

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NO.: 2022-CP-37-00182
	)	
Dorothy Pierce,	)	
	)	
PLAINTIFF,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
Edwards Group Holdings, Inc.,	)	
et al,	)	
	)	
DEFENDANT.	)	
	)	
_____	)	



JANUARY 27, 2023  
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. SCOTT SPROUSE

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

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I N D E X

		<b>Direct</b>	<b>Cross</b>	<b>Redirect</b>	<b>Recross</b>
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Certificate of Reporter 39

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THE COURT: All right, this is January the 27th, 2023 term of Common Pleas here in Oconee County on our virtual motions docket. First case up is Dorothy Pierce versus Edwards Group Holdings Inc., 2022-CP-37-182. And there are several motions set on the docket. There's -- this case -- there's a motion to compel filed by the Defendant Edwards Holding Group. There's a motion for a temporary injunction filed by the Plaintiff. There's a motion to compel filed by the Plaintiff -- two motions to compel. Well, actually, there's three motions to compel on this case filed by the Plaintiff. So, I will take them in order as they are listed on the docket. We will begin with Edwards Group Holding, Inc.'s motion to compel.

Would each attorney -- Ms. Pierce, before we start with the attorneys, do you have an attorney on this case? Ma'am, I can't hear you, you are muted.

MS. PIERCE: No, Your Honor, I am pro se on this case.

THE COURT: Okay, I can hear you now. Thank you.

MS. PIERCE: Thank you.

THE COURT: All right, would the other attorneys who are participating on behalf of the Defendant state your name and who you represent?

MR. MISHKIN: Good morning, Your Honor. Max Mishkin, from Ballard Spahr, on behalf of the Journal defendants.

1 That's Jerry Edwards, Edwards Group Holdings, Edwards  
2 Printing, Riley Morningstar, The Journal newspaper, and Hal  
3 Welch.

4 THE COURT: Okay, thank you.

5 MR. BINGHAM: Your Honor, Shawn Bingham, also, from  
6 Freeman, Mathis, and Gary, also here on behalf of the Journal  
7 defendants. Mr. Mishkin will be taking the lead in arguing  
8 today, though.

9 THE COURT: Okay. Thank you.

10 MS. KNEHANS: And Your Honor, this is Dakota Knehans from  
11 Cozen O'Connor on behalf of the attorney defendants. So,  
12 that's Mr. McDuff, MJM Law, as well.

13 THE COURT: Okay.

14 MS. MOTTERN: Good morning, Your Honor. This is attorney  
15 Sarah Mottern, from Clarkson, Walsh, and Coulter, on behalf of  
16 co-defendant Mr. McDuff.

17 THE COURT: Okay. Well, Mr. Mishkin, it's your motion.  
18 Let me hear from you.

19 MR. MISHKIN: Thank you, Your Honor. I guess, before we  
20 begin, I just want to make sure to introduce for the record my  
21 colleague, Saumya, from our -- also Ballard Spahr. She'll --  
22 she is attending and has her video on. That is -- anyway,  
23 just for the record.

24 THE COURT: Well, I see her down there. My text block  
25 had her picture blocked, so I couldn't see her.

1 MS. VAISHAMPAYAN: Hi, sorry. Saumya Vaishampayan, I'm a  
2 law clerk at Ballard Spahr, along with Mr. Mishkin.

3 THE COURT: Thank you. All right, Mr. Mishkin, go ahead.

4 MR. MISHKIN: So, we identified a set of deficiencies in  
5 the Plaintiff's discovery responses in a November 22nd letter  
6 to Plaintiff. We didn't hear back a word on that until just  
7 before midnight on December 29th, when Plaintiff said that her  
8 responses were satisfactory. But they're not.

9 In particular, our motion identifies three categories of  
10 failures to fully and fairly participate in discovery that I'd  
11 like to touch on today. The first is a total failure to  
12 produce records or answer interrogatories relevant to the  
13 question of damages. You know, this is a case, a defamation  
14 case, at least as to my clients, where the Plaintiff is  
15 seeking a quarter of a billion dollars in damages. And so,  
16 understandably, we propounded document requests and submitted  
17 interrogatories to seek information that would bear out the  
18 question of Plaintiff's, you know, revenue and financial  
19 status, both prior to and subsequent to the publication of the  
20 issues in suit.

21 And we have received absolutely no records in response.  
22 It's, you know, obviously -- or I would say, obviously, a  
23 relevant issue in a case, particularly in a case where the  
24 damages sought are of this magnitude. And, you know, there  
25 are -- there hasn't been a response on the docket that I have

1 seen to our motion, so I don't know what Plaintiff's argument  
2 in response is. But that seems just like a failure to  
3 meaningfully participate in the discovery process.

4 The second is what I would describe as a total failure to  
5 identify witnesses. As set out in our motion, in our memo, in  
6 asking for people who have relevant knowledge from, you know,  
7 the facts of the -- witnesses who would be able to speak to  
8 the truth or falsity of the statements that are allegedly at  
9 issue, and then witnesses who would be able to speak to  
10 Plaintiff's claims for damages, including -- you know, she has  
11 mentioned that she sees a therapist. Her claims include pain  
12 and suffering and mental anguish, but has not identified for  
13 us a person who would be in possession of relevant information  
14 and would certainly be a person we would like to speak to.  
15 So, that sort of -- the second big category is the failure to  
16 identify witnesses.

17 And then, the third category is in response to a number  
18 of requests. For instance, as we would ordinarily do, we  
19 asked for records bearing on any prior litigation that  
20 Plaintiff has been involved in. And, of course, it's  
21 particularly relevant here, because you know, the articles in  
22 suit are articles that, for the most part, reported on  
23 Plaintiff's involvement in the prior litigation. And the  
24 response to that was largely go find them yourself, which is  
25 not a sufficient response, so long as these records are within

1 Plaintiff's custody or control. So, you know, I guess I'll  
2 pause there and see if Your Honor has any questions.

3 THE COURT: Okay. Now, have you submitted the  
4 documentation as exhibits to your motion?

5 MR. MISHKIN: We submitted them as exhibits to the  
6 memorandum, which we submitted last week. So, that's exhibits  
7 -- A is the set of interrogatories; B is the request for  
8 production; and then C and D are the responses to those  
9 respective documents. And is then, E is our deficiency  
10 letter, and then F is Plaintiff's response thereto.

11 THE COURT: Okay. Okay. All right. I need to look at  
12 that. Ms. Pierce, do you have a response?

13 MS. PIERCE: Yes, Your Honor, and I would have put my  
14 response in writing, but I have difficulty sending, because I  
15 have to be in Court physically, and in most cases, I can't  
16 really do much because I have to be present if I mail  
17 something. But I'm just going to present my response to the  
18 defendant here, right now.

19 I think that we are all at the same level that there are  
20 only three issues that they have identified. I have  
21 sufficiently responded to their requests for production.  
22 Actually, I responded beyond any of the defendants in this  
23 case because I am trying to prove my case. Now, they are  
24 saying that I have refused to provide information about my  
25 alleged damages. In the interrogatories, I stated the

1 damages. And in this case, I think they just don't understand  
2 what was going on, and I actually excused them for it.

3 When I started my face mask business, from the beginning,  
4 Mr. McDuff, Clements Electrical, they -- my business was face  
5 mask production, at the time when the world was crumbling for  
6 face masks. So, I decided to the set the business up. And  
7 when set it up, before I could even move to the launch it,  
8 McDuff -- Mr. McDuff and Clements Electrical, and my employees  
9 sabotaged everything. It took me seven months to get started  
10 again.

11 The Journal accepted to advertise my products. After two  
12 weeks, they cut me off, because Mr. McDuff advised them to cut  
13 me off. And then, while I was working hard to print fliers,  
14 get additional employees to do door-to-door marketing, The  
15 Journal goes ahead and prints all of these publications that  
16 are defamatory that -- just to run me out of town. And then I  
17 closed my business. I just shut the doors because everywhere I  
18 went in that week, there were these publications in my face.  
19 People were coming to my house. People were abusing me. I was  
20 a target of the entire community.

21 So, what is the value of my reputation? For 38 years,  
22 without a criminal record. I work so hard, 16 hours a day ---  
23 . What is the value of my reputation? 250 million is not  
24 even enough. And the rest of the damages -- these damages are  
25 going to be computed by an expert, because the damages keep

1 accumulating every day.

2 THE COURT: Well, Ms. Pierce, let me -- let me stop you  
3 right there. I understand what you're alleging, and that's a  
4 question ultimately of fact, which you allege that they have  
5 wronged you and you are seeking damages, and they deny that.  
6 And that's a question of fact. But this hearing is about  
7 discovery.

8 MS. PIERCE: Yes.

9 THE COURT: And they are alleging that they asked you for  
10 records and that you have not produced the records. Now, have  
11 you produced all of the records that you have to support your  
12 damages?

13 MS. PIERCE: I produced all of the records that are  
14 available, and the rest of the records, for example, loss of  
15 business opportunity, that's an accountant, a certified  
16 accountant going to the produce that record. That is an  
17 expert witness.

18 THE COURT: Do you have an expert witness -- and that  
19 goes to the second one. They say that you haven't identified  
20 witnesses. And you're alleging ---

21 MS. PIERCE: So ---

22 THE COURT: You are alleging economic damages, and so, do  
23 you have an expert that you have retained to testify to that?

24 MS. PIERCE: Yes, Your Honor. I haven't retained, but I  
25 am interviewing the experts.

1 THE COURT: Okay.

2 MS. PIERCE: And we still have time. I'm going to  
3 provide all the list of theses damages to them. But the  
4 expert will have to do half of that. And why can't they be  
5 patient? The trial is set for July. Or after July. And we  
6 have so much time to especially get them that.

7 And then the list of witnesses, Your Honor. I actually  
8 sent them an email and I said I was going to the update --  
9 amend the response. And I already amended the responses, and  
10 included all the witnesses up to the same -- to another  
11 defendant -- that is their attorney defendants, and I shared  
12 the documents with them. So, I listed ---

13 THE COURT: Okay. Did you file that? Did you file that  
14 with the Court?

15 MS. PIERCE: Yes, the last time I filed I included the  
16 amendment. I think that I need to verify if that is, but it  
17 should be in the system. If not in the system, then I'm going  
18 to send it to you. But I filed an amendment. And I told the  
19 general defendants I am going to amend, because once I already  
20 submitted a list of witnesses to the other defendants. They  
21 already have it. But I'm still going to amend the response  
22 and give them a list of witnesses, which is long.

23 THE COURT: Okay.

24 MS. PIERCE: And then, the last thing, they stated that I  
25 have refused to the provide the documents in my possession.

1 Your Honor, this is just harassment. The Journal defendants  
2 got all the records, court records, which they claimed they  
3 used, which really is not the case. They claimed they used  
4 the court's records to do the publications. They have all of  
5 this information. Should I really go ahead and just print the  
6 same information they already have? And it is just  
7 harassment.

8 They already have the court documents, everything. They  
9 say they used it to make their publications. And I told them  
10 that you already have these documents. And I think the  
11 lawyer's by my side, you already have the information. Why  
12 should I print the same information you already have in your  
13 system? If the judge wants me to do the same thing, which  
14 they already have, maybe I'm just going to have to print it  
15 again. But it is just some harassment on the side of The  
16 Journal defendants.

17 THE COURT: Okay. All right. Anything in response, Mr.  
18 Mishkin?

19 MR. MISHKIN: Yeah, let me just -- thank you, Your Honor.  
20 Just a few points. I mean, to answer one of the Plaintiff's  
21 questions, which is to say, what is to the value of her  
22 reputation, I would submit that that is precisely the point of  
23 fact discovery. And one way that we evaluate reputational  
24 injury is by talking to witnesses who can testify to the  
25 Plaintiff's reputation in the community before the challenged

1 publications, and then maybe who can testify to her injured  
2 reputation after them, and you know, without the ability to do  
3 that, the question remains unanswered, and it's Plaintiff's  
4 burden to the answer it ultimately.

5 I would submit, then, the second point of that, which is  
6 the Plaintiff said that she identified witnesses in response  
7 to requests from the other defendants in this case, the  
8 attorney defendants, but hasn't updated them yet to us. And  
9 frankly, there are some distinct issues involved in this case  
10 between The Journal defendants and the attorney defendants,  
11 and I don't think it's necessarily the case to say that an  
12 updated discovery response to one satisfies the discovery  
13 requests to all.

14 And then, briefly, on that last point of asking for  
15 records related to other litigation, you know, we have access  
16 to what's on the public record, of course. You know, we can  
17 go on to the Federal and State Court docket and download items  
18 that have been filed, but that is not the extent of the  
19 records that we sought. You know, we sought records relating  
20 to these cases that Plaintiff has that are unprivileged and  
21 responsive. They may not be on the docket, and we don't know  
22 what we don't know, which is precisely why it's the  
23 Plaintiff's burden to search for responsive documents and  
24 produce them, and not just say, you know, go find them  
25 yourself, so.

1           That would respond to each of the points on Plaintiff's  
2 sort of oral opposition.

3           THE COURT: Have any depositions been taken?

4           MR. MISHKIN: No, Your Honor.

5           THE COURT: Okay.

6           MR. MISHKIN: In part, because we were hoping to have  
7 sort of a closed paper record before beginning, at least, on  
8 our end, a closed paper record before we begin deposition  
9 discovery.

10          THE COURT: Okay. Let's do this. Since we are talking  
11 about discovery, Ms. Pierce has also filed a motion -- or it's  
12 three motions to compel. Let me jump down the schedule -- Ms.  
13 Pierce ---

14          MS. PIERCE: Yes, sir.

15          THE COURT: What do you claim that you have not received  
16 in discovery?

17          MS. PIERCE: So, Your Honor, I am having difficulties  
18 with Mr. McDuff, and then The Journal defendants. First of  
19 all, Mr. McDuff decided to publish -- defame me to third  
20 parties, and that's not -- and is claiming privilege. I need  
21 the privilege of Mr. McDuff, first of all, defined, because  
22 every answer he is citing privilege. He doesn't have any  
23 privilege at court.

24          When Mr. McDuff decided to defame me to my employees,  
25 defame me to everyone like I have alleged in all of my

1 pleadings, he lost the privilege. Most of his actions were  
2 fraudulent in so many ways. And then when he went ahead and  
3 published, together with his client, they published all of  
4 these defamatory statements in the newspaper for 10,000  
5 readers of Oconee County or for The Journal's newspapers, they  
6 lost their privilege.

7       So, I asked for documents related to all of this, and  
8 they have not provided any information because they cite  
9 privilege. They are not providing any sufficient documents  
10 because they are citing privilege. Now, the relationship -- I  
11 asked for some documents between Mr. McDuff and The Journal.  
12 And remember, Mr. McDuff did not connive with The Journal to  
13 print all of these defamatory articles because he was advising  
14 them. He did that at a personal level, because he was  
15 handling other cases of his other clients. So, he decided to  
16 use his relationship and friendship with The Journal to print  
17 all of these defamatory statements.

18       It's not protected by privilege in any way, but they're  
19 not giving me any documents at all. I was actually -- when  
20 Mr. McDuff sent me a few documents, five pages, I think,  
21 documents that couldn't be used for anything, irrelevant  
22 information. And yet, they have the most important  
23 information that would help me in this case. They have  
24 refused to give them. So, I just want the Court to order  
25 them, to compel them to answer every question on the

1 interrogatories and stop using these generic objections.  
2 They're generically objecting to everything, including The  
3 Journal. The Journal is objecting to everything. They are  
4 citing privilege. I want to know if The Journal had a  
5 relationship with McDuff. Who was McDuff representing,  
6 because according to this, I can't get any communication. I  
7 know McDuff talked to Riley Morningstar about all these  
8 publications.

9 Riley Morningstar interviewed McDuff as an interviewee,  
10 not as an attorney. But they are not providing anything at  
11 all. So, can the Court just help me compel them to answer all  
12 of the questions and provide all of the documents that I asked  
13 for in the interrogatories.

14 THE COURT: Okay, thank you, Ms. Pierce. Well, let's  
15 start -- I think the initial allegation was made against Mr.  
16 McDuff. And there is -- there are three separate motions to  
17 compel for three separate defendants, so I'll just -- let's  
18 just do it in the same order. Mr. Mishkin, what's your  
19 response?

20 MR. MISHKIN: Thank you, Your Honor. So, I would say, in  
21 you know, tallying these through, that we substantively  
22 responded to 43 out of 45 of the Plaintiff's interrogatories,  
23 which is to say we either responded, you know, with an answer  
24 that provided information, or an answer that said, you know,  
25 there will be documents produced to you that answer this

1 interrogatory. So, there were two out of the 45  
2 interrogatories by my count that we actually just object to  
3 as, you know, irrelevant or harassing or unduly burdensome.

4 Likewise, just again, on a rough tally, from the request  
5 for production, I counted 50 out of 64 requests for production  
6 we responded to, either with a we don't have any documents  
7 responsive to this request, or you know, the documents that  
8 are responsive to this request, we will produce them to you,  
9 you know, once a joint protective order is in place, which I  
10 think is our ordinary process. We would prefer to have a  
11 protective order in place before we begin producing documents.  
12 And Plaintiff has indicated to us that she needs a little more  
13 time to review the protective order, which is fine with us.  
14 But, I guess, what I would say is, maybe to go back to the  
15 start, is that this was a motion that was filed 12 hours after  
16 what would generously be called a meet and confer email.

17 There really wasn't any meaningful meet and confer  
18 process here, so that, you know, we were sort of caught  
19 unawares by what Plaintiff thought was deficient in our  
20 responses, having said documents will be forthcoming upon  
21 entry of a joint protective order.

22 And then we didn't hear anything back for, you know,  
23 weeks. So, I sort of take issue, both with the idea that we  
24 didn't respond, and take issue with the idea that, you know,  
25 we -- our objections are, you know, frustrating Plaintiff's

1 discovery. And I mean, to be sure, we lodged objections where  
2 we found these requests objectionable, but as is often the  
3 case, we would say, you know, we would object -- list the  
4 various objections to our request, but then say,  
5 notwithstanding those objections, we don't have any responsive  
6 -- or records responsive to this request.

7 We did that, you know, frequently. And so, it is not the  
8 case that -- the objections are not actually the reason that  
9 records weren't produced in response to the request. It was  
10 the lack of responsive records. And, just one last point,  
11 which is to say that we have subsequently produced a set of  
12 records to Plaintiff -- a set of non-confidential records to  
13 Plaintiff that, you know, we felt comfortable producing, even  
14 in advance of a protective order. And, you know, the -- once  
15 Plaintiff tells us what she thinks of the protective order and  
16 we move forward on that, then we can get into the confidential  
17 documents, but I don't think it's on us that those documents  
18 haven't been produced yet.

19 THE COURT: Okay.

20 MS. PIERCE: Your Honor, can I say something?

21 THE COURT: Let me hear from the other two attorneys, and  
22 then I'll give you the opportunity to respond since it is your  
23 motion. Ms. Knehans?

24 MS. KNEHANS: Yes, Your Honor. I just wanted to clarify.  
25 I think the third motion you're looking at is actually our

1 motion to compel Plaintiff's production. I have only seen two  
2 from Plaintiff -- two motion to compels from Plaintiff, one  
3 for the attorney defendants and one towards The Journal  
4 defendants.

5 THE COURT: Oh, you are correct. I read it wrong.

6 MS. KNEHANS: Oh, no, it's fine, I just wanted to make  
7 sure that the Court was aware.

8 THE COURT: Okay. All right, go ahead. Any response?

9 MS. KNEHANS: So, in response to Ms. Pierce's  
10 allegations, again, as with The Journal defendants, we had no  
11 notice of what the issues with our responses even were,  
12 because there was no meaningful meet and confer for us at all.  
13 Ms. Pierce did not email us or call us, let us know there were  
14 any deficiencies in her point of view. She simply filed this  
15 motion.

16 And also, in filing the motion, she filed no memorandums,  
17 so we have really no idea what she's alleging is incorrect.  
18 Looking at the substance of her interrogatories and her  
19 request for productions, she is requesting, very explicitly,  
20 privileged documents exchanged between an attorney and its  
21 client. My client, Mr. McDuff, is the attorney for The  
22 Journal defendants. We were asked very explicitly for their  
23 privileged and confidential communications and exchanges  
24 about, in general, their business as, you know, attorney and  
25 client.

1           Those are very clearly privileged, Your Honor, and to say  
2 that they are waived simply because Plaintiff is making  
3 allegations is just not -- it's very contrary to South  
4 Carolina law in general. Further, Plaintiff is saying, oh, we  
5 haven't responded to all the interrogatories. Plaintiff  
6 compounded over 70 interrogatories to Mr. McDuff, which, as we  
7 all know is over the jurisdictional allowed amount, and that's  
8 not counting subparts.

9           So, it's probably, in counting, over 100 interrogatories,  
10 which is 50 more than we are required to respond to in the  
11 beginning. Further, we have responded substantively to a  
12 majority of these interrogatories, and we've provided 23  
13 pages, not five, where the documents that we also felt  
14 comfortable producing without a protective order. Similar to  
15 Mr. Mishkin, we don't feel comfortable producing Mr. McDuff's  
16 confidential communications or confidential documents without  
17 some sort of protective order, which -- I'm with Mr. Mishkin.

18           You know, we've all talked to Ms. Pierce about, and she  
19 hasn't responded. So, now -- one, it's difficult to tell what  
20 the issues that she is pointing to are. Two, she's claiming  
21 that we need to produce very clearly confidential, privileged  
22 records and communications. And three, Your Honor, we don't  
23 -- we have fully complied where we can. We have fully  
24 responded where we can. We have records where we even  
25 understand what it is she's asking, we have responded.

1 THE COURT: Okay. All right, Ms. Mottern, anything for  
2 the record?

3 MS. MOTTERN: Nothing to add, sir. Thank you, Your  
4 Honor.

5 THE COURT: Okay. Now, Ms. Pierce, let me make sure I  
6 understand. Your allegation is that you would like the items  
7 that they have identified as privileged to be submitted to you  
8 in discovery, is that correct?

9 MS. PIERCE: You see, they're not specifying. I was  
10 specifically talking about all the documentations regarding  
11 the challenged reports. And like I told you before, Mr.  
12 McDuff did not do this on attorney-client privilege, as you  
13 can even see that his client was interviewed. No, his other  
14 client was interviewed, and McDuff himself was interviewed.

15 This was not a relation, attorney-client relationship. I  
16 just need documentation related to those articles and what  
17 communications they had with the publisher, what communication  
18 did he have connected to these defamatory articles. I didn't  
19 ask them for anything that's beyond that. And like I say,  
20 those articles are defamatory. And Mr. McDuff did not publish  
21 them, did not make The Journal publish them on any attorney-  
22 client relationship. It was a personal favor that The Journal  
23 did to a friend of theirs. So, can I have all of those  
24 communications?

25 THE COURT: Okay. Well, let me ask you this. What is

1 your response to what Mr. Mishkin and Ms. Knehans told me  
2 about a protective order on confidential information? Have  
3 you reviewed the proposed protective order?

4 MS. PIERCE: I -- when I sent them an email in December,  
5 and I told them that with Ms. Dakota -- I don't know, the  
6 attorney defendants -- I told them that I was going to amend  
7 whatever less points that I had to amend. And that is fine.  
8 I went ahead and amended. You are shaking your head, but you  
9 are lying to Court, because I went ahead and submitted an  
10 amendment with all the list of witnesses and all the details.  
11 And I'm going to provide that to the Court, because if you  
12 don't want to lie to the Court in broad daylight. And about  
13 the protective order, you said ---

14 MS. KNEHANS: ---

15 THE COURT: Hold on. Hold on. One at a time.

16 MS. PIERCE: About the protective order, it was only The  
17 Journal defendants that talked about that. The attorney  
18 defendants never at any point talked about any additional  
19 documents that were coming. They just submitted five pages --  
20 the few documents that were irrelevant, and never even told me  
21 they had any document that was coming.

22 I sent them an email, and I say I needed -- they had  
23 responded insufficiently, and I wanted them to the withdraw  
24 their objections. And I'm going to send that evidence to the  
25 Court today -- withdraw your objections and answer these

1 interrogatories in full. They never responded. Instead, they  
2 just filed a motion to compel.

3 And so, I understand that Mr. McDuff has lied a lot, but  
4 -- and then the attorneys are doing the same thing. The  
5 Journal is the only defendant that decided that we are going  
6 to need a protective order. And I've been sick in and out, so  
7 I told them that was going to review it, so that they would  
8 send me the documents they needed to send. The Journal  
9 defendant is being honest, but the attorney defendants are not

10 And the other thing, that is one less item, they are just  
11 lying that they sent -- they sent most of their requests, they  
12 sending it out to the wrong email address, either my attorney  
13 handling the other case. Or they send it to another email  
14 address for business address of mine. They are so ---

15 THE COURT: All right, hold on. Let's correct that right  
16 now. What address should they use to send documents to you?

17 MS. PIERCE: The email address that I have on file that  
18 they should be using is dorothypierce84@gmail.com. And  
19 sometimes they use that, sometimes they send it ---

20 THE COURT: Well, hold on. Mr. Mishkin, do you have that  
21 email address?

22 MR. MISHKIN: Yes, Your Honor.

23 THE COURT: All right. Ms. Knehans, do you have that  
24 email address?

25 MS. KNEHANS: Yes, Your Honor.

1 THE COURT: Okay, Ms. Mottern, do you have that email  
2 address?

3 MS. MOTTERN: Yes.

4 THE COURT: Okay. So -- now, Ms. Pierce, have you  
5 provided that email address to the Clerk of Court?

6 MS. PIERCE: Yes. The Clerk of Court has never been  
7 wrong on my email address.

8 THE COURT: Okay. All right, so -- and that is where you  
9 want all correspondence sent, is that correct?

10 MS. PIERCE: All correspondence send there. If they want  
11 to mail something, they mail it to 750 Morning Dove Lane,  
12 Seneca, South Carolina. The zip code is 29678.

13 THE COURT: Okay.

14 MS. PIERCE: If they have to mail me something.  
15 Sometimes, they mail whatever belongs to this case to my  
16 attorney in Charleston for another case.

17 THE COURT: Okay. But, everything on this case, should  
18 either be sent to that email address or the physical address  
19 that ---

20 MS. PIERCE: Yes.

21 THE COURT: --- you just gave us. Okay.

22 MS. PIERCE: Yes, Your Honor.

23 THE COURT: All the attorneys have those? Mishkin,  
24 Knehans, and Ms. Mottern.

25 MR. MISHKIN: Yes, Your Honor.

1 THE COURT: Okay. All right. So, let's -- are there any  
2 other issues regarding these motions to compel that I need to  
3 the hear about?

4 MS. PIERCE: To me, apart from them answering all of the  
5 interrogatories, and producing all of the documents, I don't  
6 have any other issues.

7 THE COURT: Okay. All right. Well, I went back and I  
8 looked. And I remember I heard earlier motions on this case  
9 back in October and it doesn't appear as though we've made  
10 much progress since the October hearing. There were motions  
11 for summary judgment and so forth that were not ripe because  
12 no discovery had taken place, and I set some time frames in my  
13 order.

14 Now, Ms. Pierce is correct when she states that July 1<sup>st</sup>  
15 is the deadline which discovery must be complete. But it  
16 doesn't look like much of anything has really been  
17 accomplished since then. So, I have looked at -- heard from  
18 the parties and looked at what's been filed. So, this is what  
19 I'm going to order.

20 MS. KNEHANS: Your Honor, my apologies. We have that  
21 motion to compel as well that hasn't been heard yet.

22 THE COURT: What now?

23 MS. KNEHANS: We have a motion to compel as well and that  
24 hasn't been heard yet.

25 THE COURT: Okay, that's what -- okay, tell me what you

1 are lacking, what you ---

2 MS. KNEHANS: It's pretty much the identical argument as  
3 Mr. Mishkin. We are lacking the addresses and contact  
4 information of witnesses, and the identification of certain  
5 witnesses. We are lacking a majority of the documents that  
6 we've asked for. We are also lacking any information about  
7 Plaintiff's alleged damages. And the records of her previous  
8 legal issues, outside of what she has with Mr. McDuff, as well  
9 as documents concerning, you know, any of the communications  
10 she alleges that we've had with her employees or with, you  
11 know, her other parties.

12 THE COURT: Okay. So essentially, the same information  
13 that ---

14 MS. KNEHANS: Yes, Your Honor.

15 THE COURT: --- Mr. Mishkin -- and Ms. Pierce, again, it  
16 -- if I'm understanding your response to that, you were  
17 waiting until you had hired an expert and you were going to  
18 supplement your responses at that time. Is that what you are  
19 telling me?

20 MS. PIERCE: Yeah, they already have the list of what my  
21 damages are. They are needing the figures, which I'm going to  
22 have the expert present to them.

23 THE COURT: Okay.

24 MS. PIERCE: And they are going to have that. And the  
25 list of witnesses, Mr. McDuff already has an update. If they

1 need the addresses, some of these -- it's just about updating,  
2 because the witnesses that I am actually calling are the  
3 witnesses that employees of The Journal defendant. And they  
4 are going to be represented. The address is going to be The  
5 Journal defendants' attorney.

6 And also, their employees, the attorney employees, and  
7 the address is going to be with the lawyers of the attorneys.  
8 And then the rest of others, I think I'm just going to update  
9 them and then give them the addresses. And about ---

10 THE COURT: Ms. Pierce, let me stop you right there.  
11 They are not under obligation to call witnesses for your case.  
12 So, even though a witness may be employed with the defendant,  
13 if you intend to the call that witness -- because as  
14 Plaintiff, you have the burden of proof in the case.

15 MS. PIERCE: Yes.

16 THE COURT: So, if you intend to call that witness, you  
17 need to list them, okay.

18 MS. PIERCE: I did that. I'm only supplementing the  
19 address.

20 THE COURT: Okay. Okay. All right. Well, this is what  
21 we are going to do. On these -- the defendant's motion to  
22 compel -- it sounds like it's identical information that they  
23 need. The Plaintiff shall provide all records relating to  
24 damages that is in her possession within 15 days. She will  
25 also provide a complete witness list that are -- of any

1 witnesses that she intends to call in her case within 15 days,  
2 along with any -- the address that knows. She will have the  
3 right to supplement her response if new witnesses come  
4 available or in the event that she retains an expert witness,  
5 she will have the right to supplement her response at that  
6 point.

7       However, this will all operate within the context of the  
8 July 1<sup>st</sup> deadline of discovery. I'm not amending the deadline  
9 for discovery. Now, as to Ms. Pierce's motions, any matters  
10 or any documents that the defendants claim as privileged,  
11 defendants will compose a privilege log of any documents  
12 claimed as privileged along with a copy of the document and  
13 they will submit those to the Court for an in camera review.  
14 Also -- and that would be done within 30 days. A protective  
15 order will be circulated -- or the protective order that has  
16 been circulated would be submitted to the Court within 15  
17 days, along with the response from Ms. Pierce, and I will look  
18 at the proposed protective order along with Ms. Pierce's  
19 response. And the Court will determine what will go into that  
20 order.

21       So, are there any other discovery -- and then, after I  
22 conduct an in camera review of the privileged documents, I  
23 will issue an order of what's discoverable and what's not.  
24 So, are there any other matters that I haven't covered  
25 regarding discovery?

1 MS. KNEHANS: No, Your Honor.

2 THE COURT: Okay. All right. So, let's move on to the  
3 next issue. It looks like we will go now to the motion for a  
4 temporary injunction that was filed by Ms. Pierce and this ---

5 MR. MISHKIN: Sorry, Your Honor. Apologies for chiming  
6 in late. One -- just because, I wouldn't want Your Honor to  
7 feel sandbagged, I don't know my client's position about  
8 presenting -- to the extent that there are news gathering  
9 materials. There are some -- some publishers take the  
10 position that even producing them to the Court for in camera  
11 review is something that they might wish to weigh in on. So,  
12 I'm not lodging an objection to that now. I'm merely saying  
13 that I sort of want to reserve the right to raise the question  
14 about whether we object to in camera review of the privileged  
15 materials, without -- again, without getting ahead of  
16 anything. Again, because I wouldn't want Your Honor to be  
17 caught by surprise.

18 THE COURT: Okay. Well, you file something, we will  
19 address it.

20 MR. MISHKIN: Thank you. I appreciate it, Your Honor.

21 THE COURT: Ms. Pierce, you had a question?

22 MS. PIERCE: I don't know how they can prove that  
23 whatever they published that are defamatory is accurate  
24 without their sources, without releasing their sources.

25 THE COURT: Okay. Well, that's what I want to -- I want

1 to see what is being claimed, and then I want to look at it.  
2 But Ms. Pierce, you understand, in camera review means that I  
3 look at it and it's not disseminated to the parties.

4 MS. PIERCE: Yes.

5 THE COURT: And then I'll make a determination of whether  
6 it's privileged or not. This is commonly done when there's a  
7 discovery dispute involving something -- for instance,  
8 attorney-client privilege. That's a common response on this.  
9 So, we will see. I'll look at that, and then if the Court  
10 determines it's privileged, it's not discoverable. If it's  
11 something that the public and not confidential and not subject  
12 to privilege, then the Court will allow it to be discovered.  
13 But that's for review, okay.

14 MS. PIERCE: Okay, yes.

15 THE COURT: So, let's look at Ms. Pierce's motion for a  
16 temporary injunction. So, Ms. Pierce, state what you are  
17 seeking in this motion.

18 MS. PIERCE: Your Honor, these publications have been up  
19 -- they are on the website of The Journal, and they are also  
20 in the national database of NewBank, Inc. These publications  
21 are outright defamatory, and I have provided all of the  
22 evidence and proof that they are defamatory to the defendants.  
23 The deadline for this case going to trial is one year apart.  
24 And while I say that is that I think that I have the legal  
25 right to be protected from all the harm that comes as a result

1 of these publications while we are waiting for the litigation  
2 of my case to be decided upon.

3 And according to my paperwork, I have submitted the legal  
4 -- the case laws that will support that. These publications  
5 are so defamatory to the extent that first of all, my son  
6 Googled me -- my 16-year old child Googled me, and found all  
7 these defamatory statements online. My other daughter read  
8 the same information, she's 14. My 11-year old thinks that  
9 America is a terrible place, I am not safe here. Apart from  
10 that, every business negotiation, any communication that I get  
11 into, it ends up somebody Googling my name and finding all of  
12 these defamatory statements, and no one wants to talk to me  
13 anymore.

14 I have people coming to my house in the middle of the  
15 night. Since the publication, I am afraid for my own life.  
16 These publications are so, so harmful to me to the extent that  
17 they have caused me harm that I don't know when I can -- if I  
18 can repair them. My businesses have all gone down. I have  
19 listed these things in my -- in their response, in my response  
20 to their interrogatories. And Your Honor, I am just asking  
21 that whatever they published is defamatory. And they don't  
22 have any privilege.

23 Can the Court just protect my rights. And if I don't  
24 have any right at all maybe on a personal level, maybe I  
25 deserve to be protected and let this article be taken down

1 until litigation ends. And then, after that, whatever the  
2 Court decides. If the Court -- I know I'm going to win,  
3 because I have so much evidence, and actually submitted a lot  
4 of evidence to them. That's why they are not asking for any  
5 other documents apart from three, because I submitted evidence  
6 beyond a reasonable doubt. Can the Court protect any rights  
7 that I have, if I have any, and let them take these articles  
8 down until that time when my litigation has come to an end.  
9 I'm only ask ---

10 THE COURT: Well, Ms. Pierce, let me ask you this. Now,  
11 is your request that the Court issue an order preventing a  
12 newspaper from printing an article? Is that what you're ---

13 MS. PIERCE: No, the article has already costed -- the  
14 ones that have been printed already, the defamatory ones.  
15 Because they have -- I'm not talking about the ones that is in  
16 the print. I'm talking about the ones they have posted  
17 online, because people keep -- when somebody Googles my name,  
18 those articles pop up. They have them on the Internet. Can  
19 they take those defamatory articles down? Can the Court order  
20 them temporarily to take the articles down until my litigation  
21 -- you know, until the end of the litigation of this case.

22 THE COURT: Ms. Pierce, we have an issue here with -- we  
23 have several laws and rules of civil procedure that we've been  
24 dealing with, and state law regarding these discovery  
25 requests. But now, this gets off into constitutional issues.

1 The newspaper is part of the press and that's a fundamental  
2 Constitutional right. Do you have any authority that you can  
3 cite to me that this Court has the authority to issue a --  
4 because what this would amount to is a prior restraint, is the  
5 term that the law uses for me to order the press not to print  
6 an article or not to display. You are asking me -- and  
7 there's two questions on that. I don't know if something's  
8 out in cyberspace whether you can actually take it off Google,  
9 even if I had that power to do that. So, do you have any case  
10 law ---

11 MS. PIERCE: Yes.

12 THE COURT: --- or anything ---

13 MS. PIERCE: I do.

14 THE COURT: --- you want me to look at?

15 MS. PIERCE: Yes. And first of all, Your Honor, falsely  
16 claiming that someone is a criminal is unconstitutional.  
17 Because whatever they publish, they claim that I am a  
18 criminal, that I have scammed \$16,000 from a company, and that  
19 is not true. I have provided them evidence. The case is  
20 pending in Court. There is no way they can claim I am a  
21 criminal, because it's unconstitutional.

22 They said I am a con artist, and how would I con my own  
23 husband that I have been providing financial support to. I  
24 have been -- I have provided all of the evidence to The  
25 Journal defendants that actually dispute every false

1 allegation that they published in their print media. Now, I  
2 am protected by law like Levine versus Spartanburg Regional  
3 Services District. It says to obtain an injunction, the  
4 Plaintiff must allege facts sufficient to the constitute a  
5 cause of action for injunction and demonstrate that the  
6 injunction is reasonably necessary to protect the legal rights  
7 pending in the litigation, Levine versus Spartanburg Regional  
8 Services District Incorporated.

9 I have a legal right that needs to be protected pending  
10 this litigation, and I'm only talking about them taking down  
11 all the defamatory publications that are at -- in dispute in  
12 this action.

13 THE COURT: Okay. But again, do you have any case law  
14 that gives me the authority to do that?

15 MS. PIERCE: Yes. Yes. It's in my documents.

16 THE COURT: Okay. Okay. I'll look at what you have  
17 filed. Mr. Mishkin?

18 MR. MISHKIN: Thank you, Your Honor. So, I think Your  
19 Honor has sort of already identified the crux of the issue,  
20 which is that this is not about civil discovery rules, this is  
21 about sort of fundamental First Amendment principals and the  
22 relief that the Plaintiff is requesting is antithetical to the  
23 First Amendment. And just to clarify a question -- or to  
24 offer our answer to a question that Your Honor asked Plaintiff  
25 is that yes, this is a request for both a take down of

1 articles that are currently published on matters of public  
2 concern that have not been adjudicated as defamatory. And a  
3 request that in the words of the prayer for relief, a  
4 temporary order of injunction that would prevent The Journal  
5 defendants from making any publications whatsoever about the  
6 Plaintiff pending the disposal of the Plaintiff's amended  
7 complaint. So, it is both a take down and a open-ended prior  
8 restraint on any publication about the Plaintiff.

9       You know, I think our paper set out to the extraordinary  
10 standard that a party seeking a prior restraint on speech has  
11 to the satisfy, and that, you know, it's the sort of true  
12 movements in battle. You know, this doesn't -- you know, sort  
13 of, alleged reputational harm of articles that are in suit  
14 doesn't rise anywhere near to that. And, you know, I  
15 certainly can't cite any authority to Your Honor where a  
16 defamation Plaintiff has successfully obtained a take down of  
17 the articles in suit prior to the adjudication of the  
18 articles.

19       The defamatory, you know, not to go down a rabbit hole,  
20 but there is split of authority about even whether after the  
21 adjudication the publications are defamatory, whether it's  
22 constitutional to order them to be taken down. You know,  
23 obviously, that's not where we are here, and that's an  
24 interesting academic argument, not one that the we need to get  
25 into, but the notion that you can have a take down order prior

1 to the adjudication of the, you know, the defamation claim is  
2 nowhere to be found in the law. And just in addition to that,  
3 I mean, the one authority that Plaintiff cited, the Levine  
4 case, which is sort of a run of the mill injunctive relief  
5 case, does speak to our other argument, which is that the  
6 Plaintiff hasn't even satisfied -- setting aside the First  
7 Amendment issues, there's the ordinary three-prong test for  
8 injunctive relief, which also fails here, right.

9       There's no -- reputational harm is not irreparable. It's  
10 addressed by money damages. We have put forward our argument,  
11 and why the Plaintiff is actually likely to succeed on the  
12 merits. Her, you know, views on the matter notwithstanding.  
13 And then, of course, there is an adequate remedy of law, which  
14 again, is the claim that she's bringing in this very case.  
15 So, both for the constitutional issue and just as a matter of  
16 ordinary equity principals, we would ask that the Court deny  
17 the motion.

18       THE COURT: Okay. Ms. Pierce, any response?

19       MS. PIERCE: Your Honor, the First Amendment is a battle  
20 sword. Imagine somebody is allowed to the freely express  
21 themselves, their expression must not cause harm to the other  
22 person. So, this Court has to the look at both sides. Their  
23 freedom of speech has been infringing on my right in causing  
24 harm to me on a daily basis. And they -- is that  
25 constitutional? That is not constitutional. They have

1 claimed I am a criminal. The constitution does not protect  
2 someone who falsely accuses another person of committing a  
3 crime. That is unconstitutional.

4 And then, for them to argue that I have to pass three  
5 arguments for the likelihood of the success of my merits -- of  
6 course, I'm going to succeed in this litigation. I'm going to  
7 prevail, and they already know, but they are just using that  
8 right now as an excuse. And they claim that I should state  
9 irreparable harm. How much harm do they want to continue to  
10 inflict? I have already stated everything.

11 I have fear to sleep in my house. My family is Googling  
12 me. My children are doing -- my business is being interrupted  
13 on a daily basis. I cannot come out of that. I cannot  
14 recover from it. And then, I have also mentioned to the  
15 Court, I don't have any remedies at all. Because I ask the  
16 Court in the previous hearing, that let us expedite this  
17 hearing, so that I can get these articles taken down after I  
18 succeed, but the deadline is set for one year apart upon the  
19 request of the defendant.

20 What legal remedy do I have apart from seeking a  
21 temporary injunction? It's not a permanent. He's talking  
22 about a permanent take down, but this is just a temporary  
23 injunction. Please, take them down until the litigation is  
24 decided upon. And then after that, you can give them back or  
25 you can permanently take them down. This is just temporary,

1 Your Honor. And the Court has to the protect me in some way  
2 and the law provides for that protection, both  
3 constitutionally and the legal case law that I have here.

4 THE COURT: Well, Ms. Pierce, I want to look at what  
5 you've filed. But again, I have grave constitutional concerns  
6 that I -- that what you are seeking is outside my authority  
7 under the Constitution. But I will go back and read what you  
8 have submitted and I'll take this issue under advisement. And  
9 I'll have my law clerk send all of you a decision. Now, is  
10 there anything else that we need to deal with on this  
11 particular case number, 182?

12 MS. PIERCE: I have a question, Your Honor.

13 THE COURT: Yes, ma'am.

14 MS. PIERCE: Would it be possible for the Court to allow  
15 me to amend my complaint? I have discovered so much  
16 information in the last ---

17 THE COURT: Okay, well you ---

18 MS. PIERCE: --- several weeks.

19 THE COURT: You are outside the time frame for just being  
20 able to amend it without a motion. You would have to make a  
21 formal motion and serve the other parties, and then they would  
22 have the opportunity to be heard on that, so.

23 MS. PIERCE: Okay, I will do that.

24 THE COURT: I'll refer you to look at the Rules of Civil  
25 Procedure and then act accordingly.

1 MS. PIERCE: Thank you, Your Honor.

2 THE COURT: Okay.

3 MS. PIERCE: Yes.

4 THE COURT: All right. So -- and Mr. Mishkin, Ms.  
5 Knehan, Ms. Mottern, anything further?

6 MR. MISHKIN: Nothing from The Journal defendants, Your  
7 Honor, thank you.

8 MS. KNEHAN: Nothing from the attorney defendants, Your  
9 Honor.

10 THE COURT: Okay.

11 MS. MOTTERN: Nothing from us, Your Honor.

12 THE COURT: We'll close the record on case 182. Thank  
13 you.

14 MS. PIERCE: Thank you.

15 End of Transcript.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED MONA L. MANLEY, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL REQUESTED PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT OF OCONEE COUNTY, SOUTH CAROLINA, ON THE 27<sup>TH</sup> DAY OF JANUARY, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

January 15, 2024

Mona L. Manley

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