ATTACHMENT A

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE) Richard A. Gorman,) Plaintiff,) -vs-) John C. Monarch,) Defendant.)	IN THE COURT OF COMMON PLEAS **ORDER FOR SANCTIONS** **AND STRIKING DEFENDANT'S PLEADINGS** C.A. No. 2021CP2303414

The Court has been presented with Plaintiff's Motion for Sanctions which was heard on January 24, 2025. This is one of many Motions where Plaintiff has sought sanctions against the Defendant for discovery abuse and violations of various Court orders. The initial Complaint was filed in 2014 with the most recent version set forth in the Second Amended Complaint filed on August 28, 2018. The Plaintiff alleges that Defendant, using the name of "Rick Rollinski" sent an email in 2013 asking for $500,000 in bitcoins to avoid the publication of extremely derogatory statements about the Plaintiff being a convicted child molester. When the demands were not met by the Plaintiff, the statements were widely published. Due to various conflicts and the relationship between the parties, Plaintiff immediately suspected Defendant and after the publication, Plaintiff's lawyers sent a letter dated December 20, 2013 demanding Defendant to cease and desist any further publication of the information and requesting that he preserve all relevant data and devices. Plaintiff filed suit against the Defendant and various other entities. The causes of actions which have survived the duration of this action are defamation and intentional infliction of emotional distress. The Plaintiff has spent over ten years trying to gain access to Defendant's various devices to prove that he was the one who initiated these postings and emails.

The Plaintiff's Motion for Sanctions currently before the Court presents the same issues which the Court has struggled with for many years and many Orders: to determine whether Defendant has willfully withheld material information in discovery and violated various court orders. The issue becomes somewhat pressing with the rapidly approaching trial date of March 24, 2025. This trial was set after a long history of delays, including a dismissal under Rule 40(j) and several continuances of "date certain" trials. In other words, the issues raised by Plaintiff's motion are more than ripe for a final determination.

The plaintiff has charged defendant with extreme discovery abuse and violation of numerous court orders and the Court must determine whether the Defendant is guilty of these charges and if so, what sanction to impose. The Court finds that the Defendant has willfully violated the prior Orders of this Court and an appropriate sanction is warranted.

The gravamen of Plaintiff's Motion for Sanctions is that Plaintiff has asserted serious claims against the Defendant resulting in substantial damages, but Defendant's conduct and refusal to abide by standard discovery practices and Orders of this Court, has made it impossible to conduct meaningful discovery and be in a position prove his case. In order for the Plaintiff to succeed in his claims, he must prove that the Defendant was the one who sent the emails and made the postings, which was presumably done under a fictitious name. Plaintiff has spent more than ten years trying to establish his case, but has been diverted at every turn by Defendant's failure to provide data or meaningful access to his devices. From the beginning, the Plaintiff has sought access to all computers which the Defendant was using at the relevant times to this lawsuit, but Defendant has fought him at every turn and blocked the Plaintiff's discovery efforts with legal wranglings, subterfuge, deceit and destruction of evidence. The issues before the ultimate trier of fact are pretty basic—did Defendant publish the statements or not and whether

they constitute defamation and/or a basis for intentional infliction of emotional distress. With access to all of his devices, this question should have been easily answered and would either exonerate the Defendant or confirm that he was the culprit.

First, it is important to review the very tortured procedural history and how Defendant has responded to prior Court rulings:

-December 20, 2013, Plaintiff's attorneys sent a letter to Defendant demanding that he cease and desist from further publication of any statements and to preserve relevant information, data and devices.

-In 2014, Plaintiff served Defendant with extensive discovery regarding Defendant's activities and information regarding various information contained on his computers and devices.

-After many requests and objections submitted by Defendant, the Plaintiff filed a Motion to Compel discovery in 2018, but the hearing was cancelled because Plaintiff understood that an agreement had been reached for responding to the discovery requests.

-As of June, 2020, Defendant had failed to provide appropriate discovery responses as agreed and Plaintiff renewed his Motion to Compel. Likewise, Defendant filed a Motion to Compel and all issues were purportedly resolved with a "Consent Order Resolving Motions to Compel" issued by The Hon. Alex Kinlaw on August 21, 2020 in which Defendant agreed to provide a list of all referenced electronic devices within 14 days and "cooperate concerning the expeditions provision of such devices from the list as the Plaintiff may select for examination."

-On December 9, 2020, Plaintiff filed a Motion for Sanctions for Destruction of Evidence relating to Defendant's purported destruction of data and disposal of certain devices.

-As of August17, 2021, Plaintiff had not received the relevant data or devices and filed a Motion to Compel Production of Electronic Devices for Examination which Judge Kinlaw granted by Form 4 issued on September 15, 2021 with a formal Order to follow. Judge Kinlaw also issued a Form 4 continuing the Plaintiff's Motion for Sanction. Judge Kinlaw issued his "Order Granting Motion to Compel Production of Electronic Devices" on March 28, 2022 requiring Defendant to submit his devices to an independent expert so a determination could be made as to what data had been destroyed or removed. The issue of sanctions was held in abeyance at that time.

-On April 7, 2022, Defendant filed a Rule 59(e) Motion to Reconsider the March 28, 2022 Order and Judge Kinlaw reissued his previous Order on April 27, 2022.

- On May 18, 2022, Defendant filed an appeal of the Discovery Orders issued by Judge Kinlaw which were clearly interlocutory. On May 24, 2022, the South Carolina Court of Appeals issued an Order dismissing the appeal because the underlying discovery orders were "not immediately appealable." The Defendant then filed a Petition for Rehearing which was denied by order of November 15, 2022 and the case was remanded back to Circuit Court.

-Following the denial of Defendant's Petition for Rehearing, Judge Kinlaw heard the Motion to Reconsider his Order on December 2, 2022 and issued an Order on January 12, 2023 denying the Defendant's Motion and confirming his previous Order.

-The case was designated as Complex by Order of Judge Letitia Verdin on October 18, 2022 assigning the case to the undersigned Judge.

-On February 10, 2023, Plaintiff file a Motion for Sanctions asserting that Defendant had failed to abide by any court orders and provide discovery. After a hearing on March 23, 2023, the Court issued its Order on April 28, 2023 finding the Defendant had not

complied with previous Orders of the Court and that his non-compliance was "in bad faith, willfully disobedient or at a minimum a gross indifference to the Plaintiff's rights" and held the Defendant in Civil Contempt and ordered that:

> the Defendant shall fully comply with the March 28, 2022 Order of Judge Kinlaw within 45 days of this Order or shall be fined $7,500 and his Answer and Counterclaim shall be stricken and Defendant shall be deemed in default.

Although the defendant was found in contempt as a result of his willful violation of the previous Orders, the Court gave the Defendant one last chance to rectify his prior conduct—a lifeline which Defendant had not shown that he deserved.

-On August 24, 2023, the Plaintiff filed a "Motion to Enforce Order" asserting that Defendant had submitted an altered laptop to the independent expert and that Defendant had failed to turn over all of his devices. The Motion was supported by affidavits from various forensic experts who had analyzed the data from the computer which was produced. On January 18, 2024, the Court issued an Order finding that the Defendant's conduct had raised "some serious concerns over the validity of the laptop in question," but no violation had been established. Once again, the determination of Defendant's conduct was "kicked down the road."

- Finally, on May 29, 2024, the Plaintiff filed yet another "Motion for Sanctions and to Enforce Order" asserting that Defendant had failed to retain evidence, communicated with a material witness just prior to his deposition in a format which automatically destroyed evidence of such communication, and failure to provide all relevant devices. Because of various delays and the parties attempts to resolve some discovery issues, this Motion was not heard until January 24, 2025.

So, in summary: Plaintiff has taken Herculean steps to obtain the material information from Defendant; Defendant entered a consent order agreeing to provide it, but then spent the next

two and a half years conducting various legal maneuverings to block the production of the information. Plaintiff continued his efforts and finally got information from the requested devices, but it appeared to be altered and the Court issued an Order finding Defendant in Contempt.

And that brings us to the current Motion which was heard on January 24, 2025, two months before the trial has been set on March 24, 2025. As a result of the various orders and stipulation of counsel and delay of many years, the Defendant has provided access to one computer which has been analyzed by three separate experts.

Plaintiff has provided affidavits from two experts to support the claim of willful violation of the Order: Christopher Watkins, the expert retained by the Plaintiff and Steven Abrams, the neutral expert appointed to examine the Defendant's computer and retrieve information from it. In response, the Defendant submitted the affidavit of its retained expert, Ian Finch.

Steven Abrams has submitted two affidavits to the Court. He was initially retained jointly by both parties for the extraction of data for a computer that was referenced. Mr. Abram's initial affidavit of August 24, 2023 essentially outlined the process and method used in extracting the information. In his supplemental affidavit filed November 7, 2023, Mr. Abrams stated that "my initial feeling is that the internet history and much of the content of the hard drive must have been erased in late 2016 near the point at which the history record resumes on the hard drive." (Paragraph #4)

The affidavit of Christopher Watkins as Plaintiff's expert, was filed on May 29, 2024 and outlines his process in analyzing the data and computers. His affidavit concludes the following:

18. "….the pattern of behavior suggests that the user has a history of deleting Bash session history or at the very least, that the user is familiar with how to delete the Bash history."

23. Mr. Watkins concurs with the conclusion of Abrams that "considering the time stamp metadata associated with the activities…that a portion of user data has evidently been purged from the computer."

23b. "What is plain, though, is that this hard drive has been tampered with. All indications are that this tampering was done through activities that would have had to be undertaken purposefully…it is my opinion that the computer user selectively purged certain types of data from the system, such as internet browsing history data"

25. Bash history analysis "suggest that the computer user intended to hide activity."

27. "Based on my examination…it is my conclusion that it is more likely than not:

a. Some person went to extensive lengths to move data to and from this laptop computer, including deleting significant amounts of data from the computer's data storage drive"

b. That person was most likely John Monarch, who was the person who naturally had the most access and perhaps the only access to the laptop and who has the computer science background to understand these activities.;

c. Other things, unusual things, were done to this computer, consistent with them being done purposefully in the hope that they would create false or confusing impressions for someone examining the laptop…"

In response, Defendant submitted the affidavit of Ian Finch, along with a very comprehensive report refuting some of the findings set forth in Mr. Watkins affidavit and suggesting that some of Mr. Watkins conclusions could have been incorrect based on the analysis and extractions by the neutral expert, Mr. Abrams. Mr. Watkins submitted an affidavit filed January 22, 2025 in response to Mr. Finch's affidavit confirming the opinion set forth in his May 29, 2024 affidavit.

Overall, the Court finds the two affidavits submitted by Mr. Watkins, and the affidavit of Mr. Abrams convincing, especially since both opine that the computer had been tampered with. In addition, Mr. Watkins' affidavit concludes that the computer in question had more than 18,543 events, between October 20, 2015 and January 3, 2018, when it was used to remotely access another computer or network device which "limits [his] ability to determine what the computer user was doing on the remotely accessed devices." (Watkins Affidavit, 5/29/24, Paragraph 19c.) Mr. Finch does not address or refute this finding in his affidavit or report.

Based on the record, the Court cannot determine at what point this data was removed or

destroyed, but clearly it was after the Defendant was aware that the Plaintiff intended to pursue him for this matter based on the demand letter sent in December, 2013. Over the past ten plus years, the Plaintiff has attempted to gain access to the devices to prove his case. Defendant had within his means the ability to provide the necessary information to clear himself if he was not the publisher of this information. Even though the defendant argues that the Plaintiff has not established that he destroyed any data or disposed of any devices since the issuance of the Court's Order, the defendant cannot defend the fact that after over ten years, letters, discovery and Orders to Compel have been issued, he has not produced any of the requested information regardless of the reason, or any real explanation of why it has not been produced nor the identity of the devices which he used during the relevant time periods.

Plaintiff has attempted to obtain material evidence from the Defendant since 2014 and has not received a meaningful response in that period. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125 (2004). That has not been accomplished in this matter.

After much deliberation, the Court finds that the Defendant has willfully destroyed or removed relevant and material evidence, which most like occurred after discovery had been presented to him and after he was Ordered by the Court to do so. When the Court considered this matter in connection with its Order of April 24, 2023, it appeared to be a close call of whether the Defendant should be sanctioned, but the information provided at this last hearing overcomes any previous perceived obstacles to sanctions. Even though the timing cannot be determined, the Court finds that the Defendant's actions were clearly done with the goal of destroying the evidence and making sure it was not discoverable. Further, even though some of the conduct may have occurred prior to the issuance of these Orders or discovery submitted, it was after the

letter of December 20, 2013 and at no time, has the Defendant admitted and explained the circumstances for which the evidence was removed and/or destroyed.

Based on the affidavits and reports, the Court finds that Defendant has violated the rules of discovery and prior Court Orders in the following ways:

1) Not maintaining the integrity of his devices after receiving the letter of December 20, 2013, discovery requests and Court Orders relating to these devices;

2) Not identifying and producing other devices which he used and were subject to the discovery requests and Court Orders, including the IPhone and the device(s) accessed remotely as identified in Watkins affidavit.

3) Defendant consented to produce several devices in Judge Kinlaw's Consent Order of August 21, 2020 but caused a two-and-a-half-year delay through Motions and Appeals and finally indicated that he no longer had the iPhone which he had agreed to produce, but that the data was stored on his computer; and

4) Defendant engaged in further subterfuge by communicating with a material witness before his deposition through a platform which automatically destroyed the communication just after it was received, thus eliminating the ability to access this information in discovery, consistent with his other actions throughout this case.

When review of all matters related to the discovery of the data and devices, it is clear that Defendant has engaged in a pattern of deception which justice and equity cannot ignore.

The next step is to determine what are the appropriate sanctions for Defendant's conduct over the past ten years. The determination of whether to impose sanctions on a party is a very serious one and one that this Court does not take lightly. But ultimately, this decision is "entrusted to the discretion of the trial court." QZO, Inc. v. Moyer, 358 S.C. 246, 255 (2004)

(citations omitted). One of the sanctions available to the Court for a party's failure to obey a discovery order is to "strike the party's pleading and enter a default judgment". QZO, at 256. (citing Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mgf Co., 334 S.C. 193 (1999). Under Rule 37, SCRCP, the Court is given broad latitude on fashioning a sanction for discovery abuse including "an order striking out pleadings or parts thereof…or rendering a judgment by default against the disobedient party." Rule 37(b)(2)(C). "When a court orders a sanction that results in default or dismissal, 'the end result is harsh medicine that should not be administered lightly.'" QZO, at 256 (quoting Griffin at 198). Therefore, the sanction should be "aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits." QZO at 256 (citing Griffin). The Supreme Court continued with the standard and considerations for the Court:

> The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case…Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." QZO, at 257 (citations omitted)

In this case, the Court must carefully consider the Defendant's position for failure to comply with discovery and the various orders. When reviewing the Defendant's argument and affidavit submitted by his expert, the Court finds that his reasons for not complying, like in QZO, were a "great mysterious sequence of coincidences that strain credulity." *Ibid* at 257. When there is conflicting evidence, it is up to the judge to determine the credibility. See Halbersberg v. Berry, 302 S.C. 97 (Ct. App. 1990).

The Court has given the Defendant numerous opportunities to rectify these deficiencies and provide a good faith explanation for these events, to no avail. All of this clearly shows a pattern of deceit and destruction of material evidence which the Plaintiff needs to have access to

before proceeding further with his case. Plaintiff has undergone tremendous efforts to locate and secure the information necessary to prove his case, only to be met with roadblocks at every step of the way. The Defendant's effort have undermined the entire discovery process and ignored Court Orders. Therefore, the Court affirms its Order of March 28, 2023 in which it found "no meaningful compliance by Defendant" and that such "non-compliance is in bad faith, willfully disobedient or a minimum a gross indifference to the Plaintiff's rights."

Now, to determine an appropriate sanction in light of Defendant's conduct. Options for sanctions include a fine, striking of pleadings or a spoliation charge to the jury. A spoliation charge to the jury would allow the jury to draw an inference that destroyed evidence would have been unfavorable to the Defendant. Stokes v. Spartanburg Regional Medical Center, 368 S.C. 515 (2006). A charge for spoliation seems like a mere tap on the hand in view of the Defendant's egregious conduct, especially since the failure to provide the information severely hampers the Plaintiff's ability to prove his case, thus rendering the spoliation charge not sufficient. The Court has threatened fines and striking of pleadings, but the Defendant still has not provided the requested information and complied with its Orders.

The Court issued a very strong caveat in its Order of April 28, 2023 finding a willful violation and stating that failure to comply within 45 days would result in a fine of $7,500.00 and striking of Defendant's Answer and Counterclaim. To do anything less at this point, more than twenty-one months later and in view of the egregious conduct of the defendant would only diminish the authority of this Court and its Order.

The Court finds that the defendant is in willful violation of the previous referenced Orders of the Court and discovery and finds Defendant in contempt of these Orders and Orders the following:

Defendant's Answer and Counterclaim filed in this matter shall be stricken and the Defendant shall be deemed in default; and

Defendant shall be assessed a fine in the amount of $7,500.00 to be paid within 10 days from the issuance of this Order.

Based on the Court's ruling on Plaintiff's Motion and striking of Defendant's pleading, the Defendant's Motion for Summary Judgment is denied.

IT IS SO ORDERED.

[E-signature of Judge Gravely to follow]

ATTACHMENT A

Greenville Common Pleas

Case Caption: Richard A Gorman vs. John C Monarch , defendant, et al

Case Number: 2021CP2303414

Type: Order/Sanctions

So Ordered

s/ Honorable Perry H. Gravely, #2755