believe the plaintiffs here are
6 turning the rules and the caselaw a little bit on their head
7 as it relates to temporary restraining orders and what the
8 Court is permitted to do under caselaw and under Rule 65,
9 because again an affidavit has refuted many of positions as to
10 the least in terms of what EXP has. EXP has never had this
11 information, has never sought to obtain this information, has
12 never had access to this information, has never used this
13 information. That's all in the affidavit that's been
14 submitted earlier this week on March 28th, the affidavit of
15 Darcy Varney. There's essentially -- in the complaint,
16 there's essentially one allegation against EXP throughout all
17 of this, because EXP certainly was not involved, and it's not
18 alleged that they were involved before February 14th. And
19 it's this allegation that there was some attempt to purchase
20 or sell the leads from Mr. Barber to 25 percent referral fee.
21 Certainly, through the affidavit and certainly since that
22 information was never had and there is no -- and the answer is
23 filed -- the answer deadline is Monday, that allegation will
24 be denied. But that's basically the allegation that's there,
25 and then there's this allegation in a couple of the affidavits

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1 that there's been these couple of listings or sales that may
2 or could've happened that Mr. Barber has brought over, yet
3 it's done in such a broad sense, there's no name -- there's no
4 names associated with that. We have no idea who they may be
5 talking about. You know, if there was a listing that
6 occurred, that's an MLS that every -- multiple listing service
7 that everybody has, share those names. I've got a stack here
8 of hundreds of pages of documents, of affidavits that have
9 been thrown at us, and there's not something in there to tell
10 me what those properties are. You know, and it's -- as Mr.
11 Daigle had said, who is in this list, what is this? You know,
12 you're wanting to stop something that we don't have any
13 information on what they're seeking to stop. And I do think
14 that's what -- here there is some danger or what an order
15 could do when it's based on that generic information of CRM
16 data and data that has never been in EXP's hands. I don't
17 know who that list is. EXP doesn't know who that list of
18 leads, potential customers, whatever they may be.

19 So, again, this is about -- you know, a TRO is about
20 preventing irreparable injury, loss, or damage that I don't
21 think has been shown or established here today. You know, for
22 example, if -- you know, a common example of a need for a TRO
23 is seeing your neighbor -- your neighboring property of two
24 real estate owners and somebody is looking to cut down trees
25 that are on the boundary and you start seeing the trucks

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1 coming out there, you start seeing someone is about to cut
2 trees, and you think those trees are on your own property, not
3 your neighbor's property, that's when you can see irreparable
4 harm is about to happen. Those trees may disappear; there's a
5 boundary dispute. But, if nobody has ever been on that
6 property, nobody has been there, you know, bringing trucks and
7 the other things to cut those trees down, right now, we're in
8 really a hypothetical sense of a potential harm rather than
9 actual harm. Plaintiffs have been very aggressive at the
10 start of this lawsuit. I certainly understand based on their
11 claims why they were doing so, but I think this also leads to
12 a larger -- there's been some newspaper articles published
13 about this case already. I think there's a larger business
14 play at issue here from the plaintiffs that, you know, involve
15 the market of who is a big real estate player in the Myrtle
16 Beach and Horry County area. And the right place for that
17 market fight or market battle is in the marketplace, not in
18 the courtroom.

19 You know, as to the case law, Your Honor, certainly the
20 rules are well established about what the plaintiffs have to
21 show and that it's a heavy burden of demonstrating facts and
22 circumstances warranting an injunction, such as noted in the
23 *Strategic Resources* case at 367 S.C. 540. And that this
24 temporary -- you know, the point of this temporary injunction
25 is to preserve the status quo. Again, that many of these

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1 things are already -- you know, the Court is informed that I
2 think the status quo, based on the responsive affidavit, is
3 going to already stay in place.

4 Looking at the alleged facts here, Your Honor, again the
5 -- what has been stated in responsive affidavit is that EXP
6 doesn't have this data, doesn't have this information. Yes,
7 Mr. Barber is still an active independent contractor real
8 estate broker with them. But, looking at the allegations and
9 the causes of action, you have eight causes of action in this
10 complaint. Let's take -- you know, one of those is for the
11 temporary restraining order. The other seven are breach of
12 contract, breach of contract accompanied by fraudulent act,
13 trespass, conversion, violation of the South Carolina Crimes
14 Act, violation of Unfair Trade Practice Act, interference with
15 existing and prospective contracts. All of those are claims
16 that normally dealt with through the course of a lawsuit,
17 through pleadings, through discovery to trial were damages or
18 how wrongs are dealt with. And so, you can't -- with those
19 claims, if there is a loss of goodwill, there are ways to
20 measure damage for that. This is not something that makes it
21 impossible to measure damages. Does it mean there could be
22 variances in what that damage amount could be? Yes. And
23 that's for a fact finder to determine at the end of the --
24 towards the end of this case.

25 Also, as noted by Mr. Daigle, the memorandum of law

1 submits that there is some violations of the South Carolina
2 Trade Secrets Act here. Again, that is not in the pleadings.
3 The pleadings that are before the Court do not have a cause of
4 action related to that, so that cannot be a basis for a TRO
5 today dealing with that. So, instead of you have these causes
6 of action, you know, they've decided to plead those and plead
7 those in the alternative, but there are seven that have -- you
8 know, that are here for matters of law to be determined, not
9 -- not in equity as a TRO is normally dealt with. So, let's
10 say during the discovery it is determined, you know, based on
11 -- you know, essentially switching the standard here a little
12 bit and assuming some of allegations by plaintiff are true,
13 those things would be determined in discovery. If there are
14 sales that have occurred, real estate commissions are readily
15 available under contract -- under what will happen in any of
16 these closings. And the monetary damage can be determined.
17 You know, the affidavit that was referred to, the supplemental
18 affidavit, I believe of Mr. Harrelson, you know, puts a dollar
19 figure somehow on what that is worth as to third parties, but
20 doesn't put it on what it is to him. If he can make a damages
21 estimation of what it is to third parties, it seems like he
22 could also do it for what kind of damages caused to himself.
23 So, I don't know why that's not revealed to the Court and the
24 tribunal at this time.

25 You know, as to likelihood of success, you know, just if

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1 something is being alleged today that shows they'd have some
2 kind of likelihood of success as to Barber, which I don't
3 think -- I don't know if that's been shown today or not. I
4 don't believe it has. But as to EXP, most of these causes of
5 action don't even relate to EXP. Breach of contract, breach
6 of contract with fraudulent act, crimes -- the crime computer
7 fraud statute, those all deal with actions before he was with
8 EXP. The causes of action that deal with EXP as far as I can
9 tell are the Unfair Trade Practices Act and interference with
10 existing and prospective contracts. The interference with
11 existing and prospective contracts is not addressed in the
12 memo of law. I don't know what contracts those could even be.
13 If it's about potential customers in the future, again,
14 that'll be -- I think will be determined in the discovery
15 because we don't have those names of who those could be. From
16 past contracts, we don't have the names of who those could be,
17 what contracts those even are. So, I don't see how that has
18 been converted as to that claim has been met today. Unfair
19 Trade Practices Act is certainly normally more than the
20 consumer or individual context as opposed to business on
21 business context as we are here today. Again, I don't see --
22 you know, that claim, you know, proving that actually is a
23 difficult one. It's easy to allege. You know, I don't think
24 that here today in terms of, you know, elements like
25 repetition, I don't know if -- I haven't seen something today

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1 that shows that. Deception by EXP has not been shown today.
2 And unfair act, at most -- from what I've heard again is this
3 alleged attempt to sell some of the leads, which, you know,
4 you know, whether that gets to an unfair act again will be a
5 fact finder determination, I don't -- you know, at best it's a
6 questionable claim.

7 So, simply put, Your Honor, I don't believe that the
8 requirements -- the three requirements and elements of a TRO
9 have been met. As Plaintiff has referenced, any -- you know,
10 if the Court does decide to order injunctive relief in some
11 way -- well, taking a step back from that, I am -- I am
12 worried about what this order -- an order could do in terms of
13 cooling the market place and hurting consumers if there is
14 something that just generally talks about CRM data that has
15 come from the plaintiffs that is -- that we don't know who is
16 in that list, and then having to make a determination of can
17 this property -- can a certain property, property at Green
18 Acres be listed in our MLS when is there some possibility that
19 Joel Barber, although he's told us that none of these are
20 leads that he got from Plaintiffs. He certainly made that
21 statement to Ms. Varney that somehow listing that could be a
22 problem. That can cause economic loss, and each listing, you
23 know, with the property values that we're at today, those
24 properties are -- many properties are \$300,000 in excess of
25 that and each one has a real estate commission that's at three

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1 percent each. And so, getting to the -- if the Court does
2 decide to do some form of injunctive relief, the rule
3 certainly requires that there be a -- that there be a bond or
4 some other security to protect the defendants from damages.
5 And I think those damages are this potential loss -- the
6 effect of this could be a potential loss of listings, and
7 \$1,250 is -- I think would fall under what is instead a
8 nominal amount, which caselaw certainly says is not permitted
9 under the *Atwood Agency v. Black* case from the -- it's a 2007
10 case, 374 S.C. 68 is that a -- it cannot be a nominal amount
11 because that erroneously assumes the injunction is proper
12 instead of providing the amounts, they should protect the
13 defendants.

14 So, Your Honor, one -- as I've gone through, don't
15 believe a TRO is proper in this standpoint, but if it does, I
16 believe the Court's got to look a little bit deeper at this --
17 at whether this requested bond amount or security amount of
18 \$1,250 is appropriate.

19 Thank you, Your Honor.

20 MR. DAIGLE: Your Honor, may I say -- just follow up on
21 one thing that Mr. Hershon said?

22 THE COURT: Yes, sir.

23 MR. DAIGLE: Okay. Just real quick on the maintaining
24 the status quo, the point of an injunction is to maintain the
25 status quo. What the plaintiff is requesting here is that we

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1 not use this information that is allegedly ill-gotten. That
2 is currently what is happening now. That is the status quo.
3 We don't have access to it. We don't have it, we're not using
4 it; that's the status quo. Issuing an injunction would in
5 fact disrupt the status quo by preventing Joel Barber and EXP
6 from practicing real estate in the Myrtle Beach area.

7 Thank you.

8 THE COURT: All right. Go ahead, Ms. Bailey. Brief
9 reply.

10 MS. BAILEY: Thank you, Your Honor.

11 Your Honor, the injunction is tailored. The request for
12 injunction is tailored. It's -- and important to note, there
13 is -- other than Darcy Varney giving an affidavit saying she
14 personally doesn't have access to the information that she
15 says she doesn't have access to, there's no affidavit from
16 Joel Barber, there's no evidence. There's no answer, there's
17 no filing whatsoever from Joe Barber to say any of these facts
18 are disputed. So, all of the evidence that's been presented
19 set forth a likelihood of success in the merits. Any
20 information gathered from any other source should not be
21 subject to this injunction. That is something that would
22 require Joel Barber to demonstrate. The sources that this
23 information was acquired through that we're seeking the
24 injunction were from March 2017 to February 7th, 2022, when he
25 was an independent contractor with Century 21 Harrelson Group.

1 Your Honor, there is -- I want to -- I think it's
2 important to specifically point to the supplemental affidavit
3 of Kevin Mills and the affidavit of Vincent Bufano. In the
4 supplemental affidavit of Kevin Mills, Kevin explained some of
5 the evidence that is set forth in Montana Hartsock's affidavit
6 and Clarke Walton's affidavit about the improper access to
7 Kevin Mills' Google account. What happened when Joel Barber
8 came in in the middle of the night, broke into locked offices,
9 and hacked onto Kevin Mills' computer and Google account is
10 that he deleted information from that account. One set of
11 that information was a calendar entry for Vincent Bufano.
12 That calendar entry was for Kevin Mills to follow-up and
13 continue contacting his existing customer, client, lead,
14 prospect, however you define it. And when Joel Barber deleted
15 that, it came off of Kevin Mills' calendar, came off of his
16 reminders, came off of his information about that individual,
17 about his -- the valuable information he had about that
18 potential sale. And Kevin Mills didn't follow-up with Vincent
19 Bufano and -- because it wasn't on his calendar entry. But
20 you know who did? Joel Barber. Joel Barber, between the
21 beginning of February and the end of February, when he was an
22 agent with Darcy Varney and EXP Realty, he emailed multiple
23 emails, ten-plus calls, he called Vincent Bufano. And do you
24 know what he did? He represented that he was an extension of
25 Kevin Mills. So, he took information from Kevin Mills.

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1 Didn't leave it with Kevin Mills, he took it, utilized it for
2 his own benefit while he was being supervised as a licensee of
3 Darcy Varney as a broker-in-charge. So, how Darcy Varney can
4 put an affidavit in this Court that says she doesn't know this
5 information, doesn't have access to this information, and
6 still be charged with supervising her licensees is
7 unexplainable to me. She has a statutory obligation to
8 supervise her licensees. And if she's representing this in an
9 affidavit, she's not doing her statutory obligation.

10 Your Honor, in anticipation of some of this argument
11 related to Ms. Varney, I have prepared a supplemental
12 memoranda which I'll provide to the parties. It has not been
13 provided to the Court. We've discussed this just in general
14 related to -- may I approach the bench?

15 THE COURT: Yes, ma'am, please.

16 MS. BAILEY: Discusses in general related to the
17 obligations of a brokerage firm and a brokerage in charge
18 specifically as it relates to the supervisory obligation, and
19 as it relates to the information that is gathered by a
20 licensee and then used by the licensee. So, in this case, it
21 works both ways. So, contractually and under the licensing
22 act, when Joel Barber was with Century 21 Harrelson Group, he
23 was benefitting Century 21 Harrelson Group. His obligations
24 were Century 21 Harrelson Group. When he moved over to Darcy
25 Varney and EXP Realty, he's being supervised by that group and

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1 he's benefitting that group. They're the principals; it's an
2 agency/principal relationship.

3 Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 All right. Counsel, if y'all give me a few minutes, I'll
6 come back and give you a ruling. All right?

7 MS. BAILEY: Thank you.

8 THE COURT: Thank you very much.

9 RECESS - 10:57 A.M.

10 *****OFF THE RECORD*****

11 ON THE RECORD - 11:15 A.M.

12 RULING OF THE COURT:

13 THE COURT: In this matter, requesting a temporary
14 injunction, regarding a temporary injunction, obviously, it's
15 in the Court's discretion to issue that to prevent irreparable
16 harm to the plaintiff. The plaintiff's complaint must allege
17 facts as well as the affidavits filed in conjunction thereto
18 must allege facts sufficient to constitute a cause of action
19 for an injunction, demonstrate that it is reasonably necessary
20 to protect the legal rights of the plaintiff during the
21 pendency of the litigation. For preliminary injunction will
22 be granted the plaintiff must establish that they would suffer
23 irreparable harm if the injunction is not granted; that there
24 is a likelihood of success on the merits of the litigation;
25 and there is an inadequate remedy of law. Now, the plaintiff

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1 is not required to prove an absolute legal right when seeking
2 a preliminary injunction, but the plaintiff must present a
3 reasonable question as to the existence of such a right. So,
4 that being the guiding principles, I looked at the filings of
5 the plaintiff including the verified summons and complaint,
6 all the affidavits that have been filed. In opposition to
7 that, I have only the affidavit of Darcy Varney. There's been
8 no other filings on behalf of the defendants at this time,
9 understanding that the complaint was filed -- summons and
10 complaint was filed on March 2nd of this year, and the time
11 period for responding has not yet expired.

12 Pursuant to the rules and the statutory -- and I'm sorry
13 -- the caselaw regarding temporary injunctions, I do find in
14 this matter that the plaintiff has more than sufficiently
15 proved that they would suffer irreparable harm. There is
16 certainly a likelihood of success on the merits, and I do find
17 that there is an inadequate remedy of law regarding the
18 information.

19 Now, there are different parties in this. Regarding the
20 defendant in this matter, the -- Joel Barber individually and
21 as a licensed realtor, I am enjoining him from, as agreed
22 upon, from the business property of the plaintiffs. I am also
23 enjoining him from being on the personal property of the
24 plaintiffs during the pendency of this action.

25 For the time period that Mr. Barber was employed and

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1 associated with the plaintiffs, from the period of March 17th,
2 2017 through February 7th of 2022, the information he gained
3 access to by being and working with the plaintiffs for that
4 period of time, as to leads, clients, prospects, however they
5 are defined, he is prohibited from using that information.
6 Those individuals cannot be communicated with or contacted by
7 the defendant, Barber. Now, that's only as to him. He -- if
8 someone would communicate with him and is not as a result of
9 any action on behalf of Mr. Barber, then he'd be free to
10 communicate with them, but he cannot initiate in any shape,
11 manner, or form, communication with any of those individuals
12 by any means. Now, the -- further, that information cannot be
13 sold or disclosed to anyone else.

14 The affidavit of Darcy Varney states that she, in her
15 capacity for the EXP Realty, has -- in her sworn affidavit has
16 none of this information. The Court finds therefore that the
17 restraining order by agreement should extend to Darcy Varney
18 and EXP Realty because they claim no access and no
19 information. So, there is no harm in extending the injunction
20 to them to information they claim to have no knowledge of or
21 access to. That does not prevent the defendant, Varney or EXP
22 Realty from using any of the available real estate sources to
23 access that kind of information and communicate with
24 individuals; they just cannot use the information of the
25 plaintiff. Since there could be -- and again I'm limited by

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1 the lack of filings on behalf of the defendant, again, I
2 understand the answers are not due and whether or not they'll
3 be any counterclaims in those answers, but I think there at
4 least exists the potential of harm to the defendants from the
5 potential loss of sales or commissions on information that
6 they could garner from other sources. And therefore, I'm
7 gonna set the bond at \$100,000..

8 Now, I am not granting in the injunction the requested
9 inspection of devices. That is a matter for a motion of
10 discovery strictly for that. I do not find it to be proper in
11 the request for a temporary injunction. Further, I do not
12 place on the defendants any burden to notify the plaintiffs as
13 to any commissions or fees gained. If the plaintiff has a
14 claim for that, they clearly have all of the information and
15 the resources to make such a claim by monitoring the MLS
16 system and other systems that are available that show sales.
17 And they can and have the ability to match up people that they
18 have in their database with these sales and can include that
19 in their claim against the defendants if such exists.

20 I believe that covers it. Anything else from the
21 plaintiffs?

22 MS. BAILEY: Nothing from the plaintiff, Your Honor.

23 THE COURT: From the Defendant Barber?

24 MR. DAIGLE: Your Honor, if I could have about two
25 seconds to ---

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1 THE COURT: Yes, sir.

2 MR. DAIGLE: Your Honor, just by way of clarification.

3 THE COURT: Yes, sir.

4 MR. DAIGLE: I understand that you're ruling that Barber
5 and EXP can't use the information in the plaintiffs'
6 databases. What I'm concerned about is what does that mean?
7 We don't know what's in there.

8 THE COURT: Well, I understand you don't know what's in
9 it. If the question comes up and -- it's not part of the
10 order, but clearly, if y'all engage in some kind of activity
11 regarding John Doe, you know, just picking John Doe, and that
12 person happened to be in the database, but the defendants can
13 show, look, we found John Doe either because John Doe called
14 us or we used these various real estate sources that are
15 available to everybody in the market place, and that's now --
16 we came in contact with John Doe, then it's not a violation.

17 MR. DAIGLE: Okay.

18 THE COURT: But, you know, if that doesn't -- obviously,
19 that doesn't prevent the plaintiff from -- you may have to
20 explain that based upon a complaint by the plaintiff saying,
21 look, you -- John Doe is in our database and you've now sold
22 property to John Doe, and so that'll be part of the
23 litigation. Okay? So, I understand that, and I can't give
24 you an order that covers every eventuality.

25 MR. DAIGLE: I understand that and that's why I asked for

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1 the clarification.

2 THE COURT: Okay.

3 MR. DAIGLE: Just because somebody is in their database,
4 doesn't necessarily mean it's in violation of this injunction?

5 THE COURT: No, it doesn't mean that necessarily -- it's
6 just -- but it means that, obviously, the plaintiff could make
7 a complaint about it and then y'all have to explain it.

8 MR. DAIGLE: That we got it from somewhere else.

9 THE COURT: That it was accessed in some other manner.

10 MR. DAIGLE: Yes, sir.

11 THE COURT: And did not have this information or
12 whatever. So, you know, that's -- it's just not automatically
13 a violation. Then it comes whether it's part of the case or
14 part of a request regarding the order.

15 MR. DAIGLE: Thank you, Your Honor.

16 THE COURT: Okay?

17 MR. DAIGLE: Yes, sir.

18 THE COURT: Mr. Hershon?

19 MR. HERSHON: Nothing further, Your Honor. Thank you.

20 THE COURT: So, what I'm gonna ask that you do -- I'm
21 sorry, Ms. Bailey, is there ---

22 MS. BAILEY: Your Honor, I was just gonna offer to
23 prepare the order.

24 THE COURT: Well, that's what I was gonna ask you to do.
25 I'm gonna ask you to prepare the order, but before you eFile

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1 it with the Court, obviously share it with Mr. Daigle and Mr.
2 Hershon, and you know, if there's some problems, see if y'all
3 can work them out. If not, then obviously, you file it and,
4 gentlemen, you communicate with the Court that you have some
5 objection to some part of the -- of the proposed order.

6 All right?

7 MR. DAIGLE: Thank you, Your Honor.

8 THE COURT: All right. Thank you very much.

9 MR. HERSON: Thank you, Your Honor.

10 MS. BAILEY: Thank you.

11 ADJOURNED - 11:28 A.M.

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of HSS Barefoot, et al. v. Joel D. Barber, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 31, 2022.

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



Kay H. Richardson

Official Court Reporter

December 27, 2022.

State of South Carolina)
) Court of General Sessions
County of Horry) 2022CP2601323

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

November 16, 2022
Horry, South Carolina

B E F O R E:

The Honorable William H. Seals, Judge.

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

Amanda A. Bailey, Esq.
Attorney for the Plaintiffs

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
Attorney for the Defendants

Erica Wolfe
Transcriber

1 THE COURT: All right. I think we have everybody, and
2 I'm ready whenever you are.

3 MS. BAILEY: Your Honor, Amanda Bailey. I am here on
4 behalf of the named plaintiffs in this lawsuit. We are here
5 on a motion for contempt and sanctions against the named
6 defendant, Joel D. Barber, individually and as a licensed
7 realtor. Your Honor, this motion was filed on July 25th,
8 2022.

9 We were able to take Mr. Barber's deposition, or at least
10 start Mr. Barber's deposition yesterday. It was not completed
11 yesterday, and there are a number of items that I would be
12 pointing to from his deposition yesterday. We have a rough
13 copy of that transcript, but we do not have a signed copy of
14 the transcript from the court reporter. So I may be referring
15 to it. The notes in the transcript do indicate that it is a
16 rough copy.

17 Your Honor, on March 31st, 2022, of -- earlier this year
18 a hearing was held before Judge John on our motion for a
19 temporary restraining order, and this temporary restraining
20 order and injunction was against the then-named defendants,
21 which included Joel Barber and Darcy Varney and eXp Realty.
22 The motion for temporary restraining order and injunction
23 arose as a result of the independent contractor agreement
24 between Century 21 Harrelson Group and Joel Barber.

25 What occurred and what is supported by a volume of

1 affidavits in support of that injunctive relief was that Mr.
2 Barber was a licensed real estate agent who hung his license
3 as a licensed sales person with Century 21 Harrelson Group
4 through their broker in charge, Margaret McBride. They had a
5 number of documents -- they had an independent contractor
6 agreement, which defined the terms of their relationship.
7 That independent contractor agreement incorporated an agent
8 manual and an office policies document.

9 From about 2016 through February 7th, 2022, Mr. Barber
10 was indeed an agent of Century 21 Harrelson Group. This is
11 both because he hung his real estate license with them under
12 the South Carolina Real Estate Commission, but also as defined
13 by the independent contractor agreement that they had.

14 On February 7th, 2022, what is referenced in the original
15 affidavits filed with the TRO is that there was an incident
16 that occurred that was reviewed on Ring camera footage and an
17 encounter between Kevin Mills, who is a real estate agent
18 associated with a group called Century 21 Barefoot, and Mr.
19 Barber, who is the real estate agent associated with Century
20 21 Harrelson Group.

21 What Mr. Mills discovered on the morning of February 7th,
22 2022, was that his office had been accessed -- improperly
23 accessed, and his computer that was utilized by his assistant,
24 Martina Hartsock (phonetic), as well as his files, databases,
25 online databases, Gmail accounts, Gmail calendars -- all of

1 the databases and online accounts that he uses for the
2 operation of his business were broken into. They were
3 accessed, they were accessed without permission, and they were
4 accessed by Mr. Barber based on the video footage that show
5 Mr. Barber entering and exiting the facility, but also based
6 on the admissions that Mr. Barber made to the investigating
7 officer that day, in which he does say he entered that
8 building and does say that he was looking at information to
9 investigate "teams".

10 In his deposition yesterday, he admits telling third
11 parties that he was terminated on -- his independent
12 contractor agreement was ended, and he was dismissed on
13 February 7th, 2022, because he was looking at somebody else's
14 leads. So what Mr. Barber was doing is really not in dispute.
15 So on February 7th, he was accessing the office. He was
16 looking at somebody else's leads. He shouldn't have been
17 doing that.

18 After February 7th, after his discharge, the Century 21
19 Harrelson Group undertook an investigation to determine how he
20 got into this building and what all he had access to. What
21 was revealed was remarkable. They sent their documents off to
22 an independent investigator, Clark Walton, who has also filed
23 an affidavit in this case.

24 Clark Walton is an expert and he does forensic analysis
25 of databases, forensic analysis of devices, and based on Clark

1 Walton's affidavit, what he discovered was that over the
2 course of at least December 2021 through February 7th, 2022,
3 that at times in which correspond with video footage with Mr.
4 Barber entering and exiting the Century 21 Harrelson Group
5 building in the middle of the night or at the very wee hours
6 of the morning -- at 2 a.m. or 3 a.m. -- that not only were
7 Kevin Mills' databases, leads, Gmail accounts, computers
8 accessed, but also Greg Harrelson's accounts were accessed.

9 Greg Harrelson is the owner of Century 21 Harrelson
10 Group, and he has administrative capacities related to these
11 databases, meaning he has the ability to control everything
12 related to the databases. Greg Harrelson has access to
13 everything, whereas his agents may have some limited accesses
14 to these databases.

15 But the documents show from Clark Walton is that Greg
16 Harrelson's passwords were accessed in 2021 and early 2022,
17 and these would include all administrative passwords, which
18 allow access to every database. And those were accessed in
19 times that correspond with Mr. Barber accessing the building.

20 What also occurs thereafter, is there are some edits.
21 There are edits to Kevin Mills' accounts, which not only
22 reveal that the databases were accessed, but reveal that
23 actual meetings with clients were deleted from Mr. Mills'
24 account. So he had calendared meetings out in the future, and
25 those were deleted. Those meetings were deleted and follow-

1 ups didn't occur because changes were made to his account.

2 All of this action is what resulted in the issuance of
3 the temporary restraining order and injunction on March 31st,
4 2021 (sic). Judge John orally granted that relief and
5 instructed a written order to be prepared, which was. It was
6 circulated with the parties, and it was entered by the Court
7 on April 8th, 2022. The bond that was required under the
8 order was posted that same day, so the temporary restraining
9 order was in effect and entered and bond posted on April 8th,
10 2022. Mr. Barber had notice of it through his counsel, as did
11 eXp Realty and Darcy Varney.

12 That temporary restraining order prevented Mr. Barber, as
13 well as the other named defendants and anyone acting in any
14 capacity with Mr. Barber, from doing a number of things. One,
15 it prevented him from using any information which he gained
16 access to by being an independent contractor and working with
17 any of the plaintiffs. That would've been between March 14th,
18 2017, and February 7th, 2022.

19 It goes on to list, with specificity, what that means.
20 It means you can't use leads; you can't use clients; you can't
21 use prospects; you can't use customers; you can't use CRMs,
22 which are customer relationship management databases; you
23 can't use software, cloudware, and files. He was prevented
24 from using any of that information.

25 He was also prevented from contacting these leads,

1 clients, customers, prospects, and customers. Not just these
2 clients, contacts, and -- not just those that anybody could
3 specifically identify at that point in time, but it is broad
4 enough to say anyone that he gained access to by being an
5 independent contractor and working with the plaintiffs.

6 And he is prevented from disclosing any information which
7 he gained access to. This is broad language. This is
8 language that arose as a result of egregious conduct by Mr.
9 Barber, and it prevents him from utilizing to his financial
10 benefit information that he gained access to.

11 What he had gained access to, based on the affidavits in
12 the TRO, was every database with administrative credentials
13 that Greg Harrelson maintained for Century 21 Harrelson Group.
14 That's set forth in the affidavits that were filed in support
15 of the TRO.

16 What happened after the March 31st hearing where the
17 order granting the TRO was read out loud in court and what
18 happened after it was entered and the bond was posted is
19 astonishing and quite flagrant. What Mr. Barber did is he
20 took hundreds and thousands of leads and prospects, and he
21 uploaded this information into a new Homebot account, which he
22 opened in his name.

23 This Homebot account we've asked for through a subpoena
24 and is part of our motion to file under seal. We received the
25 data back from Homebot, which has been Bates marked 1 through

1 833, and indicates various correspondence between Mr. Barber
2 and Homebot that date after the March 31st order, after the
3 April 8th order was entered, where he's asking that hundreds
4 of files be uploaded to Homebot. He has no documentation to
5 show. He's not produced, he's not identified -- quite
6 frankly, he's withheld intentionally, and he has failed to
7 preserve these files, so we've been unable to identify what
8 files he uploaded to Homebot. But it is demonstrated through
9 these documentation (sic) that immediately after the
10 injunction was ordered he throws thousands of files up to his
11 own Homebot account.

12 What (sic) he testified in his deposition yesterday, he
13 admitted that he had approximately 60,000 leads while he was
14 with Century 21 Harrelson Group. He said about 60 to 70,000
15 leads and prospects and that he took those 60 to 70,000 leads
16 and prospects and he took some of them. When he left, he took
17 them and took some of them to eXp Realty, and then he took
18 them to his new broker in charge at North Group.

19 So he doesn't dispute that he's got these leads that he
20 had with Century 21 Harrelson Group. He doesn't dispute that
21 he took them with him, and he doesn't dispute he still has
22 them. In fact, he was testifying yesterday he's got them all
23 on a thumb drive which has not been produced in this case. By
24 the way, we have a separate motion to compel discovery.

25 So again, after these documents were uploaded, this data

1 was uploaded, and after these leads and prospects were
2 continued to be held by Mr. Barber, he began initiating
3 contact with these leads. And we have at least two that we
4 have affidavits from: One is Susan Brown (phonetic), and one
5 is Rob Safa. Both of these leads were in the Century 21
6 database, and both of these leads were contacted by Mr. Barber
7 after March 31, 2022. In addition, Greg Harrelson has
8 provided his fourth affidavit to this Court where he's
9 identified 20-plus customers and clients of Century 21
10 Harrelson Group that Mr. Barber has current listing agreements
11 with.

12 In opposition to this motion, Mr. Barber has filed two
13 affidavits. These are the first affidavits that he's filed,
14 and then yesterday, we were able to partially take his
15 deposition. It is apparent, based on his two affidavits that
16 he has filed, that his argument is not that he hasn't used,
17 disclosed, or initiated contact with leads, clients,
18 prospects, customers that are located in plaintiffs' database,
19 in plaintiffs' CRM, their Real Geeks or their Homebot
20 database. In fact, quite frankly, he admits all that.

21 Rather, his argument is that those leads, clients,
22 prospects, customers were not Century 21's leads, contacts,
23 and customers, but that they were his individual leads and
24 contacts and customers because he got them from a third party
25 while he was with Century 21 Harrelson Group. This is a

1 distinction without consequence for really any purpose, but
2 specifically for the purposes of this TRO and for purposes of
3 a motion for sanctions.

4 At all times between when Mr. Barber began hanging his
5 real estate license with Century 21 Harrelson Group all the
6 way through February 7th of 2022, Mr. Barber was a licensed
7 real estate salesperson with Century 21 Harrelson Group.
8 Their relationship is not only defined by the South Carolina
9 Real Estate Commission, but it's defined by their independent
10 contractor agreement, it's defined by the agent manual, and
11 it's defined by the office policies.

12 The statute related to the real estate commission that
13 sets forth, really, the standards of real estate licensees in
14 South Carolina is South Carolina Code 40-57-5, and it creates
15 a South Carolina Real Estate commission. It tells what
16 brokers in charge, licensees, management companies -- it tells
17 you what those standards are. And it defines a salesperson
18 and it defines a licensee as a sub-agent of the real estate
19 brokerage firm. That's 40-57-30.

20 Under statute, at all times Mr. Barber was hanging his
21 real estate license with Century 21, he was acting as a sub-
22 agent for Century 21. He was acting on their behalf, and
23 that's statutory. That's just how you obtain a real estate
24 license and how you're able to operate as a salesperson under
25 a broker in charge.

1 During his agency with Century 21 at Harrelson Group, he
2 certainly could bring in his own leads. He certainly could
3 contact with a third party to identify leads that would
4 benefit Century 21 Harrelson Group, and he certainly would
5 have those own leads that he could work on individually while
6 as an agent with Century 21 Harrelson Group. But under no
7 circumstances were those leads not for the benefit of Century
8 21 Harrelson Group, both statutory and pursuant to the
9 independent contractor agreement. All of that was done as an
10 agent of Century 21 Harrelson Group.

11 In fact, while he was an agent with Century 21 Harrelson
12 Group, statutorily and pursuant to his independent contractor
13 agreement, Barber could not engage in real estate transactions
14 with another real estate firm. His license had to be hung
15 with one company and one company only.

16 When his independent contractor agreement with Century 21
17 Harrelson Group was terminated on February 7th, 2022, the
18 independent contractor agreement dictates what happens to his
19 leads, regardless of whether the leads were handed to him by
20 somebody else or regardless of whether those leads came from a
21 third party. It says all transactional files, prospects, and
22 referral lists were to be turned over to the broker. It is
23 undisputed he did not do that. He did not turn these over.
24 He is still sitting on a flash drive that has all this
25 information on it.

1 All listing contracts, pendings, and buyer agencies are
2 property of the broker. What he testified to yesterday was
3 that he took no steps -- zero -- to identify whether or not
4 the people he was contacting were not within the Century 21
5 Harrelson Group database. He has the Century 21 Group
6 database. He has the leads that he took from Century 21
7 Harrelson Group -- that database. He is utilizing that
8 database, and he is utilizing it both prior to and after the
9 entry of the temporary restraining order. It is a flagrant
10 disregard to the language of the temporary restraining order,
11 and it is verified by the affidavits that are on file.

12 Your Honor, to the extent that we were able to get a
13 partial deposition of Mr. Barber yesterday, I will note that
14 we have pending numerous motions to compel. There are also
15 well over 15 relevant and very specific questions that his
16 counsel instructed him not to answer yesterday without any
17 reference to any privilege or any reason for that instruction
18 not to answer. I certainly expect that they're going to file
19 a motion for a protective order, but nonetheless, those
20 instructions were made to him yesterday without any reference
21 on the record as to the grounds.

22 Your Honor, to the extent that any supplementation
23 related to the deposition that was taken yesterday, we would
24 ask -- is needed, we would certainly supplement with those
25 transcripts once copies that are capable of being filed can be

1 filed, and we'd be happy to do so.

2 With this motion for sanctions, what we would ask for the
3 requested relief is, that we would ask for the relief that was
4 originally asked for in the temporary restraining order, but
5 not granted at that time, which is that Mr. Barber immediately
6 identify and turn over all devices, databases, and website
7 information to a neutral third party which would be chosen by
8 the plaintiffs and paid for by the defendants. That neutral
9 third party should conduct a preservation and inspection and
10 inspect to the same scope and extent that the plaintiffs'
11 expert, Clark Walton, conducted the inspection on all these
12 devices and databases.

13 In his deposition yesterday, Mr. Barber identified some.
14 I don't think he identified all, but certainly there's a
15 volume of databases that he has access to. There's a volume
16 of devices that he utilizes. We would ask that that be
17 granted at this time.

18 We'd also ask that the Court order that any and all
19 commissions, referral fees, and any other compensation
20 associated with Mr. Joel Barber as a realtor, as a licensee,
21 from any transaction that he's conducted since February 7th,
22 2022, without deduction be held in trust in an account
23 maintained by the defendants, not comingled with any other
24 funds, and that a report be provided to all parties within 30
25 days and every 30 days thereafter.

1 We'd ask for an award of attorneys' fees and costs
2 related to this motion and the motion for a temporary
3 restraining order. This would include all fees and costs
4 related to the preparation of the temporary motion, temporary
5 restraining order motion, the motion for sanctions, the
6 numerous affidavits, and any memoranda and orders.

7 I will have to provide an affidavit of attorneys' fees
8 following this hearing. I suspect, given the volume of the
9 evidence, the lack of cooperation of the defendants regarding
10 discovery, and efforts that we've had to utilize to obtain
11 information from third parties, including out of state third
12 parties, that these attorneys' fees will certainly cost
13 greater than 20,000 dollars at this time.

14 Further, we'd ask that this Court further enjoin
15 defendants from using, in any manner, his existing database.
16 We are unable to identify or discern anything that would be
17 capable of examination related to his existing database. He's
18 simply not provided it, and that existing database is
19 admitted, based on his deposition, followed him from Century
20 21 Harrelson Group to eXp and to his current broker.

21 Thank you, Your Honor.

22 THE COURT: Your reply to that?

23 MR. STAPLES: Yes, Your Honor. Good morning. Christian
24 Staples for the defendant, Joel Barber.

25 Just to make clear for the record, Your Honor, Attorney

1 Jason Daigle also represents Mr. Barber. He represents him in
2 connection with the counter claims that Mr. Barber has
3 asserted against the plaintiffs, but I'll take the lead on the
4 hearing today. But I want to give Mr. Daigle the opportunity
5 to be heard as well, if he would like.

6 Your Honor, I think it's -- well, first of all, let me
7 say I do take issue with a lot of what Ms. Bailey has said in
8 terms of the motion to compel and whether or not the
9 defendants have cooperated, but I'll save all that for another
10 day. That's not before the Court today.

11 On the contempt motion that is properly noticed and heard
12 today, Your Honor, the standard of review is that civil
13 contempt must be proven by clear and convincing evidence. The
14 contempt must be willful, meaning that it must be voluntary
15 and intentional with the specific intent to do something that
16 the law forbids, and in this case, to do something that the
17 prior injunction order entered by Judge John forbids. And of
18 course, an injunction being restraining must be narrowly
19 construed. And the cite I would give you for those are Ex
20 Parte Cannon 385 S.C. 643 from 2009.

21 I think if you read the injunction order and the
22 plaintiffs' motion, they cite three components of the
23 injunction order that they allege Mr. Barber has violated, and
24 it's basically related to him using information that he gained
25 access to by being an independent contractor and working with

1 the plaintiffs, initiating contact or communication with
2 leads, clients, prospects, and customers he gained access to
3 by being an independent contractor and working with the
4 plaintiffs. And so the key question is whether or not Mr.
5 Barber gained access to the information by virtue of him being
6 an agent at Century 21 as opposed to access he derived from
7 some other independent source.

8 Now, I don't believe the plaintiffs have met this burden
9 by clear and convincing evidence, and instead, when you
10 actually read the affidavits that have been submitted by Mr.
11 Harrelson, Ms. Brown, and Mr. Safa, they make wholly
12 conclusory allegations, none of whom can say with absolute
13 certainty that Mr. Barber did not obtain these leads in lawful
14 and independent way, in some way other than referring to the
15 Century 21 database.

16 Mr. Barber has submitted two affidavits attesting to how
17 he gained access to this information primarily through third
18 party vendors. I believe Exact Data is the name of one
19 vendor, and the other vendor is called Vulcan 7. They're
20 basically subscription services that Mr. Barber paid for out
21 of his own funds and in return would receive a listing of
22 leads, individuals with a phone number and address -- an email
23 address, perhaps. And so, as well, we've got one of these
24 lead sources that he subscribed for and paid for and received
25 was after the termination of his employment with Century 21.

1 In the plaintiffs' -- and Your Honor, unfortunately, I
2 think I'm having a fire drill in my office right now. So I'll
3 continue on until I might get kicked out here.

4 The two individuals that are cited in the plaintiffs'
5 motion, Susan Brown and Rob Safa, I think it's important to
6 note Susan Brown is actually an agent with Century 21, and Rob
7 Safa is actually the brother of an agent at Century 21 named
8 Abe Safa. And so it's not as if they're walking in a number
9 of individuals that are just off the street. I mean, these
10 are people that are affiliated with the plaintiffs that claim
11 they received marketing emails from Mr. Barber.

12 And if you look at the emails that they received, and
13 they were filed supplementally, I think, on October 27th, it's
14 clear that these are generic marketing email blasts that went
15 out to a large distribution group. It's not an email that is
16 specifically targeted to Ms. Brown or to Mr. Safa. And so
17 once this was brought to Mr. Barber's attention, he, of
18 course, removed Ms. Brown and Mr. Safa from his email
19 distribution group, just as he would do for anyone else that
20 expressed a desire not to receive communications from him.

21 I think what the plaintiffs want this Court to do is to
22 essentially say that Mr. Barber cannot practice as a realtor
23 in the Myrtle Beach area. That is clearly not what the
24 injunction order says. That was not Judge John's intent. Mr.
25 Barber has been practicing as a real estate agent for a number

1 of years. He's well-established, top agent in the Myrtle
2 Beach area. I think the plaintiffs are arguing for an overly
3 strict interpretation and enforcement of the order.

4 It's highly probable, if not virtually guaranteed, that
5 these same leads would appear in numerous places: The Century
6 21 database, third party sources that Mr. Barber obtained.
7 Practically every realtor agency in the Myrtle Beach area
8 is -- probably all has the same list of leads, because they
9 all obtain those leads from the same sources -- various
10 community lists, subscription services, and the like.

11 And so the bottom line, I don't think there's clear and
12 convincing evidence that Mr. Barber did not obtain these leads
13 from an independent source. When you hold up the Harrelson,
14 Safa, and Brown affidavits against Mr. Barber's affidavits,
15 they, at best, sort of balance each other out. I mean, it
16 would be a question for a jury, supposedly, as to what -- how
17 he actually obtained the leads. It's not clear and convincing
18 that he did, in fact, use the Century 21 information.

19 Practically, thinking about how we could prevent this, it
20 would be impractical, I think, for every time Mr. Barber gets
21 a lead to reach out to Century 21 and say, hey, is this
22 individual in your database? And even if it is, that doesn't
23 mean that Mr. Barber derived that lead from an improper means
24 in violation of the injunction. It could've been an
25 individual at his church, somebody he met at the Starbucks --

1 there's a number of ways that leads are generated by real
2 estate agents, and the mere fact that Mr. Barber comes upon
3 somebody's email address and contact information does not mean
4 that he's illegally obtained that from Century 21.

5 So for those reasons, Your Honor, I think the motion
6 should be denied. Similarly, if the motion is denied, we
7 would in turn request our costs in opposing this. The
8 plaintiffs were required to post a 100,000 dollar bond in
9 order to get the injunction, and so there are funds available
10 from which that could be ordered.

11 But that's all I have at this time, Your Honor, and I do
12 want to give Mr. Daigle an opportunity, if he has anything to
13 add. Thank you.

14 THE COURT: Mr. Daigle?

15 MR. DAIGLE: No, Your Honor. I'm representing Mr. Barber
16 on his counter claims. I don't think those counter claims are
17 germane to the injunction or to the contempt hearing.

18 THE COURT: Any reply to this, Ms. Bailey? Oh no, you're
19 muted.

20 MS. BAILEY: Very briefly, Your Honor.

21 It would have been very easy for Mr. Barber to return the
22 leads that he took back to Century 21 Harrelson Group. Had he
23 done so, anything that he did from thereon forward would have
24 been new leads and not derived from his independent contractor
25 relationship with Century 21 Harrelson Group.

1 Not only did he take leads that didn't belong to him, he
2 took those leads, he kept them, and he continues to use them.
3 Regardless of whether or not he now tries to recreate this
4 same list and duplicate this same list from what he took with
5 Century 21 Harrelson Group, he has no means to identify what
6 leads he took from Century 21 Harrelson Group because he never
7 returned them. He still has them.

8 Based on his deposition yesterday, he was instructed not
9 to answer some very important questions.

10 To your knowledge, did you ever transfer leads out of
11 that Homebot account, meaning Century 21 Harrelson's Group
12 account? He was instructed not to answer.

13 When you say, put leads on community reports, did you
14 then, in this taking leads from someone's account like Mr.
15 Harrelson's, did you transfer it to your own? I'd like to
16 confer with my attorneys. Instructed not to answer.

17 Did you ever obtain any passwords that Kevin Mills used
18 for any of his accounts in his computer. Instructed not to
19 answer.

20 Did you take any computers with you? Instructed not to
21 answer.

22 What was on the flash drive that you gave to Officer
23 Knapp, who was the officer that investigated the incident on
24 February 7th, 2022? Instructed not to answer.

25 What have you removed, destroyed, or deleted? Why have

1 you destroyed, removed, or deleted information that you had
2 electronically stored related to Century 21? Instructed not
3 to answer.

4 Your Honor, the lack of cooperation for identifying what
5 these leads were and where they were obtained is evident from
6 the failure to cooperate, the instructions not to answer, and
7 quite frankly, in his own affidavit, he has said, I'm happy to
8 provide you information about where these leads came from if
9 given the time. He's had nine months. This lawsuit has been
10 filed for nine months, and none of this information has been
11 returned to Century 21 Harrelson Group. It's not been made
12 available for inspection. It's not been made available for us
13 to review and identify. Absolutely no steps were taken to
14 ensure that Century 21 Harrelson Group's databases'
15 information was not used in his listings. Your Honor, to the
16 extent that we need to supplement with these deposition
17 transcripts, we are happy to do so.

18 The documents and the evidence that has been presented
19 via affidavit prior to the TRO and in support of this motion
20 for sanctions make clear that Mr. Barber was prohibited from
21 taking leads with him when he left Century 21 Harrelson Group.
22 It makes no difference as to whether or not those leads were
23 obtained from a third party. His own affidavit reflects at
24 least a set of leads from Vulcan 7 were obtained by Joel
25 Barber while an agent of Century 21 Harrelson Group. Those

1 leads should've been returned to Century 21 Harrelson Group.
2 They were not. Thank you, Your Honor.

3 MR. STAPLES: Your Honor, if I may, briefly.

4 I just want to point out that failing to return the leads
5 is not contempt. Not answering a deposition question on
6 advice of your attorney is not contempt. Lack of cooperation
7 in discovery, even if we assume that that's true, which we
8 don't, is not contempt.

9 They have not established contempt by clear and
10 convincing evidence, which is the standard that has to be
11 applied. Thank you.

12 THE COURT: Does the defendant explain the Ring camera --
13 the video footage and the after --

14 MS. BAILEY: No, Your Honor. He was instructed not to
15 answer.

16 MR. STAPLES: And frankly, Your Honor, that all was
17 subject to the prior hearing when Judge John entered the
18 injunction. I mean, we're only concerned with what has
19 happened since that time, and all they've got is two emails
20 that were sent to Century 21 agents and affiliates that Mr.
21 Barber has explained where he got that from.

22 And then, with respect to this fourth Harrelson affidavit
23 that became available Monday morning -- and we sat all day
24 yesterday in the deposition -- we did file the second
25 affidavit of Mr. Barber yesterday evening in an attempt to

1 explain where those listings came from. We have not had time,
2 frankly, to provide a detailed information as to where those
3 came from, but if leave of Court would be granted, we can
4 certainly do that.

5 But Mr. Barber does have a lawful explanation for where
6 each and every of those MLS listings came from, one of which I
7 would note is not even his listing. So that raises some
8 questions about the level of care that plaintiffs have put
9 into their own affidavit, but we're happy to supplement with
10 an explanation, but we would need some time to do that.

11 MS. BAILEY: Your Honor, if I may have just one moment.

12 Quite frankly, we don't have just the two affidavits.
13 Yesterday, for the very first time, Mr. Barber testified that
14 he took 60 to 70,000 leads with him when he left Century 21
15 Harrelson Group, and that he has all of those leads on a flash
16 drive. This is the first time we've learned of this
17 information. This information is directly supportive of our
18 motion for contempt.

19 THE COURT: I will take it under advisement and let you
20 know something this week.

21 MS. BAILEY: Thank you, Your Honor.

22 MR. STAPLES: Thank you.

23 THE COURT: Thank you all.

24 (End of Transcript of Record)

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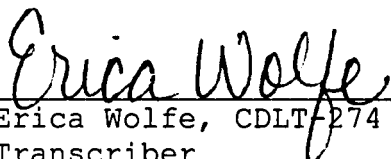
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Horry)

I, ERICA WOLFE, a court-approved transcriber, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Horry County,
South Carolina, on the 16th day of November 2022.

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

February 27, 2023


Erica Wolfe, CDLT-274
Transcriber

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

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

January 3, 2023
Horry, South Carolina

B E F O R E:

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

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

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

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

Tamara Bentzur
Transcriber



1 THE COURT: Good afternoon.

2 UNIDENTIFIED SPEAKER: Good afternoon, Judge.

3 MR. STAPLES: Good afternoon.

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

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

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

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

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

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

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

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

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

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

11 THE COURT: How about now?

12 MS. BAILEY: Yes. Thank you.

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

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

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

25 So given the order that was granted in the contempt

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

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

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

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

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

1 reconsider.

2 MS. BAILEY: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Defendant Barber was an independent contractor. He paid

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3 of my brief that was filed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Judge John declined to put in the injunction.

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

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

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

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

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

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

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

21 THE COURT: Can you reply to that?

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

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

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

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

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

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

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

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

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

1 affidavits that were previously in the file.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Go ahead, Ms. Bailey.

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

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

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

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

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

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

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

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

16 THE COURT: How about a brief response?

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

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

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

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

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

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

1 his tax bill or anything.

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

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

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

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

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

3 MS. BAILEY: Thank you, Your Honor.

4 MR. DAIGLE: Thank you.

5 MR. STAPLES: Thank you, Your Honor.

6 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Horry)

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

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

February 21, 2023

Tamara Bentzur
Tamara Bentzur, CET-824
Transcriber

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CASE NO.: 2022-CP-26-

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

Plaintiffs,)

v.)

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

Defendants.)

**MOTION FOR A TEMPORARY
 RESTRAINING ORDER AND
 TEMPORARY INJUNCTION**

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

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

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

5. Jurisdiction and venue are proper with this Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: March 2, 2022

BURR & FORMAN LLP

By s/Amanda A. Bailey
Amanda A. Bailey SC Bar #71085
E-mail: abailey@burr.com
Post Office Box 336
Myrtle Beach, SC 29578
Telephone: (843) 444-1107
Attorneys for Plaintiffs

EXHIBIT A



INDEPENDENT CONTRACTOR AND BROKER AGREEMENT

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

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


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

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

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

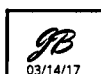
10. This contract and the association created hereby, may be terminated by either party hereto at any time upon notice given to the other; but the rights of the parties to any commissions or division thereof which accrued prior to the time of said notice shall not be divested by the termination of this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

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

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

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

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


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15. Joel Barber

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

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

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

FIRM NAME

Century 21 The Harrelson Group

Margaret McBride

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Broker

Date _____

Witness

Date

Joel Barber

dotloop verified
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Independent Contractor

Date _____

Witness

Date _____

PAGE 3 OF 3

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

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

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

Plaintiffs,)

v.)

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

Defendants.)

MEMORANDUM IN SUPPORT

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

BACKGROUND

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

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

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

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

Compl. ¶ 32.

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

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

c. January 15, 2022 --

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

d. January 22, 2022 --

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

e. January 29, 2022 --

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

f. February 7, 2022 --

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

"The required elements of a contract are an offer, acceptance, and valuable consideration." *Armstrong v. Collins*, 366 S.C 204, 222, 621 S.E.2d 368, 377 (Ct. App. 2005). "The elements for breach of contract are the existence of the contract, its breach, and damages caused by such breach." *Road, LLC v. Beaufort Cty.*, 433 S.C. 164, 175, 857 S.E.2d 371, 376 (Ct. App. 2021) (quotation omitted).

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

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

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

B. Trespass.

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

C. Conversion.

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

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

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

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

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

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

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

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

(iii) committing any other crime.

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

S.C. Code § 16-16-20(1).

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

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

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

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

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

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

III. THERE IS NO ADEQUATE REMEDY AT LAW.

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

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

CONCLUSION

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

Dated: March 30, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF HORRY	) CASE NO.: 2022-CP-26-01323
	)
HSS BAREFOOT, LLC, d/b/a CENTURY 21	)
BAREFOOT; R&G CORP, d/b/a CENTURY 21	)
THE HARRELSON GROUP, KEVIN MILLS,	)
individually, MILLS, LLC, and GREG	)
HARRELSON, individually,	)
	)
Plaintiffs,	)
	)
v.	)
	)
JOEL D. BARBER, individually and as licensed	)
realtor, BARBER REAL ESTATE, INC.,	)
NICHOLAS FITZPATRICK, as licensed realtor,	)
DARCY VARNEY, individually and as broker-in-	)
charge, eXp REALTY, LLC, JAMES RAY	)
LUNSFORD, individually and as broker-in-charge,	)
and NORTHGROUP REAL ESTATE, INC.,	)
	)
Defendants.	)
	)

**PLAINTIFFS' MOTION FOR CONTEMPT
AND SANCTIONS AGAINST
DEFENDANT, JOEL BARBER**

NOW COME THE PLAINTIFFS, HSS Barefoot, LLC, d/b/a Century 21 Barefoot ("C21 Barefoot"), R&G Corp, d/b/a Century 21 The Harrelson Group ("C21 Harrelson"), Kevin Mills, individually ("Mr. Mills"), Mills, LLC ("Mills, LLC"), and Greg Harrelson, individually ("Mr. Harrelson") (collectively, "Plaintiffs"), by and through their undersigned counsel, and hereby seek an Order of this Honorable Court holding the Defendant, Joel Barber ("Defendant" or "Mr. Barber"), in contempt of court due to his numerous, intentional failures to comply with the Order entered on April 8, 2022 enjoining Mr. Barber from, *inter alia*:

[c.] . . . using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies,

reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

d. . . . from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;

e. . . . from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

See Order Granting Temporary Injunction, Apr. 8, 2022, ¶ 23(c)-(e).

Instead of complying with the Court's Order, Mr. Barber chose to disregard the Court's mandate and proceed along the same path of deception he embarked leading up to this lawsuit. The facts supportive of holding Mr. Barber in contempt of court and awarding sanctions are set forth below and in any additional memoranda or arguments to be presented to the Court, and as set forth in the accompanying affidavits:

1. Homebot is a database or portal whereby real estate agents can input client and prospective lead information and communicate. It functions as follows:

- a. A real estate company will create a user profile for employees and/or independent contractors affiliated with the company.
- b. The agent obtains client or lead contact information from each client or lead.
- c. The contact information is then uploaded into Homebot by Homebot staff.
- d. Once the client or lead information is uploaded into Homebot, the real estate agent has access to contact those individual(s) through the Homebot database.
- e. Although Homebot generates emails, when clients or prospective leads receive emails from Homebot, they receive the email "from" their individual agent.

See Third Affidavit of Greg Harrelson (“Harrelson Affidavit”), ¶ 2-4; Affidavit of Susan Brown (“Brown Affidavit”), ¶ 5.

2. Homebot is not designed to upload client contact information *en masse* or through a file or spreadsheet upload. Harrelson Affidavit, ¶ 5; *see also* Homebot_00802-803.¹

3. While Mr. Barber was affiliated with C21 Harrelson, he was provided a Century 21 Harrelson user profile for Real Geeks and Homebot. That profile was terminated on February 7, 2022 when Mr. Barber’s relationship was terminated with C21 Harrelson. Harrelson Affidavit, ¶ 6-7.

4. The website databases used by C21 Harrelson (including Real Geeks and Homebot), and the information contained therein, was and is confidential information belonging to C21 Harrelson and C21 Barefoot, not to Mr. Barber or any other individual agent. Mr. Barber should not have had any client or prospective lead contact information, a Real Geeks account, or a Homebot account, as such information belonged to C21 Harrelson and should have been returned to C21 Harrelson pursuant to the terms of Mr. Barber’s Independent Contractor Agreement. Harrelson Affidavit, ¶ 8-9.

5. Prior to the hearing on Plaintiff’s Motion for Temporary Restraining Order and Temporary Injunction, Mr. Barber contacted various clients and leads that were clients or otherwise affiliated with C21 Harrelson through Homebot and/or its related applications. *See* Brown Affidavit, ¶ 3.

6. Specifically, Ms. Susan Brown (“Ms. Brown”), a licensed real estate agent with C21 Harrelson, received an email on March 30, 2022 from “Joel Barber—Realtor,”

¹ Document production received from Homebot is currently marked as “Attorneys’ Eyes Only.” Plaintiffs seek to file these documents under seal and/or seek relief from the Confidentiality Order for purposes of using these documents in support of their motion for contempt. In any event, such relief will be sought by way of separate motion.

hello@homebotapp.com, at her personal Gmail address, s—p@gmail.com. The email included a link stating, “Your new home value estimate is ready.” The address included in the subject line of that email is a property Ms. Brown owns and purchased through C21 Harrelson. Brown Affidavit, ¶ 3.

7. Ms. Brown had never provided Mr. Barber her personal Gmail address, phone number, or other contact information. The only real estate company to have her personal contact information is C21 Harrelson. Brown Affidavit, ¶¶ 6, 10.

8. On April 8, 2022, the Honorable Steven H. John granted Plaintiffs’ Motion for Temporary Restraining Order and Temporary Injunction pursuant to Rule 65(b), SCRPC.

9. That order enjoined Mr. Barber from, among other things:

[c.] . . . using any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

d. . . . from initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022;

e. . . . from selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloudware, and files.

See Order Granting Temporary Injunction, Apr. 8, 2022, ¶ 23(c)-(e).

10. Plaintiffs posted the required security under Rule 65(c), which the Court set at \$100,000.00.

11. After the Temporary Injunction entered in this case, Ms. Brown continued to receive emails from Mr. Barber through Homebot to her personal Gmail address, the most recent of which occurred on July 16, 2022.

12. Similarly, Mr. Rob Safa ("Mr. Safa") received correspondence from Mr. Barber, through the email address joel@livinginmb.com, on May 18, 2022. The email went to Mr. Safa's personal Gmail address, r—a@gmail.com. Affidavit of Rob Safa ("Safa Affidavit"), ¶ 5.

13. Mr. Safa's real estate agent is his brother, Abe Safa, and Abe Safa's team at C21 Harrelson; Mr. Safa does not conduct and has never conducted business with Mr. Barber, Barber Real Estate, Inc., Nicholas Fitzpatrick, Darcy Varney, eXp Realty, LLC, James Ray Lunsford, or Northgroup Real Estate, Inc., nor has he provided any of these individuals or entities with his personal contact information. Safa Affidavit, ¶¶ 3-4, 6-7, 11.

14. The only real estate professionals that Mr. Safa has provided his personal contact information to are C21 Harrelson through its agents, Mr. Abe Safa, Ms. Brown, and Mr. Bryan Yagar. Safa Affidavit, ¶ 6.

15. Mr. Safa and Ms. Brown received marketing or other commercial communications from Mr. Barber through Homebot or another account, at their personal email addresses which were Confidential Information held by C21 Harrelson and/or C21 Barefoot and not otherwise provided to any defendants in this case, *after* the Temporary Injunction issued explicitly prohibiting such conduct by Mr. Barber.

16. Further, it is apparent based on other document production that Mr. Safa and Ms. Brown are not the only leads, clients, prospects, and customers that Barber gained access to by being an independent contractor and working with any of the Plaintiffs, who continue to be contacted by Mr. Barber even after the entry of the April 8, 2022 Restraining Order.

In light of Mr. Barber's repeated, willful violations of the Order, Plaintiffs move this Court to: (1) find Mr. Barber in contempt of court; (2) order Defendant Mr. Barber to bring himself and anyone acting on his behalf or for his benefit including, but not limited to, any named Defendants in this suit, into immediate compliance with the Court's April 8 Order; and (3) order sanctions against Mr. Barber as the Court sees fit including, but not limited to, the following remedies: (a) award attorneys' fees and costs; and (b) order such other relief as this Court deems just and proper.

Dated: July 25, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

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

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

Plaintiffs,)

v.)

**PLAINTIFFS' MOTION TO COMPEL
 DEFENDANT JOEL D. BARBER'S
 DISCOVERY RESPONSES**

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

Defendants.)

YOU WILL PLEASE TAKE NOTICE that Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot ("C21 Barefoot"), R&G Corp, d/b/a Century 21 The Harrelson Group ("C21 Harrelson"), Kevin Mills, individually, Mills, LLC, and Greg Harrelson, individually (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby request this Honorable Court, within ten days after service hereof or as soon thereafter as counsel may be heard, to issue an Order compelling Defendant Joel D. Barber ("Defendant") to provide complete responses to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production of Documents, and to permit inspection of items responsive to Plaintiffs' First Request for Inspection of Property pursuant to Rule 37(a) of the South Carolina Rules of Civil Procedure.

Defendant was served with Plaintiffs' First Request for Inspection of Property on May 2, 2022 as well as Plaintiffs' First Set of Interrogatories and Plaintiffs' First Set of Requests for Production of Documents on May 4, 2022. A copy of these discovery requests are attached hereto as Exhibit A. Defendant responded with limited answers, objections, and only four pages of document production on June 3, 2022 and July 15, 2022. On July 25, 2022, Plaintiffs sent a letter to Defendant, identifying the discovery deficiencies and requesting complete responses by July 29, 2022, pursuant to Rule 11, SCRPC. A copy of this letter is attached as Exhibit B.

On July 27, 2022, Defendant served additional document production, and on August 4, 2022, Defendant supplemented his answers to Plaintiffs' First Set of Interrogatories. However, Defendant's discovery responses remain deficient as Defendant has failed to disclose and/or fully identify his devices and has failed to produce portions of emails, attachments, and communications between Defendants and Defendant and his leads/customers/clients.

Further, although the undersigned has provided Defendant a draft proposed consent order regarding electronically-stored information ("ESI") protocol, in order to move forward with inspection of Defendant's property, no agreement has been reached, and a court order is necessary to move forward with discovery.

As of the date of this Motion, Defendant has provided neither items for inspection nor complete discovery responses. Pursuant to Rule 11, SCRPC, the undersigned, as counsel for the Plaintiffs, hereby affirms that attempts were made in good faith to resolve the matters contained in this Motion with Defendant's counsel, but those attempts were unsuccessful.

Plaintiffs request this Court issue an Order compelling responses to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production of Documents in addition to ordering the inspection of Defendant's property that is responsive to Plaintiffs' First Request for Inspection of

Property pursuant to Rule 36, SCRCF, and awarding attorneys' fees and expenses regarding this Motion, and/or for such other sanctions as this Court deems proper pursuant to Rule 37(a)(4), SCRCF.

Dated: October 31, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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*Attorneys for Plaintiffs HSS Barefoot, LLC d/b/a
Century 21 Barefoot, R&G Corp, d/b/a Century 21
The Harrelson Group, Kevin Mills, Mills, LLC,
and Greg Harrelson*

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

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

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

Plaintiffs,

v.

) **PLAINTIFFS' FIRST REQUEST FOR**
) **INSPECTION OF PROPERTY**

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

Defendants.

TO: JASON DAIGLE, ESQ. AND LAWRENCE M. HERSHON, ESQ., COUNSEL
FOR DEFENDANTS:

Pursuant to Rule 34(a) of the South Carolina Rules of Civil Procedure, the Plaintiffs, HSS Barefoot, LLC d/b/a Century 21 Barefoot, R&G Corp d/b/a Century 21 The Harrelson Group, and Kevin Mills, Individually, by and through undersigned counsel, hereby submit this Request for Inspection of Property to Defendants, Joel Barber, eXp Realty, LLC, and Darcy Varney (collectively, the "Defendants"). In accordance with the procedure set forth under Rule 34(a), SCRCF, Defendants shall permit the Plaintiffs, including the Plaintiffs' agents, representatives, or experts, to inspect, copy, test, and/or sample the designated property and electronically stored information set forth below, by or before thirty (30) days after service of this request:

1. All electronic communication devices or file storage devices and platforms used or accessed by Joel Barber for real estate-related business or communications from June 2021 to the present for an expedited inspection, including but not limited to any:

- a. Electronic communication equipment, including but not limited to any computer, desktop, laptop, tablet, personal digital assistant, cellular telephone, landline telephone, or the like;
- b. Storage drive, including but not limited to USB drives, flash drives, external hard drives, or the like;
- c. Cloud-based storage or internet website storage accounts, including but not limited to Dropbox, Amazon Drive, OneDrive, Box, Wrap-up, Egnyte, Idrive, MEGA, iCloud, or the like;
- d. Cloud-based or internet website customer relationship management ("CRM") tool or account, including but not limited to Homebot, Real Geeks, InfusionSoft, Pipedrive, or the like; and
- e. Cloud-based or internet website referral service accounts, including but not limited to Homelight.com, Homelight.com/simplesale, Fastexpert.com, Effectiveagents.com, Upnest.com, Glenbeck.com, or the like.

2. All responsive property to Request No. 1, above, used or accessed by Joel Barber's agents, principals, and any others acting on Joel Barber's behalf or in active concert or participation with Joel Barber.

Dated: May 2, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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 Email: abailey@burr.com
 Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2022-CP-26-01323

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

Plaintiffs,

vs.

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

Defendants.

**PLAINTIFFS' FIRST SET
OF INTERROGATORIES
TO DEFENDANT, JOEL D.
BARBER**

**TO: JASON A. DAIGLE, ESQUIRE AND CHRISTIAN HART STAPLES, ESQUIRE,
ATTORNEYS FOR THE DEFENDANT, JOEL D. BARBER**

Plaintiffs, by and through their undersigned counsel, hereby submits this First Set of Interrogatories to Defendant, Joel D. Barber. The following Interrogatories are to be answered separately and in writing by the Defendant. Pursuant to and in accordance with Rule 33 of the South Carolina Rules of Civil Procedure, you are hereby requested to serve answers, under oath and within thirty (30) days from the date of service hereof, to Plaintiffs' counsel at Burr & Forman LLP, 2411 North Oak Street, Suite 206, Myrtle Beach, South Carolina 29577.

DEFINITIONS

Definitions set forth in the Complaint, and any other pleadings, are incorporated herein by reference.

"Document" shall mean any document or electronically stored information ("ESI") described in South Carolina Rules of Civil Procedure Rule 34 and shall also include information

created, manipulated, communicated, stored, and/or best used in digital form, requiring the use of computer hardware and software or other electronic storage device.

“Identify” (with respect to persons) shall mean to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

“Identify” (with respect to Documents) shall mean to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s)

“Identify” (with respect to records) shall means to state the name and title of the person(s) who had responsibility for creating and/or maintaining the record, and explain how such records are stored, in what format, and where. If any such records have been destroyed or lost, explain the circumstances in detail.

“Describe” shall mean to give a full account in words of someone or something, including all relevant characteristics, qualities, or events.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or, provide a copy of any written or recorded statements taken from such witness.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, if any.

6. List the names and addresses of all expert witnesses whom you expect to call at the trial of this case and with respect to each witness, state the following:

- a. The subject matter on which each said expert witness is expected to testify;
- b. The substance of the facts and opinions to which each said expert witness is expected to testify;
- c. A summary of the grounds of each opinion;
- d. Whether or not any such expert witness is employed by you and in what capacity; and
- e. The financial interest each said expert witness has in this litigation.

7. Identify each of Defendant's immediate family members residing in Horry County, South Carolina, including parents (and step-parents), spouse, and former spouse(s), children (and step-children), siblings (and step-siblings), grandparents, aunts, uncles, cousins, and in-laws.

8. Identify all real estate related subscriptions or accounts and Documents related to real estate related subscriptions or accounts including, but not limited to, Customer Relationship Management ("CRM") or referral subscriptions or accounts, created for, by, or owned by Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from June 1, 2021 to the present including, but not limited to, Real Geeks, Homebot, InfusionSoft, Homelight.com, Fastexpert.com, Effectiveagents.com, Upnest.com, Glenbeck.com, Pipedrive, or the like.

9. Identify all communications between you and Darcy Varney or EXP Realty, LLC from June 1, 2021 to the present regarding real estate sales, marketing, "leads," contracts or listings.

10. Identify all communications between you and Nicholas ("Nick") Fitzpatrick from June 1, 2021 to the present regarding real estate sales, marketing, "leads," contracts or listings.

11. Identify all communications between you and James Ray Lunsford or NorthGroup Real Estate, Inc. from June 1, 2021 to the present regarding real estate sales, marketing, "leads," contracts or listings.

12. Identify each real estate listings and Documents related to each real estate listings for Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from February 1, 2022 to the present.

13. Identify any persons working with you or Barber Real Estate Inc. as an agent, broker, or on a real estate team as an employee, agent, partner, affiliate, contractor from June 1, 2021 to the present.

14. Identify any persons with whom you have agreed to pay or split real estate related commissions, or agreed to pay or receive a referral fee, from February 1, 2022 to the present.

15. Identify any contracts or Documents related to any of your contracts with any broker, Realtor, real estate agent, or real estate company including, but not limited to, Darcy Varney, EXP Realty, LLC, Nicholas ("Nick") Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present.

16. Identify any and all electronic storage media (i.e. disks, CD, DVDS, drives (external or internal, or any other type data storage or drives, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

17. Identify any and all electronic storage devices (i.e. computer, laptop, desktop, tablet, server, cell phone/smart phone, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

18. Identify any and all electronic storage locations (cloud-based, storage providers, subscriptions services, back up, files, or the like) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

19. Identify all software, hardware, equipment, or technology used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present.

Pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure, these Interrogatories shall continue from the time of service until the time of trial of the case, and any information requested herein which shall come to your knowledge or the knowledge of the parties, after answers have been submitted, shall be promptly submitted to the undersigned.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey

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Email: abailey@burr.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Christine Badami, an employee of Burr & Forman LLP, certify the foregoing document was served on counsel of record for the Defendants, on this 4th day of May, 2022, via electronic communications only and/or U.S. Mail, postage prepaid and affixed thereto, addressed as follows:

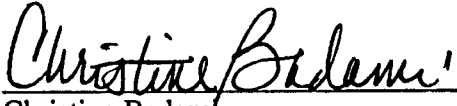
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Attorneys for Defendants, Darcy Varney
and EXP Realty, LLC


Christine Badami

Myrtle Beach, South Carolina

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

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

**PLAINTIFFS' FIRST SET
OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
TO DEFENDANT, JOEL D.
BARBER**

**TO: JASON A. DAIGLE, ESQUIRE, AND CHRISTIAN HART STAPLES, ESQUIRE,
ATTORNEYS FOR THE DEFENDANT, JOEL D. BARBER**

You are hereby requested under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure to produce and permit the Plaintiffs or persons acting on their behalf, to inspect, measure, photograph, and copy the documents and tangible things designated hereafter. Unless otherwise noted, or agreed to between counsel, the production, inspection, copying and all acts necessarily related thereto shall take place at the offices of Plaintiffs' counsel at 2411 North Oak Street, Suite 206, Myrtle Beach, South Carolina 29577, thirty (30) days after receipt hereof, and continue from day to day thereafter until said inspection, copying and related acts are completed.

DEFINITIONS

Definitions set forth in the Complaint, and any other pleadings, are incorporated herein by reference.

"Document" shall mean any document or electronically stored information ("ESI") described in South Carolina Rules of Civil Procedure Rule 34 and shall also include information

created, manipulated, communicated, stored, and/or best used in digital form, requiring the use of computer hardware and software or other electronic storage device.

NOTE: These requests shall be deemed continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

1. Copies of any and all correspondence, communications, statements, reports, reviews, analysis, and any other such Documents, whether in written, electronic, or in transcription form, concerning the allegations and defenses in the pleadings in the above referenced matter.

2. Copies of any and all written or recorded statements taken from witnesses or expert witnesses, or other persons which in any way relate to this action.

3. Any and all Documents related to any cause of action, defense, fact, or allegation in this lawsuit.

4. Any and all communications, including, but not limited to, emails, text messages, social media posts, letters, or any type of transmission of the written word whatsoever, between Defendants and any other individual regarding the Plaintiffs, this lawsuit, or the allegations in this lawsuit.

5. Any and all Documents that may pertain to the subject of this action and which may be utilized at the time of trial in any manner whatsoever.

6. Full copy of any insurance policy that may provide indemnity of defense related to the allegations of this lawsuit.

7. Any and all Documents provided to or received from any expert witness you expect to call at the trial of this case.

8. A complete copy of any real estate listing and Documents related to each real estate listing for Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present.

9. A complete copy of any commissions or referral fees received and Documents related to any commissions or referral fees received by Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present.

10. A complete copy of any contracts or Document related to any contracts with any broker, Realtor, real estate agent, or real estate company, including but not limited to Darcy Varney, EXP Realty, LLC, Nicholas ("Nick") Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present.

11. A complete copy of Joel Barber and Barber Real Estate, Inc.'s tax returns, including any and all schedules, from January 1, 2020 to the present.

12. A complete copy of any contracts or Documents that you rely upon or have reviewed to support any claimed damages.

13. A complete copy of any contracts, or agreements, or Documents related to any contracts or agreements for commissions, referral fees, or agreement for commission splits between Joel Barber and Barber Real Estate, Inc. and any of the named Plaintiffs, Lee Lott, Ryan Pitchall, and/or Jim Hannigan.

14. Copies of any Documents referred to in your answers to Interrogatories or reviewed by you in answering any discovery requests.

Dated: May 4, 2022

BURR & FORMAN LLP

s/Amanda A. Bailey
Amanda A. Bailey, SC Bar #70185
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336

Myrtle Beach, SC 29578-0336

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Christine Badami, an employee of Burr & Forman LLP, certify the foregoing document was served on counsel of record for the Defendants, on this 4th day of May, 2022, via electronic communications only and/or U.S. Mail, postage prepaid and affixed thereto, addressed as follows:

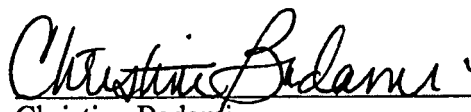
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Attorneys for Defendants, Darcy Varney
and EXP Realty, LLC

Attorneys for Defendant, Joel D. Barber


Christine Badami

Myrtle Beach, South Carolina

BURR • FORMAN LLP
results matter

Taylor K. Voegel
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BURR • CO.

July 25, 2022

VIA EMAIL (cstaples@shumaker.com; jdaigle@vcrllaw.com)

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101 South Tryon Street, Suite 2200
Charlotte, NC 28280

Jason A. Daigle, Esq.
Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

**Re: HSS Barefoot, LLC, d/b/a Century 21 Barefoot, et al. v. Joel D. Barber, individually
and as licensed realtor, et al.
Civil Action No. 2022-CP-26-01323**

Dear Christian and Jason:

On June 3, 2022, you served *Defendant Joel D. Barber's Response to Plaintiffs' First Request for Inspection of Property*. On July 15, 2022, you served *Defendant Joel D. Barber's Objections and Responses to Plaintiffs' First Set of Interrogatories and First Requests for Production of Documents*. However, your responses and production are deficient as set forth below:

Plaintiffs' First Set of Interrogatories

- Interrogatory No. 1: "Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements."
 - Defendant Barber's answer to this Interrogatory does not provide a name or address for any individual. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
- Interrogatory No. 2: "For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the facts known to or observed by such witness, or, provide a copy of any written or recorded statements taken from such witness."

AL • DE • FL • GA • MS • NC • SC • TN

EXHIBIT B

Christian H. Staples, Esq.
 Jason A. Daigle, Esq.
 July 25, 2022
 Page 2

-
- Defendant Barber's answer vaguely states, "[I]t is generally expected that the parties to this action have knowledge of the facts at issue in this action." This Interrogatory requests that for each person known, you should provide a summary of what you expect the party to have knowledge of, specifically when you mentioned potential individuals other than the parties in your answer to Interrogatory No. 1. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
 - Interrogatory No. 3: "Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case."
 - Defendant Barber's answer to this Interrogatory states, "Defendant Barber is not aware of any non-privileged responsive documents." However, you provided four pages of documents in your document production, and by email dated July 22, 2022, you stated you would provide more documents electronically. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP, and if any document is subject to a claimed privilege, please provide a privilege log.
 - Interrogatory No. 4: "Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy."
 - Defendant Barber's answer to this Interrogatory did not provide the addresses of the insurance company, the number of policies, or the amount of liability coverage in each policy. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
 - Interrogatory No. 5: "Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party, if any."
 - Defendant Barber's answer states, "Please refer to the pleadings filed by Defendant Barber, which contain responsive information." Defendant Barber's Answer and Counterclaims filed June 3, 2022 provide only that Defendant Barber allegedly did not receive commissions, his "fair rate of pay," or "wages," in addition to other damages. However, this Interrogatory requests an *itemized* statement of all damages. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.

Christian H. Staples, Esq.
 Jason A. Daigle, Esq.
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-
- Interrogatory No. 9: "Identify all communications between you and Darcy Varney or EXP Realty, LLC from June 1, 2021 to the present regarding real estate sales, marketing, 'leads,' contracts or listings."
 - Defendant Barber answered in part that he did have communications with Darcy Varney once he joined EXP Realty as an agent, and he further answered he would provide written communications with Defendant Varney. However, no communications with Defendant Varney or Defendant EXP Realty, LLC were identified as requested by this Interrogatory or produced as stated in Defendant Barber's answer. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
 - Interrogatory No. 10: "Identify all communications between you and Nicholas ('Nick') Fitzpatrick from June 1, 2021 to the present regarding real estate sales, marketing, 'leads,' contracts or listings."
 - Defendant Barber responded in part that he would produce written communication with Defendant Fitzpatrick. However, Defendant Barber did not identify any applicable communications as requested by this Interrogatory or produce any written communications within his document production, contrary to his indications in answering this Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
 - Interrogatory No. 11: "Identify all communications between you and James Ray Lunsford or NorthGroup Real Estate, Inc. from June 1, 2021 to the present regarding real estate sales, marketing, 'leads,' contracts or listings."
 - Defendant Barber answered in part that he would produce written communication with Defendant Lunsford or Defendant NorthGroup. However, Defendant Barber did not identify any applicable communications as requested by this Interrogatory or produce any written communications within his document production, contrary to his indications in answering this Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.
 - Interrogatory No. 12: "Identify each real estate listings and Documents related to each real estate listings for Joel Barber, Joel Barber, Realtor, or Barber Real Estate, Inc. from January 1, 2022 tot eh present."
 - In answering this Interrogatory, Defendant Barber did not identify each real estate listing and Document related to each listing as required, but rather, cited to two of

Christian H. Staples, Esq.
 Jason A. Daigle, Esq.
 July 25, 2022
 Page 4

the four pages he produced. Of the four pages Defendant Barber produced, only two are partially responsive to this Interrogatory in that they contain MLS listings. However, this Interrogatory requested that the listings "*and Documents* related to each real estate listings" be identified in answering the Interrogatory. Please answer the Interrogatory fully as required by Rule 33(a), SCRCP.

- Interrogatory No. 15: "Identify any contracts or Documents related to any of your contracts with any broker, Realtor, real estate agent, or real estate company including, but not limited to, Darcy Varney, EXP Realty, LLC, Nicholas ('Nick') Fitzpatrick, James Ray Lunsford, or NorthGroup Real Estate, Inc. from February 1, 2022 to the present."
 - Defendant Barber responded in part with a general reference to "initial contracts of employment/agency executed at the inception of his involvement with the various entities." This Interrogatory asks Defendant Barber to *identify* any contracts or Documents. Please specifically state with whom you had each "initial contract[]" of employment/agency."
- Interrogatory No. 16: "Identify any and all electronic storage media (i.e. disks, CD, DVDs, drives (external or internal, or any other type [of] data storage or drive, or the like)[]) and Documents used for electronic information owned, maintained, or used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present."
 - Defendant Barber answered that he uses a flash drive "from time to time for storage of electronic documents in connection with his work as a real estate agent." This Interrogatory asked to Defendant Barber to *identify* "Documents." Please identify these "electronic documents" and any other "Documents" as defined in Plaintiffs' discovery requests that are responsive to this Interrogatory.
- Interrogatory No. 19: "Identify all software, hardware, equipment, or technology used by Joel Barber or Barber Real Estate, Inc. related to real estate or real estate sales or marketing from June 1, 2021 to the present."
 - Defendant Barber stated in part that he distinguished no difference between this Interrogatory and Interrogatories Nos. 8, 16, 17, and 18. However, this Interrogatory includes all software, hardware, equipment, or technology not otherwise described or previously requested. Therefore, if there is no additional, responsive answer to this Interrogatory, please respond accordingly.

Christian H. Staples, Esq.
 Jason A. Daigle, Esq.
 July 25, 2022
 Page 5

Plaintiffs' First Requests for Production of Documents

In addition to insufficient responses to Plaintiffs' First Requests for Production of Documents as described more fully below, Defendant Barber produced only four (4) pages of documents in response to these Requests for Production despite your answers in other discovery responses indicating other responsive documents exist as detailed herein. On Friday, July 22, 2022, you informed Ms. Bailey via email you had received additional documentation from Defendant Barber and would be producing those documents through electronic means. To date, we have received no further documents. Please produce these documents in their native forms. Your responses are further deficient in the following ways:

- Requests Nos. 1, 2, 3, 4, 5, 9, 10, 12, 13, and 14: Defendant Barber provided the same response to these Requests: "Any non-privileged responsive documents in Defendant's possession will be made available for inspection and copying at a mutually agreeable date, time and location." However, you have not provided dates or times for Ms. Bailey or someone on her behalf to inspect these documents. Instead, mostly recently, you stated you would electronically produce these electronically in your Friday, July 22, 2022 email. To date, we have not received these documents. Please respond as required by Rule 34(a), SCRCP, and produce these documents in their native formats.
- Request No. 6: "Full copy of any insurance policy that may provide indemnity of defense related to the allegations of this lawsuit."
 - Two of the four pages Defendant Barber produced are merely the declarations page of one insurance policy. This Request seeks a full copy of any insurance policy—not just the declarations page; please respond as required by Rule 34(a), SCRCP, and provide the full insurance policy.
- Request No. 8: "A complete copy of any real estate listing and Documents related to each real estate listing for Joel Barber or Barber Real Estate, Inc. from February 1, 2022 to the present."
 - This Request seeks the actual listings and any related Documents as defined therein, not a two-page list prepared by Defendant Barber or you containing nothing more than MLS numbers. Please respond fully as required by Rule 34(a), SCRCP.
- Request No. 11: "A complete copy of Joel Barber and Barber Real Estate, Inc.'s tax returns, including any and all schedules, from January 1, 2020 to the present."

Christian H. Staples, Esq.
 Jason A. Daigle, Esq.
 July 25, 2022
 Page 6

- Defendant Barber objected to this Request on the grounds that it is “overly broad, unduly burdensome, irrelevant to the issues in this case, and not reasonably calculated to lead to the discovery of admissible evidence.” However, you have put alleged payments, and specifically, commissions and wages, at issue. Accordingly, tax returns are relevant and commonly requested in civil actions. Please respond fully as required by Rule 34(a), SCRPC.

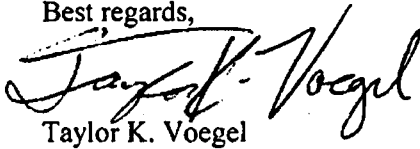
Plaintiffs’ First Request for Inspection of Property

- Request No. 1: “All electronic communication devices or file storage devices and platforms used or accessed by Joel Barber for real estate-related business or communications from June 2021 to the present for an expedited inspection, including but not limited to any [electronic communication equipment, storage drives, cloud-based storage accounts, cloud-based or internet website customer relationship management accounts, or referral service accounts.]”
 - In responding to this Request, Defendant Barber stated he would allow “an inspection of his personal cell phone, laptop/computer, and Apple iCloud storage by an independent third-party vendor such as Reliance Forensics[.]” Defendant Barber did not provide any CRM, other accounts, or the flash drive referenced in other discovery responses. Please fully respond to this Request. Plaintiffs further propose that Clark Walton, Lead Forensic and Cyber Security Expert at Reliance Forensics, LLC, be permitted to inspect the above-listed devices and accounts in accordance with the Stipulated Confidentiality and Protective Order. If this is agreeable, please provide dates and times for availability of this inspection by Mr. Walton. A proposed Consent Order Regarding Electronically Stored Information Protocol will be forthcoming.
- Request No. 2: “All responsive property to Request No. 1, above, used or accessed by Joel Barber’s agents, principals, and any others action on Joel Barber’s behalf or in active concert or participation with Joel Barber.”
 - Defendant Barber responded in part that this Request was not directed to him. This response is deficient because anyone using Homebot, Real Geeks, other CRMs, or other accounts on Defendant Barber’s behalf, such as assistants, employees, or other members of Defendant Barber’s “team,” would be responsive to this Request. Please conduct a reasonable inquiry to responsive material in Defendant Barber’s possession and respond fully to this Request.

Christian H. Staples, Esq.
Jason A. Daigle, Esq.
July 25, 2022
Page 7

Pursuant to Rule 11(a), SCRCP, this letter is an attempt to avoid filing a motion to compel sufficient and complete responses to the above-mentioned discovery requests. I have enclosed a courtesy copy of Defendant Barber's responses to Plaintiffs' Interrogatories, Requests for Production, and Request for Inspection of Property, as well as your document production to date. Given the numerous extensions to respond to discovery and recent communications requesting inspection of your document production, we are requesting your answers and responses within four days of the date of this letter, making **Friday, July 29, 2022** the deadline to respond.

Best regards,



Taylor K. Voegel

Enclosures (*via email only*)

cc: Amanda A. Bailey, Esq., w/enc. (*via email only*)
Lawrence M. Hershon, Esq., w/enc. (*via email only*)
Russell M. Racine, Esq., w/enc. (*via email only*)
Clients, w/enc. (*via email only*)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
2022-CP-26-01323

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

Plaintiffs,

vs.

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

Defendants.

**DEFENDANT JOEL D. BARBER'S
MOTION TO RECONSIDER**

NOW COMES the Defendant Joel D. Barber ("Defendant Barber"), by and through his undersigned counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and hereby moves for reconsideration of the Order Granting Plaintiffs' Motion for Contempt entered in this action on November 22, 2022 (the "Order"). The basis of this motion is that the Order will necessarily lead to the production of privileged and/or non-discoverable information; the Order has undefined terms; the Order appears to circumvent the discovery rules and pending discovery motions which have yet to be heard; the Order is inconsistent with the injunction upon which it is ostensibly based; the Order effectively creates an unenforceable non-compete clause where one does not exist; the retroactive nature of the Order makes adherence to it impossible; and such other

grounds as may become apparent. Defendant Barber reserves the right to submit a memorandum of law and/or affidavit in further support of this motion.

This the 22nd day of November, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

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Charlotte, NC 28280
Telephone: 704-375-0057
Facsimile: 704-332-1197
cstaples@shumaker.com

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

-and-

CLEMENT RIVERS, LLP

/s/ Jason A. Daigle

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Charleston, SC 29402
(843) 720-5436
jdaigle@ycrlaw.com

*Attorneys for Defendant
Joel D. Barber (as to the Counterclaims only)
and Barber Real Estate, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **DEFENDANT JOEL D. BARBER'S MOTION TO RECONSIDER** was electronically filed using the SC Courts' E-Filing portal which will automatically send notice of filing to all counsel of record in this action.

This the 22nd day of November, 2022.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

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

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' REPLY MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANT
JOEL D. BARBER'S MOTION TO
RECONSIDER**

Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot ("Century 21 Barefoot"), R&G Corp, d/b/a Century 21 The Harrelson Group ("Century 21 Harrelson") (collectively, "Century 21"), Kevin Mills, individually, Mills, LLC, and Greg Harrelson, individually (collectively, "Plaintiffs"), by and through their undersigned counsel, submit this Reply Memorandum of Law in Opposition to Defendant Joel D. Barber's Motion to Reconsider.

FACTS

This case began when Plaintiffs discovered Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21, including leads, for his benefit and for the benefit of other brokerage companies when, on numerous occasions, Defendant Barber entered Century 21's office in the early morning hours

and logged into other people's computers, accessing and saving their lead information and deleting appointments from calendars, among other things. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction ("the Injunction"). The Court held a hearing on the matter and issued an oral ruling on March 31, 2022 [See Ex. A, Transcript of March 31, 2022 Hearing], granting Plaintiffs' Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. Plaintiffs were ordered to pay a bond in the amount of \$100,000.00. (Inj., ¶ 27.) The Injunction, which is unappealed and continues to be in effect until the resolution of this case, sets forth in part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMSs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

(Inj., ¶ 23(c)-(e).) Subsequent to the hearing and order granting the injunction, Defendant Barber continued to initiate contact with individuals and utilize information he gained access to by being an independent contractor and working with the Plaintiffs, in violation of the Injunction. In particular, Plaintiffs submitted the affidavits of Susan Brown and Rob Safa who each attested to receiving email communications from Defendant Barber despite never having provided him their

contact information. (**Rob Safa Aff. and Susan Brown Aff.**) Rather, both Rob Safa and Susan Brown attested they provided their contact information to other agents associated with Century 21, but never Defendant Barber. (**Safa Aff., ¶¶ 6-8; Brown Aff. ¶¶ 6-8.**) Specifically, Susan Brown received an email on March 30, 2022 from Defendant Barber from the software “Homebot.” (**Brown Aff., ¶ 3.**) Susan Brown attested she had never provided Defendant Barber her contact information, but rather, had only entered her own contact information into a Homebot database belonging to Century 21. (**Brown Aff., ¶¶ 5-10.**)

Although Defendant Barber contends he received the contact information for Susan Brown and Rob Safa through some source other than Century 21, the evidence does not support this assertion; specifically, the documents Plaintiffs received in response to their subpoena to Homebot Inc., reflect that Defendant Barber entered Susan Brown’s contact information into his new Homebot account on March 24, 2022. (**Exhibit B, pg. 752.**)¹ Defendant Barber’s own affidavit and testimony evidences that he gained access to this information while an independent contractor and working with Century 21. (**Joel Barber Aff., ¶¶ 9-10, Exs. D and E**) (**Barber Depo., pp.157-164.**)

In light of these violations of the Injunction, and other violations later revealed at Defendant Barber’s deposition and in discovery, Plaintiffs filed a Motion for Contempt Against Defendant Barber on July 25, 2022. The Court held a virtual hearing on November 16, 2022. Plaintiffs presented evidence from affidavits as well as Defendant Barber’s deposition testimony, which was taken November 15, 2022.² Based on Defendant Barber’s deposition testimony, he

¹ By consent order dated November 8, 2022, the Parties were permitted to file Homebot, Inc.’s documents under seal, portions of which are marked as Ex. 52 (Confidential Homebot_000763) and 53 (Confidential Homebot_000764 to 000833) of Barber’s deposition. **Exhibit B** is filed under seal.

² Excerpts from Defendant Barber’s transcript are included herein as **Exhibit C**.

retains a flashdrive of some 60,000 to 70,000 leads, 4,000 to 6,000 of which he has transferred to eXp and/or NorthGroup, and several thousand of which he has uploaded to a new personal Homebot account. (**Barber Depo.**, pp. 163, 178, 189, 201-202, 205-206, 216, 222-223.) Moreover, he uses this same flashdrive to prepare and store spreadsheets. *Id.* None of which have been produced.

The Court granted Plaintiffs' Motion for Contempt Against Defendant Barber. Defendant Barber filed a Motion to Reconsider on November 22, 2022, but to date, Defendant Barber has not served the Honorable William H. Seals, Jr. with a copy of his Motion per Rule 59(g), SCRCP. On December 23, 2022, counsel for Defendant Barber emailed counsel of record copies of his Memorandum of Law in Support of his Motion to Reconsider, in addition to new affidavits and over 100 exhibits never previously presented to the Court on November 16, 2022, or otherwise produced in discovery. Plaintiff produced the affidavit of "Sandra Churgin" signed by "Arlene S. Churgin", neither of which were identified as a potential witness by Defendant Barber.³

Since the Court's Order Granting Plaintiffs' Motion for Contempt Against Defendant Joel D. Barber, Defendant Barber has continued to violate the Injunction and disregard the Contempt Order. Among other evidence, Plaintiffs have since received the subpoena response⁴ of Defendant Barber Real Estate, Inc.'s bank statements⁵, which show checks paid out from this account on

³ Defendant Barber asserts these exhibits are "documentary proof" of how he obtained each listing. (**Barber Third Aff.**, ¶ 12.) These documents provide no such evidence of how he obtained any listing. Further, these documents have never been produced in discovery and were not made available to Plaintiffs prior to Barber's deposition or prior to the Motion to Contempt. Plaintiffs have a pending Motion to Compel for Defendant Barber's continued incomplete and inadequate discovery responses.

⁴ Excerpts of First Citizens Bank's subpoena response are included herein as **Exhibit D**.

⁵ The First Citizens Bank account for Barber Real Estate, Inc. is Barber's real estate related business account. (**Barber Depo.**, pp. 79)

November 21, 2022 for \$250,000.00 and on November 30, 2022 for \$100,000.00, both after the Contempt Order was entered.

LEGAL STANDARD

“A party *may* wish to file [a Rule 59(e), SCRCPP] motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised but not rule on, in order to preserve it for appellate review.” *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original).

Contempt results from a willful disobedience of an order of the Court. *Miller v. Miller*, 375 S.C. 443, 454, 552 S.E.2d 754, 759 (Ct. App. 2007) (citations omitted). An act is willful when it is committed “voluntarily and intentionally with the specific intent to do something the law forbids...[or] with bad purpose either to disobey or disregard the law.” *Id.* at 454, 552 S.E.2d at 759-60 (citations and quotations omitted).

South Carolina Code Section 14-5-320 provides: “The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempt of authority in any cause or hearing before the same.” Although a determination of contempt should be imposed sparingly, “The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *Miller*, 375 S.C. at 452-53, 552 S.E.2d at 759 (citations and internal quotation marks omitted).

The record must “clearly and specifically reflect the contemptuous conduct” before a court may find a party in contempt, and when a prima facie case of contemptuous conduct is shown, the

burden shifts to the nonmoving party to establish his defense and inability to follow the court's order. *Id.* at 454, 552 S.E.2d at 760 (citations and internal quotation marks omitted).⁶

In this case, Plaintiffs made a *prima facie* showing of contemptuous conduct at the November 16, 2022 hearing in support of their motion for contempt and sanctions and Defendant Barber did not meet his burden to establish any defense or inability to follow the Injunctive Order.

DISCUSSION

I. The Court did not misapprehend or overlook any argument when deciding Plaintiffs' Motion for Contempt, and sufficient evidence existed to grant Plaintiffs' motion.

The affidavits of Rob Safa and Susan Brown provide direct evidence of Defendant Barber's violation of the Injunction. Although Defendant Barber insists he obtained this information independently of Century 21, the evidence does not support this contention, and regardless of where Defendant Barber allegedly obtained the information, the Injunction prohibits his use of it because he gained access to this information while an independent contractor with Century 21.

Both Rob Safa and Susan Brown attested they were contacted by Defendant Barber related to the valuation of their homes or the use of Defendant Barber for real estate transactions. (**Safa Aff., ¶ 5; Brown Aff., ¶ 3.**) Subsections 23(c) and (d) prohibit Defendant Barber's use of any information to which he gained access to by being an independent contractor and/or initiating contact with anyone whose information he may have gained access to by being an independent contractor at Century 21. (**Inj., ¶ 23(c)-(d).**) Here, both Rob Safa and Susan Brown attested they never provided their information, specifically, their personal email addresses, to Defendant Barber,

⁶ Defendant Barber cites to a 1935 Supreme Court of South Carolina decision that addressed the denial of motions for directed verdict—not a motion for contempt—and therefore, such case is inapposite to the issue before the Court. *Oakman Serv. Station v. People's Oil Co.*, 174 S.C. 517, 178 S.E. 129 (1935).

and their email addresses were not public information. (**Safa Aff.**, ¶¶ 4, 6-10, **Brown Aff.**, ¶¶ 4, 6-8.)

Defendant Barber's own affidavit proves he violated the Injunction when he utilized information he received in August 2021—while he was an independent contractor with Century 21—to contact Susan Brown. (**Brown Aff.**, ¶¶ 9-10, **Exs. D & E.**) While Defendant Barber asks this Court to refrain from enforcing the Injunction because he supposedly received such information from other sources, Defendant Barber himself concedes that he is using information he gained access to while an independent contractor with Century 21 and working with Century 21, such conduct is prohibited by the Injunction. Further, Defendant Barber did nothing to ensure he refrained from using information obtained from Century 21's databases. (**Barber Depo.**, pp. 222-223.)

In his deposition taken the day prior to the hearing on Plaintiffs' Motion for Contempt, Defendant Barber admitted to use of these leads and information he gained access to while an independent contractor at and otherwise working with Plaintiffs. Although he was instructed not to answer over twenty questions related to whether he improperly accessed and retained information from Plaintiffs, Defendant Barber did admit he was terminated from Century 21 because he was "caught looking at other people's leads." (**Barber Depo.**, pp. 100:5-10.) Defendant Barber further stated he imported leads he obtained during the time period he was associated with Century 21 into the database of Defendant eXp Realty, LLC, and later imported that information into Defendant NorthGroup Real Estate, Inc. (**Barber Depo.**, pp. 189:19-24; 197:7-18; 198:17—200:4.) Defendant Barber also conceded he provided several lists of leads he gained access to while at Century 21 to Homebot, Inc. (**Barber Depo.**, pp. 198:17—199:21; 205:14—206:1.) Moreover, Defendant Barber admits that 60,000 to 70,000 leads as well as

spreadsheets and other electronic data is stored on his two computers and a flash drive. Defendant Barber admits the flash drive is assessed and used in his real estate business. **(Barber Depo., pp. 163, 178, 189, 201-202, 205-206, 216, 222-223.)** This flashdrive has not been produced nor even identified in Defendant Barber's response to Plaintiff's Request to Inspect served on June 3, 2022. Further, Defendant Barber admits to deleting electronic data as recently as 45 days prior to his deposition. **(Barber Depo., pp. 190-193, 208-210.)** Thus, according to his own testimony, Defendant Barber has used and continues to use information subject to the Injunction and has taken no efforts to preserve his data related to his activities.

Not only did the evidence presented to the Court on November 16, 2022 demonstrate Defendant Barber's disregard for court orders, but his behavior since the Court's order of contempt illustrates his continued disregard. Defendant Barber continues to obfuscate orders of the Court, such as Defendant Barber Real Estate, Inc.'s transfer of \$350,000.00 of real estate business/commission funds immediately after Defendant Barber had been ordered to hold any and all real estate-related commissions in trust until the final resolution of this action. **(Ex. D.)**

Ultimately, in support of their Motion for Contempt, Plaintiffs proved by clear and convincing evidence that Defendant Barber willfully violated the Injunction. Defendant Barber failed to meet his burden of establishing a defense for compliance with the Injunction or inability to follow, and accordingly, the granting of contempt was proper.⁷

⁷ In his Memorandum of Law in Support of his Motion to Reconsider not previously argued, Defendant Barber insists he can explain where he received lead information for the MLS listings set forth by Plaintiff Greg Harrelson in his fourth affidavit. However, not only do the exhibits Defendant Barber set forth fail to prove or otherwise support that he did not improperly use such lead information in violation of the Injunction, but such an argument fails because regardless of whether Defendant Barber subsequently purchases contact information with his own money or from a vendor, the Injunction prohibits the use of information he gained access to while an independent contractor at Century 21 or while otherwise working with Plaintiffs. Defendant Barber has taken no steps to attempt to comply with his obligations pursuant to the Injunction, and he has willfully continued using such information and initiating contact with such leads in violation of the Injunction. Defendant Barber asserts these exhibits are "documentary proof" of how he

Moreover, for purposes of Rule 59(e), SCRCP, Defendant Barber has not asserted any argument that was overlooked or misapprehended by the Court, but rather, Defendant Barber takes issue with the relief ordered. Counsel for the undersigned circulated the draft order regarding the contempt and incorporated proposed edits for co-defendants prior to submitting to the Court. Although counsel for the co-defendants responded and requested changes, which were incorporated, counsel for Defendant Barber requested no changes, edits, or limitation in this order prior to submittal.

Defendant Barber now asserts the inspection of his devices is improper because there are no restrictions or safeguards of what information may be discovered, such as that subject to a privilege. Defendant Barber's other concerns initially raised are thoroughly protected by the current Consent Protective and Confidentiality Order entered May 16, 2022.⁸

Defendant Barber also asserts the relief provided by the Court will keep him from practicing real estate in the area entirely. However, the Court simply ordered Defendant Barber to do what he has been required to do all along, which is to refrain from using information he gained access to while working with Century 21. According to his own testimony, Defendant Barber has taken no steps to distinguish which information he should and should not use, and as such, the Court has now ordered measures to ensure he will not continue harming Plaintiffs. **(Barber Depo., pp. 222:8-14.)**

obtained each listing, but, from those that are legible, these exhibits do not demonstrate how these listings were originally obtained, and in fact, some exhibits even demonstrate Defendant Barber's violation of the Injunction as he seemingly initiated contact with various pre-existing leads. **(Barber Third Aff., ¶ 12; Ex. 13.)**

⁸ To the extent Defendant Barber seeks to preserve any purported privilege, objections to which Plaintiff does not waive, Defendant Barber should pay the cost and Plaintiff proposes the attached Proposed ESI Order, which is consistent with the Contempt Order and proposes to allow for the identification of privilege and confidential material, **Ex. E.**

Lastly, Defendant Barber has not only continued to violate the injunctive relief, but also continues to violate the Contempt Order. He has not provided his devices, data, or databases for inspection, he has not held his commissions in trust, and he continues to use information he gained access to while an independent contractor and working with Century 21. Nothing in their Rule 59(e) motion stays the enforcement of the Injunction or Contempt Orders. *Cf. Haselden v. Haselden*, 347 S.C. 48, 63, 552 S.E.2d 329, 336-37 (Ct. App. 2001) (holding a Rule 59(e), SCRCPP motion did not stay the enforcement of a judgment, and the granting of contempt was not in error simply because a contempt motion was granted prior to the ruling on the Motion to Reconsider).

This Court should deny the motion to reconsider. Notwithstanding, the Plaintiffs consent to the entry of the attached proposed ESI Order, provided Defendant Barber and each party pay a proportional share of the cost to image and preserve Defendant Barber's data, devices, and databases, and Defendant Barber solely pay the entirety of the costs of any effort for searching and reporting and for privilege/confidentiality review.

II. Defendant Barber is procedurally barred from seeking reconsideration.

Rule 59(g), SCRCPP provides that “[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” The Court entered its Order Granting Plaintiffs’ Motion for Contempt on November 22, 2022. Although Defendant Barber electronically filed his Motion to Reconsider, Plaintiffs are aware of no service of the Motion on the Honorable William H. Seals, Jr. as required by Rule 59(g), SCRCPP. *See* Rule 6(b), SCRCPP (“The time for taking any action under rule[] . . . 59 . . . may not be extended except to the extent and under the conditions stated in them.”); Rule 59(e), SCRCPP (“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”); Rule 59(g) (providing ten days after the filing of a motion pursuant to

Rule 59, SCRCP to the judge). *Cf. Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 397, 665 S.E.2d 222, 227 (Ct. App. 2008) (finding appellant's Rule 59(e), SCRCP motion was not properly before the court where the appellant failed to serve the opposing party with the motion). Further, the time for appealing both the Order Granting the Injunction and the Contempt Order has passed. *See* Rule 203(b)(1), SCACR (providing a party thirty days after receipt of written notice of entry of a judgment to appeal). Accordingly, Defendant Barber's Motion questioning the Injunctive Order and the Contempt Order is procedurally improper and should be denied.

As a result, Defendant Barber's Motion for Reconsideration is procedurally barred as untimely.

CONCLUSION

For the foregoing reasons, the Court should deny Defendant Barber's Motion to Reconsider.

Dated: December 28, 2022

BURR & FORMAN LLP

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EXHIBIT A

**TRANSCRIPT OF RECORD, MOTION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY INJUNCTION, MARCH 31, 2022**

**ORIGINAL REMOVED AS THIS DOCUMENT APPEARS ELSEWHERE IN THE
RECORD ON APPEAL**

EXHIBIT B

Homebot_000752

Exhibit 52, Joel Barber Deposition

Exhibit 53, Joel Barber Deposition

Filed under Seal

EXHIBIT C

EXCERPTS OF DEPOSITION OF JOEL D. BARBER

EXHIBITS 1-3, 6-7, 50 and 54 TO DEPOSITION OF JOEL D. BARBER

FILED UNDER SEAL

Case #2022-CP-26-01323
FCB File #21440



First Citizens Bank
forever first®

**AFFIDAVIT AND CERTIFICATION
OF COPIES OF BANK RECORDS**

Lori Dunn, being duly sworn, states as follows:

1. This Affidavit and Certification of Copies of Bank Records is issued on behalf of the following bank (the "Bank"):

" First-Citizens Bank & Trust Company, a North Carolina banking corporation
2. I am a custodian of the business records of the Bank. As such, I am familiar with the system by which the bank records are made and maintained.
3. I certify that the copies attached to this affidavit are true and accurate copies of the records of original entry of the Bank kept in the ordinary course of the Bank's business.

Date: December 12, 2022

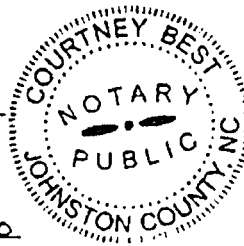
Lori Dunn, Mgr Deposit Operations VP & Asst Sec
Deposit Operations

Sworn to and subscribed before me on

December 12 2022

Courtney Best

Notary Public for Wake
County, North Carolina



My Commission Expires: 11/14/2026



Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

IM EST
264

08041
BARBER REAL ESTATE, INC
964 BLUFFVIEW DR
MYRTLE BEACH SC 29579-5246

Your Account(s) At A Glance
Checking
Balance **16,773.81+**

Statement Period: November 1, 2022 Thru November 30, 2022

Account Number: [REDACTED]



Basic Business Checking

Account Number: [REDACTED]

Enclosures In Statement: 0

Beginning Balance **346,241.61+**
0 Deposits 0.00
11 Other Credits 51,625.00+
4 Checks 353,610.00-
6 Other Debits 27,482.80-
Monthly Service Charge 0.00

Statement Period Days **30**
Average Ledger Balance **270,380.00+**

Ending Balance **16,773.81+**

Other Credits To Your Account

Date	Description	Amount
11-01	Ecomission Fina 0000120477 *****0477	2,575.00
11-01	Ecomission Fina 0000120566 *****0566	5,000.00
11-10	Ecomission Fina 0000125543 *****5543	4,325.00
11-10	Ecomission Fina 0000125555 *****5555	9,422.50
11-10	Ecomission Fina 0000125557 *****5557	6,391.00
11-14	Ecomission Fina 0000125995 *****5995	4,475.00
11-14	Ecomission Fina 0000126185 *****6185	3,800.00
11-17	Ecomission Fina 0000128030 *****8030	2,874.00
11-23	Ecomission Fina 0000130862 *****0862	3,065.00
11-23	Ecomission Fina 0000131006 *****1006	5,925.00
11-30	Ecomission Fina 0000133488 *****3488	3,772.50
Total		51,625.00

Checks Paid From Your Account

Check No.	Date	Amount	Check No.	Date	Amount
1089	11-21	2,770.00	1157*	11-07	840.00
1090	11-21	250,000.00	1158	11-30	100,000.00

*Prior Check Number(s) Not Included or Out of Sequence.



Direct Customer Inquiry Calls To
Personal 1-888-323-4732
Business 1-866-322-4249

Page 1 of 7

EXHIBIT D

Statement Period: November 1, 2022 Thru November 30, 2022

Account Number : [REDACTED]

Other Debits From Your Account

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11-03	Amex Epayment ACH Pmt A5208	13,175.31
11-09	Adp Tax Adp Tax Keze* ****23A01	2,228.14
11-09	Adp Wage Pay Wage Pay *****424Ze6	2,869.09
11-23	Adp Tax Adp Tax Keze* ****24A01	2,263.24
11-23	Adp Wage Pay Wage Pay *****729Ze6	2,947.02
11-28	Transfer Internet 11-28 Seq # 79438 [REDACTED]	4,000.00
Total		27,482.80

Daily Balance Summary

<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>	<u>Date</u>	<u>Balance</u>
11-01	353,816.61+	11-10	354,842.57+	11-23	117,001.31+
11-03	340,641.30+	11-14	363,117.57+	11-28	113,001.31+
11-07	339,801.30+	11-17	365,991.57+	11-30	16,773.81+
11-09	334,704.07+	11-21	113,221.57+		

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) FIFTEENTH JUDICIAL CIRCUIT

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

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

Plaintiffs,

v.

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

Defendants.

**ORDER REGARDING
E-DISCOVERY PROTOCOL**

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders, including, but not limited to, the Stipulated Confidentiality and Protective Order entered May 16, 2022 and the November 22, 2022 Order Granting Plaintiffs' Motion for Contempt. This order streamlines Electronically Stored Information ("ESI" or "Documents") production to promote a "just, speedy, and inexpensive determination" of this action, as required by Rule 1 of the South Carolina Rules of Civil Procedure ("SCRCP"). This order further serves the purposes of preventing inadvertent disclosure of privileged information and limiting discovery to relevant to the subject matter involved in the pending action pursuant to Rule 26(b)(1), SCRCP.

2. This order may be modified in the Court's discretion or by agreement of the parties.

3. The parties acknowledge that costs will be shifted for disproportionate ESI production requests pursuant to Rule 26, SCRCp. Likewise, a party's nonresponsive or dilatory discovery tactics will be cost-shifting considerations under Rule 26, SCRCp.

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

5. As a specific supplement to the November 22, 2022 Order Granting Plaintiffs' Motion for Contempt against Defendant Joel Barber, Defendant Barber was required to turn over all real estate business-related data, devices, and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of November 22, 2022. Any imaging, preservation, searching and reporting by Clark Walton in compliance with the November 22, 2022 Order shall be provided first to counsel for Defendant Barber to review and redact for privilege and to mark "Confidential" in accordance with May 16, 2022 Stipulated Confidentiality and Protective Order before being turned over to other parties. A privilege log shall be produced with respect to any redactions as a result of the assertion of any privilege. The costs associated with imaging and preserving the data, devices, and databases shall be borne equally by all parties. The costs associated with searching and reporting on file sources and/or privilege and confidentiality review shall be borne by Defendant Barber.

6. Absent a showing of good cause, general ESI production requests per Rules 34 and 35, SCRCp, or compliance with a mandatory disclosure requirement of this Court, shall include metadata. The fields identified in Exhibit A shall generally be included in the production load file identified in Paragraph 6(a) if such fields exist. Except as set forth in Paragraph 5, that compliance

with this paragraph may be fulfilled through the use of third-party vendors and/or experts who are engaged and/or retained to conduct an inspection of a party's ESI.

7. Absent agreement of the parties or further order of this Court, the following parameters shall apply to ESI production:

- a. General Document Image Format. ESI shall be produced in the form in which it is ordinarily maintained ("native format") or in single-page Tagged Image File Format ("TIFF") or multiple page, searchable PDF format at a resolution of at least 300 dpi. TIFF files shall be single page and shall be made with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF or PDF files, as well as the metadata fields identified in Exhibit A to the extent they exist. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.
- b. Text-Searchable Documents. Documents shall be produced in a text-searchable format to the extent possible without undue effort.
- c. Production Numbers. Each document image shall contain a footer with a sequentially ascending production number, provided that, if a footer would obstruct any information on the document image, the sequentially ascending production number may be affixed to an alternative location on the document image.
- d. Native Files. A party is not required to produce the same ESI in more than one format. After initial production of electronic documents in electronic file format has occurred, a party may request that specific documents be produced in native format by specifically identifying to the producing party the Bates number of the

document(s) sought and the basis for the request for production in native format. The parties should then meet and confer in good faith to determine whether the production in an alternative format is necessary. A party shall not make unduly burdensome and unreasonable requests for production of documents in native format, and a party shall not unreasonably refuse a request for the production of documents in native format. Notwithstanding the foregoing, all spreadsheets (e.g., Excel files), presentations (e.g., PowerPoint files), database files, audio files, video files, and animations shall be produced in native format (with speaker notes, hidden comments or content, and track changes intact), unless redaction is necessary to protect a privilege or immunity from discovery. Natively-produced files should be produced with a placeholder, Bates numbered TIFF image stating "Document Produced Natively," and the load file should include a link referencing the record in the NATIVEFILE field. The parties acknowledge that the processing and production of ESI in certain formats, including native format, may result in minor or otherwise insignificant alteration of metadata, including metadata within or about the native file.

- e. Duplicate Documents. A party may identify and remove duplicate copies of records produced electronically, in which case it must include an "ALL CUSTODIANS" field (or other clearly identified field) identifying the custodian(s) from whom a record was de-duplicated. The producing party shall not be required to search for or produce additional copies of such duplicative documents absent a showing of good cause that the production of such additional copies is necessary.

8. Each party shall conduct diligent searches of all reasonably accessible sources which it has reason to believe may contain ESI responsive to the opposing party's discovery requests. Reasonably accessible sources of ESI generally include, but are not limited to, email, computer hard drives, shared network drives, and other storage devices and media, including CD-ROMs, DVDs, flash drives, cloud-based storage, or internet based storage.

9. The parties shall use Clark Walton or a neutral third-party vendor to inspect a party's devices, including, but not limited to, cell phones, laptops, computer hard drives, email, shared network drives, cloud-based storage or internet website storage accounts, cloud-based or internet website referral service accounts, cloud-based or internet website customer relationship management tools or accounts, and other storage devices and media, including CD-ROMs, DVDs, and flash drives. Such inspection may take place at a mutually agreeable date and location and subject to mutually agreeable parameters, including but not limited to, search terms, provided that such parameters are in accordance with Stipulated Confidentiality and Protective Order and are disclosed to the third-party vendor, who is also required to comply with the Stipulated Confidentiality and Protective Order. A third-party vendor's access to or review of a party's privileged information shall not result in a waiver of such privilege. The findings and data generated upon such inspection by a third-party vendor shall be produced in the first instance only to counsel for the party or parties whose devices were inspected, so that said counsel has an opportunity to review the same and to make appropriate determinations, if applicable, regarding confidentiality, attorneys' eyes only, and privilege, pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and other applicable law. The costs associated with searching and reporting for privilege and confidentiality review shall be borne by the party whose devices were inspected.

10. Counsel shall complete such review and designation process and to release those documents not being withheld pursuant to a claim of privilege or designation of Confidential to counsel requesting such documents within thirty (30) days of their receipt in the first instance from the third-party vendor, unless an extension of time is granted by agreement of counsel for the parties or court order. Counsel shall provide a privilege log for all documents withheld from production to opposing counsel at the time of production.

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

12. The inadvertent production of a privileged or work-product-protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

13. The receiving party shall not use ESI that the producing party asserts is attorney-client privileged or work-product-protected to challenge the privilege or protection.

AND IT IS SO ORDERED.

Dated:

Presiding Judge, Court of Common Pleas
Fifteenth Judicial Circuit

APPROVED:

s/

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Attorneys for Plaintiffs

Dated: August ___, 2022

Exhibit A

1. BEGDOC (*first Bates number in document*)
2. ENDOC (*last Bates number in document*)
3. PAGECOUNT (*number of pages in document*)
4. BEGATTACH (*first Bates number of attachment range*)
5. ENDATTACH (*last Bates number of attachment range*)
6. CUSTODIAN (*name of person or location where docs came from*)
7. ALL CUSTODIANS (*to detail custodians a document has been de-duplicated from*)
8. TO (*email receiving party or parties*)
9. FROM (*email sending party*)
10. CC (*email copied party or parties*)
11. BCC (*email blind-copied party or parties*)
12. SUBJECT (*subject title for emails*)
13. DATE/TIME SENT (*date and time email was sent*)
14. DATE/TIME RECEIVED (*date and time email was received*)
15. DATE/TIME CREATED (*date and time a non-email document was created*)
16. DATE/TIME MODIFIED (*date and time a non-email document was last modified*)
17. MD5HASH (*unique document identifier*)
18. AUTHOR (*creator of a non-email document*)
19. FILENAME (*name of a non-email document*)
20. DOEXT (*document extension*)
21. RECORDTYPE (*Email/Email Attachment/E-Doc, etc.*)
22. FILESIZE
23. NATIVEFILE (*hyperlink to native file, if any*)
24. TEXTFILEPATH (*relative path to the corresponding document textfile on the production media*)
25. CONFIDENTIAL STATUS
26. REDACTION STATUS

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

2022-CP-26-01323

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

Plaintiffs,

vs.

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

Defendants.

**DEFENDANT JOEL D. BARBER'S
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
RECONSIDER**

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

STANDARD OF REVIEW

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

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

FACTUAL AND PROCEDURAL BACKGROUND

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

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

- “using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 ...”
- “initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022”
- “selling or disclosing any information to which Joel Barber gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022”.

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

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

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

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

established by the language of the proposed Consent Order, drafted in the first instance by counsel for Plaintiffs, which recites the parties' agreement to "the use of a mutually agreeable third-party vendor to inspect a party's devices" and for the inspection to be "subject to mutually agreeable parameters, including but not limited to, search terms, provided that such parameters are in accordance with Stipulated Confidentiality and Protective Order and are disclosed to the third-party vendor, who is also required to comply with the Stipulated Confidentiality and Protective Order." It is on this last point that the parties' negotiations were still ongoing at the time Plaintiffs' counsel prematurely filed the Motion to Compel and ceased further discussion with the undersigned regarding the terms of the proposed Consent Order.

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

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

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

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

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

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

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

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

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

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

In fact, Paragraph 7 of the Independent Contractor and Broker Agreement dated March 14, 2017, by and between Defendant Barber, as Independent Contractor, and Margaret McBride on behalf of Century 21 The Harrelson Group, as Broker, express states that “[w]hen Independent Contractor shall perform any service hereunder, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Independent Contractor in which division Independent Contractor shall receive a proportionate share as set out in office policy and Broker shall receive the balance.”⁶

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

This the 23rd day of December, 2022.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ Christian H. Staples

Christian H. Staples, SC Bar No. 101470

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Charlotte, NC 28280

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cstaples@shumaker.com

Attorneys for Defendant

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

-and-

CLEMENT RIVERS, LLP

/s/ Jason A. Daigle

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Attorneys for Defendant

*Joel D. Barber (as to the Counterclaims only)
and Barber Real Estate, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing **DEFENDANT JOEL D. BARBER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER** was served on all counsel of record in this action via email to the following addresses:

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

This the 23rd day of December, 2022.

/s/ Christian H. Staples

Christian H. Staples
Shumaker, Loop & Kendrick, LLP

Staples, Christian H.

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

Taylor/Amanda,

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

Best,

Christian

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

CAUTION: External Email

Christian,

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

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

Thank you,

-Taylor

Taylor Voegel
Associate

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

main 843-444-1107
fax 843-444-3968
tvoegel@burr.com
Web

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you.

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

Christian,

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

Thank you,

-Taylor

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

[EXTERNAL EMAIL]

Taylor,

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

<https://www.epiqglobal.com/en-us>

<https://rosenlrc.com/>

<https://detectiveati.com/>

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

Thanks

Christian H. Staples

Attorney at Law

SHUMAKER

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

Direct 704.945.2183 | Fax 704.332.1197

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

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

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

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

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

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

CAUTION: External Email

Hi Christian,

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

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

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

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

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

Respectfully,

-Taylor

Taylor Voegel
Associate

BURR ∴
FORMAN LLP

2411 Oak St., Suite 206
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From: Staples, Christian H. <cstaples@shumaker.com>

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

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

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

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

[EXTERNAL EMAIL]

Taylor,

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

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

Best,

Christian

Christian H. Staples

Attorney at Law

SHUMAKER

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

Direct 704.945.2183 | Fax 704.332.1197

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

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF HORRY

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

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

Plaintiffs,

v.

**CONSENT ORDER REGARDING
 E-DISCOVERY PROTOCOL**

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

Defendants.

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders, including, but not limited to, the Stipulated Confidentiality and Protective Order entered May 16, 2022. This order streamlines Electronically Stored Information ("ESI") production to promote a "just, speedy, and inexpensive determination" of this action, as required by Rule 1 of the South Carolina Rules of Civil Procedure ("SCRCP"). This order further serves the purposes of preventing inadvertent disclosure of privileged information and limiting discovery to relevant to the subject matter involved in the pending action pursuant to Rule 26(b)(1), SCRCP.

2. This order may be modified in the Court's discretion or by agreement of the parties.

3. The parties acknowledge that ~~Costs will~~ may be shifted for disproportionate ESI production requests pursuant to Rule 26, SCRCP. Likewise, a party's nonresponsive or dilatory

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

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

5.4. Absent a showing of good cause, general ESI production requests per Rules 34 and 35, SCRCP, or compliance with a mandatory disclosure requirement of this Court, shall include metadata whenever practical. The fields identified in **Exhibit A** shall generally be included in the production load file identified in Paragraph 6(a) if such fields exist. The parties agree that compliance with this paragraph may be fulfilled through the use of third-party vendors and/or experts who are engaged and/or retained to conduct an inspection of a party's ESI.

6.5. Absent agreement of the parties or further order of this Court, the following parameters shall apply to ESI production:

- a. General Document Image Format. ESI shall be produced in the form in which it is ordinarily maintained ("native format") or in single-page Tagged Image File Format ("TIFF") or multiple page, searchable PDF format at a resolution of at least 300 dpi. TIFF files shall be single page and shall be made with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF or PDF files, as well as the metadata fields identified in **Exhibit A** to the extent they exist. If a document is

more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

- b. Text-Searchable Documents. Documents shall be produced in a text-searchable format to the extent possible without undue effort.
- c. Production Numbers. Each document image shall contain a footer with a sequentially ascending production number, provided that, if a footer would obstruct any information on the document image, the sequentially ascending production number may be affixed to an alternative location on the document image.
- d. Native Files. A party is not required to produce the same ESI in more than one format. After initial production of electronic documents in electronic file format has occurred, a party may request that specific documents be produced in native format by specifically identifying to the producing party the Bates number of the document(s) sought and the basis for the request for production in native format. The parties should then meet and confer in good faith to determine whether the production in an alternative format is necessary. A party shall not make unduly burdensome and unreasonable requests for production of documents in native format, and a party shall not unreasonably refuse a request for the production of documents in native format. Notwithstanding the foregoing, all spreadsheets (e.g., Excel files), presentations (e.g., PowerPoint files), database files, audio files, video files, and animations shall be produced in native format (with speaker notes, hidden comments or content, and track changes intact), unless redaction is necessary to protect a privilege or immunity from discovery. Natively-produced files should be produced with a placeholder, Bates numbered TIFF image stating "Document

Produced Natively,” and the load file should include a link referencing the record in the NATIVEFILE field. The parties acknowledge that the processing and production of ESI in certain formats, including native format, may result in minor or otherwise insignificant alteration of metadata, including metadata within or about the native file.

- e. Duplicate Documents. A party may identify and remove duplicate copies of records produced electronically, in which case it must include an “ALL CUSTODIANS” field (or other clearly identified field) identifying the custodian(s) from whom a record was de-duplicated. The producing party shall not be required to search for or produce additional copies of such duplicative documents absent a showing of good cause that the production of such additional copies is necessary.

7.6. Each party shall conduct diligent searches of all reasonably accessible sources which it has reason to believe may contain ESI responsive to the opposing party’s discovery requests. Reasonably accessible sources of ESI generally include, but are not limited to, email, computer hard drives, shared network drives, and other storage devices and media, including CD-ROMs, DVDs, and flash drives.

8.7. The parties further consent to the use of a mutually agreeable third-party vendor to inspect a party’s devices, including, but not limited to, cell phones, laptops, computer hard drives, email, shared network drives, cloud-based storage or internet website storage accounts, ~~cloud-based or internet website referral service accounts, cloud-based or internet website customer relationship management tools or accounts,~~ and other storage devices and media, including CD-ROMs, DVDs, and flash drives. Such inspection may take place at a mutually agreeable date and location and subject to mutually agreeable parameters, including but not limited to, search terms,

provided that such parameters are in accordance with Stipulated Confidentiality and Protective Order and are disclosed to the third-party vendor, who is also required to comply with the Stipulated Confidentiality and Protective Order. The parties agree that a third-party vendor's access to or review of a party's privileged information shall not result in a waiver of such privilege. The findings and data generated upon such inspection by a third-party vendor shall be produced in the first instance only to counsel for the party or parties whose devices were inspected, so that said counsel has an opportunity to review the same and to make appropriate determinations, if applicable, regarding confidentiality, attorneys' eyes only, privilege, and irrelevance, pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and other applicable law. Counsel shall endeavor to complete such review and designation process and to release those documents not being withheld pursuant to a claim of privilege or irrelevance to counsel requesting such documents within thirty (30) days of their receipt in the first instance from the third-party vendor, unless an extension of time is granted by agreement of counsel for the parties or court order. Counsel shall provide a privilege log for all documents withheld from production to opposing counsel upon request.

9-8. The parties have and will continue to take reasonable and proportionate steps to preserve evidence relevant to the issues in this action.

10-9. The inadvertent production of a privileged or work-product-protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

11-10. The receiving party shall not use ESI that the producing party asserts is attorney-client privileged or work-product-protected to challenge the privilege or protection.

AND IT IS SO ORDERED!

Dated:

Presiding Judge, Court of Common Pleas
Fifteenth Judicial Circuit

DRAFT

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

APPROVED:

s/ _____
 Christian Hart Staples, Esq.
 cstaples@shumaker.com
 Shumaker, Loop & Kendrick, LLP
 101 South Tryon Street, Suite 2200
 Charlotte, NC 28280

s/ _____
 Jason Daigle, Esq.
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 Clement Rivers, LLP
 25 Calhoun Street, Suite 400
 Charleston, SC 29401

Attorneys for Defendant, Joel D. Barber

s/ _____
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Attorneys for Defendant, Barber Real Estate, Inc.

s/ _____
 Lawrence M. Hershon, Esq.
 lawrence@hershonlawfirm.com
 The Hershon Law Firm, P.A.
 1565 Sam Rittenberg Blvd., Suite 103
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Attorneys for Defendants, Darcy Varney and EXP Realty, LLC

s/ _____
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 rracine@cshlaw.com
 Cranfill Sumner LLP
 2907 Providence Road, Suite 200
 Charlotte, NC 28211

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

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

Attorneys for Plaintiffs

Dated: August __, 2022

Exhibit A

1. BEGDOC (*first Bates number in document*)
2. ENDOC (*last Bates number in document*)
3. PAGECOUNT (*number of pages in document*)
4. BEGATTACH (*first Bates number of attachment range*)
5. ENDATTACH (*last Bates number of attachment range*)
6. CUSTODIAN (*name of person or location where docs came from*)
7. ALL CUSTODIANS (*to detail custodians a document has been de-duplicated from*)
8. TO (*email receiving party or parties*)
9. FROM (*email sending party*)
10. CC (*email copied party or parties*)
11. BCC (*email blind-copied party or parties*)
12. SUBJECT (*subject title for emails*)
13. DATE/TIME SENT (*date and time email was sent*)
14. DATE/TIME RECEIVED (*date and time email was received*)
15. DATE/TIME CREATED (*date and time a non-email document was created*)
16. DATE/TIME MODIFIED (*date and time a non-email document was last modified*)
17. MD5HASH (*unique document identifier*)
18. AUTHOR (*creator of a non-email document*)
19. FILENAME (*name of a non-email document*)
20. DOCEXT (*document extension*)
21. RECORDTYPE (*Email/Email Attachment/E-Doc, etc.*)
22. FILESIZE
23. NATIVEFILE (*hyperlink to native file, if any*)
24. TEXTFILEPATH (*relative path to the corresponding document textfile on the production media*)
25. CONFIDENTIAL STATUS
26. REDACTION STATUS

Staples, Christian H.

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

CAUTION: External Email

Good morning Christian,

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

Respectfully,

-Taylor

Taylor Voegel
Associate

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FORMAN LLP

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

main 843-444-1107

fax 843-444-3968

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Web

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

Staples, Christian H.

EXHIBIT 4

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

EXHIBIT 4

CAUTION: External Email

Christian:

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

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

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

Market Report Update - www.c21theharrelsongroup.com



The Harrelson Group | Century 21 <harrelsongroup-DJg3kk@property-updates.com> [Unsubscribe](#)
to me ▾

Tue, Nov 1, 8:57 AM ☆ ↶ ⋮

Hello Joel,

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

[Market Report: Bluffs sales](#)

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

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

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

Century 21 The Harrelson Group

Agent Liaison

www.c21theharrelsongroup.com

Office: 843-481-4619

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EXHIBIT 5

EXHIBIT 5

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

~~Original message~~

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

Hello Don and Karen,

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

Please be careful...

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

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

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

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

Your Realtor,

Greg Harrelson

(843) 457-7816