

Exhibit 1

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SC Court of Appeals

Husband's Response to Wife's Proposed Findings of Fact

Response to Abstract

Wife's abstract is full of conjecture and overstatements that are not supported by the evidence. As explained below, Wife and her purported experts consistently confuse the devices involved, both in their number and their audio-recording capabilities. Further, just the fact that a device *could have* recorded audio is not enough to establish a violation of the Act. Even if it could, such a recording was not intentional and other defenses to the Act apply. Thus, the Court should not adopt Wife's proposed findings and instead recommend that no violation of the Act has occurred.

Response to Proposed Findings of Fact

1. Husband admits that Wife signed a lease for 664 McCutchen Street, Charleston, SC 29412 ("McCutchen House").
2. Husband admits that the parties first separated on February 21, 2021.
3. Husband denies that he did not reside at McCutchen House.
 - 3.1. In fact, Charleston County revoked Husband's legal resident property tax status for his prior residence at 7312 Eddy Farm Road, Hollywood, SC 29449 ("Eddy Farm"). (Resp. App'x at 304, ¶ 5.)
 - 3.2. Husband also frequently stayed at McCutchen House overnight on many occasions. (Resp. App'x at 304, ¶¶ 4–7.)
 - 3.3. As further evidence that Husband and the family resided at McCutchen House, Husband provides sworn testimony that the family stayed together at Eddy Farm briefly for Christmas 2021, but then went on a vacation together for the holiday and all returned to McCutchen House. (Resp. App'x at 305, ¶ 7.) When Husband moved out of McCutchen House in June 2022, and returned to Eddie Farm, he

had to take the Christmas tree and decorations down that had remained up since Christmas 2021 because nobody was living at Eddy Farm. (*Id.*)

4. Husband denies that he did not frequently live at McCutchen House for the reasons set forth above. He does admit, however, that he did not return to McCutchen House for overnight stays after July 29, 2022.
 - 4.1. Wife's reliance on the August 19, 2021 text message takes that message out of context.
 - 4.2. Husband objects to the Court's consideration of the proposed June 6, 2022 stipulation under Rule 408, SCRE. Husband provided this draft stipulation to Wife as part of settlement negotiations between the parties, so the draft and any facts referenced therein are inadmissible. Wife's findings even concede that the parties exchanged settlement agreements in June 2022. (*See* Wife's Proposed Findings at 11, ¶ V.B–C.) In any event, Wife rejected the draft stipulation, making it a nullity and non-binding.
 - 4.3. Even if the Court considers the draft stipulation, Wife misconstrues its contents. (Resp. App'x at 299, ¶¶ 6–7.)
5. As Wife concedes, Husband did stay overnight at McCutchen House on July 6, 2022, and July 29, 2022. Husband denies that he did not spend the night at McCutchen House after May 29, 2022.
6. Wife's allegation that Husband left his iPhone in a car on May 17, 2021, is irrelevant to Wife's Homeland Security Act claim as the iPhone was locked and not recording any video or audio.

- 6.1. In any event, the allegation is inaccurate. Husband left his iPhone in his car that Wife used on or about May 17, 2021, and Husband looked at the location of his iPhone when Wife was using his car because he believed Wife was untruthful about her whereabouts.
- 6.2. Wife did say she wanted a divorce and the parties were separated in February 2021, but the parties subsequently attended marriage counseling, ceased communicating with the attorney representing them at that time, went on trips together (both as a family and just the two of them), moved in together, went on date nights, and reconciled their marriage. The May 17, 2021 text messages predated all of those developments. Neither of the parties were concerned about divorce or evidence gathering after they reconciled and resumed cohabitation in June 2021.
7. Husband admits that on May 17, 2021, he did tell Wife that he had not been entirely truthful with her.
 - 7.1. Husband did so based on recommendations from the parties' marriage counselor and was based upon the issues Wife told Husband he needed to work on to improve their relationship. (Resp. App'x at 309, ¶¶ 44–45.)
8. Husband admits that on August 19, 2021, he did tell Wife he was not spying on her.
 - 8.1. By that time, Husband did have his private investigator, John Clayton ("Investigator"), monitoring her movements and conducting surveillance. Husband hired Investigator on or around June 15, 2022, when he began to suspect Wife was having an affair. (Resp. App'x at 164, ¶ 19.)

- 8.2. As detailed in Husband’s affidavit, his retention of Investigator was independent of any of Wife’s allegations that Husband was illegally intercepting her communications in violation of the Homeland Security Act. (Resp. App’x at 306, ¶ 15.)
9. Wife’s allegation that “thirteen covert recording devices” connected to the Wi-Fi network at McCutchen House is irrelevant to Wife’s Homeland Security Act claim as Wife fails to allege these devices recording audio, contemporaneously or otherwise.
- 9.1. Husband objects to the Court’s consideration of the router logs from McCutchen House relied upon by Mr. Bumgarner, (Resp. App’x at 224–34), under Rules 802, 901, 1002, and 403. Wife has provided no evidence as to the authenticity of these third-party records.
- 9.2. The records also are demonstrably inaccurate in at least three respects:
- 9.2.1. The proposed finding states that the router logs from McCutchen House “indicated thirteen covert recording devices had connected to the Wi-Fi network.” The support for this proposed finding is the router log with summary, which identifies only twelve devices. (Resp. App’x at 224–34.)
- 9.2.2. The router logs also show a connection of “Dans-iPhone” as connected to the McCutchen House Wi-Fi on June 12, 2023. (Resp. App’x at 230.) This device is the iPhone of non-party Daniel Walden who provided an affidavit to the Court of Appeals confirming he was in Minnesota on June 12, 2023. (Resp. App’x at 185–86, ¶ 5.)
- 9.2.3. A similar scenario happened with a babysitter, Madisen Lamp, who owned a device known as “Madisen’s Air.” (Resp. App’x at 183–84.) The router

logs on which Mr. Bumgarner relies state that this device connected on June 6, 2023, (Resp. App'x at 226); however, Ms. Lamp testified that she had not been to McCutchen House since February 2022. (Resp. App'x at 183–84, ¶¶ 6–7.)

- 9.3. The router logs also are not accurate and should not be relied upon by this Court for such a drastic remedy as suppression, especially when Wife essentially seeks dismissal of the entire divorce based on her request to suppress the Complaint. (Resp. App'x at 191, No. 3.)
- 9.4. Even if the Court could consider these router logs, Wife's use of them is speculative at best. The various unknowns about these logs and the evidentiary uncertainties above confirm that the danger of unfair prejudice to Husband in using these un-authenticated and inaccurate router logs substantially outweighs the logs' probative value.
- 9.5. Regardless, Husband denies Wife's allegations that thirteen covert recording devices connected to the Wi-Fi network at McCutchen House.
- 9.6. Furthermore, Wife and her purported experts continue to be inconsistent with their claims as to the number of cameras and whether those cameras recorded audio. Husband details these inconsistencies beginning on page 28, below.

Response to Alleged Violations of the Homeland Security Act

I. Camduck

10. Responding to paragraph A, Husband admits that on January 30, 2022, he purchased the LUOHE TY-BK camera ("Camduck").
 - 10.1. Husband admits this is the purchase receipt for the Camduck.

10.2. Wife concedes that the sound function of the App associated with the Camduck was turned off, which should be the end of the inquiry under the Homeland Security Act. As her purported expert explains, he has “confirmed beyond a shadow of a doubt that this device had audio recording capabilities, *which had to be manually enabled by the user controlling the device.*” (Resp. App’x at 99–100, ¶ 39.) Stated another way, the Camduck’s “microphone has to be manually enabled by the user configuring the camera for deployment.” (Resp. App’x at 273.)² And another: “All 3 of the CamDuck cameras purchased by [Husband] had built-in internal microphones, *which are disabled when shipped from Amazon.*” (Resp. App’x at 119, ¶ 22.)

10.3. Husband does not have enough information to admit or deny whether the sound function can be activated on the Camduck because:

10.3.1. Husband never even knew the Camduck could record audio (and still is not convinced to this day that the Camduck did record audio), (*see* Resp. App’x at 306, ¶ 16);

10.3.2. Husband did not activate the audio on the Camduck and has never reviewed any videos from the Camduck having sound, contemporaneously or otherwise, (*see* Resp. App’x at 306, ¶ 17); and

² The Camduck is not the only camera that did not have readily accessible audio. As Wife’s purported expert John Bumgarner explained to Wife’s counsel in January 2024, there “are at least 12 cameras that have the capability to record audio. Some of the purchases show that audio was included. Some of the vendors don’t mention audio, because it’s not enabled by default. It has to be turned on like the CAMDUCK did.” (Resp. App’x at 275.)

- 10.3.3. The Camduck remains in Wife’s possession and Husband has not been able to retain an expert to verify Wife’s allegations for the reasons detailed starting on page 33, below.
- 10.4. Bumgarner’s testimony should be ignored by this Court for the reasons set forth starting on page 28, below.
- 10.5. Even if the Court considers this testimony, Wife has presented no evidence that Husband ever activated the sound functionality on any recording device, including the Camduck. The Court should reject Mr. Bumgarner’s speculative allegation that “[w]e know that the Respondent was most likely informed by LUOHE, as was McDougall Self Currence McLeod, about enabling audio on the camera.” (Resp. App’x at 94–95, ¶ 28.) There is no support for Mr. Bumgardner’s knowledge about what LUOHE “likely” informed Husband. (*Id.*) This is especially true because Husband has never contacted LUOHE and was never informed that the Camduck even had audio capabilities. (Resp. App’x at 306, ¶ 18.)
- 10.6. Merely alleging that the Camduck *could have* recorded audio unbeknownst to the alleged intercepting party is not sufficient to state a claim under the Act for the reasons set forth in paragraph 57, below. Thus, Wife failed to establish that Husband intentionally intercepted her communications in violation of the Act.
11. Responding to paragraph B, Husband admits that on February 8, 2022, he downloaded the CIXICM mobile application—the application associated with the Camduck—on his iPhone XS.

- 11.1. Bumgarner’s screenshots appear to be from the Camduck App, which he claims is the precursor to the CIXICM application. (Resp. App’x at 113–19.) This is not the same app as the CIXICM app Husband used. Husband did not use the Camduck App. (Resp. App’x at 306, ¶¶ 19–20.)
12. Responding to paragraph C, Husband has not been permitted to depose Wife and otherwise lacks sufficient information to be able to admit or deny this paragraph. Husband does not allege Wife downloaded the application, however.
13. Responding to paragraph D, Husband admits that he originally took the Camduck to McCutchen House while he was staying there.
 - 13.1. Husband originally purchased the Camduck for work. He first noticed it had been removed from the law firm around August 20–24, 2022. (Resp. App’x at 183, ¶ 4.)
 - 13.2. Husband did not place the Camduck in Wife’s bedside cabinet. (Resp. App’x at 183, ¶¶ 5–6.)
 - 13.3. Wife admits that she placed the Camduck there. (Resp. App’x at 53, ¶ 4.)
14. Responding to the “Supplemental Response” to this paragraph D provided by Wife to the Court on March 4, 2024, Husband denies Wife’s insinuation that he took the Camduck to McCutchen House to record any audio.
 - 14.1. Wife’s claim that Husband has somehow admitted any of Wife’s requests does not comport with Rule 36, SCRCR, and is contradicted by the record. Wife claims that Husband’s responses and supplemental responses “fail to deny that he took the Camduck to” McCutchen House. (Resp. App’x at 21.) But Wife never asked Husband to admit he took the Camduck to McCutchen House in her First

Set of Request to Admit. (Resp. App'x at 213–15.) Thus, Husband could not have failed to deny something he was not requested to admit.

- 14.2. Additionally, Wife has not raised any issue with Husband's responses to any requests to admit about taking the Camduck to McCutchen House since January 2024, much less filed a motion to challenge Husband's discovery responses. Wife did so with other requests during the second status conference on January 12, 2024, which the Court directed Husband to supplement. (See 2d Status Conference Order ¶¶ 11, 14, Jan. 16, 2024.) Wife, however, has failed to raise any other challenges to Husband's request for admission responses.
15. Responding to paragraph E, Husband denies ever placing the Camduck in Wife's bedroom at McCutchen House, much less "using" the Camduck on May 14, 2022. (Resp. App'x at 306, ¶ 21.)
 - 15.1. It is pure speculation to state that Husband was using the Camduck based on a photograph of a USB tower dated May 14, 2022. Wife's purported experts have testified the Camduck was *inside* the cabinet, and there is no evidence the device in the photograph was not just another USB tower the parties owned. (Resp. App'x at 53, ¶ 5.)
 - 15.2. Notably, Wife provides no record showing the Camduck was connected to Wi-Fi on May 14, 2022.
16. Responding to paragraph F, Husband denies connecting the Camduck to the Wi-Fi at McCutchen House on May 15, 2022. (App'x at 307, ¶ 23.)
17. Responding to paragraph G, Husband admits that he was at McCutchen House on May 15, 2022, because he was living there at the time. (Resp. App'x at 304, ¶ 4.)

- 17.1. Husband was at McCutchen House taking care of the parties' daughter that day. (App'x at 265.)
- 17.2. The parties were in the process of purchasing McCutchen House and were set to go on a family vacation to Outer Banks the next week. (Resp. App'x at 309, ¶47.)
18. Responding to paragraph H, Husband has no reason to contest that he was using an iPhone XS on May 15, 2022, or that he used that phone to take the picture of him caring for the parties' youngest child.
19. Responding to paragraph I, Husband objects to the Court's consideration of this proposed finding as it is purely speculative.
20. Responding to paragraph J, Husband disputes this claim. Wife's cited support—paragraph 39 of Bumgarner's Fifth Affidavit—does not make this allegation. (Resp. App'x at 99–100, ¶39.)
- 20.1. In any event, Husband denies that he remotely accessed the Camduck to listen to audio. (Resp. App'x at 306, ¶17.)
21. Responding to paragraph K, Husband denies he was remotely managing the Camduck on August 27, 2022.
- 21.1. Husband has not seen the video referenced by Wife in paragraph I.K.c., so he cannot admit or deny any allegations about its contents.³

³ Husband does not want the video and has no intentions of using it as evidence against Wife in any litigation. That said, he disagrees with Wife's assertion that the Act would prohibit Wife from providing the video to the Court and counsel for review if she intends to rely on it as evidence.

- 21.2. Again, however, Husband did not remotely access the Camduck or delete anything from the Camduck on August 24 or 27, 2022, as alleged by Wife. (Resp. App'x at 308, ¶ 24.)
22. Responding to paragraph L, Husband denies that any evidence establishes the Camduck recorded cognizable audio at McCutchen House that was accessible to Husband, contemporaneously or otherwise.
- 22.1. As an initial matter, Husband has not seen the video referenced by Wife in paragraph I.L.a., so he cannot admit or deny any allegations about its contents.
- 22.2. Furthermore, Husband denies these allegations for the reasons set forth in paragraphs 10.3.1–10.3.3, above.
- 22.3. Even if the Camduck did record Wife with the parties' children, such recordings would not be cognizable under the Act as Husband can vicariously consent for the recording of his children's conversations. *See State v. Whitner*, 399 S.C. 547, 554, 732 S.E.2d 861, 865 (2012) (“We are persuaded that the consent provision in the Wiretap Act encompasses vicarious consent.”).
23. Responding to paragraph M, Husband denies that any evidence establishes the Camduck recorded cognizable audio of conversations between Wife and third parties at McCutchen House that was accessible to Husband, contemporaneously or otherwise.
- 23.1. As an initial matter, Husband has not seen the video referenced by Wife in paragraph I.M.a., so he cannot admit or deny any allegations about its contents.
- 23.2. Even taking Wife's allegations as true and ignoring the vicarious consent issue, Wife fails to establish that Husband had access to any audio recordings from the Camduck, much less contemporaneous audio recordings.

24. Responding to paragraphs N–S, Husband does not have the technical abilities to admit or deny these allegations.

24.1. Husband needs the ability to retain an expert to counter these allegations. For the reasons explained starting on page 33 below, the current posture of the case and Wife’s litigation tactics to date have prevented Husband from being able to afford an expert.

24.2. Husband seeks leave to amend his responses to these paragraphs should he be able to afford an expert.

II. SCS WF-113 Cameras

25. Responding to paragraph A, Husband admits he purchased the referenced device, which did not record audio and was never located at McCutchen House. (Resp. App’x at 262–63.)

26. Responding to paragraph B, Husband admits he purchased and installed the IOT Living application on his Apple account and iPhone and that this application allowed remote access to connected SCS devices.

27. Responding to paragraph C, Husband admits he purchased the four SCS WF-113 devices and that such devices did not capture audio. (Resp. App’x at 262–63.)

28. Responding to paragraph D, Husband has no information as to when Wife discovered a SCS WF-113 device in her garage other than what Wife has said to him, which is inconsistent with this assertion. Wife has told Husband in the past that she moved this SCS device from the garage to other parts of McCutchen House to help charge an iPad for one of the parties’ sons. (Resp. App’x at 307, ¶ 22.) On August 9, 2023, Wife also told Husband she found this device in the garage. (Resp. App’x at 307, ¶ 22.)

- 28.1. Husband also admits that he did use a non-audio SCS camera in the parties' garage at McCutchen House while living there.
- 28.2. That said, this reference to a non-audio SCS camera is irrelevant because it has no bearing on the claim under the Act, except for the numerous inconsistencies about whether this device has audio capabilities as is discussed starting on page 28, below.
29. Responding to paragraph E–F, Husband denies that only two of the four SCS WF-113 devices that did not capture audio were ever used at the McCutchen House and affirmatively states that each of these devices connected to the Wi-Fi at the McCutchen House at some point.
- 29.1. This again illustrates the inaccuracy of the router logs relied upon by Wife's purported experts.
30. Responding to paragraph G, Husband admits he purchased the referenced SCS WF-113 device.
31. Responding to paragraph H, Husband admits he purchased the referenced SCS WF-113 devices.
32. Responding to paragraph I, Husband admits he purchased the referenced SCS WF-113 devices.
33. Responding to paragraph J, Husband denies violating the Homeland Security Act.
- 33.1. Wife's allegation here ignores that Husband expressly qualified his admission: "Admitted as qualified. Husband admits that he placed two devices with audio capability inside of [McCutchen House] with Wife's knowledge and/or consent." (Resp. App'x at 213.)

- 33.2. As detailed beginning on page 24 below, merely installing cameras with audio capability inside Wife's home is insufficient to establish a violation of the Act. This is especially true in the absence of intent, or with a party's knowledge of the recording device.
34. Responding to paragraph K, Husband has no knowledge of the SCS WF-113 device alleged used in the kitchen at the McCutchen House on August 28, 2022,
- 34.1. Husband did inadvertently leave one such SCS device (that did not record audio) unplugged in the garage at McCutchen House after he moved out In June 2022.
- 34.2. It stands to reason that the device in the photo referenced was that same device, which did *not* capture audio. The device in the picture appears to be the SCS WF-113 device from the garage and Wife was attempting to make a video to send to Husband demonstrating that their middle son's iPad was not charging, despite being plugged in. (Resp. App'x at 307, ¶22.) Husband recalls Wife's explanation at the time and saying she got a different USB outlet and cord, and it still was not charging. (*Id.*)

III. RXAMYDE Wi-Fi Mini Camera

35. Responding to paragraph A, Wife has not established that this device captured audio with competent, admissible evidence.
- 35.1. For the reasons set forth beginning on page 28, the Court should not give credence to this purported expert opinion.
- 35.2. Husband objects to this opinion under Rule 702, 705, and 403, SCRE.

36. Responding to paragraph B, Husband denies that he spoliated evidence relevant to any claims under the Act or that Wife has established grounds under South Carolina law for an adverse inference.

36.1. Because Wife did not establish the RXAMYDE device captured audio, the device is irrelevant under the Act. Husband cannot be required to preserve a non-audio device that was purchased more than two years before Wife filed her Motion to Suppress. (Resp. App'x at 262.)

36.2. Husband is unaware of the location of this device after conducting a diligent search. (Resp. App'x at 307, ¶ 27.)

36.3. It is possible it was in the parties' camper that was located at Eddy Farm until it was repossessed after Wife failed to make the required payments. (Resp. App'x at 307, ¶ 28.)

IV. iPhone 8 Plus

37. Responding to paragraph A, Husband admits he purchased a new iPhone 12 Pro Max on September 3, 2021.

37.1. Husband continues to make installment payments on this phone. (Resp. App'x at 307, ¶ 30.)

37.2. Husband owns this iPhone 12 Pro Max currently being used by Lindsay.

38. Responding to paragraph B, Husband admits that he bought the iPhone 12 Pro Max for Wife and took possession of her old iPhone 8 Plus.

38.1. Wife was an authorized user on Husband's AT&T account and, upon information and belief, Wife picked up the device directly from the AT&T store. (Resp. App'x at 307, ¶ 31.)

- 38.2. The device was new in the box and Husband did not possess the device before Wife set it up. (Resp. App'x at 308, ¶ 32.)
- 38.3. Before Wife provided the iPhone 8 Plus to Husband, she conducted a factory reset of the phone. (Resp. App'x at 46, ¶ 6.)
39. Responding to paragraph C, Husband admits he connected phone number 843-300-2853 on September 16, 2021.
- 39.1. This phone number remains associated with the iPhone 8 Plus. (Resp. App'x at 166, ¶ 30.)
- 39.2. This phone number is generally called the “farm phone,” and was generally used while at Eddy Farm. (Resp. App'x at 308, ¶ 35.)
40. Responding to paragraph D, Husband admits that he used this iPhone 8 Plus on phone number 843-300-2853 until at least November 13, 2022.
- 40.1. Since his original affidavit to the Court of Appeals on September 29, 2023, Husband has testified that the parties “communicated via phone calls, text messages, iMessages, and FaceTime through that iPhone 8 from September 2021 to November 2022.” (Resp. App'x at 166, ¶ 31.)
- 40.2. Monthly AT&T statements confirm that this iPhone 8 Plus has not been used since November 13, 2022, which is nearly a year before Wife filed her Motion to Suppress. (Resp. App'x at 292–96.)⁴

⁴ Husband's counsel represented to the Court or Wife's counsel that the factory reset of the iPhone 8 Plus occurred before November 2022. That was in error. Husband and his counsel take this opportunity to correct those unintentional misstatements. That said, Husband has testified consistently to the November 2022 dates, and is not aware of any discovery request served on him in which he has provided a contradictory response or contradictory sworn testimony. *Cf. In re Gonzalez*, 409 S.C. 621, 636 n.3, 763 S.E.2d 210, 218 n.3 (2014) (arguments of counsel are not evidence).

- 40.3. Husband quit using this iPhone 8 Plus when he conducted a factory reset of it on or about November 13, 2022. (Resp. App'x at 308, ¶ 36.)
- 40.4. Wife's reliance on Husband's statement in his September 29, 2023 Affidavit that the iPhone 8 Plus has been "continuously connected to the phone number" misunderstands the testimony. Yes, the iPhone 8 Plus is still connected to this phone number; however, Husband has not used the iPhone 8 Plus for "phone calls, text messages, iMessages, and FaceTime" since Husband conducted the factory reset in November 2022 as shown by monthly AT&T statements. (Resp. App'x at 292–96.)
41. Responding to paragraph E, Husband admits that the iPhone 8 Plus remains connected to 843-300-2853, although the phone has not been used since around November 13, 2022, as set forth above.
42. Responding to paragraphs F–G, Husband denies he conducted a factory reset of the iPhone 8 Plus in 2023.
- 42.1. As an initial matter, Wife's allegations in this regard are a creative attempt at misdirection for two reasons (explained in more detail below):
- 42.1.1. Husband has offered to provide access to the iPhone 8 Plus or to attempt to restore it by initializing the device, but Wife's counsel has abandoned its pursuit of this phone; and
- 42.1.2. Any backup of the device through Husband's Apple ID still exists and can be restored, so Husband is aware of no data from the iPhone 8 Plus that has actually been deleted.

- 42.2. As the Court is aware, the factory reset of the iPhone 8 Plus was a hotly contested issue. After Husband confirmed he could not access the iPhone 8 Plus without initializing the device, he notified the Court and counsel so as to avoid yet another unfounded claim of spoliation.
- 42.3. In its Order from Second Status Conference, the Court directed Husband to provide the iPhone 8 Plus to his counsel’s forensic evaluators to extract information only using “Gray Key Tool.” (2d Order ¶ 5, Jan. 16, 2024.) The Court also ordered that if Husband was “unable to access and copy the information on the iPhone 8 Plus and the iPhone 8 Plus SIM card using the ‘Gray Key Tool,’ either party may file a motion to request that the Court allow the phone and SIM card to be accessed/copied in a different manner.” (*Id.* at 3 n.7.)
- 42.4. On January 29, 2024, Husband filed his Statement of Compliance with Order from Second Status Conference. (Resp. App’x at 250–56.) In that filing, Husband notified the Court and counsel that it could not access the iPhone 8 Plus without modifying the device. (Resp. App’x at 253, ¶ 8–9.) He further explained that his counsel’s forensic evaluator “has not imaged this device because he cannot access it without following the iPhone setup process,” and that he did “not have access to ‘Gray Key Tool.’” (Resp. App’x at 253 ¶ 10.)
- 42.5. The iPhone 8 Plus remains in an evidence locker. (Resp. App’x at 253, ¶ 9.) AT&T records show that it has not been used since November 2022. (Resp. App’x at 292–96.)
- 42.6. Despite knowing options to restore the phone have existed since January, Wife has not taken steps to try to image the device. She has filed no “motion to request

that the Court allow the phone and SIM card to be accessed/copied in a different manner.” She is instead content with making speculative and unfounded allegations about spoliation of the iPhone 8 Plus rather than taking steps to secure any information that may be on the device.

43. Responding to paragraph H, Husband denies that he destroyed anything.
 - 43.1. As an initial matter, the evidence supporting this allegation references Findings IV.(A_K). No such paragraphs I, J, or K exist, so Husband cannot respond to them.
 - 43.2. Husband is informed and believes that the iPhone 8 Plus can be restored by initializing the device or using a different iPhone to access the Apple ID for that device. Additionally, Wife’s own experts have testified that the iPhone 8 Plus can be backed up from the existing Apple ID or even a SIM Card (which Husband disputes). (Resp. App’x at 74, ¶ 26; Resp. App’x at 2, ¶ 2.)
 - 43.3. This has not occurred because the Court has ordered that “[n]o other method shall be used to attempt to extract information from the aforementioned iPhone 8 Plus and SIM card without further order of the Court or written agreement of the parties.” (2d Status Conference Order ¶ 5, Jan. 16, 2024.)
 - 43.4. Regardless, the factory reset of the iPhone occurred more than nine months before Wife filed her Motion to Suppress. (Resp. App’x at 308, ¶ 36.)
 - 43.5. Thus, it is pure speculation that Husband has deleted anything from the iPhone 8 Plus. Wife engages in this speculation to attempt to manufacture a claim of spoliation for an adverse inference.

V. Spoliation

44. Responding to paragraph A, Husband admits that the parties separated on May 29, 2022.
- 44.1. However, Husband still regularly visited McCutchen House and stayed overnight on July 6 and 29, 2022. (Resp. App'x at 128, ¶ 3.)
45. Responding to paragraph B–C, Husband admits that the parties discussed potentially resolving the marital issues through settlement.
- 45.1. However, Husband her denies that “divorce proceedings were imminent.”
46. Responding to paragraph D, Husband admits that he hired Investigator on or about June 15, 2022, when he began to have concerns about Wife’s behavior. (See ¶¶ 8.1–8.2, above; Resp. App'x at 305, ¶¶ 8–9.)
47. Responding to paragraph E, Husband admits that he used nanny cameras at McCutchen House to ensure the safety of the parties’ children and out of concerns about Wife’s behavior. (Resp. App'x at 174, ¶ 61.)
- 47.1. The support Wife cites for this allegation is Husband’s first affidavit filed with the Court of Appeals, which includes discussions about video-only nanny cameras. It is purely speculative to suggest that the cameras used at the time had audio as is required for a claim under the Act.
48. Responding to paragraph F, H, and I, Husband denies that the evidence reflects he anticipated divorce in June, July, or August 2022 or that he disposed of any SCS cameras or storage cards while divorce was reasonably foreseeable.
49. Responding to paragraph G, Husband admits that he notified Wife to preserve evidence on her phones on September 17, 2022.

49.1. Nevertheless, this did not stop Wife from deleting messages from her phone, directing other material witnesses to delete evidence, and use ephemeral messaging services to avoid preserving evidence. These allegations are discussing in more detail starting on page 34, below.

50. Responding to paragraph J–K, Husband denies that he spoliated evidence relevant to any claims under the Act or that Wife has established grounds under South Carolina law for an adverse inference.

51. Responding to paragraph L, Husband denies that Wife has established grounds under South Carolina law for an adverse inference.

VI. General Findings

52. Responding to paragraph M, Husband denies that he has violated the Act in any respects.

52.1. As detailed beginning on page 24 below, merely installing cameras with audio capability inside Wife’s home is insufficient to establish a violation of the Act.

53. Responding to paragraph N, this proposed finding is identical to paragraph M, so Husband incorporates paragraph 52 by reference.

54. Responding to paragraph O, Husband denies that Wife did not consent to having nanny cameras at McCutchen House.

54.1. Husband first purchased a covert camera device for the purpose of catching a construction worker who was working on the Eddy Farm home who Wife claimed had snuck into the bathroom while she was in the shower and watched her changing clothes around December 2020. (Resp. App’x at 264, No. 24–26.)

- 54.2. Wife also knew Husband had placed cameras in McCutchen House because he discussed catching a babysitter riffling through drawers in an office. (Resp. App'x at 209–10, No. 7.)
55. Responding to paragraph P, Husband does not understand Wife's allegation regarding "two audio recording devices."
- 55.1. As an initial matter, Husband is not aware of the support for this allegation. He does not have any supplemental response to request to admit number four.
- 55.2. He did serve supplemental responses to requests to admit numbers five and six on January 26, 2024, as required by the Court's July 16, 2024 Order from Second Status Conference, but provided no supplemental response to request to admit number four. (Resp. App'x at 217–19.)
- 55.3. His original request to admit number four relates to Husband's purchase of the Camduck that did not have audio capabilities—this also does not relate to "two audio recording devices." (Resp. App'x at 214.)
56. Responding to the un-numbered paragraphs in Wife's proposed findings, (Resp. App'x at 28), Husband denies that he ever intercepted any oral communications in violation of the Act and states that Wife's speculation to the contrary is incorrect and should be disregarded by the Court.

Husband's Proposed Findings

57. Husband did not intentionally intercept Wife's oral communications with third parties, contemporaneously or otherwise. Thus, the Court should find that Husband did not violate the Act.

58. Wife has failed to carry her burden of establishing a violation of the Act. Even if any question remained about potential violations of the Act, Wife's inequitable conduct prohibits her from the drastic relief she seeks.

VII. Allegations of Violating the Act

59. Even if Wife's allegations of audio recording were founded, they do not establish a violation of the Homeland Security Act because Wife does not allege Husband acquired the audio contemporaneously with its transmission. *See Cronin v. Cronin*, Appellate Case No. 2023-000959, Order (Sept. 6, 2023);⁵ *Ducharme v. Madewell Concrete, LLC*, No. CV 6:20-1620-HMH, 2021 WL 2141728, at *8 (D.S.C. May 26, 2021) ("a qualifying 'intercept' occurs only where the acquisition of the communication occurs contemporaneously with its transmission by its sender." (citing *Glob. Pol'y Partners, LLC v. Yessin*, 686 F. Supp. 2d 631, 638 (E.D. Va. 2009) (collecting cases)); *Fraser v. Nationwide Mut. Ins. Co.*, 352 F.3d 107, 113 (3d Cir. 2003) ("Every circuit court to have considered the matter has held that an 'intercept' under the [Federal Act] must occur contemporaneously with transmission.")).⁶

60. Plaintiff has not established that an interception under the Homeland Security Act of any communications occurred.

61. Merely alleging that Husband *could have* intercepted her communications or *could have* activated the audio on the Camduck is not enough. *See Carson v. Emergency MD, LLC*,

⁵ Husband provides a binder of the orders under the Act from the South Carolina Court of Appeals to the Court and counsel for ease of reference.

⁶ The Homeland Security Act parallels the Federal Act such that "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting provisions of the Homeland Security Act" in state court. *State v. Guerrero-Flores*, 402 S.C. 540, 534, 741 S.E.2d 577, 580 (Ct. App. 2013).

621 F. Supp. 3d 610, 618 (D.S.C. 2022) (rejecting argument that an “alleged ability to access and review” communications was sufficient under the Homeland Security Act and granting summary judgment on that claim), *vacated as to the Stored Communications Act claim and remanded sub nom. Carson v. EmergencyMD, LLC*, No. 22-1139, 2023 WL 1861053, at *2 n.5 (4th Cir. Feb. 9, 2023).

62. Husband obtained the information about Wife’s adultery and drug use from independent sources.

62.1. As set forth above, Husband hired Investigator in June 2022.

62.2. Husband’s retention of Investigator and instructions to him were independent of any of Wife’s allegations that Husband was illegally intercepting her communications in violation of the Act. (Resp. App’x at 306, ¶ 15.)

62.3. On September 3, 2022, Husband’s Investigator discovered Wife was having an affair. (*Id.*, ¶ 20.)

62.4. As Wife testified, she did not speak to Karen Keys and only communicated via text message with her that weekend because she was concerned about a listening device. This means no interception of audio could have led to Husband’s directions to Investigator.

63. Even if the Court credits Wife’s allegations, Husband would have inevitably discovered Wife’s affair and drug abuse independent of any recordings.

63.1. Wife has admitted in a public court filing that she had an affair with Steven Fowler (“Paramour”). (Resp. App’x at 48 (“I committed adultery with Dan

Fowler (D.F.) on September 4, 2022, and was almost immediately confronted by Justin.”.)⁷

63.2. If she attempted to dispute the adultery, Husband could impeach her with her own prior filings.⁸

63.3. Paramour also knew of the Camduck and contents of the recordings as Wife has admitted to Husband that Paramour sent Husband the Nolan Email. (Resp. App’x at 309, ¶ 48.)⁹ Husband has not been permitted to depose Paramour to verify this claim, however.

64. Wife has repeatedly abandoned claims, allegations, and discovery she sought, wasting the Court and the parties’ resources.

64.1. The original device on which Wife based her claims was a camera found, unplugged, in her garage. (Resp. App’x at 6, ¶ 13.) Yet months later she conceded it was not actionable under the Act: Wife “acknowledges that the device. . . . found in her garage . . . had no audio capability.” (Resp. App’x at 41.)

64.2. Wife also originally asserted illegal intrusions into her Bank of America and Gmail accounts. Not only did these intrusions not occur, they would not have been cognizable under the Act. She has since admitted that she has abandoned these claims. (2d Status Conference Order at 1 n.1.)

⁷ Even her purported expert refers to Mr. Fowler as her “paramour.” (Resp. App’x at 301.)

⁸ Even if the Court of Appeals were to exclude any evidence in this case, that evidence could still be used for impeachment. *See Nash v. Byrd*, 298 S.C. 530, 535, 381 S.E.2d 913, 916 (Ct. App. 1989) (explaining the parallel Federal Act permits the use of unlawfully intercepted communications for impeachment purposes).

⁹ The Nolan Email was filed under seal with the Court of Appeals.

65. Wife's ever-shifting claims and strategy also occurred during discovery, causing unnecessary work for the Court and needlessly incurring attorneys' fees on both sides.

65.1. Much ink was spilled by the parties and the Court over the McGee Law Firm SharePoint. Yet despite making a reasonable offer to produce client records under a confidentiality order, Wife abandoned that pursuit.

65.2. Wife did so only after her purported experts claimed to have "evidence that Nelson Mullins assisted Justin McGee in obfuscating digital evidence in how they produced the audit logs from Justin McGee's cloud based file system, omitting crucial evidence such as filenames and other metadata related to Justin's recent use of the system." (Resp. App'x at 311.)

65.3. No such "obfuscating" occurred—the SharePoint logs have long been ready for production under a confidentiality order, yet Wife abandoned her request for these records. (2d Status Conference Order at 1 n.1.)

66. Wife seeks a drastic remedy not warranted by the thin record before the Court.

67. Wife does not seek monetary relief.

67.1. It is clear, however, that the motivation for the claims is economical. (Resp. App'x at 289 ("Based on just the CamDuck that we have, your statutory damages are at least \$135,000").

68. Husband has maintained his jurisdictional and related objections to these proceedings.

Additional Matters for the Court's Consideration

To analyze Wife's proposed findings, the Court should consider three additional matters impacting the claims and defenses.

I. The Court lacks jurisdiction over Wife’s claims.

All courts must assure themselves of their own jurisdiction before proceeding. The Court should do the same, especially in light of the drastic remedies Wife seeks. This Court lacks jurisdiction over Wife’s claims because (1) no original jurisdiction of the Court of Appeals exists; and (2) Wife has chosen to litigate this matter in the Court of Common Pleas, proceedings that have been removed to federal court. *See McGee v. McGee*, No. 2:24-cv-01659-RMG (filed Feb. 28, 2024, and timely removed April 2, 2024.)

II. Wife’s purported experts are not credible, and Husband has not been afforded the opportunity to evaluate their opinions or the facts and data on which they rely.

A. Wife’s purported experts have been inconsistent and have a material interest in the outcome of the litigation.

Wife’s purported experts have provided conflicting testimony to the Court of Appeals and this Court. For example, the original device on which Wife based her claims was an SCS camera found in her garage. (Resp. App’x at 3, ¶5; Resp. App’x 6, ¶¶12–13.) Mr. Abrams provided sworn testimony to the Court of Appeals that this camera recorded audio of Wife’s oral communications:

From the videos it could be seen that this camera had been hidden in the back of Petitioner’s garage, aimed towards the garage door. . . . Petitioner frequently goes into her garage when she needs to make phone calls outside the earshot of her children, such as to her attorney, and all of these conversations would easily have been recorded and transmitted by the spy camera hidden in the garage. I have not reviewed many of the hundreds of video clips stored to the SD Card, but from what I did review **I can confirm that there was video, and audio recorded by the camera**, and that Petitioner was frequently recorded in her garage making or receiving phone calls.

(Resp. App’x at 64–64, ¶5 (emphasis added).) Mr. Bumgarner provided similar testimony:

“This location gave the person monitoring this covert surveillance camera unfettered access to

Lindsay McGee's physical activities in her garage and also allowed someone to listen to her private conversations when the device was triggered by motion detection.” (Resp. App’x at 77, ¶ 38.)

Wife has since provided verified interrogatory responses that the SCS camera found in her garage did not record audio in direct contradiction of her expert’s sworn testimony: “The camera found in the garage was placed at the rear of the garage, plugged into an electrical outlet. It was disguised as a USB hub. This camera did not record audio.” (Resp. App’x at 197 (Wife’s Response to Interrogatory No. 8).) She has elsewhere conceded this fact. (Resp. App’x at 41 (“While it is true that the device that was found in the garage which was purchased from SCS had no audio recording capacity . . .”); *id.* at 223 (Requests to Admit No. 19–20, admitted based on Wife’s refusal to respond); Resp. App’x at 226.) To date, however, Mr. Abrams and Mr. Bumgarner have not corrected this sworn testimony or withdrawn it, calling into question their veracity as purported experts in this case.

Wife’s purported experts also appear to be relying on incorrect “third-party sources” for information about devices, either in an intentional attempt to mislead the Court or at least in a way that undermines the validity of their purported expert opinions. This is illustrated by the facts underlying Mr. Bumgarner’s bold claim that his data, Figure 13, “*clearly* shows that the RXAMYDE spy camera that was purchased by the Respondent on Amazon had the capability to record audio.” (Resp. App’x at 123–24, ¶ 30 (emphasis added).) Figure 13 from Mr. Bumgarner’s Sixth Affidavit—which has not been authenticated or established as an exception to the hearsay rule—contains the following screenshot:

Figure 13 - Amazon Page for the RXAMYDE Camera

Camera & Photo > Surveillance Cameras > Spy Cameras

Small Body, Large Function

Mini W-Fi 1080p HD Video Playback Remote of Small Micro Motion Cam

- Simple WiFi Setup**: One key wifi configuration on the app
- Two-Way Audio**: Clear voice communication in real time
- Clear Night Vision**: Safeguard your home from day to night
- Easy Remote Access**: Talk to your loved one anytime and anywhere
- Motion Detection**: Detect motion and send instant alarm pushes
- Card recording storage**: Maximum support for 64GB
- Big wide angle view**: Safeguard your home from day to night
- Battery powered**: No power, battery powered!

RXAMYDE New 2021 Hidden Camera Mini Spy Charger 1080P USB Motion Activated Camera Wide Viewing Angle 4K Hidden Spy Camera [Remote A Control] Home, Kids, Baby, Pet Monitoring Cam

Brand: RXAMYDE
3.1 ★★★★★ - 4 ratings

Currently unavailable.
We don't know when or if this item will be back in stock.

Recommended uses for product: Spy, Security, Monitoring, Spy Camera

Brand: RXAMYDE
Connectivity technology: Wired
Special feature: Motion Sensor
Power source: Corded Electric

About this item

- Motion Sensor

(Id.) What Mr. Bumgarner doesn't show is the rest of the webpage, which confirms that his screenshot is from an Amazon UK webpage for a device that is not sold in the United States:

amazon.co.uk | Deliver to United States | Search Amazon.co.uk

Home & Garden | Gift Ideas | PC & Video Games | Vouchers | PC | Electronics | Toys & Games | Beauty | Pet Supplies | Health & Personal Care | Car & Motorbike | Baby

Wire-free solar camera, go green, save savvy! **25% off** Limited time deal £99.99 (€129.99) - prime

Camera & Photo > Surveillance Cameras > Spy Cameras

Small Body, Large Function

Mini W-Fi 1080p HD Video Playback Remote of Small Micro Motion Cam

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Currently unavailable.
We don't know when or if this item will be back in stock.

Recommended uses for product: Spy, Security, Monitoring, Spy Camera

Brand: RXAMYDE
Connectivity technology: Wired
Special feature: Motion Sensor
Power source: Corded Electric

About this item

- Motion Sensor

Customers also viewed these products

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(See also Resp. App'x at 268 (PDF of full webpage).) This calls into question what Wife's purported expert opines is "clearly" established "from third-party sources." This discrepancy also reiterates Husband's objections to consideration of Mr. Bumgarner's opinions, especially

when not tested by cross-examination. *See State v. Slocumb*, 336 S.C. 619, 628, 521 S.E.2d 507, 512 (Ct. App. 1999) (discussing Rules 703, 705, and 403, SCRE).

Yet another inconsistency is the inability of Wife’s purported experts to agree on the actual number of audio-recording devices connecting to her Wi-Fi at McCutchen House. Just last month—after Wife submitted her proposed findings—Mr. Bumgarner testified there “is unquestionable technical evidence that shows at least 13 spy cameras were once connected to the Wi-Fi network in the Petitioner's private residence.” (Resp. App’x at 108, ¶ 4.) As support for this claim, Mr. Bumgarner cites an annotated router log, Exhibit B. (Resp. App’x at 238–49.) These annotations, however, only identify 12 devices. (*Id.*) In a case hinging on minutiae like MAC addresses and the exact types of devices allegedly being used, the difference of just one device may make the difference between a violation of the Act or not. An inconsistency of this type calls into question Mr. Bumgarner’s opinions and the data on which he purports to rely.

Time and time again Wife has abandoned claims she forcefully asserted with the support of her purported experts. (*See* 2d Status Conference Order at 1 n.1) None of the original claims she asserted to the Court of Appeals remain. (Resp. App’x at 1–13.) Apart from the original claims that Wife has abandoned, notably absent from her proposed findings are any allegations about the weather station or alarm clock that her experts were positive contained cameras. This is likely because Mr. Bumgarner concluded on February 7, 2024 that the “RCA Clock does record clear video, but has no audio capabilities nor WiFi.” (Resp. App’x at 300.) Likewise, Mr. Bumgarner concluded the next day that the “black power adapter . . . does record clear video, but does not have audio recording capabilities.” (Resp. App’x at 297.)

Wife’s experts also have a material interest in the outcome of this litigation. For example, John Bumgarner demanded in September 2023 that an arrangement with Wife’s

counsel be made in which counsel pays \$5,000 per month to settle more than \$31,000 in fees. (Resp. App'x at 299.) Essentially, her experts are now working on a contingency basis, which Mr. Abrams has explained would be “unethical” to do as an expert. (Resp. App'x at 285.)¹⁰ As of February 8, 2024, these fees had increased to \$115,406. (Resp. App'x at 298.)

The Court should consider these inconsistencies and biases in its findings. *See State v. McEachern*, 399 S.C. 125, 140–41, 731 S.E.2d 604, 612 (Ct. App. 2012) (“Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.” (quotation omitted)). Likewise, the credibility of these purported experts, as well as the fact witnesses for both parties, must be evaluated to effectively make factual findings. *See Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001) (discussing court’s view of the witnesses’ testimony and assessment of credibility).¹¹

B. The limited discovery offered to date has been insufficient, especially in light of Wife’s refusal to produce certain records.

Wife has refused to provide attachments exchange with her experts, as well as attachments provided by her experts to third parties. The documents cannot be withheld on the basis of any recognizable discovery protection. Wife’s purported experts are testifying and

¹⁰ Despite this acknowledgement, it appears Wife’s counsel discussed “bringing [Mr. Abrams] in” on the now-pending civil litigation and “splitting that fee with the three of us.” (Resp. App'x at 291.)

¹¹ Absent an evidentiary hearing at which the testimony from both sides is presented and subject to cross examination, the Court cannot meaningfully address factual issues that remain in light of the inconsistencies and biases set forth above.

providing purported expert analysis to this Court.¹² Thus, Husband has been unable to properly evaluate their opinions.

Another example occurs on June 22, 2023. Bumgarner has previously testified that on this date, Wife's "attorney Peter Currence sent me text messages containing photographs of multiple devices that Lindsay McGee believed could be hidden cameras." (Resp. App'x at 77, ¶35.) Yet the Bumgarner text messages provided by Wife in discovery begin on July 17, 2023.

C. Wife's scorched earth litigation strategy has limited Husband's ability to meaningfully respond to Wife's technical allegations.

At least one of Wife's purported experts have also shown an interest in expanding Wife's claims beyond the bounds of this litigation. Mr. Abrams has been leveraging his law enforcement contacts in furtherance of the current civil claims. (Resp. App'x at 281–84.) Mr. Abrams, an attorney acting in this case as a purported forensics expert, has contacted the South Carolina Law Enforcement Division, the Solicitor, and the Sherriff's Department about the claims being made in this case. (Resp. App'x at 281.) At least once Mr. Abrams has incorrectly claimed to SLED that the SCS camera he recovered from Wife's garage contained audio, even though Wife has confirmed it does not. (Resp. App'x at 284 ("I have confirmed that the recordings contain audio and video. Ms. McGee and her children are seen coming and going from the home via the garage.")) It is unclear from the materials provided by Wife if Mr. Abrams has corrected this factual inaccuracy that he relayed to law enforcement.

As a result of Wife's litigation tactics, Husband has been unable to mount a defense to the technical aspects of these proceedings. Wife is not paying her counsel or experts

¹² Any attorney-client privilege that may have existed has long since been waived by the discussion of privilege matters in communications between Wife, her counsel, and her purported experts.

contemporaneously but expects to pay them from her share of the marital estate. Husband is restrained from accessing, encumbering, or liquidating any portion of the marital estate and therefore is not able to match the efforts and expenditures of Wife and her litigation team. Additionally, since this action was filed, Husband has been paying for the children's health insurance, childcare, tuition, and a disproportionate amount of their expenses overall. The effect of this dynamic is prejudicial and inequitable, to the extent Husband cannot afford to retain the services of an expert to refute the technical data or purported expert opinions Wife's offers. Thus, Husband may have no other option than to seek a limited remand from the Court of Appeals to permit the sale of Eddy Farm, escrowing half of net sales proceeds and giving him the other half as an advance on equitable division for payment to experts and attorneys. Only then would Husband be able to appropriately participate in both this and Wife's recently filed civil litigation. Wife has already received several advances from the marital estate, including borrowing the entire cash value of her life insurance policy after the date of filing.

III. Wife has directed a material witness in this case to destroy evidence, so she comes to this Court of equity with unclean hands.

As Husband has detailed previously, Wife specifically directed a material witness to delete text messages she sent him after the divorce had been filed. This intentional witness tampering causes her to come to this Court with unclean hands. Wife also referenced sexually suggestive text messages that purportedly occurred on February 28, 2023, (Resp. App'x at 48, ¶ 12), but later could not produce those text messages and claims they were deleted in **May 2023**, several months before she referenced them in her affidavit. She also mentions other text messages that she did not produce on June 29, 2023, in text messages with Paramour, stating that she was reviewing them for production, but then does not produce them and claims they were

deleted several weeks earlier. (Resp. App'x at 267.) Yet Wife has not provided these messages, yet another example of Wife's unclean hands.

Conclusion

For the reasons set forth above, the Court should reject Wife's proposed findings and instead find that no violation of the Act has occurred.

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