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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. Appellants.

RECORD ON APPEAL

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From: SCDEfilingstat@scd.uscourts.gov
To: scd_ecf_nef@scd.uscourts.gov
Subject: Activity in Case 4:22-cv-04017-JD Coggeshall et al v. von Herrmann et al Order on Motion to Remand
Date: Monday, April 3, 2023 11:05:01 AM

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U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 4/3/2023 at 11:03 AM EDT and filed on 4/3/2023

Case Name: Coggeshall et al v. von Herrmann et al

Case Number: [4:22-cv-04017-JD](#)

Filer:

Document Number: 17(No document attached)

Docket Text:

TEXT ORDER denying [6] Plaintiffs Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall's (collectively the "Coggeshalls") Motion to Remand for the reasons stated in their motion, but otherwise, the Court declines to exercise supplemental jurisdiction over the remaining state law claims in the Amended Complaint; and therefore, remands the case to the Horry County Court of Common Pleas.

On October 14, 2022, Plaintiffs filed the current action in the Horry County Court of Common Pleas for violations of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and other related state law claims. (DE 1-3.) On November 17, 2022, Defendants filed the Notice of Removal based on federal question subject matter jurisdiction. (DE 1; see 28 U.S. § 1441.) Simultaneously, Plaintiffs filed an amended complaint, removing the sole cause of action based on the federal statute, 18 U.S.C. § 1030. (DE 5.) Plaintiffs seek remand of the case to state court because "the Amended Complaint contains no federal questions," (DE 6, p. 1); however, Defendants' removal was jurisdictionally proper as it was filed pursuant to the complaint that alleged an action arising out of a federal statute. See 28 U.S. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). Accordingly, Defendants now request the Court to maintain supplemental jurisdiction over the remaining state law claims (DE 11, p. 4.)

The supplemental jurisdiction statute provides in pertinent part "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S. § 1367(a). However, a court *may decline* to exercise such supplemental jurisdiction if "the district court has dismissed all claims over which it has original jurisdiction." Id. at § 1367(c)(3). Regarding such claims taken out by a Plaintiff in an amended complaint, "trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished. Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995). In order to decide whether to exercise jurisdiction over a case brought in that court involving pendent state-law claims," the court should consider "the values of judicial economy, convenience, fairness, and comity." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988).

After review of the record, the Court does not find the aforementioned considerations weigh in favor of retaining supplemental jurisdiction; therefore, this Court declines to do so. Accordingly, the case is remanded to the Horry County Court of Common Pleas.

Signed by the Honorable Joseph Dawson, III on 4/3/2023. (lgib,)

4:22-cv-04017-JD Notice has been electronically mailed to:

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4:22-cv-04017-JD Notice will not be electronically mailed to:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	ORDER GRANTING IN PART AND
Plaintiffs,	)	DENYING IN PART DEFENDANTS'
	)	MOTION TO DISMISS
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' claims for (1) violation of the South Carolina Homeland Security Act, (2) invasion of privacy – publicizing private affairs, and (3) invasion of privacy – wrongful intrusion and outrage. For the reasons explained below, this Court GRANTS the motion in part and dismisses both invasion of privacy causes of action but DENIES the motion with respect to the alleged violation of the South Carolina Homeland Security Act.

Background

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf (Fulmer Action). Plaintiffs allege Mr. Fulmer intercepted the electronic

communications and Defendants, with knowledge the information was “unlawfully obtained” disseminated the material. The Fulmer Action is still ongoing.

As a result of Defendants’ actions, Plaintiffs brought this lawsuit in the Horry County Court of Common Pleas. Defendants removed the case to federal court because Plaintiffs’ original complaint asserted a federal claim. Plaintiffs amended their complaint in federal court to remove the federal claim. Defendants moved to dismiss the amended complaint in federal court, Plaintiffs responded, and Defendants replied. Plaintiff also moved to remand the case back to state court. The federal court remanded the case to the Horry County Court of Common Pleas without deciding the motion to dismiss. This Court heard Defendants’ Motion to Dismiss on August 14th, 2023.

Procedural Standard

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, “[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s ‘failure to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Legal Analysis

Defendants argue Plaintiffs' claims should be dismissed based on the attorney-immunity doctrine. After considering Defendants' arguments in their motion and reply, Plaintiffs' response, and the arguments at the hearing, this Court finds the attorney-immunity doctrine shields Defendants from the invasion of privacy claims, but the defense does not apply to the alleged violation of the South Carolina Homeland Security Act.

Attorney-Immunity and Invasions of Privacy

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client, the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and

outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602. The doctrine has barred many different common law claims against attorneys, including those for fraud, conversion, civil conspiracy, and malicious prosecution. *See, e.g., Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (fraud and conversion); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (civil conspiracy); *Gaar*, 339 S.E.2d at 889 (malicious prosecution).

This Court finds that Plaintiffs' claims for Invasion of Privacy are barred by the attorney-immunity defense. Attorney-immunity is a common law defense that has prevented common-law claims, such as civil conspiracy and malicious prosecution, when the attorney was acting with the client's knowledge and within scope of the representation. Taking the allegations of the amended complaint as true at the motion to dismiss stage, the amended complaint makes clear that the invasions of privacy took place while Defendants were representing Mr. Fulmer—alleging that Defendants used the communications to bring a lawsuit against Plaintiffs on Mr. Fulmer's behalf. The amended complaint is devoid of any allegations Defendants breached some independent duty to the Plaintiffs or acted in their own interests and outside the scope of their representation of Mr. Fulmer. This is precisely the scenario for which attorney immunity exists and Courts have relied upon to dismiss common law claims previously. Accordingly, this Court agrees with Defendants and DISMISSES with prejudice Plaintiffs' causes of action for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage.

Attorney Immunity and South Carolina Homeland Security Act (Act)

Defendants argue attorney immunity applies to the Act because the legislature enacts against the backdrop of common law and, pursuant to statutory interpretation rules of plain meaning and strict construction, the Act does not clearly and unambiguously change the common

law in a way that abrogates the attorney-immunity defense. Plaintiffs, on the other hand, argue that attorney-immunity does not apply because the Act does not expressly exempt attorneys from its application. Although this is a novel question in South Carolina, this Court agrees with Plaintiffs and finds the attorney-immunity defense does not apply to the Act.

The Act makes it a felony for any “person” to intentionally disclose to another person, or use, the contents of any electronic communication, “knowing or having reason to know that the information was obtained through the interception” of an electronic communication. *See* S.C. Code Ann. § 17-30-20(3) & (4). The Act creates a civil cause of action, stating that “[a]ny person whose . . . electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses . . . the communications.” S.C. Code Ann. § 17-30-135(A). The statute creating the civil cause of action lists one defense: “A good faith reliance on a court order, subpoena, or request of an agent of the South Carolina Law Enforcement Division under [s]ection 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief.” S.C. Code Ann. § 17-20-135(B). The statute is otherwise silent on the application of any defenses. Further, the Act explains in what circumstances the interception of an electronic communication is legal, section 17-30-35, and exempts the employees of the Federal Communications Commission and employees of providers of communications services in certain scenarios. *See* §§ 17-30-25, 17-30-35.

This Court finds that attorneys fall within the common meaning of “any person” as used in the Act and, therefore, the Act applies to attorneys. This Court finds that if the South Carolina legislature had intended to exempt attorneys from liability under the Act, it could have expressly included that group as it did employees of certain entities. Because the Act applies to attorneys and the legislature did not expressly exempt attorneys, this Court finds the common law

attorney-immunity defense does not apply to claims arising under the Act. Therefore, Defendants' Motion to Dismiss the claim under the Act is DENIED and Defendants cannot assert the defense going forward.

Conclusion

After considering the arguments and authorities cited by Defendants in their Motion to dismiss and reply, by Plaintiffs in response to the Motion to Dismiss, and the arguments at the hearing, it is ORDERED:

1. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is GRANTED as to the Plaintiffs' claims for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage, and such claims are hereby dismissed with prejudice; and

2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED as to Plaintiffs' claim for violation of the South Carolina Homeland Security Act and Defendants cannot assert the attorney-immunity defense going forward.

SO ORDERED!

The Honorable Kristi F. Curtis
Fifteenth Judicial Circuit

[Electronic Signature Page Follows]



Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann ,
defendant, et al
Case Number: 2022CP2606296
Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2606296

Anna Coggeshall et al
 PLAINTIFF(S)

William Bertram Von Herrmann et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff, Anna Coggeshall's Motion/Compel Discovery is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/19/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann ,
defendant, et al
Case Number: 2022CP2606296
Type: Order/Electronic Form 4

IT IS SO ORDERED

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	ORDER DENYING THE MOTION TO
	)	RECONSIDER
Plaintiff,	)	
vs.	)	
	)	
William Bertram von Herrmann and The	)	
Von Herrmann Law Firm,	)	
	)	
Defendant,	)	

PRESIDING JUDGE: The Honorable Krisi F. Curtis

DATE OF HEARING: December 19, 2023

ATTORNEY FOR PLAINTIFF: Steve Abrams, *Esq.* and Richard Whiting, *Esq.*

ATTORNEY FOR DEFENDANT: Skyler C. Wilson, *Esq.* and Douglas W. MacKelcan, *Esq.*

This matter comes before the court pursuant to the Defendants' Notice of Motion and Motion for Reconsideration of its Order filed November 10, 2023.

After further review of the Defendants' Motion for Reconsideration in this matter, the Defendants' Motion is respectfully denied. The court recognized that this is a Novel Issue, but is persuaded by the reasoning contained in Plaintiffs' original Reply to the Defendants' original Motion, filed May 7, 2023.

The controlling statute is extremely broad. This statute mirrors the Federal Wiretap Action in many respects in that it prohibits the interception of electronic communications as well as the disclosure of illegally intercepted communications. The South Carolina Homeland Security Act is the State's equivalent of the Federal Electronic Communication Privacy Act, which also expressly

prohibits any evidence derived from the illegally intercepted communication from being entered into evidence in any trial, hearing or other proceeding before any court. See South Carolina code §17-30-65. The only exception for court proceedings is that set forth in South Carolina code §17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings. This statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute certain alleged crimes.

It is illogical for the legislation to specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family court narratives.

The court finds that it would be illogical for the legislation to prohibit a pro se individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing that individual's attorney to take the exact same actions with absolute immunity. Accordingly, the Defendants' Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Presiding Circuit Judge

_____, 2024.

Horry, South Carolina.



Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann ,
defendant, et al
Case Number: 2022CP2606296
Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 OF THE
 FIFTEENTH JUDICIAL CIRCUIT

Anna Coggeshall, Bryan Coggeshall,
 and Katherine Coggeshall,

Plaintiffs,

versus

William Bertram von Herrmann
 and The Von Herrmann Law Firm,

Defendants.

SUMMONS

Civil Action No. 2022-CP-26-_____

TO THE DEFENDANTS, WILLIAM BERTRAM VON HERRMANN AND THE VON
 HERRMANN LAW FIRM:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this
 action, a copy of which is hereby served upon you, and to serve a copy of your answer
 to the said Complaint on Plaintiff or his/her attorney, at his office 1515 Lady Street
 (29201), Post Office Box 7877, Columbia, South Carolina 29202, within thirty (30) days
 after the service hereof, exclusive of the date of such service, and if you fail to answer
 the Complaint within the time aforesaid, judgment by default will be rendered against
 you for the relief demanded in the Complaint.

s/Richard G. Whiting
 Richard G. Whiting
 Attorney for Plaintiffs
 1515 Lady Street (29201)
 Post Office Box 7877
 Columbia, SC 29202
 803-256-9067
dick.whiting@whitinglawsc.com

s/Steven M. Abrams, Esquire
 Steven M. Abrams, Esquire
 Attorney for Plaintiffs
 1154 Holly Bend Drive
 Mount Pleasant, SC 29466
 843.216.1100
steve@abramsforensics.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Anna Coggeshall, Bryan Coggeshall,	)	
and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	COMPLAINT
	)	
versus	)	(JURY TRIAL DEMANDED)
	)	
William Bertram von Herrmann,	)	
and The Von Herrmann Law Firm	)	
	)	
Defendants.	)	Civil Action No. 2022-CP-26-_____
	)	

GENERAL ALLEGATIONS AND JURISDICTION

1. The parties are residents of Horry County, South Carolina.
2. Jurisdiction and venue are proper before this Court.
3. At all times relevant herein Plaintiffs had a private cell phone numbers. At no time did Plaintiffs give anyone permission to intercept or use their private electronic communications or to disclose the contents of these communications.
4. At all times relevant herein Plaintiffs had the ability to send and receive private text messages on their cell phones. At no time did Plaintiffs give anyone permission to access, use or disclose their private text messages.
5. At the time of Plaintiff Anna Coggeshall and Justin Fulmer's physical separation, based upon information and belief, Justin Fulmer, who was and continues to be a client of William Bertram von Herrmann and The Von Hermann Law Firm unlawfully took possession of Plaintiff Anna Coggeshall's iWatch and began to illegally access her and the other Plaintiffs' private email address without permission, and to

improperly procure Plaintiffs' private electronic text messages/communications in excess of 960 occasions.

6. After intercepting and accessing Plaintiffs' private text messages, private text messages between all Plaintiffs, and possibly other electronic communications through the use of the unlawfully obtained iWatch, which Defendants' client, Justin Fulmer, unlawfully took from Plaintiff Anna Coggeshall without her knowledge or consent, and through the electronic communications system, Justin Fulmer or his agent(s) began taking screen shots or otherwise reproducing the same electronic communications, and Defendants printed the same.

7. Defendants used the improperly obtained communications in an attempt to gain an economic benefit and to gain collateral advantage in a new Circuit Court action which their client, Justin Fulmer, brought against all Plaintiffs and others via the Defendants named herein.

8. The contents of all Plaintiffs' private electronic messages were disseminated visually, and copies being provided to various entities, and as yet, unidentified third persons.

9. The foregoing acts were accomplished through and including an unknown date, and possibly up to present.

10. Justin Fulmer intercepted those electronic communications described hereinabove and Defendants, knowing these communications were unlawfully obtained, disseminated same without Plaintiffs' prior knowledge or consent and without the knowledge or consent of any third parties to whom the Plaintiffs were communicating.

11. As a result of the Defendants' conduct, the Plaintiffs have been injured and are entitled to damages as follows: actual damages, statutory damages, punitive damages, attorney's fees, and other litigation costs.

12. Plaintiffs bring this cause of action pursuant to the South Carolina Homeland Security Act, S.C. Code Ann § 17-30-10, et seq., South Carolina Computer Crimes Acts, S.C. Code Ann. § 16-16-10 et seq., the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2522, the Federal Stored Communications Act, 18 U.S.C. § 2701-2712, and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 as well as Invasion of Privacy/Wrongful Intrusion, Trespass to Chattels and Outrage.

FOR A FIRST CAUSE OF ACTION
(Violation of Electronic Communications Privacy Act)

13. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

14. Any person whose communications have been intercepted in violation of § 17-30-20 is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate, including a preliminary or equitable or declaratory relief as may be appropriate; actual damages, but not less than liquidated damages computed at the rate of five hundred dollars (\$500.00) a day for each day of violation or twenty-five thousand dollars (\$25,000.00), whichever is greater, not to exceed the limits on liability provided in subsection (F)(3); punitive damages, except as may be prohibited in subsection (F)(4); and reasonable attorney's fee and other litigation costs reasonably incurred.

15. Plaintiffs allege that their electronic communications have been intercepted, intentionally accessed/recorded, disclosed, and used without their authorization and in violation of the foregoing chapters and brings this civil cause of action against those Defendants and entities who accessed, intercepted, disclosed, used, or procured Plaintiffs' private electronic communications.

16. Based thereon, Plaintiffs are entitled to an immediate Order and injunction restraining the Defendants and their agents from any further dissemination of Plaintiffs' private electronic mail/electronic conversations which were intercepted and used by Defendants.

17. Pursuant to §§ 17-30-10 et seq. and 17-30-135 of the 1976 Code of Law, State of South Carolina, as amended, Plaintiffs are further entitled to actual damages of not less than liquidated damages computed at the rate of \$500.00 per day for each day of violation or \$25,000.00, whichever is greater, alleging that, upon information and belief, from the date of the first interception, disclosure continues upon the public records and elsewhere through this date and Plaintiff is entitled damages at the rate of \$500.00 per day for every day on which the foregoing records continue to be used or disclosed.

18. Plaintiffs are also entitled to punitive damages in an amount to be established by a jury, together with reasonable attorney's fees and other litigation costs reasonably incurred and such other legal and equitable relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of the Computer Fraud and Abuse Act)

19. Each allegation in Paragraphs 1 to 18 is repeated herein as if first stated.

20. Under the Federal Law (18 U.S.C. § 1030) known as the Computer Fraud and Abuse Act it is illegal to access certain computers without authorization or exceeding one's authorization. These "protected computers" include computers used by financial institutions and/or computers used in or affecting interstate commerce or communications. For practical purposes, therefore any computer connected to the Internet is a "protected computer." In *United States v. Kramer*, 81 631 F.3d 900 (8th Cir. 2011), cert. denied, 131 S. Ct. 2977 (2011), the Eighth Circuit Court of Appeals found that smartphones constitute a protected computer governed under the CFAA because modern smartphones fulfill all of the required functions in the definition of a computer in 18 USC § 1030 (e)(1). Specifically, a modern smartphone fits the requirements of "high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device" to a tee. The United States Supreme Court in *Riley v. California* (134 S. Ct. 2473, 189 L.Ed.2d 430, 82 USLW 4558 (2014)) went to great lengths to differentiate modern smartphones from the generation of flip phones that came before them, concluding that these Internet connected devices were more a computer than mere phone agreeing with the logic applied earlier in *United States v. Kramer*. Since then it has been argued consistently that smartphones, such as the iPhone and iWatch, should be afforded the protections of the Computer Fraud and Abuse Act.

21. Plaintiff Anna Coggeshall's iPhone smartphone and corresponding iWatch is by virtue of fulfilling the definition of "computer" per the Computer Fraud and Abuse Act ("CFAA"), 18 USC § 1030 (e)(1), and by being connected to the Internet and being used regularly in interstate commerce and communications, and Financial Institution transactions is a "protected computer" as understood in the CFAA. (18 USC § 1030 (e) (2)).

22. Justin Fulmer, a client of Defendants, accessed Plaintiffs' data and communications on the iPhone via the iWatch without authorization in multiple violations of the CFAA. This allowed Defendants to have unauthorized access to a "protected computer" per the meaning of the CFAA which not only was used in interstate commerce and communications, but also was regularly used by Plaintiffs.

23. As a result of Defendants' multiple unauthorized accesses and disclosures of the contents of Plaintiff Anna Coggeshall's "protected computer" (iPhone smartphone via the iWatch), Plaintiffs have suffered damages well in excess of \$5,000.00 and are entitled to compensatory damages, punitive damages, attorney's fees and costs, and injunctive relief or other equitable relief.

FOR A THIRD CAUSE OF ACTION
(Invasion of Privacy – Publicizing of Private Affairs)

24. Each allegation in Paragraphs 1 through 23 is repeated herein as if first stated.

25. Defendants herein gave publicity to matters that are private to Plaintiffs.

26. The disclosure of these communications or images would be highly offensive to a reasonable person and is not of legitimate public concern.

27. Further, Plaintiffs did not consent to the disclosure of this private information/images.

28. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against Defendants, together with such other legal and equitable relief as the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Invasion of Privacy – Wrongful Intrusion and Outrage)

29. Each allegation in Paragraphs 1 through 28 is repeated herein as if first stated.

30. Defendants' wrongful intrusions consist of watching, spying, and prying into Plaintiffs' private affairs.

31. The wrongful intrusions concern those aspects of the Plaintiffs, their personal relationships, and communications which one normally expects to be free from exposure to Defendants.

32. Defendants' conduct is intentional, substantial, and unreasonable, and is of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.

33. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against the Defendants, together with such other legal and equitable relief this Court deems just and proper.

THIS COURT'S POWER TO GRANT RELIEF

34. This Court has the equitable powers and statutory remedies under the various statutes to grant injunctive relief from Defendants' continuing misconduct, including the interception and disclosure of Plaintiffs' electronic communications.

35. This Court has the statutory authority under South Carolina Code of Laws §17-30-135 to award to Plaintiffs actual damages, not less than liquidated damages of \$25,000.00, plus punitive damages, and reasonable attorneys' fees and court costs for the interception of Plaintiffs' electronic communications.

36. This Court has the power to award Plaintiffs compensatory damages and injunctive relief or other equitable relief for Defendants' willful violation of the Computer Fraud and Abuse Act in accessing and disclosing Plaintiffs' protected computer on multiple occasions without authorization.

37. The Court has the equitable powers and statutory remedies to award damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, invasion of privacy - wrongful intrusion, and outrage including actual and punitive damages against Defendants together with such other equitable and reasonable relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court pursuant to its own equitable and legal powers:

1. Enter an Order enjoining Defendants preliminarily and permanently from any further intrusion into Plaintiffs' internet communications or interception of Plaintiffs' electronic communications.

2. Award Plaintiffs actual, not less than statutory, liquidated damages, and punitive damages for Defendant's client's, Justin Fulmer's, unauthorized and illegal interception of Plaintiffs' electronic communications and Defendants' conduct.

3. Award Plaintiffs compensatory damages and injunctive relief or other equitable relief for Defendants' multiple violations of the Computer Fraud and Abuse Act.

4. Award Plaintiffs actual damages, punitive damages, reasonable attorney's fees and costs for the violation of the Stored Electronic Communications Act.

5. Award actual and punitive damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, the invasion of privacy - wrongful intrusion and outrage.

6. Award Plaintiffs reasonable attorneys' fees and the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

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steve@abramsforensics.com

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) OF THE
FIFTEENTH JUDICIAL CIRCUIT

Anna Coggeshall, Bryan Coggeshall,
and Katherine Coggeshall,

Plaintiffs,

versus

William Bertram von Herrmann,
and The Von Herrmann Law Firm,

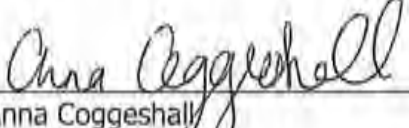
Defendants.

VERIFICATION

Civil Action No. 2022-CP-26-_____

I, Anna Coggeshall, declare as follows:

1. I have reviewed the foregoing Complaint.
2. Regarding the allegations of which I have personal knowledge, I know or believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true.


Anna Coggeshall

Sworn to and subscribed before me this

3 day of Oct, 2022


Notary Public for South Carolina

My commission expires April 23, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Anna Coggeshall, Bryan Coggeshall,	)	
and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	VERIFICATION
	)	
versus	)	
	)	
William Bertram von Herrmann,	)	Civil Action No. 2022-CP-26-_____
and The Von Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

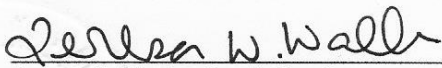
I, Bryan Coggeshall, declare as follows:

1. I have reviewed the foregoing Complaint.
2. Regarding the allegations of which I have personal knowledge, I know or believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true.


Bryan Coggeshall

Sworn to and subscribed before me this

5 day of October, 2022


Notary Public for South Carolina

My commission expires 07-17-2029

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
OF THE
FIFTEENTH JUDICIAL CIRCUITAnna Coggeshall, Bryan Coggeshall,
and Katherine Coggeshall,

Plaintiffs,

versus

William Bertram von Herrmann,
and The Von Herrmann Law Firm,

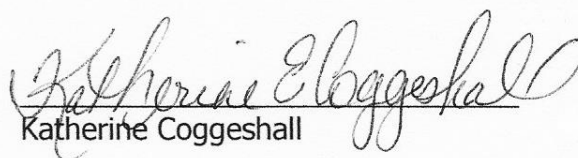
Defendants.

VERIFICATION

Civil Action No. 2022-CP-26-_____

I, Katherine Coggeshall, declare as follows:

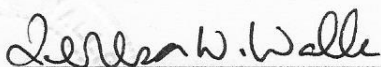
1. I have reviewed the foregoing Complaint.
2. Regarding the allegations of which I have personal knowledge, I know or believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true.



Katherine Coggeshall

Sworn to and subscribed before me this

5 day of October, 2022



Notary Public for South Carolina

My commission expires 07-17-2029

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Anna Coggeshall; Bryan Coggeshall; and
Katherine Coggeshall,

Plaintiffs,

vs.

William Bertram von Herrmann and
The Von Herrmann Law Firm,
Defendants.

CASE NO.: 4:22-cv-04017-JD

AMENDED SUMMONS

TO THE DEFENDANTS, WILLIAM BERTRAM VON HERRMANN AND THE VON
HERRMANN LAW FIRM:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is hereby served upon you, and to serve a copy of your answer to the said
Complaint on Plaintiff or his/her attorney, at his office 1515 Lady Street (29201), Post Office
Box 7877, Columbia, South Carolina 29202, within thirty (30) days after the service hereof,
exclusive of the date of such service, and if you fail to answer the Complaint within the time
aforesaid, judgment by default will be rendered against you for the relief demanded in the
Complaint.

s/Richard G. Whiting
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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Anna Coggeshall; Bryan Coggeshall; and)
Katherine Coggeshall,)
)
Plaintiffs,)

CASE NO.: 4:22-cv-04017-JD

AMENDED COMPLAINT

vs.

William Bertram von Herrmann and
The Von Herrmann Law Firm,
Defendants.

GENERAL ALLEGATIONS AND JURISDICTION

1. The parties are residents of Horry County, South Carolina.
2. Jurisdiction and venue are proper before this Court.
3. At all times relevant herein Plaintiffs had private cell phone numbers. At no time did Plaintiffs give anyone permission to intercept or use their private electronic communications or to disclose the contents of these communications.
4. At all times relevant herein Plaintiffs had the ability to send and receive private text messages on their cell phones. At no time did Plaintiffs give anyone permission to access, use or disclose their private text messages.
5. At the time of Plaintiff Anna Coggeshall and Justin Fulmer's physical separation, based upon information and belief, Justin Fulmer, who was and continues to be a client of William Bertram von Herrmann and The Von Hermann Law Firm unlawfully took possession of Plaintiff Anna Coggeshall's iWatch and began to illegally access her and the other Plaintiffs' private email address without permission, and to improperly procure Plaintiffs' private electronic text messages/communications in excess of 960 occasions.
6. After intercepting and accessing Plaintiffs' private text messages, private text messages between all Plaintiffs, and possibly other electronic communications through the use of

the unlawfully obtained iWatch, which Defendants' client, Justin Fulmer, unlawfully took from Plaintiff Anna Coggeshall without her knowledge or consent, and through the electronic communications system, Justin Fulmer or his agent(s) began taking screen shots or otherwise reproducing the same electronic communications, and Defendants printed the same.

7. Defendants used the improperly obtained communications in an attempt to gain an economic benefit and to gain collateral advantage in a new Circuit Court action which their client, Justin Fulmer, brought against all Plaintiffs and others via the Defendants named herein.

8. The contents of all Plaintiffs' private electronic messages were disseminated visually, and copies being provided to various entities, and as yet, unidentified third persons. These disseminations of the contents of Plaintiff's private electronic communications continued willfully even after Defendant's were put on notice that publishing the contents of Plaintiff's electronic communications would constitute a "use" in multiple violations of the Interception statutes.

9. The foregoing acts were accomplished through and including an unknown date, and possibly up to present.

10. Justin Fulmer intercepted those electronic communications described hereinabove and Defendants, knowing these communications were unlawfully obtained, disseminated same without Plaintiffs' prior knowledge or consent and without the knowledge or consent of any third parties to whom the Plaintiffs were communicating.

11. As a result of the Defendants' conduct, the Plaintiffs have been injured and are entitled to damages as follows: actual damages, statutory damages, punitive damages, attorney's fees, and other litigation costs.

12. Plaintiffs bring this cause of action pursuant to the South Carolina Homeland Security Act, S.C. Code Ann § 17-30-10, et seq., as well as the Invasion of Privacy torts of Publicizing of Private Affairs, Wrongful Intrusion and Outrage.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Homeland Security Act)

13. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

14. Any person whose communications have been intercepted in violation of § 17-30-20 is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate, including a preliminary or equitable or declaratory relief as may be appropriate; actual damages, but not less than liquidated damages computed at the rate of five hundred dollars (\$500.00) a day for each day of violation or twenty-five thousand dollars (\$25,000.00), whichever is greater, not to exceed the limits on liability provided in subsection (F)(3); punitive damages, except as may be prohibited in subsection (F)(4); and reasonable attorney's fee and other litigation costs reasonably incurred.

15. Plaintiffs allege that their electronic communications have been intercepted, intentionally accessed/recorded, disclosed, and used without their authorization and in violation of the foregoing chapters and brings this civil cause of action against those Defendants and entities who accessed, intercepted, disclosed, used, or procured Plaintiffs' private electronic communications.

16. Based thereon, Plaintiffs are entitled to an immediate Order and injunction restraining the Defendants and their agents from any further dissemination of Plaintiffs' private electronic mail/electronic conversations which were intercepted and used by Defendants.

17. Pursuant to §§ 17-30-10 et seq. and 17-30-135 of the 1976 Code of Law, State of South Carolina, as amended, Plaintiffs are further entitled to actual damages of not less than liquidated damages computed at the rate of \$500.00 per day for each day of violation or \$25,000.00, whichever is greater, alleging that, upon information and belief, from the date of the first interception, disclosure continues upon the public records and

elsewhere through this date and Plaintiff is entitled damages at the rate of \$500.00 per day for every day on which the foregoing records continue to be used or disclosed.

18. Plaintiffs are also entitled to punitive damages in an amount to be established by a jury, together with reasonable attorney's fees and other litigation costs reasonably incurred and such other legal and equitable relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Invasion of Privacy – Publicizing of Private Affairs)

19. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

20. Defendants herein gave publicity to matters that are private to Plaintiffs.

21. The disclosure of these communications or images would be highly offensive to a reasonable person and is not of legitimate public concern.

22. Further, Plaintiffs did not consent to the disclosure of this private information/images.

23. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against Defendants, together with such other legal and equitable relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Invasion of Privacy – Wrongful Intrusion and Outrage)

24. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

25. Defendants' wrongful intrusions consist of watching, spying, and prying into Plaintiffs' private affairs.

26. The wrongful intrusions concern those aspects of the Plaintiffs, their personal relationships, and communications which one normally expects to be free from exposure to Defendants.

27. Defendants' conduct is intentional, substantial, and unreasonable, and is of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.

28. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against the Defendants, together with such other legal and equitable relief this Court deems just and proper.

THIS COURT'S POWER TO GRANT RELIEF

29. This Court has the equitable powers and statutory remedies under the various statutes to grant injunctive relief from Defendants' continuing misconduct, including the interception and disclosure of Plaintiffs' electronic communications.

30. This Court has the statutory authority under South Carolina Code of Laws §17-30-135 to award to Plaintiffs actual damages, not less than liquidated damages of \$25,000.00, plus punitive damages, and reasonable attorneys' fees and court costs for the interception of Plaintiffs' electronic communications.

31. The Court has the equitable powers and statutory remedies to award damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, invasion of privacy - wrongful intrusion, and outrage including actual and punitive damages against Defendants together with such other equitable and reasonable relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court pursuant to its own equitable and legal powers:

1. Enter an Order enjoining Defendants preliminarily and permanently from any further intrusion into Plaintiffs' internet communications or interception of Plaintiffs' electronic communications, and from any further dissemination of Plaintiffs' electronic communications.

2. Award Plaintiffs actual, not less than statutory, liquidated damages, and punitive damages for Defendant's client's, Justin Fulmer's, unauthorized and illegal interception of Plaintiffs' electronic communications and Defendants' conduct, including the willful dissemination of Plaintiffs' intercepted electronic communications.

3. Award actual and punitive damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, the invasion of privacy - wrongful intrusion and outrage.

4. Award Plaintiffs reasonable attorneys' fees and the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

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Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
FIFTEENTH CIRCUIT
IN THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-26-06296

Anna Coggeshall,

Plaintiff,

VS.

William Bertram Von Herrmann,

Defendant.

H E A R I N G
BEFORE THE HONORABLE KRISTI CURTIS

DATE: August 7, 2023
LOCATION: South Carolina Circuit Court 15
Horry County
TRANSCRIBED BY: Theresa Shirley

LEGAL EAGLE
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Greenville, South Carolina 29606
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APPEARANCES: Steve Abrams, Esquire
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Attorney for the Plaintiff

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Attorney for the Defendant

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P R O C E E D I N G S

2 THE COURT: Okay. Number 12 on our docket is *Anna*
3 *Coggeshall v William Bertram Von Herrmann, et al.* This is
4 case number 2022-CP-26-06296. I see where we have
5 Mr. Abrams, Mr. Whiting, and we have Mr. MacKelcan.

6 MR. MACKELCAN: Yes, Your Honor, if it may please the
7 Court.

8 THE COURT: Sure.

9 MR. MACKELCAN: My name is Doug MacKelcan here on
10 behalf of Defendants Bert Von Herrmann and he is an
11 attorney at his law firm. Mr. Von Herrmann is who is
12 seated next to me here at my office.

13 This is the Defendant's motion to dismiss all causes
14 of action in this case. There's a statutory cause of
15 action, a violation of the South Carolina Homeland
16 Security Act, and then two common law causes of action.
17 Invasion of privacy and wrongful intrusion, outrage, and
18 all of these causes of action arise out of an allegation
19 that Mr. Von Herrmann used illegally obtained
20 communications in a lawsuit that he filed, which is still
21 pending in Horry County. He filed on behalf of his
22 client, Justin *Former* (phonetic) against the Plaintiffs in
23 this case.

24 And, Your Honor, we would submit to you that this is
25 really a straightforward case of attorney immunity and

1 that it should be dismissed. It is -- it is right for
2 dismissal on those grounds. The case law in South
3 Carolina is long settled, and I've -- I've, we've cited
4 the line of cases *Gar* (phonetic) *versus City of North*
5 *Myrtle Beach*, *Style versus Eldorado*, *Hagar versus McKay*
6 *Trotter and Beverly*. Your Honor, would you like the
7 site's for those? If we were in person, I would ask to
8 hand up the print of the cases for you.

9 THE COURT: Well, but let me ask you, sir, I looked
10 up your filings and I see an entry. I am looking on the E
11 filing system. So I see an entry for a motion to dismiss,
12 but there's no image that shows up there. The only thing
13 that I could see in the E filing system was the memo on
14 opposition, the information not appearing in the E filing
15 system. And I don't know if you've emailed me separately
16 because I don't have a law clerk or an administrative
17 assistant this week, or last week, honestly. So if you
18 sent it to one of them, it may have not gotten to me. But
19 I don't -- if you filed a motion or a memo in support of
20 your motion, I don't see it on the E filing system and I
21 don't have it.

22 MR. MACKELCAN: Okay. Your Honor, I can -- I did not
23 email it to your clerk. This -- this motion has been --
24 was filed. And we filed a memorandum with the motion.
25 It's one document because it was filed in federal court.

1 The case has been removed. The motion to dismiss was
2 filed in federal court with the memorandum and then the
3 case was remanded and that may explain why it's not there.
4 So my apologies for that, Your Honor, but we can certainly
5 send you a memorandum right after the hearing.

6 THE COURT: The removal and the Federal Court order
7 declining to exercise supplemental jurisdiction, I see all
8 that here. It didn't say anything but the grounds for
9 your motion. I sort of guessed just based on the contents
10 of the memo in opposition. So you just mail that to me at
11 the thekcurtisj@SCcourts.org and that will be helpful to
12 me.

13 MR. MACKELCAN: Okay. So I will do that just as soon
14 as we are done. Your Honor, briefly, as I mentioned, this
15 case involves importantly allegations regarding actions my
16 client took in his professional capacity as a lawyer
17 representing a client. And again, the case law is quite
18 clear in South Carolina that attorneys are immune from
19 liability to non-parties arising from the performance of
20 professional activities on behalf of and with -- with the
21 knowledge of their client.

22 Your Honor, that is exactly what we have here. We
23 have -- my client filed a lawsuit on behalf of a client
24 against the Plaintiffs in this case. The Plaintiffs in
25 the case are not his clients, have never been his clients.

1 And so they are clearly non-clients the complaint -- well,
2 the amended complaint and the complaint, but the amended
3 complaint which was the Alford complaint states he was
4 representing Mr. Former and not the Plaintiff so they
5 don't allege that they've been clients.

6 And I alleged further that he was acting in the scope
7 of his role as counsel for Justin Former in the underlying
8 case. So the elements for attorney immunity are met here.
9 And Plaintiff simply haven't led back sufficient to get
10 around attorney immunity. They have not pled any sort of
11 independent duty. And for those reasons, dismissal at
12 this stage is appropriate, Your Honor. Thank you.

13 THE COURT: I am not hearing you, sir. You are not
14 muted.

15 MR: ABRAMS: Can you hear me now, Your Honor?

16 THE COURT: I can, yes, sir.

17 MR: ABRAMS: Okay. I had my volume turned down.
18 Sorry, Your Honor. Okay. My name is Steve Abrams and I
19 am going to speak in opposition. First point that I
20 wanted to make is the actions which took place in this
21 case, which was this case, the underlying case, the first
22 case Mr. Von Herrmann filed was based on 962 intercepted
23 communications. And Mr. Whiting and I who represent the
24 Coggeshalls, we recognize that these were likely to be
25 intercepted communications we filed a motion to suppress

1 in the South Carolina Court of Appeals, which we've argued
2 before The Court of Appeals and prevailed on, that these
3 962 communications were, in fact, illegally intercepted,
4 and therefore should be suppressed.

5 While that case was pending at the court of appeal,
6 Mr. Von Herrmann, announced to the other attorneys on that
7 case that he had seven additional communications that his
8 client had obtained the same way that he obtained the
9 other 950 some odd occasions. And at that time, both by
10 telephone and by email, and that's one of the attachments
11 to our motion, Mr. Whiting informed Mr. Von Herrmann that
12 we did not want to see those communications. And he
13 shouldn't distribute those communications because doing so
14 would be further violation of South Carolina Homeland
15 Security Act. That, in fact, violated the use clause on
16 the South Carolina Homeland Security Act.

17 Forty-five minutes after receiving Mr. Whiting's
18 letter to that effect by email, Mr. Von Herrmann did, in
19 fact, distribute to all the attorneys, committing further
20 violations of the use clause by distributing additional
21 illegally obtained communication. So what we want to make
22 here is that there is no general attorney statutory
23 violation absence specific language exempting attorneys
24 from that liability. There is no attorney immunity from
25 the wiretap statutes in South Carolina or under federal

1 Law, and we cite in our memo a number of cases, on this
2 point that -- that while there is attorney immunity for
3 tortuous wrongs under the proper circumstances.

4 There has never ever been finding attorney immunity
5 applies to any statutory violation. Specifically, there's
6 never been a determination that attorney immunity never
7 applies to wiretap violation. In fact, all of the cases
8 cited by the Defendant in their memo found immunity
9 applicable only for common law tort. The *Style* case, that
10 was conspiracy; *Hagar* case, that was foreign conversions;
11 *Gar* case, that was malicious prosecution. There never has
12 been a case which has found that an attorney can violate a
13 statute unless the statute has exempted language for
14 attorneys.

15 So we totally reject that there was ever a
16 possibility that attorney immunity would apply to this
17 wiretap violation, which is pretty clear from me. This
18 was written by the South Carolina Court of Appeals that
19 this was, in fact, a wiretap violation. I'll go a little
20 further by saying that the *Styles* case -- *Styles* case says
21 that an attorney is not immune if in addition to
22 representing his clients, the lawyer, number one, breaches
23 an independent duty to a third party and, number two, acts
24 in his own self interest. And in this case, Mr. Von
25 Herrmann did both of those things. He -- Plaintiff's

1 position that the wiretap statute itself establishes an
2 independent direct duty to all third parties not to use
3 intercepted communication.

4 Clearly Mr. Von Herrmann was put on notice, by
5 Mr. Whiting's letter and by my telephone call not to do
6 this and he did it anyway. So he knew he had a duty. We
7 cite that in our -- in our complaints that he was put on
8 prior notice of that and he did it in any way. But we
9 think that we addressed that independent duty in our
10 complaint. Number two, at the time Mr. Von Herrmann filed
11 suit against the Plaintiff. His wife was engaged in a
12 race for Family Court Judge. And one of the Defendants
13 that he filed against was, in fact, the only other
14 opponent in that judicial case. And I found a newspaper
15 article actually today, which actually cites exactly that
16 -- that -- that-- that Mr. Von Herrmann filed his lawsuit
17 against the law firm -- the law firm of the opponent's
18 judicial race.

19 We think that represents sort of self interest, and
20 so that -- that two situation, set forth in the *Styles*
21 case, which says an attorney is never immune. We think
22 that we can show that -- that, in fact, he did do both of
23 those things. And, therefore, we think that not only does
24 our wiretap statute claim survive this motion to dismiss,
25 should dismiss this motion to dismiss, but also our tort

1 claims, as well, should, in fact, survive this motion to
2 dismiss and we think it's pretty clear.

3 And if you want to go further, I've studied a number
4 of cases in our memo. Courts have actually looked at what
5 statute claims of attorney immunity, and in each case they
6 found that the attorneys did not have immunity from that
7 statutory violation. The only curious case of which
8 attorney was found to have some immunity for wiretap
9 statute has really no relevance here in South Carolina.
10 It was a Texas case. Texas law is different than South
11 Carolina law. And that case, attorney was in Texas
12 wiretap statute, the federal wiretap statute.

13 South Carolina statute is modeled after federal
14 statute and in Texas law is that common law immunities
15 apply to statutory wrongs unless the statute itself
16 prohibits the use of common law immunity. And in that
17 case, the Texas Supreme Court found that the attorney was
18 immune from the Texas wiretap statute but was liable under
19 federal statute. We think that Federal Wiretap Act is
20 almost verbatim with the South Carolina Homeland Security
21 Act, that there's no immunity possible, no attorney
22 immunity possible.

23 We think that we've met our burden to show, in fact,
24 that Mr. Von Herrmann has no attorney immunity in this
25 case, and therefore we would request, respectfully, Your

1 Honor, that you deny this motion.

2 THE COURT: Mr. Abrams. Do you want to reply
3 briefly, Mr. MacKelcan?

4 MR. MACKELCAN: Yes, I would, Your Honor. Thank you.
5 First, you know, I would like to remind the Court that the
6 our motion to dismiss is based on the allegations as pled
7 in the amended complaint, which are virtually identical to
8 the original complaint. The only difference is the
9 plaintiffs after we removed the case to federal court
10 struck the cause of action based on a federal law
11 violation. So they've had an opportunity already to amend
12 the complaint. And there is absolutely no independent
13 duty alleged in the complaint or the amended complaint.

14 Today, it's the first time that that's been mentioned
15 and, again, our motion has been filed ten months ago.
16 Secondly, there is no allegation of self interest in the
17 complaint or the amended complaint and that is brought up
18 for the first time this afternoon, with no support, I
19 might add. So those allegations are simply false, but
20 importantly for this motion, they are not pled in this
21 complaint. And this motion to dismiss is based on the
22 core (phonetic) complaint.

23 Second, Your Honor, Mr. Abrams mentioned a Court of
24 Appeals ruling, again, also not pled in the complaint and
25 not in this case. All right. That is something that

1 apparently occurred in the underlying case. It's not
2 determinative in this case. It's not even pled in this
3 case. It's totally irrelevant. Speaking of irrelevant,
4 Mr. Abrams just argued that the Texas case that they cited
5 in their memo is not relevant. I wonder why they're
6 citing irrelevant cases. Well, because we pointed out
7 that that case actually helps us. So that sort of, you
8 know, again, this is -- this is a little unbelievable with
9 what I'm hearing in this argument in opposition. He also
10 stated that there has never ever been an attorney immunity
11 for a statutory violation. You know, I don't know.

12 There was no case cited by Plaintiff in opposition at
13 all to support their position that attorney immunity
14 doesn't apply. I think the case law and was admitted
15 during their argument that it certainly applies to common
16 law claims, two of the three of which are here so that --
17 that one is I guess, extremely straightforward. But we go
18 into detail in our memo and support regarding legislative
19 intent and the fact that there is nothing in there to
20 indicate that attorney immunity is any -- in any way
21 abrogated or that there are any common law defenses that
22 are abrogated, so there's nothing to indicate that it
23 would not apply.

24 And, again, you know, that makes sense. Really, the
25 whole purpose of the attorney immunity is to allow

1 attorneys to vigorously represent their clients without
2 worrying about opposing parties suing them. You know, if
3 the underlying case doesn't go well, for Mr. Former have a
4 cause of action against Mr. Von Herrmann for legal
5 malpractice or whatever else in the capacity as his
6 client. Likewise, if Mr. Von Herrmann -- if there are,
7 I'm not suggesting that there are -- I think that actually
8 we disagree with everything in the complaint. But if
9 there are ethical violations, there is recourse and -- for
10 that.

11 That is discussed in the *Gar* case. Plaintiffs are
12 not left without a remedy and that's exactly the same
13 circumstance here. Mr. Von Herrmann's client brought a
14 series of facts and evidence to him that supported what
15 they believed supported the lawsuit and they filed the
16 lawsuit. This was exactly what the attorney immunity
17 doctrine in South Carolina is for. And for that reason,
18 Your Honor, we respectfully request the Court grant our
19 motion to dismiss.

20 THE COURT: Thank you and I do want to look carefully
21 at this case law before I grant or deny the motion. So I
22 will look at closely and I will email you all with my
23 ruling.

24 MR. ABRAMS: Thank you, Your Honor.

25 MR. MACKELCAN: Thank you, Your Honor.

CERTIFICATE OF TRANSCRIBER

I, Theresa Shirley, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 15 of Horry County on the 7 Day of August, 2023.

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

June 17, 2024

Theresa Shirley

Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
FIFTEENTH CIRCUIT
IN THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-26-06296

Anna Coggeshall,

Plaintiff,

vs.

William Bertram Von Herrmann,

Defendant.

H E A R I N G
BEFORE THE HONORABLE KRISTI CURTIS

DATE: December 19, 2023
LOCATION: South Carolina Circuit Court 15
Horry County
TRANSCRIBED BY: Theresa Shirley

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P R O C E E D I N G S

2 THE COURT: Okay. This is case number 2022-CP-26-
3 06296. Does that sound correct?

4 MR. WHITING: Right.

5 MR. WILSON: Yes, Your Honor, that is correct. That
6 is correct.

7 THE COURT: I am sorry. What county is that?

8 MR. WILSON: Horry.

9 THE COURT: For some reason I was thinking Horry was
10 15 county code. Okay. I have your documents in front of
11 me. I understand this is a motion for reconsideration.

12 MR WILSON: Yes. Your Honor, Skyler Wilson on behalf
13 of the Defendants, Von Herrmann Law Firm and
14 Mr. Von Herrmann. It is our motion to reconsider the
15 Court's order on the motion to dismiss that we filed.
16 I've got in the room with me today Mr. Von Herrmann for
17 the purpose of the hearing. Would Your Honor like us to
18 begin argument?

19 THE COURT: Sure, go right ahead.

20 MR. WILSON: All right. Thank you, Your Honor. So,
21 again, we are here on a motion, Defendant's motion, to
22 reconsider the motion to the Court's Order on the motion
23 to dismiss. This all pertains to the application of the
24 Common Law Attorney client. The Common Law Attorney
25 immunity doctrine defense to claims arising under a

1 statute. Specifically civil claims based on the use or
2 disclosure of allegedly intercepted electronic
3 communications, which is derived from the South Carolina
4 Homeland Security Act.

5 And I could begin briefly with just a little bit of
6 facts about the case, kind of set the stage.

7 Mr. Von Herrmann is an attorney and he represents
8 Mr. Justin *Former* (phonetics) in a lawsuit that Mr. Former
9 brought against various individuals including the
10 Plaintiff, Ms. Anna Coggeshall, in this case. Now, Justin
11 Former, acquired Ms. Coggeshall's apple watch and accessed
12 her text communications between her and her parents who
13 are both also Plaintiffs in this lawsuit.

14 Plaintiffs allege that Former intercepted those
15 electronic communications under the Homeland Security Act,
16 and then brought claims -- they brought claims against
17 Mr. Former as counterclaims in the *Former* action. And the
18 statute under the Homeland Security Act also prohibits the
19 use and disclosure of intercepted communications under
20 most circumstances.

21 So there's one case the Former lawsuit and the
22 second case and it's the one that we're here on today. It
23 is the lawsuit by the Coggeshalls against Mr. Von Herrmann
24 for using those messages to bring a civil lawsuit and then
25 disclosing those messages in discovery. And those are, we

1 believe, our quintessential attorney activities in
2 advocating on behave of our clients, and we may move to
3 dismiss the case based on the attorney immunity doctrine,
4 which is a common law doctrine immunizing attorneys from
5 liability, civil liability, to certain parties, for
6 actions the attorneys take in the course and scope of
7 their representation of a client with the client's
8 consent.

9 Now, Plaintiffs originally had two other causes of
10 action for invasion of privacy, which the Court dismissed
11 based on the Attorney Immunity Doctrine. Then the
12 Court found that the Attorney Common Law Attorney Immunity
13 Doctrine did not apply to claims under the Homeland
14 Security Act. And it found that because of the language
15 in the acts, which applies to any person, and saying that
16 includes attorneys, because attorneys are people and the
17 act did not expressly exempt attorneys, like other limited
18 groups that were exempted under the Act, and found the
19 Common Law Defense does not apply and so we filed the
20 motion to reconsider just that aspect of the ruling.

21 And before I get into the real legal argument, I'd
22 just like to reiterate this is a motion to reconsider of a
23 decision on a motion to dismiss. The Court's review is
24 really limited to what's in the complaint, and what are
25 the arguments that were advanced before the Court on the

1 motion to dismiss. Any thing included in the motion to
2 reconsider or replies or responses aren't to be considered
3 and rule not a motion to reconsider. There is not enough
4 time to present new evidence and new arguments.

5 Another factor that potentially might come up is that
6 the trial for the underlying *Former* case happened towards
7 the end of November. The result of that trial went to a
8 verdict and they are in a post trial stage, for the same
9 reasons, the standard for today on the motion to
10 reconsider and the underlying motion to dismiss. All
11 that's relevant is what's been in the complaint, and what
12 was previously argued. And we're requesting that the Court
13 reconsider its order because the basis of the ruling that
14 attorneys aren't expressly exempt based on that any-person
15 language applies the wrong legal standard in our South
16 Carolina law.

17 So the correct -- correct standard statutory
18 interpretation is that the common law exists and remains
19 in full force and effect. Unless it's changed by clear
20 and -- and unambiguous legislative enactment. So you're
21 looking to language in the statute that says, that
22 implicates, or abrogates the common law and specifically
23 -- or specific aspects of the common law that is true for
24 criminal cases, that is true for state or criminal and
25 state statutes not just criminal or civil causes of action

1 and is an extension of this strict construction of a
2 statute.

3 That standard has applied previously, which we
4 brought the Court's attention in a few different scenarios
5 in the family law context. In the Simpson versus Simpson
6 case that we've briefed, the strict construction and
7 abrogation of common law principles were applied to say
8 that you cannot -- that the -- the passage of this statute
9 did not run contrary to the elective share -- elective
10 share statute did not run contrary to other family law.
11 That it would have necessarily done so because there was
12 no express language saying we intended to in this statute
13 abrogate common law. And that standard also applied to
14 statutes creating civil liability where none existed
15 previously.

16 And if you look at *Futch McAlister Towing* cases, you
17 have an example of those principles being applied under
18 the Payment of Wages Act. And under the Payment of Wages
19 Act that requires the unconditional payment of wages due.
20 That's the language of the statute, unconditional, says
21 nothing of common law defenses, common law anything. It
22 went up to the Supreme Court -- the Court of Appeals,
23 because the employer in that case wanted to say, well,
24 that employee breached their duty of loyalty that common
25 law duty of loyalty, so I didn't have to pay those wages

1 that were due and the Court of Appeals applied those
2 strict construction principles and the idea that the
3 common law survives unless expressly abrogated to say,
4 employer, you are right. You can defend against an
5 argument under the Payment of Wages Act by arguing the
6 defense of breach of loyalty. If your employee breached
7 their loyalty you do not owe them those wages despite what
8 the act says.

9 So when you're discussing common law versus state
10 statutes, South Carolina is fairly clear in our opinion,
11 that you begin with a presumption that the common law
12 applies unless expressly, clearly, and unambiguously
13 abrogated by statute. So if we look and follow that
14 presumption, we have to examine the language of the
15 Homeland Security Act.

16 And the correct presumption again being the common
17 law is in full force and effect unless a statute
18 unambiguously and clearly abrogates that. So the statute
19 has language that says "any person" and that does apply to
20 attorneys, but that is not an expressed legislative intent
21 that the attorney immunity defendants abrogated under
22 those strict construction principles. Further, the
23 expression of one defense under the statute's good faith
24 alliance is not necessarily fencing out all other defenses
25 that are available under the common law.

1 This is exactly why *Futch* under the Court of Appeals,
2 found that the unconditional language of Payment of Wages
3 did not abrogate the common law defense of breach of duty
4 or breach of loyalty. So if we're looking at the language
5 of the statute, the Homeland Security Act applies to any
6 person. It is not an express abrogation of the common
7 law, in general, or the attorney immunity doctrine.

8 And this is exactly the same line of reasoning that
9 the Texas Supreme Court followed in the *Taylor* case that
10 we brought to the Court's attention. Texas has given
11 their statutory interpretation a little more of a act name
12 or precise name. They say that, you know, we are the opt-
13 out approach. We apply these principles of common law as
14 in full force and in effect unless expressly abrogated.
15 It survives, the legislature knows about it when they pass
16 the statute. It's there. It's exiting unless the statute
17 says, no. No. No, it doesn't exist in clear and
18 unambiguous language.

19 And it sounds overall that the Texas State Immunity
20 Law Doctrine which is Attorney Immunity Doctrine, which is
21 very similar to our attorney immunity, applied to immunize
22 the attorney in that case, for violation of the Texas
23 Federal or the Texas Wiretap statute. And when Texas
24 decided that case and rejected these arguments that the
25 Plaintiffs advanced in response to our motion to dismiss,

1 mainly that any-person language includes attorneys, that
2 is too broad and is not something that expresses a clear
3 and unambiguous intent to abrogate common law and the
4 inclusion further that that language is common to many
5 statutes. It's not something that has been seen to
6 abrogate all common law under Texas law and the lifting of
7 one defense or two defenses, and did not send out all
8 these other common law defenses that were available or
9 under this strict construction.

10 THE COURT: Sorry. I just had a little furry friend
11 from my neighboring chambers run through the office. My
12 office mate's little dog just ran through. So I just did
13 not want you to think I was smiling at your argument, but
14 I just can't help but smile when this little Dachshund
15 runs through my office. He is so excited to see me. I'm
16 sorry. I was distracted for a moment. I didn't want you
17 think I was grinning from something you said.

18 MR. WILSON: No, I understand. I like dogs, too. If
19 that happened to me, I might smile as well.

20 But on note, Your Honor, the Texas case does have
21 some interesting points that the Plaintiffs have brought
22 up in that the statute in the federal case begins with
23 this language about except as otherwise provided in this
24 chapter. The Texas state statute did not have that
25 language. And the state statute in South Carolina does.

1 It begins with except as otherwise provided any person who
2 violates chapter and criminal penalties, a separate
3 subsection for the civil liability.

4 But I'll tell you that that doesn't change the
5 decision in this case, because if you read the Texas case,
6 it starts out with this understanding that the Texas
7 common law does not apply to federal claims. So they
8 said, well, Texas law has this attorney immunity defense
9 and applies the exact same way South Carolina does to the
10 state statute. But when you look at the federal statute,
11 you don't implement your common law from the state
12 perspective to the federal claims. You have to look at
13 what the federal law says if there's any corollary, and
14 under federal law, the Supreme Court of Texas says there
15 is no equivalent to Texas's state Attorney Immunity
16 Doctrine that we can find under federal law.

17 So we don't need to get into really this idea of
18 "except as otherwise provided" in this chapter. We're not
19 applying state law to Texas or state Texas law to the
20 federal claim. And then it went on to say, and there's a
21 couple of other reasons why we don't think that the common
22 law would apply. They reference, except as otherwise
23 provided language. Again, Your Honor, that is premised on
24 the fact for the decision from that court that says we
25 don't even apply state law to the federal wiretap claims.

1 We apply federal law and federal law doesn't have the
2 equivalent of the Texas state Attorney Immunity Doctrine.

3 And if we were to follow that reasoning, anyways, it
4 would lead to an abrogation of all common law doctrines,
5 which I think would be an absurd result that the
6 legislature did not intend. Which leads me into the
7 second point of this, Your Honor, is that it's worth
8 considering the implications of finding that this defense
9 either does apply and versus the implications of if it
10 doesn't apply.

11 Now, if it does apply to the common law attorney
12 defense applies, it is not akin to a finding that all
13 attorneys are exempt from the wiretapping statute. It is
14 limited by the language of defense as it originated in the
15 *Gard* (phonetic) case that it is only for conduct taken in
16 the course and scope of representing a client with a
17 client's consent. Another point is that it doesn't
18 magically legalize illegal conduct. It doesn't amount to
19 an exemption from the application of law as a shield. It
20 says that -- that law doesn't result in liability.
21 Further, it is only applicable to civil claims.

22 If you look at the *Gard* case, originated the defense
23 for attorney immunity it says specifically, look, we want
24 attorney immunity. We understand the policy points for --
25 for adopting it, but that wouldn't apply this time. To --

1 brought by the state it wouldn't apply to legal
2 malpractice claims. Those are still existing and so it
3 doesn't just create exemption. If you allow the defense
4 it's not like writing in something statutes. Now, if it
5 does apply, then again, it doesn't shield attorneys for
6 criminal prosecution.

7 The claim that Plaintiffs have brought are under the
8 civil claims under the statute. There is a separate
9 subsection that authorizes an aggrieved party to bring
10 civil claims, not criminal prosecution, not the criminal
11 statute that we're worried about. It's about the civil
12 claims that Plaintiffs have brought. This is not the
13 state prosecuting Mr. Von Herrmann for felony violation of
14 the South Carolina Homeland Security Act, but the
15 Plaintiffs trying to get liquidated damages and attorneys
16 fees against my clients. And if you look at the *Taylor*
17 case, that was evidence in adopting the doctrine because
18 it referenced it would not shield attorneys from
19 disciplinary -- disciplinary proceedings, malpractice
20 claims or criminal prosecution.

21 Again these claims are civil in nature now, and if
22 the defense doesn't apply and if we move forward with this
23 case, Your Honor, what we're essentially saying is, we're
24 going to have a chilling effect on the attorneys' duty of
25 zealous representation, and it's going to intrude upon the

1 attorney client privilege. If an attorney has to guard
2 against exposing him or herself against liability when
3 advising a client, then -- or representing a clients'
4 interests, the attorney isn't going to be able to
5 zealously represent the client, and it could lead to -- or
6 create a conflict of interest, to the client and the
7 attorney. Exactly what the policy says in the *Gard* case
8 for adopting the defense of the attorney immunity and who
9 want to encourage full and frank communication with
10 attorneys, and they want to encourage zealous advocate --
11 advocate advocacy on behalf of clients.

12 So, under this scenario, Mr. Von Herrmann, the
13 defense should apply, but it also causes questions for how
14 we're supposed to as his counsel defend against these
15 claims. If we must guard against potential civil
16 liability under the expansive view of the Homeland
17 Security Act that the Plaintiffs are advocating for, and
18 then to prove the claim, Your Honor -- I mean we're
19 getting into it's going to chill and intrude upon these
20 same client privilege not just upon the zealous advocacy
21 if the attorneys are liable.

22 Then the claim -- then litigating the claim is going
23 to involve digging into their communications with their
24 client and how they advise their client on everything.
25 That is a Common Law Doctrine that has been in existence

1 since founding the United States. If we find that the
2 attorney immunity doesn't apply and they're allowed to go
3 forward with their claims, then there's no way to escape
4 or hide behind or shield yourself under the attorney
5 client privilege to advocate for your client both between
6 myself and Mr. Von Herrmann, between Mr. Von Herrmann and
7 his client, Justin Former.

8 So, in conclusion, Your Honor, we think that these --
9 these implications for adopting the defense -- not really
10 adopting it, just recognizing that the common law exists
11 and it's not advocated by the statute. The downside far
12 outweighs the upside of encouraging the representation and
13 encouraging the attorney client privilege to maintain it's
14 full force and effect.

15 And in conclusion, Your Honor, we would just ask that
16 you reconsider your order and apply what we believe the
17 presumption is under South Carolina law that common law is
18 there and it applies and expressly abrogated. South
19 Carolina Homeland Security Act doesn't abrogate the Common
20 Law doctrine of attorney immunity. We look at the
21 complaint. The complaint says you're liable for taking
22 actions in the course of your reputation of your clients.
23 The push to dismiss should be granted under those grounds.

24 If the Court reconsiders, and if Your Honor would
25 prefer, I'd be happy to submit any proposed order and

1 circulate amongst the parties to this case, and if you
2 have, Your Honor, any questions. I will let opposing
3 counsel respond.

4 THE COURT: Yes. Sure. We will hear from whoever
5 wants to respond, Mr Abrams or Mr Whiting.

6 MR. WHITING: Mr. Abrams is to respond.

7 THE COURT: Yes, sir.

8 MR. ABRAMS: I have a bad cold but I will do my best.
9 So we resend the following things. We think the case out
10 of Texas is sort of -- doesn't exactly apply to South
11 Carolina because of the unique opt-out feature of South
12 Carolina application of common law defenses to Texas
13 statutes and, in fact, I would draw the Court's attention
14 -- I was out of state. I knew that this hearing was about
15 to occur so I didn't really have a chance to respond at
16 all until I got back in the office yesterday.

17 I have three cases that I am electing to discuss.
18 One of which is the -- is the case in *Talbert versus*
19 *Taylor and Pathway Forensics*, which was the Texas Court of
20 Appeals case which came before the Supreme Court case
21 which defense counsel applied to, and I think this case is
22 instructive because they also discussed the difference
23 between Texas Wiretap Law, and Federal Wiretap Law, and
24 I'll give you the site to this, as well. It's 629
25 Southwest Third, 318, Texas 2020. They discuss the same

1 Wiretap statute, the Texas one and the Federal one. But
2 they go into more detail about the applicability of the
3 attorney immunity defense and specifically that it does
4 not apply to criminal conduct which is criminal in nature.

5 And -- and that's exactly the difference is that the
6 Texas Wiretap statute contains an express exemption
7 because of the way that their common law defense is
8 applied, since there's no opt-out there. They are
9 allowing attorneys to have immunity. But since there's no
10 opt-out nature to the federal statute, attorney immunity
11 does not apply to federal statutes.

12 Other states have looked at this and we initially
13 briefed on -- on this case, Your Honor, which is *Nix*
14 *O'Malley*, which is 160 Federal Third, 343, which is out of
15 the Sixth Circuit 1998. And they are -- they also looked
16 at wiretap and whether or not attorney immunity applies to
17 wiretap statutes. And they made two very important points
18 I think would address Mr. Wilson's concerns.

19 The first one is that there's two different types of
20 immunity here that are in play. There's -- there's a
21 limited defense immunity, which allows an attorney -- if a
22 client is charged with a wiretap, it allows the attorney
23 to discuss the wiretap material with his client, provided
24 they don't disclose it any further than between the
25 attorney and client. So there's -- so there's no

1 violation or no abrogation of the attorney client
2 privilege and this also allows the attorney and the client
3 to come up with a defense strategy, what with the
4 intercepted material.

5 And then in *Nix O'Malley*, they go further and say in
6 addition to this limited defense immunity, there's also
7 attorney immunity. And the attorney immunity, which is a
8 broader immunity, which in this case they were proposing
9 would protect the attorney's use of this wiretap material
10 as the basis for a summary judgment motion, very similar
11 to what Mr. Von Herrmann did, and using the material for
12 the basis of his claim and distributing it to opposing
13 counsel. I would mention you distributed this intercepted
14 material, which now the Court of Appeals said it was
15 intercepted, and the jury said it was intercepted.

16 Mr Former's trial he -- he was put on notice by
17 myself and Mr. Whiting in a letter, and no sooner than 45
18 minutes after that letter, he distributed more of this
19 material, completely ignoring us bringing my notice that
20 would violate the South Carolina Homeland Security Act.
21 However, so in *Nix O'Malley* the Court said that there's a
22 court from another decision similarly about wiretap and
23 attorney immunity, said that there's nothing in the act
24 that affords attorneys special treatment. And we hold on
25 that our recognition of the defense exception affords

1 attorneys ample protection, which I spoke about previously
2 that was defense of a client, does not permit law
3 breaking.

4 And we hold, Your Honor, that that's all that we're
5 saying here is that Mr. Von Herrmann can be a zealous
6 advocate for his client is protecting in discussing this
7 material with Mr. Former under the defense exception, but
8 when he -- when he takes that next step and he -- and he
9 distributes that incorporating it into a complaint and by
10 actually taking the actual evidence itself and
11 distributing it -- once you got notice of the Homeland
12 Security Act, we think that that crosses the line.

13 And I would say one more thing about civil vs
14 criminal. The Homeland Security Act is a criminal statute
15 and legislation thought very hard about that statute and
16 included a private right of action, which if you look at
17 case law in South Carolina, private right of action is
18 rather rare, and if it's not expressly included in
19 statute, it can't be inferred. So the fact that South
20 Carolina legislature went to the -- to the -- to the
21 extreme of actually including this private right of action
22 in this criminal statute, meant that there was a -- a
23 purpose there. A purpose beyond just providing
24 restitution, if you will, to the victim of this wiretap.
25 It also reinforces the offender, or it helps to deter

1 would be offenders from violating the statute because not
2 only do they have criminal consequences possibly to deal
3 with, but they also have this rather severe financial
4 penalties that accrue, as well.

5 So we think that this is sort of a civil provision,
6 but we think that the legislature also had another purpose
7 which is to basically make the offender take -- confront
8 their -- their and take responsibility for the harm that
9 they inflicted and offers a financial deterrence. So we
10 think that the limited defense immunity is what Mr. Skyler
11 -- Skyler -- Mr. Wilson was -- was concerned about in
12 terms of his attorney client privilege that will be
13 protected by this narrow defense immunity. But -- but we
14 don't think that it would send a message of anything
15 positive to grant attorney immunity to what is basically a
16 criminal statute and the acts which are basically criminal
17 acts even if, in fact, they were the advocacy of his
18 client.

19 Their were other means that he could have taken
20 without violating the South Carolina Homeland Security
21 Act. So we think that essentially in the Texas case that
22 I talked about previously they talk about attorney
23 immunity does not apply generally to criminal statutes and
24 more in cases of fraud. So we would urge the Court not to
25 change its standing order here and allow this case to

1 proceed. We're happy to answer any questions, Your Honor.

2 THE COURT: Thank you, sir. Mr. Wilson, do you want
3 to respond?

4 MR. WILSON: Yes. Thank you, Your Honor. There is a
5 lot to respond here. I'm a little concerned, I guess,
6 because there are a couple of mischaracterizations what
7 the law says and what these cases represent, and I'll take
8 you through a list of them that I was able to scratch down
9 based on Mr. Abrams argument. I think he mentioned that
10 South Carolina law is different, that we apply an opt-in
11 approach, that the legislature would have to say that
12 every statute, that the common law applies. That is not
13 -- not what South Carolina says.

14 South Carolina says in civil and criminal context
15 with the common law is in full force and effect unless
16 expressly, clearly, and abrogated by comments by language
17 in the statute. That is the embodiment of an opt-out
18 approach, meaning that the legislature would have to say
19 common law doesn't apply. That is exactly why we're here
20 today is because incorrect assumption that they're arguing
21 is what the Court implied. Mr. Abram also cited *Taylor*
22 *versus Tolbert* and then went into another case by the same
23 name. Well, that was the underlying case from the Court
24 of Appeals that was reversed by the *Taylor versus Tolbert*
25 in Supreme Court on that very issue about attorney

1 immunity not applying to criminal statute.

2 The *Taylor Tolbert* Supreme Court says attorney
3 immunity in Texas applies to Texas wiretapping statutes.
4 Mr. Abram referenced the *Nix O'Malley* case from the Ohio
5 Federal Court and how that should lead to some other kinds
6 of decision by this. We briefed this issue applies the
7 original motion to dismiss and if Your Honor has our
8 submission for the motion to reconsider, our argument is
9 on page 103 of the total package. Why *Nix O'Malley*
10 doesn't have any bearing on this case.

11 Now, in Ohio law, and in that case, applied Ohio's
12 attorney immunity law which had a limited defense
13 exception to the republishing for attorneys for
14 republishing defamatory statements that was their attorney
15 client immunity or attorney immunity that they applied in
16 *Nix O'Malley*. There was no equivalent to South Carolina
17 attorney immunity doctrine which protects third party
18 liability for actions taken while representing clients
19 with the clients consent. Ohio doesn't have that. And
20 here for the first time, Your Honor, you're seeing
21 arguments that, oh, no, there's actually some exceptions
22 to the statutes.

23 There's a defense exception. You can talk to your
24 clients about the case and about the messages, and you're
25 shielded from liability, and that protects your attorney

1 client privilege. That's nowhere in the statute so why in
2 the one instance can we incorporate a limited script from
3 a different state into our law. The Plaintiff seems to
4 bring this case but we can't do it and incorporate law
5 that is -- actually this state attorney doctrine applies
6 unless expressly abrogated. It's not expressly abrogated,
7 Your Honor. The presumption is that statute says
8 otherwise, statute doesn't. Thank you, Your Honor.

9 THE COURT: Okay. Anything further from Mr. Abrams
10 and Mr. Whiting?

11 MR. WHITING: No, Your Honor.

12 THE COURT: I am going take another close look at
13 this before I rule on the motion for reconsideration. I
14 do think there's a lot of issues implicated here. And I
15 do understand just a motion to dismiss. I don't mean to
16 say that like it's not important. I understand that it is
17 important. I wouldn't say that. You know we don't grant
18 motions to dismiss lightly. So anyway I'm going to look
19 at it closely before I give you my ruling.

20 MR. WHITING: Thank you, Your Honor.

21 MR. ABRAMS: Thank you, Your Honor.

22 MR. WILSON: Thank you, Your Honor.

23 THE COURT: Thank you, appreciate it.

24

25

CERTIFICATE OF TRANSCRIBER

I, Theresa Shirley, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings in the trial of the captioned case, relative to appeal, in Horry County South Carolina Circuit Court 15 on the 19 day of December, 2023.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

June 17, 2024
Theresa Shirley
Transcriber

STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT
COUNTY OF HORRY) C.A. NO. 2022-CP-26-06296

ANNA COGGESHALL, ET AL	)
Plaintiffs,	)
versus	)
	)
WILLIAM BERTRAM VON HERMANN	)
Defendant.	)

H E A R I N G

DATE: March 19, 2024
TIME:
LOCATION: South Carolina Circuit Court 15
JUDGE: William H. Seals, Jr.

TRANSCRIBED BY: Lynda Monroe

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1 PROCEEDING

2 THE COURT: Good morning.

3 MR. ABRAMS: Good morning, Your Honor.

4 THE COURT: All right. I am ready whenever you are.

5 MR. ABRAMS: I was waiting for Mr. Whiting. I'm not
6 sure if he's coming in -- he and I were waiting in the wrong
7 courtroom, Your Honor. I'm sorry about that.

8 I mean, essentially, Your Honor, this was Mr. Whiting's
9 motion. We had filed, back in, I think, April of last year,
10 we had sent the Defendants some interrogatories and they had
11 some objections to answering them. Mr. Whiting is here.
12 Dick, you want to do this?

13 MR. WHITING: Good morning, Your Honor.

14 THE COURT: There you are. Good morning.

15 MR. WHITING: Sorry, I was in your other courtroom
16 waiting and I apologize.

17 THE COURT: That's okay. I'm ready when you are.

18 MR. WHITING: Yes, sir. We had filed this motion to
19 compel back in August of last year. Subsequent to our filing
20 the motion, the Defendant's counsel filed responses and a
21 memorandum in opposition to the motion to compel on November
22 6th.

23 They raise several points, including that they believe
24 that my motion may be moot since they have, now, offered a
25 response to the various discovery requests. What I would

1 propose, Your Honor, allow us to do is -- and I have not
2 responded, specifically, to the answers that they provided,
3 is to allow us 30 days to review those answers and to file an
4 amended motion to compel if we deem that it is appropriate.
5 Some of the responses raise issues we think are not accurate.
6 However, I do think it is fair for us to specifically address
7 each one of their answers and to be more specific as to what
8 we believe the deficiency is. So if the Court would allow,
9 I'd like to go ahead and do that.

10 THE COURT: All right. And Mr. Wilson, any response to
11 that?

12 MR. WILSON: No, Your Honor. I mean, if that is how
13 the Court would prefer to handle it then that is fine. I
14 mean, I've made that point about it being moot and I
15 responded, back in November, after the motion to dismiss was
16 denied.

17 So it's been kind of sitting with them for quite a
18 while and they haven't made any issues of any of their
19 responses yet, just generally. So if they want time to try
20 and point out some of the issues, that's fine. I'm sure
21 we're probably going to be back before the Court on many of
22 the same objections, but if the Court would prefer to give
23 the parties time to address those, more specifically, before
24 bringing it to Your Honor, we would agree with that.

25 MR. WHITING: And, Your Honor, the reason I'm asking

1 for 30 days is that on Monday I have a trial starting that is
2 projected to take the week. So I will be out-of-pocket next
3 week, totally, so if I could have that 30-day period in which
4 to respond I'm certain I can get it there no later than 30
5 days from today's date to counsel.

6 THE COURT: Okay. You okay with that, Mr. Abrams?

7 MR. ABRAMS: Yes, Your Honor.

8 THE COURT: All right. We'll go ahead and put that in
9 a Form 4 and maybe you all can work it out as well.

10 MR. WHITING: Yes, sir, I hope so.

11

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24 THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 27:42)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 15, Horry County, South Carolina, on the 19th day of March, 2024.

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

April 8, 2024

Lynda Monroe, Transcriber

Fulmer intercepted the electronic communications and Defendants, with knowledge the information was “unlawfully obtained” disseminated the material. ***Id.* at ¶ 10.**

As a result of Defendants’ actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas asserting claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. **See Doc. No. 1-3.** Plaintiffs served the complaint on October 14, 2022. Because the complaint asserted a cause of action based on a federal statute and the state law claims were based on the same nucleus of operative fact as the federal claim, Defendants timely removed the case to the District Court on November 11, 2022, on the basis of federal question and supplemental jurisdiction. **See Doc. No. 1.** November 11 was Veteran’s Day and, therefore, Defendants did not receive the ECF Notice of Filing until Monday, November 14, 2022. The same day, Defendants notified the state and Plaintiffs of the removal, providing copies of the Notice of Removal, file-stamped November 11, 2022. Defendants had not responded to the complaint prior to removal and, pursuant to Rule 81(c)(2)(C) of the Federal Rules of Civil Procedure, had until Friday, November 18, 2022, to respond to the Complaint. Immediately prior to filing this Motion, Plaintiffs amended their complaint. **See Doc. No. 5.** This motion to dismiss applies equally to the allegations of the original complaint, **Doc. No. 1-3**, and the amended complaint, **Doc. No. 5.** This Motion should be considered a response to the amended complaint, and original complaint to the extent that is deemed required.

STANDARD

“A Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted ‘challenges the legal sufficiency of a complaint.’” *U.S. S.E.C. v. Staples*, 55 F. Supp. 3d 831, 834

(D.S.C. 2014) (quoting *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009)). Although the pleading standard does not require detailed factual allegations, it requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Mere labels, conclusions, naked assertions, or formulaic recitation of elements is insufficient. *Id.*

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). “A court should grant a Rule 12(b)(6) motion if, ‘after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.’” *Smith v. Catamaran Health Sols., LLC*, 205 F. Supp. 3d 699, 706 (D.S.C. 2016) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999)). Plausibility is not akin to probability, but mandates more than a sheer possibility a defendant acted unlawfully. *Id.*

Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); see also *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

ARGUMENT

I. This Court should dismiss Plaintiffs' claims because Defendants are entitled to attorney-immunity and Plaintiffs have not pled sufficient facts to overcome the immunity.

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602.

Attorney immunity has barred claims for fraud and conversion by owners within a homeowner's association against a law firm and its attorneys when the attorneys represented the homeowner's association and allegedly gave the association bad advice based on an incorrect interpretation of the association's governing documents. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. The *Hager* court held there were no allegations the law firm acted to serve its own interests other than or in addition to the association's interests. *Id.* Further, the fact that the law firm made representations to the association's insurer did not remove the law firm's acts from within the scope of representing the association. *Id.* Accordingly, the court granted the motion to dismiss. *Id.*

The same result was reached in *Stiles*, wherein the court dismissed third-party claims for civil conspiracy against an attorney and his client pursuant to attorney immunity because the complaint did not allege the attorney acted outside his role as an attorney for the client, nor did it allege the attorney breached an independent duty. *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603. In fact, the complaint alleged the attorney was the client's attorney in the lawsuit and then incorporated the allegation in the civil conspiracy claim. *Id.* Because the allegations of the complaint were insufficient to overcome attorney immunity, the court dismissed the complaint. *Id.*; see also *Douglass ex rel. Louthian v. Boyce*, 336 S.C. 318, 327, 519 S.E.2d 802, 806-07 (Ct. App. 1999) (affirming circuit court grant of motion to dismiss on civil conspiracy claims against attorney because the complaint did not allege the attorneys acted to further their own personal interests and the attorneys owed no independent duty to the plaintiff when bringing a wrongful death suit on behalf of statutory beneficiaries). Attorney immunity in South Carolina has applied to claims for malicious prosecution, abuse of process, and intentional infliction of emotional distress. *Kozel v. Kozel*, 299 F. Supp. 3d 737, 753-58 (D.S.C. 2018).

Here, Plaintiffs' claims are barred by attorney immunity because Plaintiffs do not allege Defendants owed them an independent duty, or that Defendants acted in their own interest and outside the scope of representation of the client. In fact, the allegations in the complaint indicate Defendants *were* acting within the scope of their representation of their client, Justin Fulmer.

Plaintiffs assert that Justin Fulmer is Defendants' current client. **See Doc. No. 5 at ¶ 5.** Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, accessed her and her parents' electronic communications, and copied the communications. **See Doc. No. 5 at ¶¶ 5-6.** They assert Defendants printed the communications, and used them to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. **Id. at ¶¶ 6-7.** Plaintiffs then reincorporate these allegations within their causes of action. The complaint is devoid of any allegations Defendants acted in their own interests and outside the scope of their representation of Mr. Fulmer. The complaint establishes the opposite, painting the quintessential portrait of an attorney advocate—a client comes to an attorney believing to have been wronged with evidence to support the claims, and the attorney brings a lawsuit attempting to vindicate the client's rights. This is precisely the scenario for which attorney immunity exists and has been relied upon to prevent lawsuits against attorneys at their inception. Nothing in Plaintiffs' complaint takes the case outside the ambit of attorney immunity outlined in *Garr*, *Stiles*, and *Hager*. Accordingly, the allegations are insufficient as a matter of law and this Court should dismiss Plaintiff's complaint. *See Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (dismissing complaint on 12(b)(6) motion because the complaint failed to state facts sufficient to remove the attorney from the ambit of general immunity).

Attorney immunity protects Defendants from civil liability for using electronic communications provided by their client, Mr. Fulmer, to bring a lawsuit on Mr. Fulmer's behalf to vindicate his interests. Plaintiffs have failed to allege any facts indicating Defendants owed a duty to them, as third parties, or that Defendants acted solely in their own interests and outside the scope of representing Mr. Fulmer. Therefore, this Court should dismiss Plaintiffs' complaint for failure to state a claim.

This 17th day of November, 2022.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
William Bertram von Herrmann and	)	
The Von Herrmann Law Firm,	)	
Defendants.	)	
	)	

—

CASE NO.: 4:22-cv-04017-JD

PLAINTIFFS' REPLY TO DEFENDANTS' MOTION TO DISMISS

BACKGROUND

Increasingly attorneys are running afoul of the federal Wiretap Act and the state wiretap acts such as the South Carolina Homeland Security Act by using electronic communications and/or recordings of oral and wire communications that their clients intercepted in violation of the various wiretap acts. Typically, as in the instant case clients involved in family law matters who violate the interception statutes want to obtain evidence that they can use to their advantage in the family court at any cost. "Attorneys can easily find themselves trapped between advocating on behalf of a client, who may be very insistent upon gathering and using such evidence, and potentially finding themselves liable under the state and federal wiretap statutes."

Allison B. Adams, Vol.27, J. Am. Acad. Matrim. Law, p.263-287, (2015).

The bad acts that led to the instant case began in June and July 2021, when the Von Hermann Law Firm was representing Justin Fulmer in a paternity matter with Plaintiff Anna Coggeshall over the couple's young child. During an exchange of the child in June 2021, Mr. Fulmer took Ms. Coggeshall's iWatch which was in her diaper bag and after getting it to his home and

connecting it to his Internet account proceeded to monitor and record the Plaintiff's electronic communications in a series of at least 962 photos of the watch displaying the intercepted messages. Subsequent to the family matter, Mr. Fulmer retained another attorney at the Von Herrmann Law Firm, Attorney William Bertram von Herrmann, to file a disciplinary complaint against a sitting family court judge, and a lawsuit against the instant Plaintiffs, and others, including the law firm of Anna Coggeshall's attorney in the family court matter, who at the time of the filing of the lawsuit was running against Mrs. Von Herrmann in a race for a family court judgeship. Both the disciplinary action and the lawsuit filed by Defendants was based almost solely on the 962 intercepted iWatch communications, many of which were attached to the disciplinary complaint and produced in discovery during the lawsuit. Plaintiff Anna Coggeshall's counsel advised Mr. von Herrmann that they objected to his dissemination ("use") of the intercepted electronic communications because they were intercepted without the knowledge or consent of their client. This began with Anna Coggeshall's Answer and Counterclaims and continued via email and telephone exchanges between counsel for Anna Coggeshall and Mr. von Herrmann. **See April 6 and 7, 2022 email exchange between Richard Whiting and Bert von Hermann, attached.** In his April 7, 2022, email to Mr. von Herrmann Mr. Whiting asked Mr. von Herrmann specifically about a claim by Mr. von Herrmann that he had seven additional messages relevant to his amended complaint. Mr. Whiting wrote, "Are those additional messages, which need to be forwarded on to the Court of Appeals to be considered with their order to suppress, illegally obtained communications?" Mr. Whiting then admonished Mr. von Herrmann, "Do not provide those text message to me if they were illegally obtained as sharing the contents of any illegally obtained electronic communications would be a separate and distinct violation of the state and federal law. I know you are aware of that." Despite this admonishment, Mr. Von Herrmann sent a copy of the additional seven iWatch messages to all the counsel, including Mr. Whiting, later that same day. This additional

publication of intercepted electronic communications occurred after Mr. Von Herrmann was put on notice by the Answer and Counterclaims, Mr. Whiting's email and by the filing of a Motion to Suppress at the South Carolina Court of Appeals. After written and oral argument, the South Carolina Court of Appeals ruled that the use of the iWatch to intercept and photograph the Coggeshall's electronic communications did constitute an illegal interception as Plaintiffs had always maintained. The South Carolina Court of Appeals granted the Motion to Suppress Plaintiffs' illegally intercepted electronic communications that Defendants William Bertram von Herrmann and his law firm had used as the basis of the lawsuit against Plaintiffs and others. The South Carolina Court of Appeals order confirmed that the distribution and publication of these intercepted communications by Attorney Von Herrmann and the Von Herrmann Law Firm, (which continued over a year after they knew or should have known that these messages had been intercepted), constituted an illegal "use" in violation of the South Carolina Homeland Security Act which damaged Plaintiffs and resulted in the filing of this instant case in the Court of Common Pleas in Horry County, South Carolina. Defendants removed the case to this Court based on one cause of action based on the federal Computer Fraud and Abuse Act (18 USC 1030) and supplemental jurisdiction over the related state claims. Plaintiffs amended our Complaint on November 17, 2022, to remove federal question and therefore also supplement jurisdiction, and also filed a Motion to Remand the matter back to Horry County Common Pleas. That Motion to Remand is currently pending.

Defendants filed a Motion to Dismiss on November 17, 2022, based on Rule 12(b)(6) for failure to state a claim upon which relief can be granted stemming from their assertion that Defendants were entitled to attorney-immunity in their "use" of Plaintiffs' intercepted electronic communications which was determined by the South Carolina Court of Appeals to be violative of the South Carolina Homeland Security Act. As Plaintiff's will show below it is generally

accepted that there is no attorney-immunity for federal Wiretap Act violations and for most state wiretap statute violations absent specific language in the act enabling immunity for attorneys.

See Allison B. Adams at p. 272. Plaintiffs contend that there is no attorney-immunity afforded by the South Carolina Homeland Security Act for attorneys who “use” intercepted electronic communications in violation of the Act, and thus no basis for Defendants Motion to Dismiss.

I. SUBJECT MATTER JURISDICTION

Plaintiffs filed an Amended Complaint as matter of right on November 17, 2022, which removed all federal causes of action, namely the claims under the Computer Fraud and Abuse Act, as well as all references to any federal statutes. This amendment removed any federal question jurisdiction (28 USC §1331) and as a result any supplemental jurisdiction (28 USC §1367(a)) on the State claims within the Complaint. Consequentially, there is no longer any federal subject matter jurisdiction conveyed by the instant case. Plaintiffs therefore also filed a Motion to Remand to return the Amended Complaint to Horry County Common Pleas because this Court no longer had any basis for Subject Matter Jurisdiction, and remand was the only proper course of action. (See two recent opinions from the District of South Carolina consistent with this position, *AJP Group, LLC v. Holmes*, 2013 U.S. Dist. LEXIS 86931, 2013 WL 3148416 (Florence Division), *Niemitalo v. Greenville City Council*, 2020 U.S. Dist., LEXIS 92334, 2020 WL 2745696 (Greenville Division)). Therefore, Plaintiffs’ position is that the Court should remand the case back to Horry County, and Defendants’ Motion to Dismiss should be decided by a judge in the Horry County Court of Common Pleas. Due to the time limits for a Reply imposed by the Federal rules Plaintiffs herein are also addressing their rebuttal to Defendants’ legal arguments in their Motion to Dismiss, but fully realize that this Court will probably not be addressing the Motion to Dismiss or our Reply.

II. ATTORNEY IMMUNITY INAPPLICABLE TO WIRETAP VIOLATIONS

Defendants allege that they were acting within the scope of their representation of their client, Justin Fulmer, when they made use of Plaintiff's intercepted electronic communications. Defendants further contend that common law attorney-immunity has barred suits against attorneys for various common law torts, such as fraud and conversion in the *Hager* case cited in their motion. ***Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App.2022).** Throughout Defendants' Motion to Dismiss they cite cases that rely on common law immunity to defend against various common law defamation and fraud related torts. Plaintiffs assert that this is the wrong standard as applied to the bad acts involving a statutory violation such as those alleged in Plaintiffs' Amended Complaint involving the South Carolina Homeland Security Act. Legislatures and Congress generally include express exemptions in statutes for groups to be excluded from the regulations within the statutes. Courts have typically found that common law general immunities are inapplicable to statutory violations as to do so would ignore the intentions of the legislative body who drafted the statute. As we shall show below this has been true for the federal and state wiretap statutes where courts have held there is no attorney-immunity barring suits against attorneys for violations of the acts.

The South Carolina Homeland Security Act is codified at S.C. Code Ann. §17-30-10, *et seq.* The language regarding prohibited acts under the Homeland Security Act tracks nearly verbatim with the federal Wiretap Act as codified at 18 USC §2510 *et seq.* known as The Electronic Communications Privacy Act. Neither the South Carolina nor the federal wiretap act expressly confers any immunity for attorneys to intercept or to use illegally intercepted communications (wire, oral or electronic). To the contrary, S.C. Code Ann. §17-3-65 expressly prohibits the receipt of any wire, oral, or electronic communication that has been intercepted in violation of the Act into evidence in "any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other

authority of the State, or a political subdivision thereof.” (In this regard the South Carolina wiretap act goes beyond the federal wiretap act by also prohibiting the use of intercepted “electronic communications” in any legal proceeding in addition to the wire and oral communications barred by the federal act.) It would therefore make no sense for the legislature to intend for attorneys to be immune from conduct expressly prohibited by the wiretap statutes in South Carolina Homeland Security Act. After a diligent search it does not appear that any court in South Carolina or the Federal District of South Carolina has ever determined that attorney-immunity applies to attorneys who use the intercepted communications obtained illegally by their clients.

There is a somewhat analogous case in the Fourth Circuit denying the applicability of attorney-immunity to another federal communications statute. The Fair Debt Collection Practices Act (“FDCPA”), 15 USC 1692 et seq. regulates certain types of communications that can be made in the furtherance of collecting a debt. Many of the firms engaged in this work are attorneys. The law firm of Wolpoff & Abramson were sued for violations of the FDCPA committed in the course of their professional practice, and, much as in this case, they filed a motion to dismiss under FRCP 12(b)(6) arguing that they enjoyed absolute common law immunity. *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir. 2007). In reversing the district court’s granting of the motion based on common law immunity the Fourth Circuit went to great lengths to explain why there was no common law attorney-immunity conferred by the statute. Plaintiffs argue the same logic from the Fourth Circuit should hold equally true to the issue of attorney-immunity for acts which violate the wiretap acts, including the South Carolina Homeland Security Act. The *Sayyed* arguments against attorney immunity were a) The statutory text makes clear there that there is no blanket common law litigation immunity from the requirements of the statute. Based on the definition section it is clear the scope of the statute includes attorneys. b) The statute listed specific exceptions to the scope of whom the

regulations applied, and attorneys were not covered by any of the enumerated exceptions. Plaintiffs assert that these points are equally applicable to the South Carolina Homeland Security Act. The prohibited acts section of the South Carolina Homeland Security Act reads, “Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty ...” **SC Code of Laws 17-3-20**. “A person” applies to a private attorney since there are no specific provisions that exclude liability to non-governmental attorneys under the Homeland Security Act. *Sayyed* discusses specific immunities written into the statute and argues that the inclusion of these specific immunities argues against the validity of applying a common immunity to the statutory prohibited acts. “Our view that common law immunities cannot trump the Act’s clear application to the litigating activities of attorneys is fortified by its bona fide error defense provision.” **Sayyed at 231**. “Such a provision supplies an additional argument against applying immunities as to which the statute is silent: Congress addressed the issue of immunity expressly and extended it only as far as 1692k(c) provides. To insist that some unarticulated common law immunity survived the creation of the FDCPA would be to fail to give effect to the scope of immunity articulated in the text.” **Sayyed at 232**. Applying this same logic to the South Carolina Homeland Security Act, sections 17-30-25, 17-30-35, and 17-30-40 expressly provide for numerous exceptions exempting conduct generally prohibited by the Act. None of these express exemptions insulate an attorney involved in his litigation practice from penalties for violating the provisions of the Act, including the use of illegally intercepted electronic communications. One could conclude therefore that if the South Carolina legislature had intended the statute to provide immunity for attorneys they would have expressly done so in the language of the South Carolina Homeland Security Act as they have done in other statutes that exempt attorneys from civil liability. To illustrate this point, South Carolina Title 40, Chapter 18 contains the statutes that regulate private investigators. The statute defines the types of evidence gathering activities for which one must be licensed and sets forth the

penalties for collecting the regulated types of information without a SLED issued license.

Section 40-18-140 enumerates persons who are exempted from the regulations and thus who can collect and use the prohibited types of information without penalty. Attorneys were specifically exempted by the South Carolina legislature,

“**SECTION 40-18-140.** Exceptions from application of chapter.
This chapter does not apply to: ...
(3) an attorney-at-law while in the performance of his duties”

Thus, if the South Carolina legislature had intended to include an exemption for attorneys-at-law while in the performance of his duties from the wiretap prohibitions in the South Carolina Homeland Security Act they would have expressly included such an exemption as they did for the evidence collection regulations in Title 40, Chapter 18.

There is a recent case in which a District Court in South Carolina granted a motion to dismiss for a cause of action based on vague allegations of a violation of the South Carolina Homeland Security Act. ***Propel PEO, Inc. v. Roach* (D.S.C. 2020)**. In *Propel* there was a breach of a company’s security cameras but insufficient allegations in the Complaint that the defendant was the wrong doer. In our case we know that Defendants violated the South Carolina Homeland Security Act because they did so publicly via their email account(s) and the Amended Complaint contains a specific allegation encapsulating Defendants’ bad acts, “Justin Fulmer intercepted those electronic communications described hereinabove and Defendants, knowing these communications were unlawfully obtained, disseminated same without Plaintiffs’ prior knowledge or consent and without the knowledge or consent of any third parties to whom the Plaintiffs were communicating.” ***Compl.* ¶ 10.**

There was one other recent case in the District of South Carolina involving a cause of actions for violation of the South Carolina Homeland Security Act by a former employee against an employer who accessed her email account before and after she was terminated. ***Carson v. Emergency MD, LLC* (D.S.C. 2020)**. In this case there was an Electronic Communications Policy

by which Carson granted some access to her email account to her employer, Emergency MD. She made claim under the South Carolina Homeland Security Act against Emergency MD for continuing to access her email after her termination. Emergency MD replied under 12(b)(6) to dismiss her claim based on the Electronic Communications Policy protecting them from liability for the interceptions of her email. Carson argued that any access to her email granted by the Electronic Communications Policy terminated when her employment terminated. The court relied on the standard from *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) quoting *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007), “To withstand a Rule 12(b)(6) motion to dismiss, ‘a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” In Carson the court did not dismiss the South Carolina Homeland Security Act cause of action because it was unclear at this stage before trial if the Communications Policy was still in effect to shield Emergency MD from liability for accessing Carson’s email.

Other jurisdictions have explored the applicability of common law attorney-immunity to the Wiretap Act and state wiretap acts. In *Nix v. O’Malley*, 160 F.3d 343 (6th Cir. 1998), the Sixth Circuit dealt with a wiretap matter involving the use in a legal proceeding by Attorney O’Malley and his attorneys Weston, Hurd of an illegally made audio recording. O’Malley an attorney and local politician was approached by Nix with a request for a political favor. Someone unknown intercepted recorded the request, and the audio tape was eventually in the possession of O’Malley. O’Malley disclosed the intercepted recording to his attorneys, Weston, Hurd. The attorneys used these intercepted recordings in their defense of O’Malley. Nix sued O’Malley and his attorneys under Title III and Ohio state wiretap law for the illegal use of the intercepted material. Weston, Hurd claimed they were protected from liability for violations of Title III and Ohio wiretap law by attorney-immunity. The Sixth Circuit disagreed, “We decline Weston, Hurd’s invitation to immunize attorneys for certain violations of Title III and Ohio wiretap law.” *Id.* at 352. The Sixth Circuit first addressed the common law privilege that attorneys enjoy from disclosing certain otherwise defamatory material in the course of litigation and ruled this immunity does not apply to

violation of a wiretap statute as it would to common law defamation. The Sixth Circuit addressed the proposed attorney immunity,

“[T]his immunity contravenes the plain language of federal and state wiretap statutes. Cf. e.g., *United States v. Wuliger*, 981 F.2d 14497, 1505 (6th Cir. 1992) (declining to permit attorney to receive a special jury instruction for Title III’s “reason to know” standard, explaining, “[t]here is nothing in the Act which affords attorneys special treatment”), *cert. denied*, 510 U.S. 1191, 114 S.Ct. 1293, 127 L.Ed.2d 674 (1994). This also casts doubt on the application of common-law defamation immunity to statutory wiretap. *Id.* The Sixth Circuit concluded, “The Ohio legislature banned the disclosure of the contents of illegally intercepted communications, recognizing the damage to plaintiffs’ privacy interests upon each republication. We agree with the Wuliger court that “[t]here is nothing in the Act which affords attorneys special treatment ... Zealous defense of a client does not permit law-breaking ... Wiretapping is illegal, and so is the use or disclosure of the contents of intercepted communications when the defendant knows or has reason to know that the interceptor obtained the communications illegally. ... defendants enjoyed no privilege to disclose the contents in public filings...” *Id.* at 353.

Finally, there is a new case out of Texas that examined the applicability of attorney immunity to wiretap statutes both federal and the Texas state wiretap statute. *Taylor v. Tolbert*, 644 S.W.3d 637 (Tex. 2022). This case also arises from iMessages intercepted from a wayward iPad, much like the instant case. During a child-custody modification proceeding a minor visited her aunt and signed onto the aunt’s iPad using her mother’s credentials to download an app. At that point the iPad began receiving the mother’s iMessage traffic. Aunt and Uncle sent the iPad to the child’s father (the uncle’s brother) for use in his child-custody proceedings. The father shared the messages with his attorney, Terisa Taylor. Attorney Taylor used these intercepted materials for six months during the proceedings in repeated disclosures to the court and other counsel. *Id.* at 643-644.

The Texas Supreme Court took a middle position on the applicability of attorney-immunity in matters of statutory violations, “[w]e hold that, when conduct is prohibited by statute, the

attorney-immunity defense is neither categorically inapplicable nor automatically available, even if the defense might otherwise cover the conduct at issue. In such cases, whether an attorney may claim the privilege depends on the particular statute in question.” *Id.* at 637. The Texas wiretap statute differs markedly from the federal statute and from the South Carolina wiretap statute which is modeled on the federal statute. Texas law takes a rather unique approach to the application of common-law defenses to statutory offenses. While federal law and most states interpret statutes to exclude common-law defenses not expressly included in the text of the statute, the law in Texas adopts an “opt-out” approach that includes all common-law defenses to statutes unless the legislature expressly precludes them.

For this reason, the Texas Supreme Court held that the attorney-immunity defense was available to the causes of action for violations of the Texas state wiretap statute but was not available to causes of action for the same violations of the federal wiretap statutes. The Texas Supreme Court looked to the language of the federal statute (which tracks exactly with the South Carolina statute) to conclude there was no room in the statute to apply a privilege for attorneys that was not explicitly written in the text. “First, the statute applies to “any person” “[e]xcept as otherwise specifically provided” in the statute. This exclusivity language makes the terms of the federal statute materially different from the Texas statute. Based on this plain and explicit and “clear and unambiguous” language, federal courts have rejected exceptions and immunities that are not specifically enumerated in the statute.” *Id.* at 653. **Referring** to 18 USC 2511(1).

In the instant case Plaintiff’s argue that our Amended Complaint contains sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Our allegations are pled with specificity as to what wrongs were committed and who committed them. The attorney immunity privilege should not apply to the South Carolina Homeland Security Act for all the reasons cited above, principally because the statute explicitly includes the exemptions intended by the legislature, and attorneys were not one of the intended exemptions, and Defendants use of intercepted electronic communications in a legal proceeding is explicitly prohibited by the Act.

Plaintiffs contend that all the federal jurisprudence cited above that indicates “[t]here is nothing in the Act which affords attorneys special treatment” applies equally to the South Carolina Homeland Security Act. Given that Plaintiffs have pled sufficient allegations necessary to meet our burden to survive the 12(b)(6) motion and Defendants’ stated defense to those allegations is inapplicable to the South Carolina Homeland Security Act, Defendants’ Motion to Dismiss should be denied.

Respectfully submitted,

s/Richard G. Whiting

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From: [Keri Hannon](#)
To: [Bert von Herrmann](#)
Cc: [Steven Abrams](#); [Amanda Bailey](#); [Andrea](#); [Andrew Lindemann](#); [Betsy](#); [C. Kennedy](#); [Chris Nickels](#); [Christine Badami](#); [Christopher Nickels](#); [Christy](#); [David B. Marvel](#); [George N. Spirakis](#); [Hayes K. Stanton](#); [Jenkins M. Mann](#); [Kenneth R. Moss](#); [Kevin M. Barth](#); [Richard L. Snyder](#); [Robert E. Lee](#); [Shannon](#); [Shaun C. Blake](#)
Subject: RE: Fulmer vs. Buckhannon, et al
Date: Thursday, April 7, 2022 10:48:37 AM

Bert:

While I was not present at the motion hearing before Judge Cordell Maddox, it is my understanding that he is allowing you to withdraw your claim of Negligent Infliction of Emotional Distress as to all parties. It is my understanding that his order does not give you the ability to modify your Complaint in any other regard. If you insist that your Complaint will not be amended to comply with Judge Maddox's Order, then I will have no choice but to join in a Motion to Strike these new allegations.

I would also particularly call your attention to your new paragraph 83 where you indicate that there are seven (7) text messages from July 27, 2021 that you believe are pertinent to your above outlined allegations. How were those text messages secured? Were they interceptions or were they recovered in violation of the Stored Communications Privacy Act? Are those additional messages, which need to be forwarded on to the Court of Appeals to be considered with their order to suppress, illegally obtained communications? Do not provide those text message to me if they were illegally obtained as sharing the contents of any illegally obtained electronic communications would be a separate and distinct violation of the state and federal law. I know you are aware of that. If these are not illegally obtained text messages, who are they from and to? Please provide them with the consent of one of those parties.

Please let me know if you will agree to withdraw this Amended Complaint or if I need to file my Motion to Strike.

I look forward to hearing from you.

Very truly yours,

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From: [Bert von Herrmann](#)
To: [Chelsea Kennedy](#); [Andrea Tata](#); [Andrew Lindemann](#); [Bailey, Amanda](#); [Betsy Atkinson](#); [Christopher Nichols, Esq.](#); [Christy Graves](#); [David Marvel](#); [Dick Whiting](#); [George N. Spirakis](#); [Hayes K. Stanton](#); [Jenkins Mann](#); [Kenneth Moss](#); [Keri Hannon](#); [Kevin Barth](#); [Richard L. Snyder](#); [Robert E. Lee](#); [Steven Abrams](#); [Shannon Nagy](#); [Shaun C. Blake](#)
Subject: Fulmer vs. Buckhannon, et al
Date: Thursday, April 7, 2022 4:45:53 PM

Attachments: [Plaintiff's Supplemental Production 4-7-2022.pdf](#)

Please see Supplemental Production attached.

Shannon Nagy
Paralegal to William B. von Herrmann



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April 7, 2022

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Re: Justin Fulmer vs. Melissa Emery Buckhannon, et al

Dear Counsel:

In keeping with our continuing duty to disclose, enclosed please find the following:

- Photographs of Anna Coggeshall without the iWatch;
- Chat with Apple Support and Copy of iWatch Serial # GJ9DV3YGJ5X0;
- Photographs of text messages referenced in Paragraph 83 of the Plaintiff's Amended Complaint.

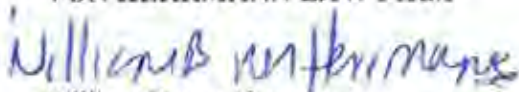
Please be advised that the Plaintiff is disclosing the following expert:

Shanna Perry @ SJPerry Consulting, 28 Smokewood Drive, Elgin, SC 29045; Resume and report enclosed.

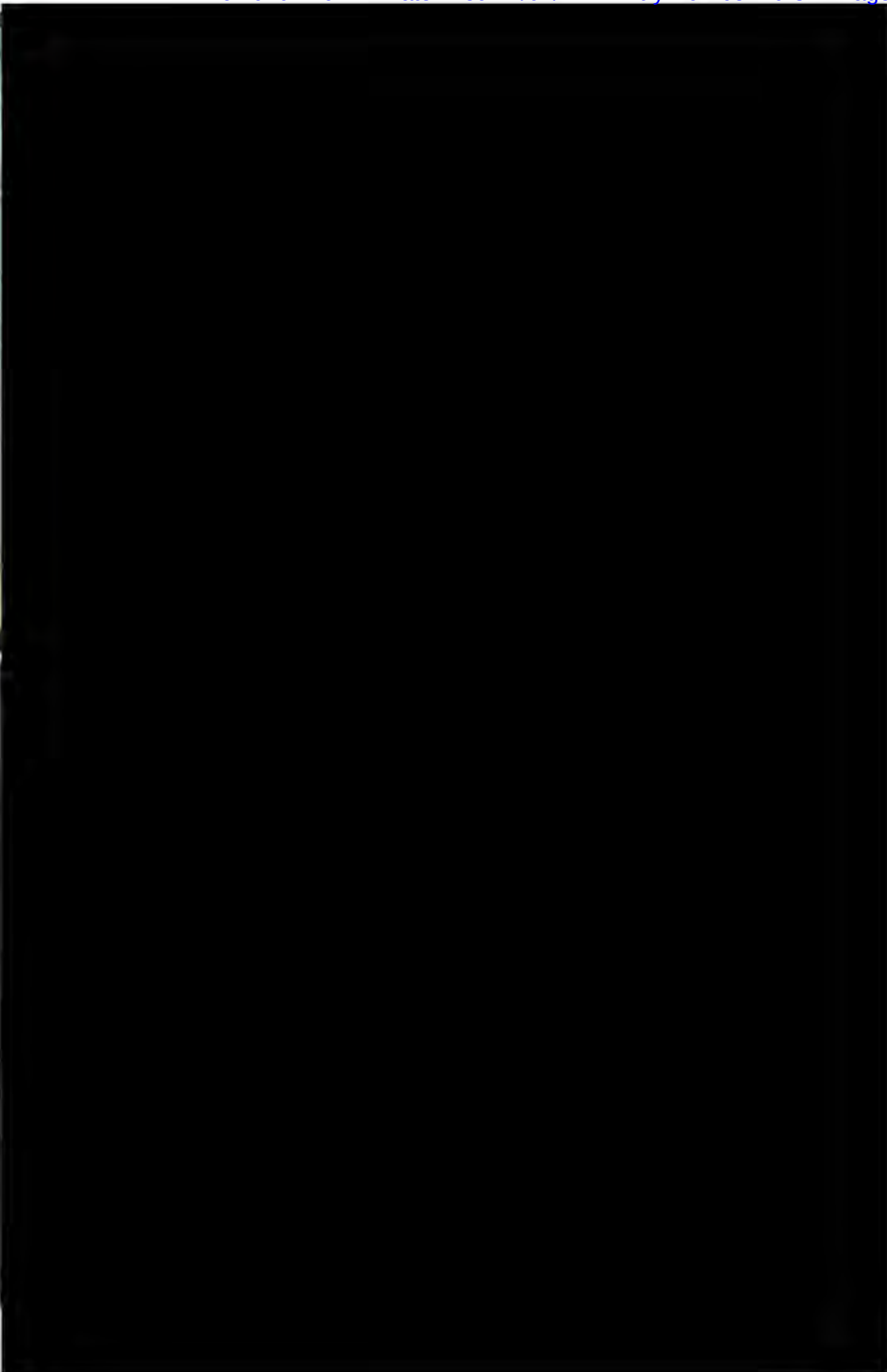
Please feel free to contact me with any questions. Thank you.

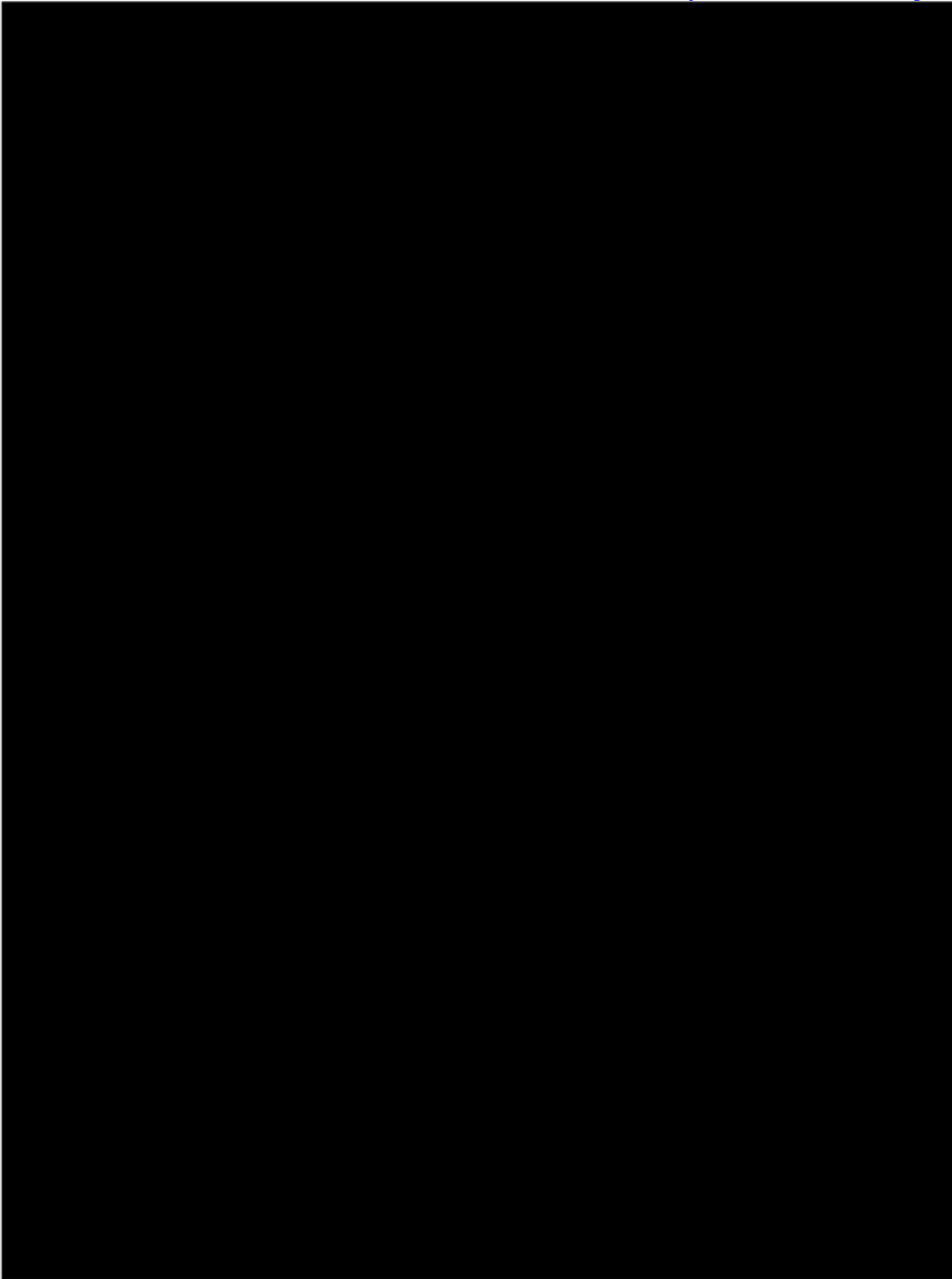
Sincerely,

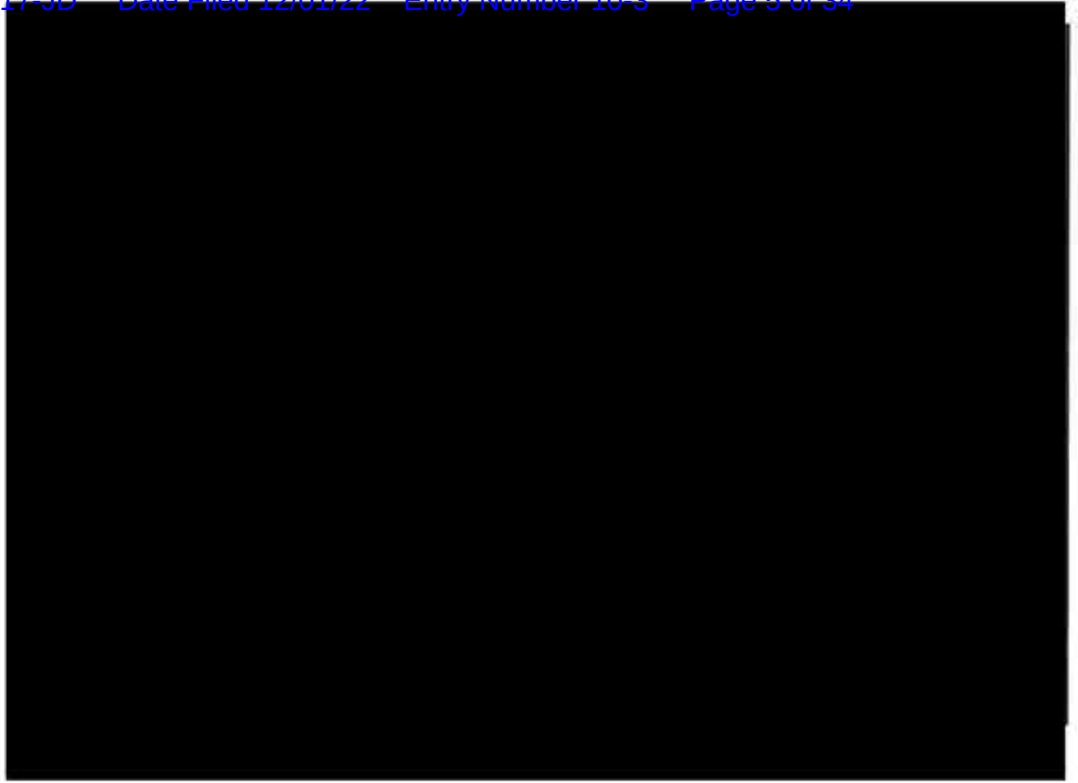
VON HERRMANN LAW FIRM



William B. von Herrmann
WBvH/sn
Enclosures









Today 2:46 PM

Hello there, I had a few questions in regards to my apple watch.

Hello 🍏, I'm Apple's automated assistant.

Ok. I can connect you to someone who can help. Your Apple Watch serial number will give the Advisor important information about your product.

Follow these steps to provide your serial number, and I'll get you to someone.

1. On your iPhone, open the Apple Watch app.
2. Tap the My Watch tab, then tap General > About.
3. Touch and hold the serial number to copy.
4. Paste it in a reply to this conversation.

GJ9DV3YGJ5X0

Let me connect you to someone who can help. If you need to step away, don't worry. We'll send you a message when we're ready for you.

Hey! Welcome to Apple Support. I hope you're doing well. How can I help out?

Thank You

You're welcome! How can I help out?

I have a few questions in regards to my Apple Watch

The serial number of my watch is GJ9DV3YGJ5X0

Thanks.

I want to make sure all is good and is clean to sell if i chose to

Happy to help!

Yes, you can sell your devices, if you'd like. You'd want to erase it before selling it.

Click to Load Preview

support.apple.com



Thank you

Can you look up my serial number and see if it has been marked lost or stolen?

\Apple doesn't have a formal flagging process for reporting lost or stolen property. You can contact your local police department if you suspect the device has been stolen.

I understand, I have the watch with me I just wanted to make sure everything was good on the watch before I sell it

Or can you tell me anything about my watch with my serial number? Just if I wanted to sell it

Of course. As long as you've followed the steps on the article about what to do before selling or giving away your Watch, you'll be fine.

Click to Load Preview

support.apple.com



GJ9DV3YGJ5X0

I'm not sure what type of information it is you're looking for. Can you elaborate?

Model? Or type? Or color? Or size? Im sorry im not very tech savvy and don't have the box

No worries. It's a Series 3 38mm with GPS. The color would be located on the Watch itself.

Okay Thank You its black I just wanted to make sure. I didnt want anyone to think I was trying to sell them something it was not

Delivered

Here's the transcript of your chat with Apple Support:

2/8/2022, 5:09:42 PM
Duration 16 minutes 47 seconds

Brandon
Thanks for contacting Apple Support. How can I help you?

Brandon
Hey, Lee! For reference your Case Number is 101626070904. Hope you're doing well today!

Lee Goble
Hello. I bought an Apple Watch on my Amazon account from Amazon that was stolen. Amazon was supposed to ship me an Apple Watch that was Silver Aluminum Case with White Sport Band but I instead received an all-black watch and black band, which is fine. My question, though, is to whether the serial number listed with my Amazon order for the Apple Watch is for the aluminum case watch that I was supposed to receive or the black watch I actually received.

Lee Goble
Does that make sense?

Lee Goble
The serial number is: SGJ6DV3YGJ5X0

Brandon
I believe so! You ordered a Watch to replace one that was stolen. When you received it, it didn't match the description of the one that was sent, so you want to see if the Serial Number from the item description is accurate or not for the one you physically have now, correct?

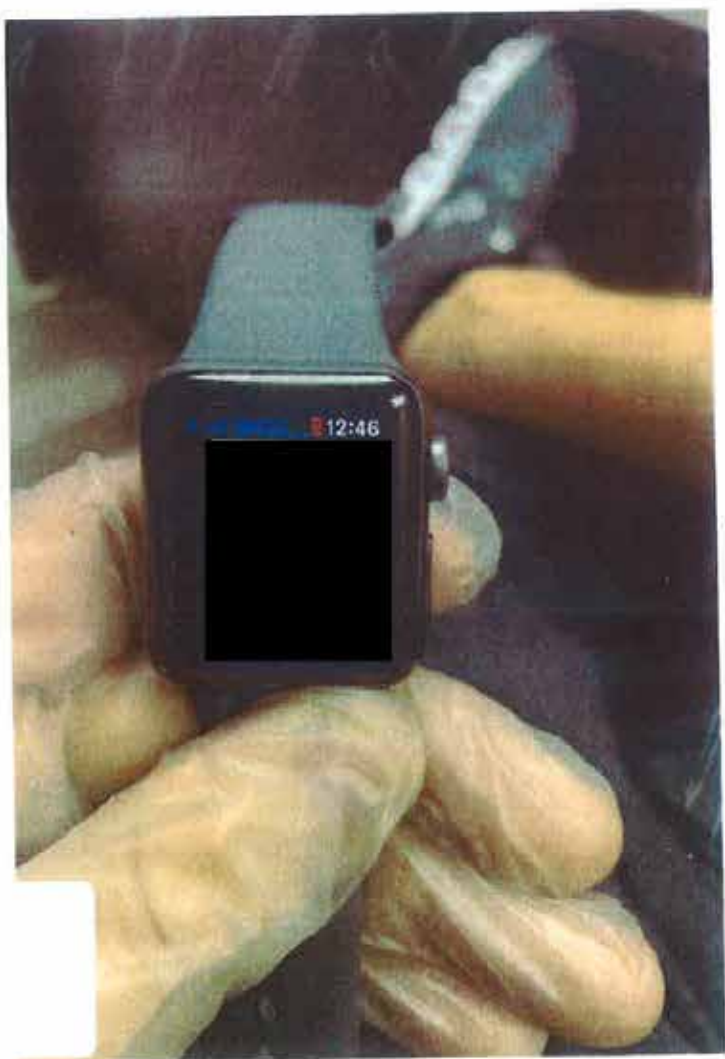
Lee Goble
No, the watch I ordered was stolen and to prove it's mine, I want to ensure that the serial number listed on the order number is the serial number for the black stolen watch, even though the order states I bought an aluminum watch with a white band.

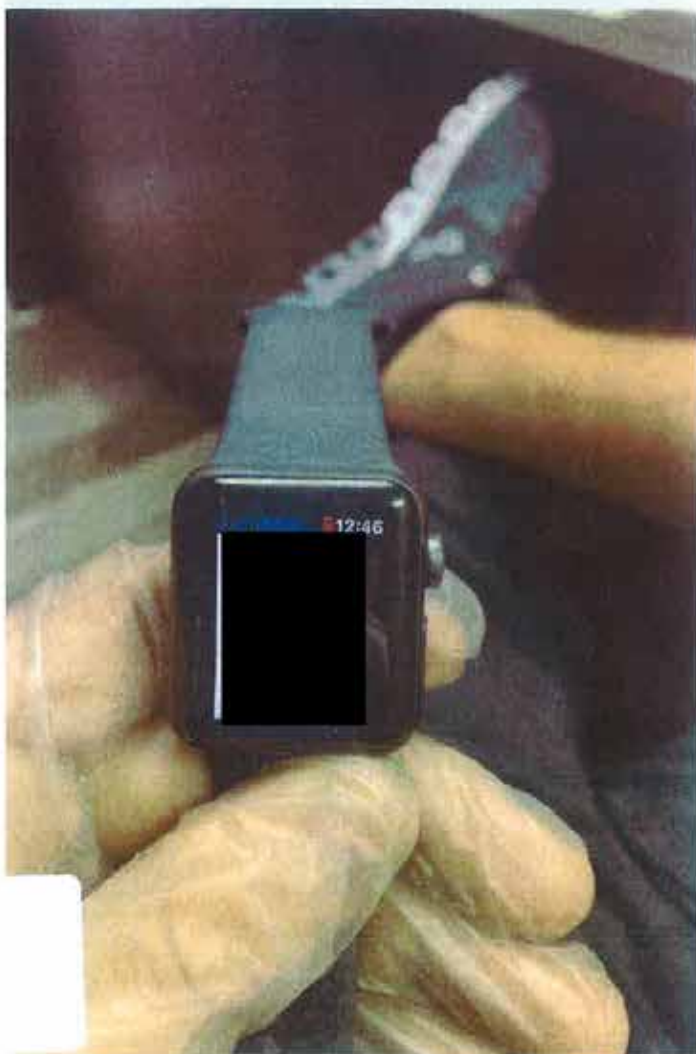
EXHIBIT 7

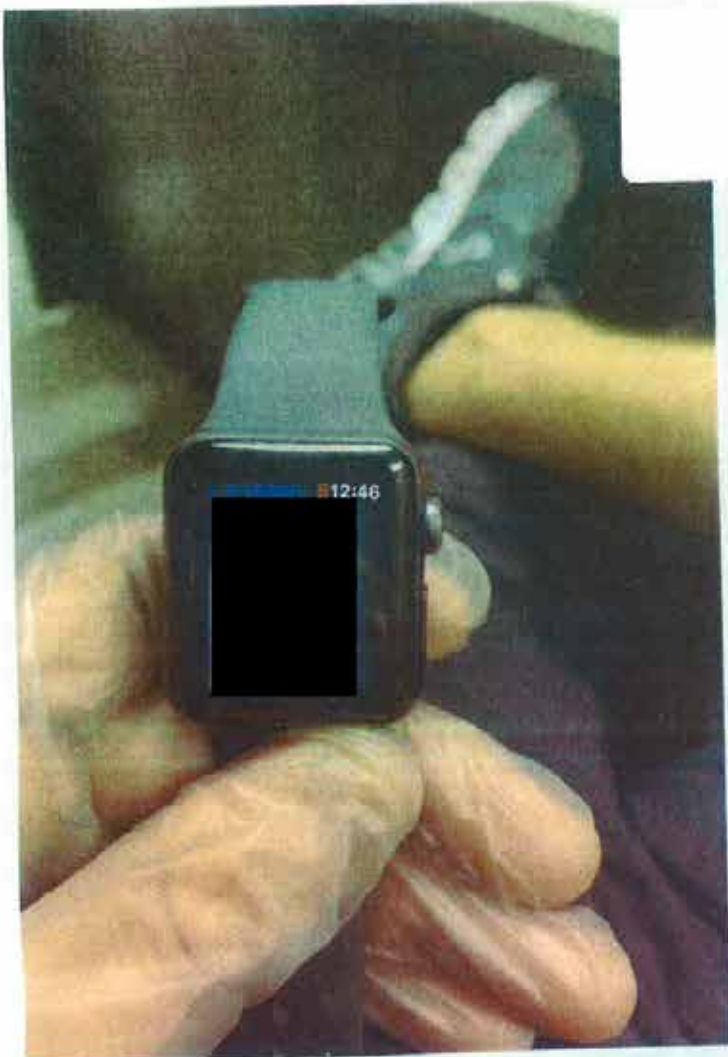
As to Paragraph 83 of the Plaintiff's Amended Complaint

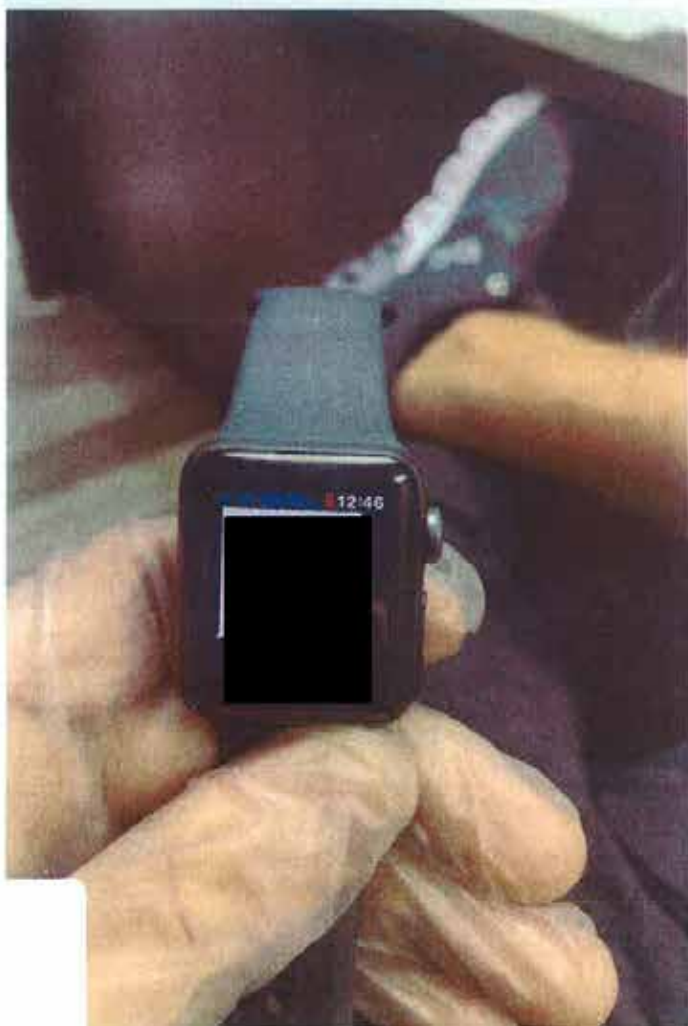


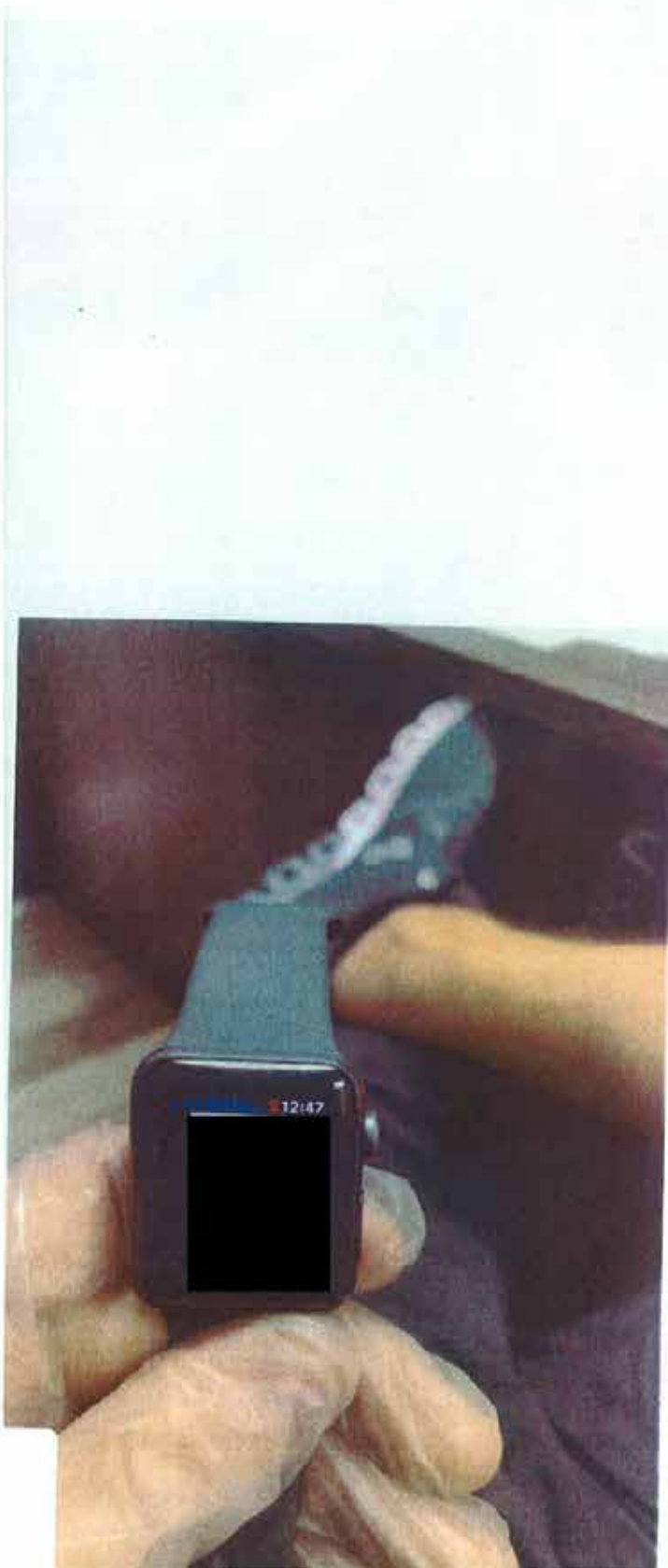


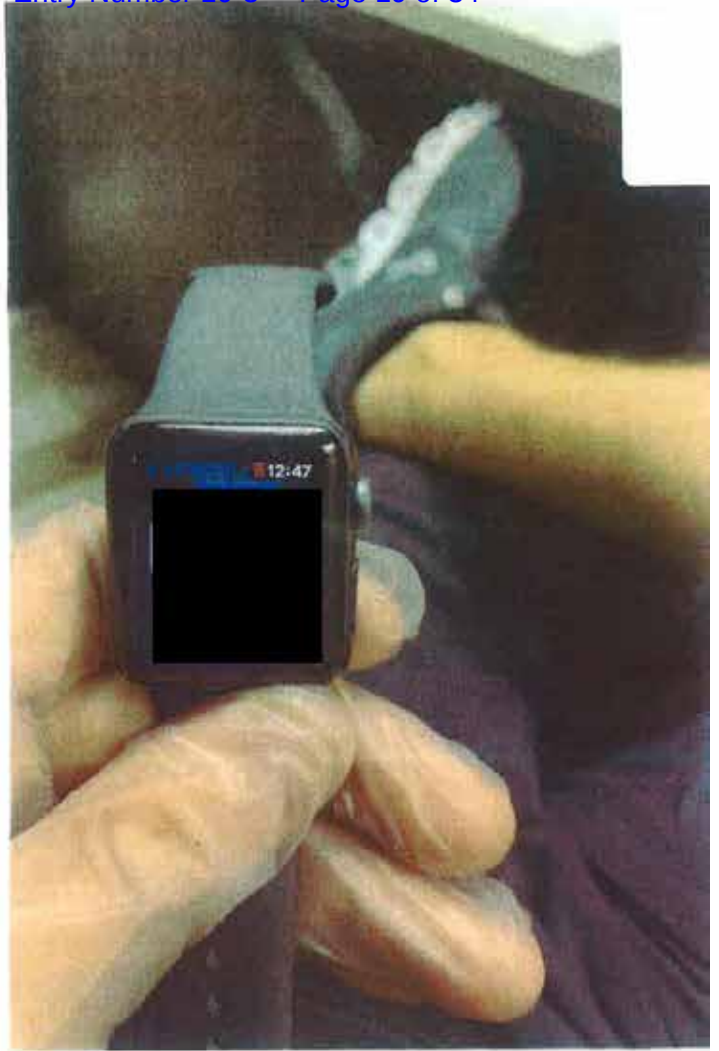


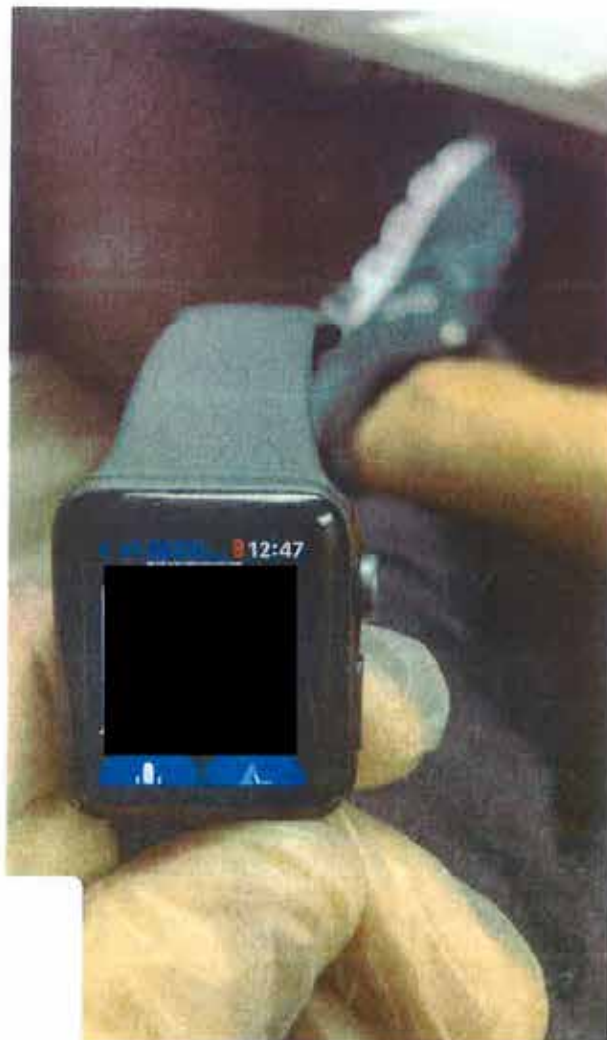












Court remands the case, the Horry County Court of Common Pleas should address the Motion to Dismiss.

Second, Plaintiffs reference the Court of Appeals ruling excluding the electronic communications from use in the Fulmer action, as a finding that Mr. von Herrmann's distribution and publication of the communications continued an illegal use in violation of the Homeland Security Act. **Doc. No. 10, p. 3.** This is false and misconstrues the court of appeals ruling, which found "Fulmer's repeated use of the device to view [Anna's] text messages amounted to interceptions under the Homeland Security Act," and suppressed and prohibited *Fulmer* from using the communications in any action. **See Doc. No. 11-3, p. 5.** Mr. von Herrmann was not a party to the ruling, and the ruling is silent as to anyone's use of the messages other than Fulmer. Thus, this Court should disregard Plaintiffs' argument to the contrary.

Third, Plaintiffs did not argue against the application of attorney-immunity to their common law causes of action for invasion of privacy. **See generally Doc. No. 5, pp. 5-12.** Because Plaintiffs did not argue against attorney-immunity from suits for invasion of privacy, this Court should dismiss those claims.

I. Attorney immunity applies to claims under the South Carolina Homeland Security Act because, under a strict construction of the Act, it is clear the legislature did not intend to abrogate the common law defense.

Statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 810 S.E.2d 848, 850 (S.C. 2018). Such statutes "will 'not be extended beyond the clear intent of the legislature.'" *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 725 S.E.2d 693, 695 (S.C. 2012)). "The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment." *Singleton v. State*, 437 S.E.2d 53, 58 (S.C. 1993).

This principal applies equally to defenses. *See Flowers v. Giep*, 871 S.E.2d 604, 607-08 (S.C. Ct. App. 2021) (interpreting, pursuant to plain meaning and strict construction rules, two statutory sections permitting defenses for physicians acting in emergency scenarios, finding the two defenses were separate defenses and rejecting the plaintiff's argument that one defense limited the other). If the legislature intended a statute to lead to a particular result, it could have drafted the statute to show that intent. *Id.* at 608.

Our state courts have determined under a similar statutory scheme that the legislature did not intend to abrogate valid common law defenses. *See Futch v. McAllister Towing of Georgetown, Inc.*, 518 S.E.2d 591, 605 (S.C. 1999) ("Futch II") ("[W]e note the Court of Appeals correctly concluded that today's version of the Payment of Wages Act, like its predecessors, does not prohibit an employer from asserting valid defenses or disputing paying in good faith."). The Payment of Wages Act gives employees the right to bring a civil suit when their employer fails to pay wages, and indicates the employee "may recover" specific damages. *See* S.C. Code Ann. § 41-10-80. The statute requires unconditional payment of wages due, but is silent on whether the employer can assert valid defenses to the civil suit. *See Futch v. McAllister Towing of Georgetown, Inc.*, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) ("Futch I"), *overruled on other grounds by* 518 S.E.2d 591 (S.C. 1999).

The court of appeals addressed the discretionary nature of the civil remedy and noted a plain reading of the statute required the employer to pay without exception compensation the employee was due, but that the statutory requirement did not expressly or impliedly abrogate an employee's common law duty of loyalty. *Id.* Accordingly, because of the discretionary language of the remedy and silence on defenses, the employer could defend against a failure to pay wages by asserting the employee breached his common law duty of loyalty. *Id.* The South Carolina

Supreme Court approved this rationale on appeal, and noted it applied to any valid defense. *Futch II*, 518 S.E.2d at 605; *see also Rice v. Multimedia, Inc.*, 456 S.E.2d 381, 383 (1995) (concluding the civil remedy is discretionary, and the Legislature did not intend to prevent employers from asserting valid defenses or disputing payment in good faith).

Here, attorney-immunity is a common law doctrine. *Gaar v. North Myrtle Beach Realty Co.*, 339 S.E.2d 887, 889 (S.C. Ct. App. 1986). Thus, unless the Act clearly and unambiguously abrogates the common-law immunity doctrine, the doctrine will bar liability. The Act does not clearly and unambiguously abrogate the common law attorney-immunity doctrine. There are no words to that effect in the statute. Instead, Plaintiffs are relying upon abrogation of the attorney-immunity doctrine by implication – this is not permissible under South Carolina case law preserving common law unless statutes expressly and unambiguously abrogate it. Therefore, the attorney-immunity defense is applicable to the Act and shields attorneys from suit for violation of the Act if certain circumstances are met.

Even if the attorney-immunity doctrine could be abrogated by implication, the Act read as a whole does not evince an intention to abrogate attorney immunity. Similar to the Payment of Wages Act, the Homeland Security Act creates a private right of action entitling a person whose communications are intercepted in violation of the Act to certain damages, but the remedy is discretionary. *See* S.C. Code Ann. § 17-30-135 (A) (stating the person is entitled to recover “relief as *may* be appropriate” (emphasis added)). The statute is silent as to whether common law defenses are abrogated or incorporated. Pursuant to a strict construction and the silence on whether common law defenses are abrogated, it is clear the legislature did not intend to abrogate the common law attorney-immunity doctrine.

Plaintiffs assert (1) the Act does not “expressly confer[] any immunity for attorneys[.]” (**Doc. No. 10, p. 5**); (2) language prohibiting the admission of intercepted communications in proceedings indicates a legislative intent to abrogate attorney-immunity, (**Doc. No. 10, pp. 5-6**); (3) the Act states someone is “guilty” unless otherwise provided under its terms, (**Doc. No. 10, p. 7**) ; and (4) attorneys are not listed in any of the exceptions from the statute. (**Doc. No. 10, p. 7**).

These arguments, however, do not evince an intent to abrogate the attorney-immunity defense. To interpret legislative silence—not expressly conferring immunity (1) and not listing attorneys in exceptions (4)—as intent to abrogate common law would be contrary to precedent under *Futch*, which finds legislatures create statutes against a backdrop of common law and, unless clearly and unambiguously, i.e., expressly, abrogated the common law survives, including defenses.

Plaintiffs’ argument the prohibition on admission of the evidence amounts to an intent to abrogate immunity for attorneys ignores the fact that admission of evidence is separate and distinct from its relevance or discovery. The scope of discovery in litigation is broad, and includes information reasonably calculated to lead to discovery of admissible evidence. The information needs to be relevant, but not necessarily admissible. The attorney immunity doctrine is not contrary to the evidentiary bar because an attorney’s duties do not begin and end with evidence admissibility.

Plaintiffs’ argument the breadth of the statute and application to a “person” indicates an intent to abrogate attorney immunity is likewise unavailing because it misconstrues the policy of the attorney-immunity defense and relies on language common to all statutes. The Act states: “Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty” The attorney-immunity doctrine does not magically legalize illegal

conduct. The purpose of the doctrine is to shield attorneys from liability for actions that *are* illegal or would otherwise expose the attorney to liability. Furthermore, the statute’s reference to “person” does not indicate an intent to abrogate attorney immunity because the immunity doctrine does not shield all attorneys from liability. The attorney immunity defense does not shield attorneys as a class of people. Instead, it applies only when an attorney is acting within their professional scope on behalf of and with knowledge of the client. *Garr*, 339 S.E.2d at 889. Therefore, the attorney immunity defense does not run afoul of the statute making it illegal to intercept communications, but providing for legal interception in certain scenarios.

In fact, many of Plaintiffs’ arguments for abrogating attorney-immunity were expressly rejected in the case they cite, *Taylor v. Tolbert*. See *Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022) (rejecting argument Texas wiretap act abrogated common-law attorney immunity by not expressly including the immunity, reasoning governments legislate against a backdrop of common law and to accept the argument would mean the legislature would have to “opt-in” to every immunity or privilege known); *id.* (rejecting argument Texas wiretap act abrogated common law attorney immunity through its evidentiary prohibition, explaining admissibility is different from using the evidence and not all evidence discoverable is admissible). Indeed, *Taylor* recognized that an attorney who receives such evidence from a client is under a duty to produce the evidence in discovery. *Id.* In addition, the “any person” language of the statute creating a right to sue for interception in Texas did not abrogate attorney immunity given the presumption that common law applies unless unambiguously abrogated, and the fact that attorney-immunity does not apply to all conduct by attorneys. *Id.*

Plaintiffs’ reliance on authority outside of this jurisdiction is unpersuasive. Plaintiffs rely on *Taylor*’s analysis of the federal wiretap act as support for the Act abrogating attorney

immunity. However, Plaintiffs' argument glosses over *Taylor*'s analysis, which actually supports attorney-immunity's application to the Act. Although the *Taylor* court held the Texas common law attorney immunity did not prevent suit under the Federal Wiretap Act, it did so only by first recognizing *state* common-law defenses do not apply to federal statutes. *Id.* at 653 ("We conclude that attorney immunity, as recognized and defined under Texas law, is not a defense under the federal wiretap statute because, quite simply, a state's common-law defense does not apply to federal statutes."). Instead, *federal* common-law defenses would apply unless abrogated by the statute, and the federal iteration of common law attorney immunity was much narrower, applying to communications in judicial proceedings from being used as a basis for libel or slander. *Id.* at 654. Therefore, *Taylor* supports applying attorney-immunity to South Carolina's Act, especially in light of *Taylor* applying Texas's attorney immunity to the state wiretap act.

Plaintiffs also cite *Nix v. O'Malley* in support of their argument that attorney immunity does not apply to disclosure or use of intercepted communications whatsoever. *Nix*, however, does not stand for that proposition and it actually recognized exceptions to both the federal and Ohio's wiretap acts. *Nix v. O'Malley*, 160 F.3d 343, 351 (6th Cir. 1998). *Nix*, the party whose communications were intercepted, sued O'Malley (an attorney) and Weston, Hurd (O'Malley's attorney), arguing the pair violated federal and Ohio wiretap acts when (1) O'Malley disclosed the communications to his attorney; (2) his attorney used the communications to prepare O'Malley's defense to wiretap allegations; and (3) his attorney disclosed the actual communications in a public filing for summary judgment. *Id.* at 348.

First, the *Nix* court recognized that the disclosure to the attorney (1) and the attorney's use of the communication in a litigation context to prepare a defense (2) was privileged, and

neither were subject to liability, under “adjudication” and “defense” exceptions. *Id.* at 351. The court held the disclosure and use were necessary functions of wiretap law. *Id.*

Second, although the *Nix* court found disclosing the communications in a public filing was not entitled to Ohio’s attorney immunity law, the attorney-immunity law at issue was the common law privilege that protects attorneys who republish defamatory statements while defending their client. *Id.* at 352. The court did not discuss an equivalence to South Carolina’s attorney immunity doctrine, which is a separate and much broader doctrine from the immunity from defamation for statements made during judicial proceedings. *See Pond Place Partners, Inc. v. Poole*, 567 S.E.2d 881, 893 (“Any communication, oral or written, uttered or published in the due course of a judicial proceeding is absolutely privileged and cannot form the basis for a cause of action for libel or slander.” (quoting *Kropp v. Prather*, 526 S.W.2d 283, 286 (Tex. Civ. App. 1975))).

Thus, under *Nix*, Fulmer’s disclosure of the communications to Mr. von Herrmann and Mr. von Herrmann’s use of those communications to prepare the lawsuit would be privileged and could not serve as a basis for a lawsuit. Furthermore, *Nix*’s holding on the inapplicability of Ohio’s “attorney-immunity” doctrine to disclosure of the communication is inapplicable because (1) Ohio’s attorney immunity is not equivalent to South Carolina’s doctrine, and (2) *Nix* involved disclosure in a public filing with the court. Here, the alleged disclosure was providing the communications in discovery to an opposing party who alleges violations of the Act.

In sum, the attorney-immunity doctrine applies to conduct otherwise illegal under the Act because the language in the statute does not express a clear and unambiguous intent to abrogate the defense. In addition, even if the defense could be abrogated by implication, the Act does not impliedly abrogate attorney immunity because the statute is silent and a strict construction

mandates preservation of common law defenses. Plaintiffs' arguments to the contrary have been rejected by other jurisdictions, and in similar scenarios in South Carolina. Plaintiffs' reference to authority outside this jurisdiction either supports applying the doctrine to the Act, or can be readily distinguished. Accordingly, this Court should find attorney immunity applies to the Act, Plaintiffs failed to plead facts sufficient to overcome the defense, and dismiss Plaintiffs' Amended Complaint.

II. Interpreting the Act to abrogate common law attorney immunity would lead to an absurd result not intended by the legislature.

Courts construing statutes must reject interpretations that lead to absurd results. *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 670 S.E.2d 371, 373 (S.C. 2008); see *Enos v. Doe*, 669 S.E.2d 619, 623 (S.C. Ct. App. 2008) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."); *Kiriakides v. United Artist Commun., Inc.*, 440 S.E.2d 364, 366 (S.C. 1994).

To hold that the Act abrogated attorney-immunity would lead to an absurd result, holding persons criminally liable for actions clearly not intended under the statute. Under the statute, a person who discloses or uses the contents of an intercepted communication knowing or having reason to know it is intercepted is guilty of a felony. S.C. Code Ann. § 17-30-20 (3), (4). There is no explicit exception under the statute for state prosecutors. It is lawful to intercept a communication when one of the parties gives prior consent to the interception. S.C. Code Ann. § 17-30-30 (B), (C). But there is no indication that later use of those intercepted communications can be consented to. There is an exception to the admissibility rule for *criminal* prosecution for violating laws prohibiting interception. S.C. Code Ann. § 17-30-65 (A). But there is no

corresponding exception for civil claims of violating the Act. *See* S.C. Code Ann. § 17-30-135. And cases alleging civil liability are entitled to a jury trial. *Id.*

Thus, according to Plaintiffs' arguments on attorney-immunity and interpretation of the Act, Plaintiffs' attorney's "use" of the intercepted communications to bring a civil lawsuit would violate the statute (note the statute for civil damages permits the person to bring a claim, but says nothing excluding the person's attorney's use of the communications to bring the claim); Plaintiffs' attorney's disclosure of the evidence in discovery in this case would violate the Act, and Plaintiffs' would not be able to introduce evidence of the intercepted communications into evidence before the jury. Important here is that the Act does not indicate the person whose communications were intercepted can consent to their use *after* the interception.

In fact, the Act states intercepted communications are discoverable under the Act, and the judge on motion to use the intercepted communications must provide the intercepted communication and derivative evidence. S.C. Code Ann. § 17-30-105 ("Upon filing of a motion by an aggrieved person, the judge must make available to the aggrieved person or his counsel for inspection, the portions of the intercepted communication or evidence derived therefrom that would be otherwise discoverable under South Carolina law."). Likewise, the Act suggests the party whose communications were intercepted can have an expert review the material. *Id.* (determining prejudice requires the court to consider "the party's need to retain experts to review the material"). In a scenario where the communications are intercepted by the government, and attorney-immunity did not apply, the aggrieved party's attorney would be liable for disclosing the intercepted communications to the expert in preparing a defense.

In addition, Plaintiffs' arguments that general language prohibiting conduct and silence on what defenses are incorporated, carried to their logical conclusion, would result in abrogating

all common law defenses and any statutory defenses not specifically mentioned in the Act. This would include any defense referenced in Rule 8(c)(1) of the Federal Rules of Civil Procedure, and Rule 8(c) of the South Carolina Rules of Civil Procedure. Another absurd result. Accordingly, this Court should reject Plaintiffs' arguments that lead to an absurd result, find attorney immunity applies to the Act, and dismiss Plaintiffs' Amended Complaint.

CONCLUSION

Contrary to Plaintiffs' arguments, South Carolina's Homeland Security Act does not clearly and unambiguously abrogate the common law attorney immunity defense. Even if the defense could be abrogated by implication, the Act does not impliedly abrogate attorney immunity because the statute is silent and a strict construction mandates preservation of common law defenses. To accept Plaintiffs' arguments and find attorney-immunity is abrogated would lead to absurd results not intended by the legislature, including holding attorneys liable for sharing intercepted communications in law suits over the intercepted communications, and would require abrogating any defense not expressly included in the Act. This Court should avoid those absurd results by finding attorney-immunity applies to claims under the Act, Plaintiffs did not plead sufficient facts to overcome the immunity, and dismiss Plaintiffs' Amended Complaint.

This 7th day of December, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
Federal Bar No.: 10058
SKYLER C. WILSON
Federal Bar No.: 13008
Counsel for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT

Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall	)	
	)	
	)	
Plaintiffs,	)	NOTICE OF MOTION
	)	AND MOTION
Versus	)	TO COMPEL DISCOVERY
	)	
William Bertram von Herrmann	)	Civil Action No. 2022-CP-26-06296
and the Von Herrmann Law Firm,	)	
	)	
Defendants.	)	
	)	

TO: DEFENDANTS AND THEIR ATTORNEY, DOUGLAS W. MACKELCAN, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE, that the Plaintiffs, through undersigned counsel, will move before the Presiding Judge of the Horry County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 26, 33, and 34 of the South Carolina Rules of Civil Procedure, compelling the Defendant,s to answer Plaintiffs' discovery requests and, pursuant to Rule 37(a), for an Order requiring the Defendant s to pay to the Plaintiffs' attorney the amount of reasonable expenses incurred in obtaining the Order, including reasonable attorney's fees.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, the undersigned counsel certifies that he has communicated, with opposing counsel and a good faith effort has been made to resolve this matter prior to the filing of this motion.

Respectfully submitted,

s/Richard G. Whiting
Richard G. Whiting
Attorney for Plaintiffs
SC Bar No. 6078
1515 Lady Street (29201)
Post Office Box 7877
Columbia, SC 29202
803.256.9067
dick.whiting@whitinglawsc.com

ELECTRONICALLY FILED - 2023 Aug 01 3:22 PM - HORRY - COMMON PLEAS - CASE#2022CP2606296

LAW OFFICES OF
RICHARD G. WHITING
A PROFESSIONAL ASSOCIATION
1515 LADY STREET
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COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE (803) 256-9067
FACSIMILE (803) 256-0223
rick.whiting@whitinglawsc.com

April 25, 2023

VIA EMAIL ONLY
dmackelcan@dsvl.law

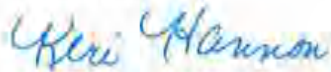
Douglas W. Mackelcan, Esquire
40 Calhoun Street, Suite 400
Charleston, SC 29401

RE: Anna Coggeshall, et al v. William Bertram von Herrmann, et al
Civil Action No. 2022-CP-26-06296

Dear Mr. Mackelcan:

Enclosed and hereby served upon you this date you will find Plaintiffs' First Set of Interrogatories to Defendants in the above captioned matter.

Sincerely,



Kerl L. Hannon
Paralegal for Richard G. Whiting

enclosures (2)
cc: Steven M. Abrams, Esquire (via email only)

FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
CERTIFIED FAMILY COURT MEDIATOR

ELECTRONICALLY FILED - 2023 Aug 01 3:22 PM - HORRY - COMMON PLEAS - CASE#2022CP2606296

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Anna Coggeshall, Bryan Coggeshall,	)	
and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	CERTIFICATE OF SERVICE
	)	
versus	)	
	)	
William Bertram von Herrmann,	)	Civil Action No. 2022-CP-26-06296
and the Von Herrmann Law Firm,	)	
	)	
Defendants.	)	

I, Keri L. Hannon, paralegal for Richard G. Whiting, attorney for the Plaintiffs, do hereby certify that I have this 25th day of April, 2023, served the Plaintiffs' First Set of Interrogatories to Defendant via email only to the following address:

Douglas W. Mackelcan, Esquire
 40 Calhoun Street, Suite 400
 Charleston, South Carolina 29401
dmackelcan@csvl.law


 Keri L. Hannon
 Paralegal for Richard G. Whiting
 1515 Lady Street
 Post Office Box 7877
 Columbia, SC 29202

April 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
 Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' FIRST SET
	)	OF INTERROGATORIES
versus	)	TO DEFENDANTS
	)	
William Bertram von Herrmann,	)	
and the Von Herrmann Law Firm,	)	
	)	
Defendants.	)	Civil Action No. 2022-CP-26-06296
	)	

TO THE DEFENDANT WILLIAM BERTRAM VON HERRMANN, AND HIS ATTORNEY,
DOUGLAS W. MACKELCAN, ESQUIRE:

The following Interrogatories are submitted to you through your attorney,
pursuant to Rule 33, South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to you or your attorney to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in your possession or in possession of your attorney that relate to the claim or defense in this case.
3. List the names and addresses of any expert witnesses who you or your attorney propose to use as witnesses at the trial of this case.

4. For each person known to you or your attorney (see Interrogatory 1 above) to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the Plaintiffs and the Plaintiffs' attorney of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. Advise how you came into possession of the various photographs of Plaintiff Anna Coggeshall's iWatch reflecting certain text messages between her and other individuals. In answering this Interrogatory, be specific as to who received these photographs which ended up being utilized by you or your law firm in the Complaint against an Horry County Family Court Judge and also provided by you in answers to certain discovery in the underlying Fulmer v. Coggeshall lawsuit.

6. Identify those individuals with whom you, your office, or your client, Justin Shayne Fulmer, shared the referenced-to photographs of the iWatch as outlined in Interrogatory number 5.

7. Identify what actions you, your law firm, or someone on behalf of you or your law firm took to ascertain whether or not it was lawful or permissible to utilize the photographs of the iWatch set out in the preceding Interrogatories numbered 5 and 6.

8. Identify the precautions taken by you or by any person or entity at your direction for maintaining and storing the photographs of the illegally intercepted communications between Plaintiff Anna Coggeshall and other individuals and the location of those photographs.

9. State whether or not you or anyone at your law firm was involved in any way in the interception of those illegally obtained text message communications between Plaintiff Anna Coggeshall and other individuals.

10. Identify any individuals whom you or your office communicated with concerning the legality of the actions taken in the interception of those text messages as evidenced by the photographs of the iWatch which were utilized in the Complaint against members of the judiciary or in support of your allegations as contained in your Complaint against Plaintiffs alleging civil conspiracy.

11. Identify which individuals conspired to take actions towards your client, Justin Shayne Fulmer, and what those actions were.

12. Identify all payments made by your client, Justin Shayne Fulmer, to you or your law firm for all work performed by you in this matter or the underlying Circuit Court matter alleging conspiracy.

13. Advise as to what research or other activities were taken by you or your law firm or by someone on behalf of you or your law firm to ascertain the legality of disclosing the contents of these illegally intercepted communications. The response should include all members of your law firm who participated in research or discussions concerning the legality of the disclosure of these communications.

14. Set forth in detail the actions taken by any member of your law firm, including any partners, associates, or other staff members, regarding assembling, copying, or disclosing/disseminating the contents of the unlawfully obtained text

message communications which were utilized in the "conspiracy" Complaint filed by you or your law firm on behalf of Justin Shayne Fulmer.

15. Describe in detail the actions which you or your law firm have now taken to secure and prevent continuing disclosure of the contents of these unlawfully obtained text message communications between Plaintiff Anna Coggeshall and third parties subsequent to the ruling by the South Carolina Court of Appeals and including up to the date of your response. Your answer should include the exact storage location of the photographs of these unlawfully obtained text message communications and the name of every individual who has access to the photographs of the illegally intercepted communications.

These Interrogatories shall be deemed to continue from the time of service until the time of trial of the case and should additional or amended answers to these Interrogatories be necessary during this time, they shall be properly transmitted to the Plaintiffs through Plaintiffs' undersigned counsel.



Richard G. Whiting
Attorney for Plaintiffs
1515 Lady Street
Post Office Box 7877
Columbia, SC 29202
(803) 256-9067
dick.whiting@whitinglawsc.com

April 24, 2023

Keri Hannon

From: Keri Hannon
Sent: Tuesday, April 25, 2023 1:34 PM
To: Mackelcan, Douglas W.
Cc: Steven Abrams (steve@abramsforensics.com)
Subject: Coggeshall, et al v. von Herrmann, et al
Attachments: ltr-email-DouglasMackelcan-2023-04-25-Interrogatories-1stToDefendants.pdf

Dear Mr. Mackelcan:

Please see the attached correspondence which is being sent to you via email only.

Sincerely,

Keri Hannon

**Paralegal for Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
keri.hannon@whitinglawsc.com**

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Keri Hannon

From: Keri Hannon
Sent: Tuesday, April 25, 2023 1:42 PM
To: 'trewt@csvg.law'; 'rmoran@csvg.law'
Subject: FW: Coggeshall, et al v. von Herrmann, et al
Attachments: ltr-email-DouglasMackelcan-2023-04-25-Interrogatories-1stToDefendants.pdf

Pursuant to the automatic email reply from Mr. Mackelcan, please see below and attached.

Sincerely,

Keri Hannon
Paralegal for Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
keri.hannon@whitinglawsc.com

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From: Keri Hannon
Sent: Tuesday, April 25, 2023 1:34 PM
To: Mackelcan, Douglas W. <dmackelcan@csvg.law>
Cc: Steven Abrams (steve@abramsforensics.com) <steve@abramsforensics.com>
Subject: Coggeshall, et al v. von Herrmann, et al

Dear Mr. Mackelcan:

Please see the attached correspondence which is being sent to you via email only.

Sincerely,

Keri Hannon

Paralegal for Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
keri.hannon@whitinglawsc.com

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ELECTRONICALLY FILED - 2023 Aug 01 3:22 PM - Horry - COMMON PLEAS - CASE#2022CP2606296

Keri Hannon

From: Keri Hannon
Sent: Tuesday, June 6, 2023 12:20 PM
To: Mackelcan, Douglas W.
Subject: FW: Coggeshall, et al v. von Herrmann, et al
Attachments: ltr-email-DouglasMackelcan-2023-04-25-Interrogatories-1stToDefendants.pdf

Categories: Review OR Waiting for Response

Dear Mr. Mackelcan:

Following up my the attached correspondence from April 25, 2023, when may Mr. Whiting expect to receive your clients' responses?

Sincerely,

Keri Hannon
Paralegal for Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
keri.hannon@whitinglawsc.com

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From: Keri Hannon
Sent: Tuesday, April 25, 2023 1:34 PM
To: Mackelcan, Douglas W. <dmackelcan@csvl.law>

Cc: Steven Abrams (steve@abramsforensics.com) <steve@abramsforensics.com>

Subject: Coggeshall, et al v. von Herrmann, et al

Dear Mr. Mackelcan:

Please see the attached correspondence which is being sent to you via email only.

Sincerely,

Keri Hannon

Paralegal for Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
keri.hannon@whitinglawsc.com

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LAW OFFICES OF
RICHARD G. WHITING
A PROFESSIONAL ASSOCIATION
1515 LADY STREET
POST OFFICE BOX 7877
COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE (803) 256-9067
FACSIMILE (803) 256-0223
rick.whiting@whitinglaw.com

June 13, 2023

VIA EMAIL ONLY

Douglas W. Mackelcan, Esquire
40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law

RE: Coggeshall, et al v. von Herrmann, et al
Civil Action No. 2022-CP-26-06296

Dear Doug:

I trust this finds you well.

I have reviewed your correspondence of June 9, 2023, but I do not believe that it is in my clients' best interest to put off moving forward getting this case ready for trial. As you know, the Circuit Court often takes quite a while to get motions scheduled and heard. I don't want to put off the discovery at this point. However, if you now need additional time to respond to the outstanding discovery requests, then I certainly have no problem granting an extension of an additional thirty (30) days from this date for that to take place.

Please accept my kindest regards.

I am, very truly yours,



Richard G. Whiting

/klh 
cc: Steven M. Abrams, Esquire (via email only)

CERTIFIED FAMILY COURT MEDIATOR

Keri Hannon

From: Mackelcan, Douglas W. <dmackelcan@csvl.law>
Sent: Wednesday, June 14, 2023 4:43 PM
To: Keri Hannon
Cc: Wilson, Skyler C.; s abrams
Subject: RE: Coggsehall, et al v. von Herrmann, et al

Received, and thank you for the extension.

Doug



Doug MacKelcan

Partner

d: 843.266.8228 | f: 843.727.2995

dmackelcan@csvl.law | www.csvl.law

40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Keri Hannon <Keri.Hannon@whitinglawsc.com>
Sent: Tuesday, June 13, 2023 2:08 PM
To: Mackelcan, Douglas W. <dmackelcan@csvl.law>
Cc: Wilson, Skyler C. <swilson@csvl.law>; s abrams <steve@abramsforensics.com>
Subject: Coggsehall, et al v. von Herrmann, et al

Some people who received this message don't often get email from keri.hannon@whitinglawsc.com. [Learn why this is important](#)

Dear Mr. Mackelcan:

Please see the attached correspondence from Mr. Whiting which is being sent to you via email only.

Sincerely,

Keri Hannon

**Paralegal for Richard G. Whiting
 Law Offices of Richard G. Whiting
 1515 Lady Street
 Post Office 7877
 Columbia, SC 29202
 (803) 256-9067
 (803) 256-0223 (fax)
keri.hannon@whitinglawsc.com**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	DEFENDANTS' MEMORANDUM IN
Plaintiffs,	)	OPPOSITION TO MOTION TO
	)	COMPEL
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel, submit this response to Plaintiffs' Motion to Compel.

BACKGROUND

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm asserting liability under various statutes and common law causes of action for the interception and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. On behalf of their client Mr. Fulmer, Defendants sued the Plaintiffs based, in part, on the information in the electronic communications. Fulmer's lawsuit against the Coggeshalls is still ongoing. It is currently scheduled for trial on November 27, 2023.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's Apple Watch and accessed her and Plaintiffs Bryan and Katherine's electronic communications. **See Ex. 1 at ¶¶ 5-6.** Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. **Id.** They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. **Id. at ¶¶ 6-7.** Plaintiffs allege Mr.

Fulmer intercepted the electronic communications and Defendants, with knowledge the information was “unlawfully obtained” disseminated the material. ***Id.* at ¶ 10.**

As a result of Defendants’ actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas asserting claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. Defendants removed the lawsuit to Federal Court and moved to dismiss based on attorney-client immunity. Plaintiffs amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. The Federal Court remanded the case without deciding the motion to dismiss.

On November 1, 2023, the Court entered an Order granting in part and denying in part Defendants’ motion to dismiss, finding the attorney-immunity doctrine did not apply to the alleged violations of the South Carolina Homeland Security Act. Defendants are moving the court to reconsider the order denying in part the motion to dismiss.

While the motion to dismiss was pending, Plaintiffs served Interrogatories and Requests for Production. Because the motion to dismiss was pending, Defendants did not respond to the discovery requests, but Plaintiffs still filed a motion to compel responses to the Interrogatories. Defendants have since submitted written responses and objections to the Interrogatories and Requests for Production. Defendants file this Memorandum in Opposition to the Motion to Compel.

ARGUMENT

I. Plaintiffs' Motion to Compel is based on the failure to respond and because Defendants submitted written responses and objections, Plaintiffs' Motion to Compel is moot.

As an initial matter, Plaintiffs' Motion to Compel appears to involve only Plaintiffs' Interrogatories. Plaintiffs moved this Court to compel responses and cited Rules 33 and 34, but failed to include the requests for production or documents showing service of the requests for production. Plaintiffs included only the interrogatories and the letter serving the interrogatories in support of its motion. Accordingly, Plaintiffs' motion likely deals only with the interrogatories.

Regardless, however, Defendants submitted written responses to Plaintiffs' discovery requests. **See Ex 2. (Defendants' Discovery Responses).** Because Plaintiffs' motion deals only with the failure to respond, and not the specific substance of the responses, and Defendants have responded, Plaintiffs' motion is moot. To the extent Plaintiffs request this Court address the substance of the responses, Plaintiffs need to file a subsequent motion to compel and brief why they believe the responses are insufficient.

II. If the Court addresses the substances of the responses, Plaintiffs' discovery requests are improper, blatantly request privileged information, and are being used to secure an advantage in an underlying case and, accordingly, the motion to compel should be denied.

Parties may obtain discovery on matters that are not privileged as long as the matters are relevant to the subject matter of the pending claim. Rule 26(b)(1), SCRCp. "The attorney client privilege has long been recognized in this State and protects against disclosure of confidential communications by a client to his attorney regarding a legal matter." *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 529 (2010). The privilege is based on the public policy the interests of society in encouraging client confidence is best served by ensuring that confidence is not abused by attorney disclosure of their communications. *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 167, 829 S.E.2d 707, 712 (2019); *see also Mohawk Indus., Inc. v. Carpenter*,

558 U.S. 100, 108 (2009) (“By assuring confidentiality, the privilege encourages clients to make ‘full and frank’ disclosures to their attorneys, who are then better able to provide candid advice and effective representation.”).

The attorney client privilege is defined as:

(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

Tobaccoville USA, 387 S.C. at 293, 692 S.E.2d at 530.

“The attorney-work product doctrine protects from discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by the requesting party.” *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010); *see also* Rule 26(b)(3), SCRCPP; *Hickman v. Taylor*, 329 U.S. 495 (1947). Generally, in determining whether a document has been prepared “in anticipation of litigation,” most courts look to whether or not the document was prepared because of the prospect of litigation.

Here, Plaintiffs are actively litigating the Underlying Case against Mr. Fulmer, who is represented by Defendants in that case. Their discovery requests ask Defendants to divulge attorney-client privileged and work-product doctrine protected information.

For example, Plaintiffs’ interrogatories request Defendants outline what actions they took to discern the legality of the Apple Watch messages. **Ex. 2 (INT 7)**. To reveal the information could run afoul of the attorney-client privilege because it would require revealing conversations with Defendants’ client, Justin Fulmer. Further, it would require Defendants to outline their work-product relative to the Underlying Case. Interrogatories 10, 13, and 14 likewise ask for information from Defendants about what they communicated to certain parties, including their client Justin Fulmer, about the messages and what work they performed to determine whether to

“disclose” or disseminate the contents of the messages. **See Ex. 2 (INT 10, 13 & 14).** This information would be work-product privileged to the extent it was prepared for the active litigation in the Underlying Case. Plaintiffs’ requests for production blatantly request communications between Mr. Fulmer and Mr. von Herrmann, which are protected by the attorney-client privilege. **See Ex. 2 (RFP 2, 3, & 8).** Much of the information and documents requested in discovery would also fall within the work-product privilege because it was generated in anticipation of, or in conjunction with, Mr. von Herrmann prosecuting the Underlying Case for his client, Mr. Fulmer.

Moreover, Plaintiffs are using discovery for an improper purpose. First, Plaintiffs are attempting to use this case to gain information relevant to the Underlying Case. Interrogatories 10, 11, and 14 ask for information relevant to the conspiracy claim in the Underlying Case. **See Ex. 2 (INT. 10, 11, 14).** Request for Production 4 seeks communications with an expert in the Underlying Case. **See Ex. 2 (RFP 5).** Plaintiffs may be entitled to information reasonably calculated to lead to the discovery of admissible information on their claims in the present case, but not the Underlying Case. This is further complicated by the fact that the Underlying Case is still ongoing and Plaintiffs are attempting to secure information usable in that case, which is improper.

Second, Plaintiffs appear to be inviting Defendants and their counsel to violate the Homeland Security Act under Plaintiffs’ theory of the case. Plaintiffs allege that Defendants violated the South Carolina Homeland Security Act by sending photographs of allegedly intercepted electronic communications in prosecuting the Underlying Case. **Ex. 1 (Amnd. Compl ¶¶ 7-8).** Further, Plaintiffs’ counsel has taken the position that sharing the messages in discovery would be a violation of the Homeland Security Act. **See Ex. 3** (emailing Mr. von Herrmann in the Underlying Case that sharing the allegedly intercepted communications with Plaintiffs’ counsel would be a separate and distinct violation of the state and federal law). Now,

Plaintiffs request Defendants to send the same information to them in this case that, by their logic, would violate the Homeland Security Act. Interrogatory 2 asks Defendants to list the photographs of the allegedly intercepted messages. The requests for production ask Defendants to send copies of the messages to Plaintiffs. **See Ex. 2 (RFP 5)**. Thus, if Defendants and their counsel were to respond with that information, Plaintiffs would likely allege violations of the Homeland Security Act against them.

Conclusion

This Court should deny Plaintiffs' Motion to Compel because Defendants responded to the written requests. If Plaintiffs contest the sufficiency of those responses, they will need to identify those deficiencies to Defendants' counsel in an attempt to resolve any issues, and then move to compel if the matter cannot be resolved.

If the Court does consider the substance of the responses, however, Plaintiffs' requests seek information that is protected by the attorney-client privilege and work-product doctrine and is not subject to disclosure. In addition, it appears Plaintiffs are utilizing discovery in this case to secure a strategic advantage in the Underlying Case, and are inviting Defendants to participate in discovery in a way they have asserted violates the Homeland Security Act in the past. Therefore, Plaintiffs' Motion to Compel should be denied.

This 6th day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Anna Coggeshall; Bryan Coggeshall; and)
Katherine Coggeshall,)
)
Plaintiffs,)

CASE NO.: 4:22-cv-04017-JD

AMENDED SUMMONS

vs.

William Bertram von Herrmann and
The Von Herrmann Law Firm,
Defendants.

TO THE DEFENDANTS, WILLIAM BERTRAM VON HERRMANN AND THE VON
HERRMANN LAW FIRM:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is hereby served upon you, and to serve a copy of your answer to the said
Complaint on Plaintiff or his/her attorney, at his office 1515 Lady Street (29201), Post Office
Box 7877, Columbia, South Carolina 29202, within thirty (30) days after the service hereof,
exclusive of the date of such service, and if you fail to answer the Complaint within the time
aforesaid, judgment by default will be rendered against you for the relief demanded in the
Complaint.

s/Richard G. Whiting
Richard G. Whiting
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s/Steven M. Abrams, Esquire
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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Anna Coggeshall; Bryan Coggeshall; and)
Katherine Coggeshall,)
)
Plaintiffs,)

CASE NO.: 4:22-cv-04017-JD

AMENDED COMPLAINT

vs.

William Bertram von Herrmann and
The Von Herrmann Law Firm,
Defendants.

GENERAL ALLEGATIONS AND JURISDICTION

1. The parties are residents of Horry County, South Carolina.
2. Jurisdiction and venue are proper before this Court.
3. At all times relevant herein Plaintiffs had private cell phone numbers. At no time did Plaintiffs give anyone permission to intercept or use their private electronic communications or to disclose the contents of these communications.
4. At all times relevant herein Plaintiffs had the ability to send and receive private text messages on their cell phones. At no time did Plaintiffs give anyone permission to access, use or disclose their private text messages.
5. At the time of Plaintiff Anna Coggeshall and Justin Fulmer's physical separation, based upon information and belief, Justin Fulmer, who was and continues to be a client of William Bertram von Herrmann and The Von Hermann Law Firm unlawfully took possession of Plaintiff Anna Coggeshall's iWatch and began to illegally access her and the other Plaintiffs' private email address without permission, and to improperly procure Plaintiffs' private electronic text messages/communications in excess of 960 occasions.
6. After intercepting and accessing Plaintiffs' private text messages, private text messages between all Plaintiffs, and possibly other electronic communications through the use of

the unlawfully obtained iWatch, which Defendants' client, Justin Fulmer, unlawfully took from Plaintiff Anna Coggeshall without her knowledge or consent, and through the electronic communications system, Justin Fulmer or his agent(s) began taking screen shots or otherwise reproducing the same electronic communications, and Defendants printed the same.

7. Defendants used the improperly obtained communications in an attempt to gain an economic benefit and to gain collateral advantage in a new Circuit Court action which their client, Justin Fulmer, brought against all Plaintiffs and others via the Defendants named herein.

8. The contents of all Plaintiffs' private electronic messages were disseminated visually, and copies being provided to various entities, and as yet, unidentified third persons. These disseminations of the contents of Plaintiff's private electronic communications continued willfully even after Defendant's were put on notice that publishing the contents of Plaintiff's electronic communications would constitute a "use" in multiple violations of the Interception statutes.

9. The foregoing acts were accomplished through and including an unknown date, and possibly up to present.

10. Justin Fulmer intercepted those electronic communications described hereinabove and Defendants, knowing these communications were unlawfully obtained, disseminated same without Plaintiffs' prior knowledge or consent and without the knowledge or consent of any third parties to whom the Plaintiffs were communicating.

11. As a result of the Defendants' conduct, the Plaintiffs have been injured and are entitled to damages as follows: actual damages, statutory damages, punitive damages, attorney's fees, and other litigation costs.

12. Plaintiffs bring this cause of action pursuant to the South Carolina Homeland Security Act, S.C. Code Ann § 17-30-10, et seq., as well as the Invasion of Privacy torts of Publicizing of Private Affairs, Wrongful Intrusion and Outrage.

FOR A FIRST CAUSE OF ACTION
(Violation of the South Carolina Homeland Security Act)

13. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

14. Any person whose communications have been intercepted in violation of § 17-30-20 is entitled to recover from the person or entity which engaged in that violation relief as may be appropriate, including a preliminary or equitable or declaratory relief as may be appropriate; actual damages, but not less than liquidated damages computed at the rate of five hundred dollars (\$500.00) a day for each day of violation or twenty-five thousand dollars (\$25,000.00), whichever is greater, not to exceed the limits on liability provided in subsection (F)(3); punitive damages, except as may be prohibited in subsection (F)(4); and reasonable attorney's fee and other litigation costs reasonably incurred.

15. Plaintiffs allege that their electronic communications have been intercepted, intentionally accessed/recorded, disclosed, and used without their authorization and in violation of the foregoing chapters and brings this civil cause of action against those Defendants and entities who accessed, intercepted, disclosed, used, or procured Plaintiffs' private electronic communications.

16. Based thereon, Plaintiffs are entitled to an immediate Order and injunction restraining the Defendants and their agents from any further dissemination of Plaintiffs' private electronic mail/electronic conversations which were intercepted and used by Defendants.

17. Pursuant to §§ 17-30-10 et seq. and 17-30-135 of the 1976 Code of Law, State of South Carolina, as amended, Plaintiffs are further entitled to actual damages of not less than liquidated damages computed at the rate of \$500.00 per day for each day of violation or \$25,000.00, whichever is greater, alleging that, upon information and belief, from the date of the first interception, disclosure continues upon the public records and

elsewhere through this date and Plaintiff is entitled damages at the rate of \$500.00 per day for every day on which the foregoing records continue to be used or disclosed.

18. Plaintiffs are also entitled to punitive damages in an amount to be established by a jury, together with reasonable attorney's fees and other litigation costs reasonably incurred and such other legal and equitable relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Invasion of Privacy – Publicizing of Private Affairs)

19. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

20. Defendants herein gave publicity to matters that are private to Plaintiffs.

21. The disclosure of these communications or images would be highly offensive to a reasonable person and is not of legitimate public concern.

22. Further, Plaintiffs did not consent to the disclosure of this private information/images.

23. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against Defendants, together with such other legal and equitable relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(Invasion of Privacy – Wrongful Intrusion and Outrage)

24. Each allegation in Paragraphs 1 through 12 is repeated herein as if first stated.

25. Defendants' wrongful intrusions consist of watching, spying, and prying into Plaintiffs' private affairs.

26. The wrongful intrusions concern those aspects of the Plaintiffs, their personal relationships, and communications which one normally expects to be free from exposure to Defendants.

27. Defendants' conduct is intentional, substantial, and unreasonable, and is of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.

28. As a result of Defendants' actions, Plaintiffs have suffered damages and should be awarded actual and punitive damages against the Defendants, together with such other legal and equitable relief this Court deems just and proper.

THIS COURT'S POWER TO GRANT RELIEF

29. This Court has the equitable powers and statutory remedies under the various statutes to grant injunctive relief from Defendants' continuing misconduct, including the interception and disclosure of Plaintiffs' electronic communications.

30. This Court has the statutory authority under South Carolina Code of Laws §17-30-135 to award to Plaintiffs actual damages, not less than liquidated damages of \$25,000.00, plus punitive damages, and reasonable attorneys' fees and court costs for the interception of Plaintiffs' electronic communications.

31. The Court has the equitable powers and statutory remedies to award damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, invasion of privacy - wrongful intrusion, and outrage including actual and punitive damages against Defendants together with such other equitable and reasonable relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court pursuant to its own equitable and legal powers:

1. Enter an Order enjoining Defendants preliminarily and permanently from any further intrusion into Plaintiffs' internet communications or interception of Plaintiffs' electronic communications, and from any further dissemination of Plaintiffs' electronic communications.

2. Award Plaintiffs actual, not less than statutory, liquidated damages, and punitive damages for Defendant's client's, Justin Fulmer's, unauthorized and illegal interception of Plaintiffs' electronic communications and Defendants' conduct, including the willful dissemination of Plaintiffs' intercepted electronic communications.

3. Award actual and punitive damages to Plaintiffs for the invasion of privacy - publicizing of private affairs, the invasion of privacy - wrongful intrusion and outrage.

4. Award Plaintiffs reasonable attorneys' fees and the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

s/Richard G. Whiting
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REPLY TO SC OFFICE

November 6, 2023

VIA EMAIL

Richard G. Whiting, Esq.
P.O. Box 1515 Lady Street
Columbia, SC 29201
Dick.whiting@whitinglawsc.com

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von
Herrmann and The Von Herrmann Law Firm
Case No.: 2022-CP-26-06296
CSVL File No.: 2283-64549

Dear Dick:

Please find enclosed, Defendants' Answers to Plaintiffs' First Set of Interrogatories and Responses to Plaintiffs' First Request for Production in this case. Let me know if you have any questions or concerns.

Sincerely yours,

s/Skyler C. Wilson

DOUGLAS W. MACKELCAN
SKYLER C. WILSON

SCW:tjr

cc: Steven Abrams, Esq. (steve@abramsforensics.com)

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2. Set forth a list of photographs, plats, sketches or other prepared documents in your possession or in possession of your attorney that relate to the claim or defense in this case.

ANSWER: Defendants are not in possession of any plats or sketches relating to any claims or defense in the case. Defendants are in possession of photographs of the text messages that are the basis for Plaintiffs' claims. However, under Plaintiffs' theory of the case, Defendants and their counsel will not list out the photographs or refer to their contents without risking reprisal from Plaintiffs under the S.C. Homeland Security Act.

3. List the names and addresses of any expert witnesses who you or your attorney propose to use as witnesses at the trial of this case.

ANSWER: Defendants do not have an expert witness at this time.

4. For each person known to you or your attorney (see Interrogatory 1 above) to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the Plaintiffs and the Plaintiffs' attorney of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

William Bertram von Herrmann – is the attorney for Justin Fulmer in the underlying case, Case No: 2021-CP-26-06975, and involving Plaintiffs. He has knowledge of the facts alleged in the complaint related to the text messages giving rise to the lawsuit.

Anna Coggeshall – is the mother of Justin Fulmer's child with whom she shares custody. Anna is expected to have knowledge of the facts related to the Apple Watch, text messages with Bryan and Katherine Coggeshall, and the facts of the underlying lawsuit.

Bryan Coggeshall – is Anna Coggeshall's father and is expected to have knowledge of the facts related to the text messages with Anna and Katherine Coggeshall, and the facts of the underlying lawsuit.

Katherine Coggeshall – is Anna Coggeshall's mother and is expected to have knowledge of the facts related to the text messages with Anna and Bryan Coggeshall, and the facts of the underlying lawsuit.

Justin Fulmer – is the father of a child with Anna Coggeshall, with whom he shares custody. He is expected to have knowledge of the facts related to the Apple Watch, the text messages between the Coggeshalls, and the underlying lawsuit.

5. Advise how you came into possession of the various photographs of Plaintiff Anna Coggeshall's iWatch reflecting certain text messages between her and other individuals. In answering this Interrogatory, be specific as to who received these photographs which ended up being utilized by you or your law firm in the Complaint against an Horry County Family Court Judge and also provided by you in answers to certain discovery in the underlying Fulmer v. Coggeshall lawsuit.

ANSWER: Defendants specifically contest, and object to Plaintiffs' characterization of, the ownership of the Apple Watch and whether Mr. von Herrmann "utilized" or "provided" the text messages to the extent those are facts for a jury to decide on whether the actions violated the S.C. Homeland Security Act. Subject to Defendants' position above, photographs of certain text messages were provided by Mr. Fulmer to his attorney, Mr. von Herrmann. Defendants object to providing any further information or detail about acquiring the text messages because doing so would intrude upon the work-product doctrine and violate the attorney-client privilege between Mr. Fulmer and Mr. von Herrmann, which is still active in the underlying lawsuit.

6. Identify those individuals with whom you, your office, or your client, Justin Shayne Fulmer, shared the referenced-to photographs of the iWatch as outlined in Interrogatory number 5.

ANSWER: Defendants do not reference sharing photographs of the Apple Watch with anyone in Interrogatory No. 5 because Interrogatory No. 5 asks how Defendants themselves came into possession of the text messages. Nevertheless, photographs of text messages were sent from Mr. Fulmer to Mr. von Herrmann, and from Mr. von Herrmann to Plaintiffs' counsel in discovery in the underlying case. Additionally, Defendants object to providing any further information or detail about Justin Fulmer's sharing of the text messages because doing so would violate the attorney-client privilege between Mr. Fulmer and Mr. von Herrmann, which is still active in the underlying lawsuit.

7. Identify what actions you, your law firm, or someone on behalf of you or our law firm took to ascertain whether or not it was lawful or permissible to utilize the photographs of the iWatch set out in the preceding Interrogatories numbered 5 and 6.

ANSWER: Defendants object to responding to this Interrogatory because it asks for Mr. von Herrmann to reveal his work-product and attorney-client privileged communications with his client, Justin Fulmer. Subject to this objection, Defendants assert that any use or disclosure of the photographs of the messages was lawful.

8. Identify the precautions taken by you or by any person or entity at your direction for maintaining and storing the photographs of the illegally intercepted communications between Plaintiff Anna Coggeshall and other individuals and the location of those photographs.

ANSWER: Defendants assert that the communications were not illegally intercepted and, therefore, are unable to respond to this Interrogatory as worded. Subject to Defendants' position, the photographs are stored securely.

9. State whether or not you or anyone at your law firm was involved in any way in the interception of those illegally obtained text message communications between Plaintiff Anna Coggeshall and other individuals.

ANSWER: Defendants assert that the text messages were not intercepted or illegally obtained and, therefore, are unable to respond to this Interrogatory as worded. Subject to Defendants' position and assuming the Interrogatory seeks information on whether Defendants were involved in the acquisition or photographing of the text messages, they were not involved.

10. Identify any individuals whom you or your office communicated with concerning the legality of the actions taken in the interception of those text messages as evidenced by the photographs of the iWatch which were utilized in the Complaint against members of the judiciary or in support of your allegations as contained in your Complaint against Plaintiffs alleging civil conspiracy.

ANSWER: Defendants assert that the text messages were not intercepted and, therefore, are unable to respond to this Interrogatory as worded. Defendants object to providing information beyond what was provided in the underlying case because to do so would reveal attorney work product and could intrude on the attorney-client privilege between Mr. von Herrmann and Mr. Fulmer in the underlying case, which is still active.

11. Identify which individuals conspired to take actions towards your client, Justin Shayne Fulmer, and what those actions were.

ANSWER: Defendants object to this interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and intrudes upon the attorney-client privilege and work-product doctrine. The information requested has no bearing on Plaintiffs' claims in this lawsuit alleging violations of the S.C. Homeland Security Act. Further, the conspiracy claim was involved in the underlying case, not this case, and revealing information responsive to this Interrogatory would violate the attorney-client privilege and work-product doctrine,

and would reveal the mental impressions of Mr. Herrmann in the underlying case, which is still ongoing.

12. Identify all payments made by your client, Justin Shayne Fulmer, to you or your law firm for all work performed by you in this matter or the underlying Circuit Court matter alleging conspiracy.

ANSWER: Defendants object to this Interrogatory as not reasonably calculated to lead to the discovery of admissible evidence and because it intrudes upon the attorney-client privilege and work-product doctrine. The information requested has no bearing on Plaintiffs' claims in this lawsuit alleging violations of the S.C. Homeland Security Act. Further, the conspiracy claim was involved in the underlying case, not this case, and revealing information responsive to this Interrogatory would violate the attorney-client privilege and work-product doctrine, and would reveal the mental impressions of Mr. Herrmann in the underlying case, which is still ongoing.

13. Advise as to what research or other activities were taken by you or your law firm or by someone on behalf of you or your law firm to ascertain the legality of disclosing the contents of these illegally intercepted communications. The response should include all members of your law firm who participated in research or discussions concerning the legality of the disclosure of these communications.

ANSWER: Defendants assert that the text messages were not illegally intercepted. In addition, Defendants object to this Interrogatory because it intrudes upon the attorney-client privilege and work-product doctrine. This Interrogatory requests Defendants outline the work that they performed in the underlying suit on behalf of Justin Fulmer and, therefore, requests information protected by the attorney-client privilege and work-product doctrine. Responding to this Interrogatory would require Mr. von Herrmann to reveal his mental impressions and work product in the underlying case, which is still ongoing.

14. Set forth in detail the actions taken by any member of your law firm, including any partners, associates, or other staff members, regarding assembling, copying, or disclosing/disseminating the contents of the unlawfully obtained text message communications which were utilized in the "conspiracy" Complaint filed by you or your law firm on behalf of Justin Shayne Fulmer.

ANSWER: Defendants assert that the text messages were not unlawfully obtained. In addition, Defendants object to this Interrogatory because it intrudes upon the attorney-client

privilege and work-product doctrine. This Interrogatory requests Defendants outline the work that they performed in the underlying suit on behalf of Justin Fulmer and, therefore, requests information protected by the attorney-client privilege and work-product doctrine. Responding to this Interrogatory would require Mr. von Herrmann to reveal his mental impressions and work product in the underlying case, which is still ongoing.

15. Describe in detail the actions which you or your law firm have now taken to secure and prevent continuing disclosure of the contents of these unlawfully obtained text message communications between Plaintiff Anna Coggeshall and third parties subsequent to the ruling by the South Carolina Court of Appeals and including up to the date of your response. Your answer should include the exact storage location of the photographs of these unlawfully obtained text message communications and the name of every individual who has access to the photographs of the illegally intercepted communications.

ANSWER: Defendants assert that the text messages were not unlawfully obtained. In addition, Defendants object to this Interrogatory because it intrudes upon the attorney-client privilege and work-product doctrine. This Interrogatory requests Defendants outline the work that they performed in the underlying suit on behalf of Justin Fulmer and, therefore, requests information protected by the attorney-client privilege and work-product doctrine. Responding to this Interrogatory would require Mr. von Herrmann to reveal his mental impressions and work product in the underlying case, which is still ongoing.

This 6th day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865

Counsel for Defendants

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvg.law
swilson@csvg.law
Ph: 843-727-0307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Defendants' Answers to Plaintiffs' First Set of Interrogatories***, upon all parties to this matter via electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Richard G. Whiting, Esq.
P.O. Box 1515 Lady Street
Columbia, SC 29201
Dick.whiting@whitinglawsc.com
Counsel for Plaintiffs

Steven M. Abrams, Esq.
Abrams Cyber Law & Forensics, LLC
P.O. Box 305
Sullivans Island, SC 29482
steve@abramsforensics.com
Counsel for Plaintiffs

This 6th day of November, 2023.

s/Teri Rewt
Legal Assistant II for Douglas W. MacKelcan and
Skyler C. Wilson

Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 329-8346

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	DEFENDANTS' RESPONSES TO
Plaintiffs,	)	PLAINTIFFS' FIRST REQUEST FOR
	)	PRODUCTION
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

TO: RICHARD G. WHITING, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Defendants William Bertram von Herrmann and The Von Hermann Law Firm, by and through their undersigned counsel and pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, and reserving the right to amend and/or supplement, hereby respond to Plaintiffs' First Request for Production, as follows:

1. Copies of any statements (including any electronic communications) made by Plaintiffs in the possession of any defendant, expert, or witness.

RESPONSE: Defendants are in possession of Anna Coggeshall's deposition transcript, which is already in Plaintiffs' possession. Defendants are not otherwise in possession of any statements made by Plaintiffs in hardcopy or electronically. Defendants have not retained an expert. Plaintiffs can acquire any documents from witnesses directly.

2. Copies of any correspondence or statement made by Defendants (or any employee of Defendants) to Justin Fulmer regarding the electronic communications of Plaintiffs.

RESPONSE: Defendants object to this Request because it seeks communications between an attorney and client, or the attorney's staff and the client, and are protected by the attorney-client privilege.

3. Copies of any correspondence or statement made by Justin Fulmer regarding the electronic communications of Plaintiffs.

RESPONSE: Defendants object to this Request to the extent it seeks correspondence between Mr. von Herrmann, or any of Mr. von Herrmann's firm's employees and Mr. Fulmer, because those communications are protected by the attorney-client privilege. Subject to this objection, Defendants are in possession of Mr. Fulmer's deposition transcript, a copy of which Plaintiffs already have.

4. Copies of any correspondence or statement made by Defendants (or any employee of Defendants) to Lester "Chip" Johnson, and/or any other experts regarding the electronic communications of Plaintiffs.

RESPONSE: Defendants object to this Request as overly broad and not reasonably calculated to the discovery of admissible evidence, and because it intrudes on the work-product doctrine. Defendants have not retained an expert at this time, and Lester Chip Johnson is an expert in the Underlying Case. Thus, the communications with Mr. Johnson have no bearing on Plaintiffs' claims in this case. Further, the communications between Chip and Defendants are protected by the attorney work product doctrine.

5. Copies of any photographs, videotapes, or motion pictures relevant to this case.

RESPONSE: Defendants do not have any motion pictures or videotapes relevant to this case. Defendants have photographs of the text messages that are the subject of this case, but will not produce them considering Plaintiffs' theory of the case includes allegations that sending the photographs in discovery violates the S.C. Homeland Security Act.

6. Copies of any electronic data relevant to this case in its original and native format, including any associated metadata.

RESPONSE: Defendants object to this Request as vague because they are not sure what Plaintiffs mean when referring to "any electronic data."

7. Copies of any reports or correspondence between Defendants and any experts or witnesses.

RESPONSE: Defendants have not retained an expert in this case at this time.

8. Copies of any correspondence (including but not limited to electronic communications) used to convey Plaintiffs' electronic communications from Justin Fulmer to Defendants (or any employee of staff of Defendants), including, but not limited to, all photographic evidence of electronic communications from the iWatch used by Anna Coggeshall secured by Mr. Fulmer, or experts hired by Defendants.

RESPONSE: Defendants object to this Request because it seeks correspondence between Mr. Fulmer and his attorney, Mr. von Herrmann or Mr. von Herrmann's Firm's employees, and such correspondence or communications are protected by the attorney-client privilege. Furthermore, Defendants have photographs of the text messages that are the subject of this case, but will not produce them considering Plaintiffs' theory of the case includes allegations that sending the photographs in discovery violates the S.C. Homeland Security Act.

9. Copies of any of Plaintiffs' electronic communications (in any form, including but not limited to, electronic or photographic) secured by experts/witnesses for Defendants or counsel for Defendants, and any correspondence to/from said experts/witnesses regarding said electronic communications.

RESPONSE: Defendants have not retained an expert or witnesses in this matter and, therefore, do not have documents responsive to this Request. Plaintiffs can acquire documents from witnesses directly.

10. Copies of all retainer agreements between the Von Herrmann Law Firm and Justin Fulmer.

RESPONSE: Defendants object to this Request for production as not reasonably calculated to lead to the discovery of admissible evidence. The retainer agreement between Mr. von Herrmann and his client, Justin Fulmer, has no bearing on Plaintiffs' claims against Mr. von Herrmann or the Von Herrmann law firm.

This 6th day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvg.law
swilson@csvg.law
Ph: 843-727-0307

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Counsel for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Defendants' Responses to Plaintiffs' First Request for Production***, upon all parties to this matter via electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Richard G. Whiting, Esq.
P.O. Box 1515 Lady Street
Columbia, SC 29201
Dick.whiting@whitinglawsc.com
Counsel for Plaintiffs

Steven M. Abrams, Esq.
Abrams Cyber Law & Forensics, LLC
P.O. Box 305
Sullivans Island, SC 29482
steve@abramsforensics.com
Counsel for Plaintiffs

This 6th day of November, 2023.

sTeri Rewt
Legal Assistant II for Douglas W. MacKelcan and
Skyler C. Wilson

Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 329-8346

From: [Keri Hannon](#)
To: [Bert von Herrmann](#)
Cc: [Steven Abrams](#); [Amanda Bailey](#); [Andrea](#); [Andrew Lindemann](#); [Betsy](#); [C Kennedy](#); [Chris Nickels](#); [Christine Badami](#); [Christopher Nickels](#); [Christy](#); [David B. Marvel](#); [George N. Spirakis](#); [Hayes K. Stanton](#); [Jenkins M. Mann](#); [Kenneth R. Moss](#); [Kevin M. Barth](#); [Richard L. Snyder](#); [Robert E. Lee](#); [Shannon](#); [Shaun C. Blake](#)
Subject: RE: Fulmer vs. Buckhannon, et al
Date: Thursday, April 7, 2022 10:48:37 AM

Bert:

While I was not present at the motion hearing before Judge Cordell Maddox, it is my understanding that he is allowing you to withdraw your claim of Negligent Infliction of Emotional Distress as to all parties. It is my understanding that his order does not give you the ability to modify your Complaint in any other regard. If you insist that your Complaint will not be amended to comply with Judge Maddox's Order, then I will have no choice but to join in a Motion to Strike these new allegations.

I would also particularly call your attention to your new paragraph 83 where you indicate that there are seven (7) text messages from July 27, 2021 that you believe are pertinent to your above outlined allegations. How were those text messages secured? Were they interceptions or were they recovered in violation of the Stored Communications Privacy Act? Are those additional messages, which need to be forwarded on to the Court of Appeals to be considered with their order to suppress, illegally obtained communications? Do not provide those text message to me if they were illegally obtained as sharing the contents of any illegally obtained electronic communications would be a separate and distinct violation of the state and federal law. I know you are aware of that. If these are not illegally obtained text messages, who are they from and to? Please provide them with the consent of one of those parties.

Please let me know if you will agree to withdraw this Amended Complaint or if I need to file my Motion to Strike.

I look forward to hearing from you.

Very truly yours,

Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067
(803) 256-0223 (fax)
dick.whiting@whitinglawsc.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	DEFENDANTS' MOTION FOR
Plaintiffs,	)	RECONSIDERATION OF ORDER
vs.	)	DENYING IN PART MOTION TO
	)	DISMISS
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
_____	)	

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, move this Court to reconsider its order denying in part Defendants' Motion to Dismiss because it has overlooked or failed to consider issues of law that warrant granting the motion in full.

BACKGROUND

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm asserting liability under various statutes and common law causes of action for the interception and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. On behalf of their client Mr. Fulmer, Defendants sued the Plaintiffs based, in part, on the information in the electronic communications. Fulmer's lawsuit against the Coggeshalls is still ongoing. It is currently scheduled for trial on November 27, 2023.

FACTUAL ALLEGATIONS

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. **See Ex. 1 at ¶¶ 5-6.**

Plaintiffs’ assert Mr. Fulmer “or his agent” copied the electronic communications, and Defendants printed them. *Id.* They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer’s behalf. *Id.* at ¶¶ 6-7. Plaintiffs allege Mr. Fulmer intercepted the electronic communications and Defendants, with knowledge the information was “unlawfully obtained,” disseminated the material. *Id.* at ¶ 10.

PROCEDURAL BACKGROUND

As a result of Defendants’ actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas. Because the lawsuit originally included a federal claim, Defendants removed the lawsuit to Federal Court and moved to dismiss based on attorney-immunity. **Ex. 2 (Notice of Removal); Ex. 3 (Motion to Dismiss)**. Plaintiffs amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. **Ex. 1 (Amended Complaint)**. Plaintiffs also opposed the motion to dismiss. **Ex. 4 (Pltfs MIO MTD)**. Defendants opposed remand, and replied to Plaintiffs’ opposition to the motion to dismiss. **Ex. 5 (Defs Reply to Pltfs MIO MTD)**. The Federal Court remanded the case without deciding the motion to dismiss. **Ex. 6 (Order on Remand)**. In conjunction with the remand, Plaintiffs filed all of the federal court filings with the Horry County Court of Common Pleas.

This Court heard Defendants’ Motion to Dismiss on August 14, 2023, and took the matter under advisement. **Ex. 7 (Form 4 Order)**. On November 1, 2023, this Court entered an Order granting in part and denying in part the motion to dismiss, finding the attorney-immunity doctrine did not apply to the alleged violations of the South Carolina Homeland Security Act. **Ex. 8 (Order on MTD)**. Defendants file the present Motion to Reconsider, requesting this Court amend its order and grant Defendants’ Motion to Dismiss in full.

STANDARD

A motion for reconsideration is appropriate when “the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue.” *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented.” *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court’s attention to a possible misapprehension of an argument, and “to revisit a previously raised argument.” *Id.*, 602 S.E.2d at 779.

ARGUMENT

This Court’s November 1 Order found that the attorney-immunity defense did not apply to claims under the Homeland Security Act because the Act applies to any “person,” which would include attorneys, and the legislature did not expressly exempt attorneys as it did other individuals or groups under the Act. The Court further found that Defendants could not assert the attorney-immunity defense moving forward. Defendants request this Court reconsider and amend its Order.

- I. **This Court should amend its order and grant Defendants’ Motion to Dismiss because the correct statutory interpretation standard begins with a presumption the common law prevails unless expressly and unambiguously abrogated by statute.**

The attorney-immunity defense is a common law doctrine. *See Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). Although originating in South Carolina through the Court of Appeals in *Gaar*, the defense has been repeatedly sanctioned by our supreme court. *See, e.g., Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

“[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.” *State v. Prince*, 316 S.C. 57,

66, 447 S.E.2d 177, 182 (1993) (citing *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192 S.C. 156, 5 S.E.2d 862 (1939)). Furthermore, statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). Such statutes “will ‘not be extended beyond the clear intent of the legislature.’” *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 695 (2012)). “The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.” *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993).

These principles apply to statutes creating causes of action or rights where none existed at common law. See, e.g., *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed); *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) (strictly construing statute creating cause of action for wrongful death of a “person” as against common law principle that tort action dies with injured person and, therefore, the statute did not apply to death of nonviable, stillborn fetus); *Davenport v. Summer*, 273 S.C. 771, 772-73, 259 S.E.2d 815, 816 (1979) (finding statute permitting joinder of insurer to action did not change well-established common law that in motor vehicle collision cases the insurance carrier of defendant cannot be joined, recognizing statutes in derogation of common law rights are strictly construed and not be extended beyond clear legislative intent).

Our courts have found common-law defenses were not abrogated under similar statutory schemes. For example, the Payment of Wages Act requires unconditional payment to an employee of wages due, and is silent on whether the common law defense of breach of loyalty would permit an employer to withhold wages due under the Act. Our court of appeals found,

and our supreme court affirmed, that nothing in the Payment of Wages Act “directly or indirectly abrogate[d] the common law duty of loyalty owed to an employer by an employee.” If the duty is breached, forfeiture of wages due under the Act is appropriate. See *Futch v. McAllister Towing of Georgetown, Inc.*, 328 S.C. 312, 318, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) (“Futch I”), *overruled on other grounds by* 335 S.C. 598, 518 S.E.2d 591 (1999) (“Futch II”); *Futch II*, 335 S.C. at 605, 518 S.E.2d at 594 (affirming court of appeals and finding “the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims against employees”). *Futch I* and *Futch II* were applications of strict construction of statutes in derogation of common law.

Here, this Court should reconsider its ruling and grant the Motion to Dismiss because the ruling applied the incorrect standard. This Court interpreted the Act to apply to attorneys by referencing the any “person” language and found that, because the Act does not expressly exempt attorneys as a class but exempts other individuals and it lists one defense, the common-law attorney immunity defense does not apply. This ruling, however, is based on the presumption that the statute displaces common law—interpreting silence as to common-law defenses and classes of persons exempted from the Act to abrogate common law defenses. The logic of this interpretation works only if we begin with a presumption the common law does not apply unless expressly included within a statute. If this was true, then every single statute would have to expressly incorporate the common law because most apply to any “person.”

South Carolina case law is clear, however, that the opposite presumption applies: we presume the common law is unchanged by a statute unless the language in the statute explicitly, clearly, or unambiguously indicates an intention to change the common law. *Prince*, 316 S.C. at 66, 447 S.E.2d at 182. The common law here is the defense of attorney-immunity. Thus, the Court must presume the attorney-immunity defense applies unless *explicitly, clearly, or*

unambiguously changed by the Act. Further, because the Act creates a cause of action where none existed, the Court must strictly construe the Act.

Presuming the attorney immunity applies and strictly construing the Act establishes there is no explicit rejection of the attorney immunity defense. The Act applying to any “person,” and noting attorneys are people, is not an explicit legislative intent that the attorney-immunity defense does not apply. Simply because the Act expresses one defense to its violation—good faith reliance—is not an explicit legislative intent that the attorney-immunity defense does not apply, let alone that all other defenses are eviscerated. This reasoning is precisely why *Futch I* and *Futch II* found the language of Payment of Wages Act *unconditionally* requiring payment of wages due an employee did not abrogate an employer’s common law “breach of loyalty” defense to paying those wages.

If attorney immunity applies to claims under the Act, then Plaintiffs’ claim should be dismissed. The defense applies to third-party claims against an attorney for actions taken on behalf of the client with the client’s knowledge, as long as there is no independent duty or allegations that the attorney acted in his own interest. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554. Plaintiffs do not allege Defendants owed an independent duty to them, or that Defendants acted in their own interest outside the scope of their representation of Mr. Fulmer. In reality, Plaintiffs’ claims are alleged to have arisen within the scope of Defendants’ representation of Mr. Fulmer. Accordingly, the attorney-immunity defense would bar the claims.

Because the Court applied the incorrect standard for interpreting the Act, the application of the correct standard under South Carolina law establishes the attorney-immunity defense was unchanged by the Act, and the attorney-immunity defense would bar Plaintiffs’ remaining claim, this Court should reconsider its order and grant Defendants’ Motion to Dismiss Plaintiffs’ claim under the Act.

II. This Court should adopt the reasoning in *Taylor v. Tolbert* because it applies legal principles similar to South Carolina and finds attorney immunity applies to a statute prohibiting interception of electronic communications.

Taylor is a recent case from the Supreme Court of Texas both Plaintiffs and Defendants referred to in their arguments on the motion to dismiss, which applied attorney-immunity to prevent claims for violations of Texas’s wiretap statute. *See Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022).

Like South Carolina, Texas’s wiretap statute makes it a crime to intercept electronic communications, or to intentionally use or disclose those communications knowing or having reason to know the communications were intercepted. *Compare* Tex. Penal Code Ann. § 16.02 with S.C. Code Ann. § 17-30-20. In addition, the two states’ laws create a civil remedy for the interception, or use or disclosure of intercepted communications. *Compare* Tex. Code Crim. Proc. Ann. art. 18A.502 with S.C. Code Ann. § 17-30-135(A). Also, Texas’ attorney-immunity defense is nearly identical to South Carolina’s, and applies to an attorney’s work in the scope of representing a client. *Taylor*, 644 S.W.3d at 646; *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554.

The *Taylor* Court found that Texas’s common-law attorney immunity defense applied to claims under Texas’s wiretap statute pursuant to legal principles similar to South Carolina, and in the process rejected the exact arguments Plaintiffs make here and this Court adopted.

The *Taylor* Court began by noting statutes purporting to abrogate common-law principles must do so expressly. 644 S.W.3d at 649. It also recognized the Texas wiretap statute created liability where none existed and, therefore, must be strictly construed and not extended beyond its plain meaning. *Id.* at 650. Thus, it presumed that the attorney immunity defense applied unless its wiretap statute expressly abrogated it. *Id.* It ultimately held “Texas’s wiretap statute does not expressly repudiate the common law or the attorney-immunity defense.” *Id.* at 649. Applying South Carolina’s exact same presumption and rules for strict construction should result

in the same holding: South Carolina’s Act does not expressly repudiate the common law or the attorney-immunity defense.

In reaching its holding, *Taylor* rejected the plaintiff’s argument that the application of the wiretap statute to “any person” meant to include attorneys and abrogate the immunity defense. *Id.* at 651. The Court noted that, “[a]lthough ‘any person’ would inarguably include attorneys, we are not convinced the breadth of the statutory language—which is not at all uncommon—clearly shows legislative intent to abrogate common-law defenses generally or attorney immunity specifically.” *Id.*

The *Taylor* Court also rejected the plaintiff’s arguments that, by including specific defenses under the statute like the good-faith reliance defense, the Texas wiretap statute “fences out” all common law defenses not explicitly included in the statute. *Id.* at 650. The court noted that by plaintiff’s line of reasoning, the legislature would have to “opt-in” to the common law in every statute, and that reasoning is contrary to the presumption the common law remains in effect. *Id.* at 650. The court also found that the Act did not make the listed defenses exclusive, and the language could not be read as clearly repudiating all civil-liability defenses otherwise available. *Id.*

The Texas Supreme Court’s analysis in *Taylor* is highly persuasive considering Texas’s parallels to South Carolina’s legal principles regarding the attorney-immunity defense, statutory civil liability related to intercepted communications, and strictly construing statutes purportedly abrogating common law. But it rejected the exact reasoning advanced by Plaintiffs—the breadth of the any “person” language and inclusion of certain defenses—which this Court relied upon in ruling on Defendants’ Motion to Dismiss. Because *Taylor* is persuasive and opposite this Court’s ruling, this Court should reconsider its order, adopt *Taylor*’s reasoning similar to South Carolina’s laws, and grant Defendants’ Motion to Dismiss Plaintiffs’ claim under the Act.

III. Applying attorney-immunity to claims under the Act does not have the effect of exempting all attorneys from the violating the Act.

This Court's ruling relies, in part, on reasoning that the attorney-immunity defense does not apply because, if the legislature wanted to exempt attorneys from the Act, it could have expressly done so like it did for other groups. This is based, however, on a misunderstanding of the attorney-immunity defense.

The attorney-immunity defense is not absolute immunity for attorneys as a class of people. The defense is qualified. It immunizes attorneys from claims (1) by third parties; (2) for actions in the scope of representing a client; (3) with the client's knowledge; (4) when there is no independent duty to the third-party. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554; *see also Taylor*, 644 S.W.3d at 646 (noting similar limitations on the attorney-immunity defense and recognizing it does not protect from liability for all attorney conduct). Neither does the defense magically legalize illegal conduct because it is conduct of an attorney. Its purpose is to shield attorneys for actions that are illegal, i.e., would expose the attorney to civil liability.

Recognizing the attorney-immunity defense would not be akin to exempting attorneys from liability for violations of the Act, attorneys could still be liable if any of the four conditions to the application of attorney immunity are not met with respect to the Act. For example, attorney immunity would not shield an attorney against a *client's* claims that the attorney intercepted communications, or used or disclosed those communications, without the client's consent. Under the same scenario it would not shield the attorney against claims under the Act by the other party to the client's communications—client knowledge lacking. Because recognizing attorney-immunity under the Act would not amount to an exemption for attorneys from the Act, this Court should not have refused to recognize the defense on the basis it would amount to an exemption similar to other classes of persons listed under the Act. Accordingly,

this Court should reconsider its ruling and grant Defendants' Motion to Dismiss Plaintiffs' claims under the Act.

IV. This Court's finding that attorney-immunity does not apply under the Act undercuts the policy of encouraging zealous client representation and will lead to an erosion of the attorney-client privilege.

"The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007). "Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Attorneys have ethical obligations to zealously assert a client's position. Rule 407, SCACR, Preamble ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."). It would create a conflict of interest with an attorney's obligation to represent and support his or her client if attorneys become liable for, and must safeguard against, acting overzealously. *Garr*, 287 S.C. at 529-30, 339 S.E.2d at 889-90. In other words, with every exception recognized for attorney-immunity, it has a chilling effect on an attorney's faithful discharge of his or her ethical obligations. *Taylor*, 644 S.W.3d at 647.

Here, considering the breadth with which this Court interprets the Act—it applies to any "person" and attorney immunity does not apply—it would be nearly impossible to faithfully and zealously represent a client defending against claims for violations of the Act. An attorney representing his or her client would have to exercise even more caution when dealing with any electronic communications provided by a client. Considering attorney-immunity does not apply, Defendants' counsel could potentially be held responsible for "using" the messages to mount a defense to Plaintiffs' claims. Defendants' counsel would be prohibited from sharing any of the messages with an expert to prepare a defense. If Defendants are not entitled to immunity under the Act for advocating on behalf of their client with their client's direction, then the same could

be said for Defendants' counsel in this matter. Thus, not applying attorney-immunity to claims under the Act has a chilling effect in on an attorney's obligation to zealously represent his or her client.

For similar reasons, not recognizing attorney-immunity under the Act has a chilling effect on and erodes the attorney-client privilege. The attorney-client privilege is based on the wise policy that the "interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications." *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). First, if attorneys are liable under the Act for advocating on behalf of their clients, attorneys will take precautions in communicating with clients to reduce the likelihood of a violation of the Act and, accordingly, will discourage clients from being truthful with their attorney. Moreover, pursuing a claim under the Act when an attorney is involved would require disclosure of attorney-client protected communications and work-product material in discovery. Case in point, Plaintiffs are directly requesting in discovery communications between Defendants and their client, Mr. Fulmer. **Ex. 9 (Plaintiffs' Discovery Requests)**. Thus, refusing to recognize the attorney-immunity defense to claims under the Act would chill and intrude upon the attorney-client privilege. This cannot be what the legislature intended.

By finding the attorney-immunity defense does not apply to claims under the Act, it has a chilling effect on an attorney's ethical obligations to zealously represent his or her client and will inevitably lead to intrusion upon the attorney-client privilege. This Court should reconsider its ruling and grant the Motion to Dismiss claims under the Act based on attorney-immunity because it would foster ethical obligations to zealously represent clients and preserve the attorney-client privilege.

CONCLUSION

This Court should reconsider its ruling and grant Defendants' Motion to Dismiss because the ruling relies upon the incorrect statutory presumption, ignores persuasive authority from another state based on similar laws, misconstrues what the attorney-immunity defense is meant to protect from, results in a chilling effect on an attorney's obligation to zealously represent his or her client, and will lead to erosions of the attorney-client privilege.

This 10th day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Anna Coggeshall, Bryan Coggeshall,	)	
and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	CERTIFICATE OF SERVICE
	)	
versus	)	
	)	
William Bertram von Herrmann,	)	Civil Action No. 2022-CP-26-06296
and the Von Herrmann Law Firm,	)	
	)	
Defendants.	)	

I, Keri L. Hannon, paralegal for Richard G. Whiting, attorney for the Plaintiffs, do hereby certify that I have this 25th day of April, 2023, served the Plaintiffs' First Set of Interrogatories to Defendant via email only to the following address:

Douglas W. Mackelcan, Esquire
 40 Calhoun Street, Suite 400
 Charleston, South Carolina 29401
dmackelcan@csvl.law


 Keri L. Hannon
 Paralegal for Richard G. Whiting
 1515 Lady Street
 Post Office Box 7877
 Columbia, SC 29202

April 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
 Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' FIRST SET
	)	OF INTERROGATORIES
versus	)	TO DEFENDANTS
	)	
William Bertram von Herrmann,	)	
and the Von Herrmann Law Firm,	)	
	)	
Defendants.	)	Civil Action No. 2022-CP-26-06296
	)	

TO THE DEFENDANT WILLIAM BERTRAM VON HERRMANN, AND HIS ATTORNEY,
DOUGLAS W. MACKELCAN, ESQUIRE:

The following Interrogatories are submitted to you through your attorney,
pursuant to Rule 33, South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to you or your attorney to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in your possession or in possession of your attorney that relate to the claim or defense in this case.
3. List the names and addresses of any expert witnesses who you or your attorney propose to use as witnesses at the trial of this case.

4. For each person known to you or your attorney (see Interrogatory 1 above) to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the Plaintiffs and the Plaintiffs' attorney of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

5. Advise how you came into possession of the various photographs of Plaintiff Anna Coggeshall's iWatch reflecting certain text messages between her and other individuals. In answering this Interrogatory, be specific as to who received these photographs which ended up being utilized by you or your law firm in the Complaint against an Horry County Family Court Judge and also provided by you in answers to certain discovery in the underlying Fulmer v. Coggeshall lawsuit.

6. Identify those individuals with whom you, your office, or your client, Justin Shayne Fulmer, shared the referenced-to photographs of the iWatch as outlined in Interrogatory number 5.

7. Identify what actions you, your law firm, or someone on behalf of you or your law firm took to ascertain whether or not it was lawful or permissible to utilize the photographs of the iWatch set out in the preceding Interrogatories numbered 5 and 6.

8. Identify the precautions taken by you or by any person or entity at your direction for maintaining and storing the photographs of the illegally intercepted communications between Plaintiff Anna Coggeshall and other individuals and the location of those photographs.

9. State whether or not you or anyone at your law firm was involved in any way in the interception of those illegally obtained text message communications between Plaintiff Anna Coggeshall and other individuals.

10. Identify any individuals whom you or your office communicated with concerning the legality of the actions taken in the interception of those text messages as evidenced by the photographs of the iWatch which were utilized in the Complaint against members of the judiciary or in support of your allegations as contained in your Complaint against Plaintiffs alleging civil conspiracy.

11. Identify which individuals conspired to take actions towards your client, Justin Shayne Fulmer, and what those actions were.

12. Identify all payments made by your client, Justin Shayne Fulmer, to you or your law firm for all work performed by you in this matter or the underlying Circuit Court matter alleging conspiracy.

13. Advise as to what research or other activities were taken by you or your law firm or by someone on behalf of you or your law firm to ascertain the legality of disclosing the contents of these illegally intercepted communications. The response should include all members of your law firm who participated in research or discussions concerning the legality of the disclosure of these communications.

14. Set forth in detail the actions taken by any member of your law firm, including any partners, associates, or other staff members, regarding assembling, copying, or disclosing/disseminating the contents of the unlawfully obtained text

message communications which were utilized in the "conspiracy" Complaint filed by you or your law firm on behalf of Justin Shayne Fulmer.

15. Describe in detail the actions which you or your law firm have now taken to secure and prevent continuing disclosure of the contents of these unlawfully obtained text message communications between Plaintiff Anna Coggeshall and third parties subsequent to the ruling by the South Carolina Court of Appeals and including up to the date of your response. Your answer should include the exact storage location of the photographs of these unlawfully obtained text message communications and the name of every individual who has access to the photographs of the illegally intercepted communications.

These Interrogatories shall be deemed to continue from the time of service until the time of trial of the case and should additional or amended answers to these Interrogatories be necessary during this time, they shall be properly transmitted to the Plaintiffs through Plaintiffs' undersigned counsel.



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April 24, 2023

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ANNA COGGESHALL,
BRYAN COGGESHALL, and
KATHERINE COGGESHALL,
Plaintiffs,

v.

WILLIAM BERTRAM
VON HERRMANN and
THE VON HERRMANN LAW FIRM,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-26-06296

PLAINTIFFS' FIRST REQUEST
FOR PRODUCTION

To: Douglas W. MacKelcan, Esquire
Partner,
Copeland, Stair, Valz, & Lovell, LLP.
40 Calhoun St., Ste. 400,
Charleston, SC 29401
Counsel for Defendants

PLEASE TAKE NOTICE that pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiffs request that Defendants produce and permit the inspection and/or copying of the documents and/or things specified below.

As used in this request for production of documents and things, the term "documents" includes statements, writings, recordings of every kind (mechanical, electronic, photographic, typed or written), including but not limited to, letters, correspondence, maps, diagrams, photographs (printed or digital), motion pictures, memoranda, notes, reports and transcriptions in the possession of, subject to the control of, or within the knowledge of Defendants (including any staff or employees of Defendants) or counsel for Defendants, or any consultants or experts retained by Defendants or counsel for Defendants. Any electronic data which you produce should be produced in native format with all metadata intact.

If you decline to produce any of the requested documents or things on the grounds of privilege, please provide a descriptive list of each such document or thing and state the detailed grounds for your refusal to produce each such document or thing.

DOCUMENTS OR THINGS TO BE PRODUCED

1. Copies of any statements (including any electronic communications) made by Plaintiffs in the possession of any defendant, expert, or witness.
2. Copies of any correspondence or statement made by Defendants (or any employee of Defendants) to Justin Fulmer regarding the electronic communications of Plaintiffs.
3. Copies of any correspondence or statement made by Justin Fulmer regarding the electronic communications of Plaintiffs.
4. Copies of any correspondence or statement made by Defendants (or any employee of Defendants) to Lester "Chip" Johnson, and/or any other experts regarding the electronic communications of Plaintiffs.
5. Copies of any photographs, videotapes, or motion pictures relevant to this case.
6. Copies of any electronic data relevant to this case in its original and native format, including any associated metadata.
7. Copies of any reports or correspondence between Defendants and any experts or witnesses.
8. Copies of any correspondence (including but not limited to electronic communications) used to convey Plaintiffs' electronic communications from Justin Fulmer to Defendants (or any employee of staff of Defendants), including, but not limited to, all photographic evidence of electronic communications from the iWatch used by Anna Coggeshall secured by Mr. Fulmer, or experts hired by Defendants.
9. Copies of any of Plaintiffs' electronic communications (in any form, including but not limited to, electronic or photographic) secured by experts / witnesses for Defendants or counsel for Defendants, and any correspondence to/from said experts / witnesses regarding said electronic communications.
10. Copies of all retainer agreements between the Von Herrmann Law Firm and Justin Fulmer.

Dated: April 20, 2023,



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Abrams Cyber Law & Forensics, LLC
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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
ANNA COGGESHALL,	)	CASE NO.: 2022-CP-06296
BRYAN COGGESHALL,	)	
and KATHERINE COGGESHALL,	)	PLAINTIFFS' REPLY
Plaintiffs,	)	TO DEFENDANTS' MOTION
vs.	)	FOR RECONSIDERATION OF ORDER
	)	DENEYING IN PART
WILLIAM BERTRAM VON HERRMANN)	)	MOTION TO DISMISS
and THE VON HERRMANN LAW FIRM,)	)	
Defendants.	)_	

Plaintiffs Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall, by and through their undersigned counsel oppose Defendant's Motion for Reconsideration. For the reasons stated originally in Plaintiff's Reply to Defendants' Motion to Dismiss and expanded on below Plaintiffs believe that this Court has correctly determined that the common law defense of attorney immunity should not apply to Defendants' violation of the South Carolina Homeland Security Act. The existing Order Denying in Part the Motion to Dismiss should stand as is.

I. Attorney von Herrmann and Defendants had an Ulterior Self-Serving Motive in Violating the South Carolina Homeland Security Act.

Defendants alleged in their Motion to Dismiss and continue to allege that they were solely acting within the scope of their representation of their client, Justin Fulmer, when they illegally made use of Plaintiffs' intercepted electronic communications. Defendants further contend that common law attorney-immunity should bar Mr. von Herrmann's liability for willfully violating the South Carolina Homeland Security Act. The South Carolina Homeland Security Act is a criminal statute with provision for a civil cause of action providing statutory monetary damages to compensate victims and deter conduct proscribed by the Act.

The Affidavit of Melissa J. Buckhannon filed in the *Fulmer v. Buckhannon, et al.*, case (2021-CP-26-06875) based on Plaintiff's illegally intercepted electronic communications, is attached along with her exhibits as Exhibit 1 to this Reply. Judge Buckhannon was a co-defendant with Plaintiffs in the lawsuit that was written and filed by Defendants. She alleges that Mr. von Herrmann was not acting as a zealous advocate of his client but in fact was principally out to punish his wife's political rivals using information from Plaintiffs' illegally intercepted communications. As Judge Buckhannon wrote,

"Mr. von Herrman put no effort toward due diligence to determine the validity of his client's claims. In fact, the supporting information provided below will show that Mr. von Herrmann made no effort to comply with existing law, alleged no reasons for reversal of existing law, and went well beyond the scope of this lawsuit for the purpose of harassment for his own personal reasons. What is important to note regarding the issue of the harassment intended by Mr. von Herrmann, by and through this case, is that he had a personal interest in bringing the action for the purposes of harassing me and one other defendant. At the time that this action was filed, Mr. von Herrmann's wife was in a contested judicial race with Melissa M. Frazier of the Frazier Law Firm, who was also a defendant in the initial Complaint."

Judge Buckhannon's affidavit dispels any illusions that Defendants' violation of the South Carolina Homeland Security Act was done with the primary thought of being a zealous advocate for his client, as much as it was for his own personal reasons.

"It is my belief that Mr. von Herrmann thought I was helping Ms. Frazier with her judicial campaign against his wife." (Aff. Melissa J. Buckhannon, page 2).

The illegally intercepted communications from Plaintiffs were initially used by Defendants to file an ODC complaint against Judge Buckhannon and Ms. Frazier, Mrs. von Herrmann's judicial opponent. According to Judge Buckhannon's affidavit, when the ODC complaint did not result in Ms. Frazier dropping out of the judicial race, Defendants filed the *Frazier v. Buckhannon* lawsuit on behalf of Justin Frazier to further harass her and Ms. Frazier.

The South Carolina Court of Appeals found that the lawsuit brought by Mr. von Herrmann and Defendants was entirely based upon information that Mr. von Herrman and his

client had illegally obtained from Plaintiff Anna Coggeshall's stolen iWatch. The Court of Appeals found that the nearly 1,000 electronic messages and emails obtained from Plaintiff Anna Coggeshall's iWatch "...amounted to interceptions under the Homeland Security Act." (*Fulmer v. Buckhannon*, et. al., Appellate Case no. 2022-000330). (Exhibit 2 to Affidavit of Melissa J. Buckhannon).

"As an attorney [...], Mr. von Herrmann should have known the use of the text messages obtained from [...] Anna Coggeshall's iWatch was illegal under the South Carolina Homeland Security Act. The law pertaining to the interception of such information is clearly set out in statutory law as well as common law. Clearly Mr. von Herrmann knew or should have known the basis for the action he filed on behalf of [Justin Fulmer] was illegally obtained information. Mr. von Herrmann may argue that he believed the information was of such a nature that it should be admissible, and that existing law should be reversed to allow such information to be used. However, he made no argument about such in his pleadings. He did not mention or even address the Homeland Security Statute..." (Aff. Melissa J. Buckhannon, page 4)

Mr. von Herrmann knew the illegal nature of the intercepted messages before he used and disseminated them, and despite being cautioned by other attorneys in the case about the South Carolina Homeland Security Act chose to disclose and distribute the text messages from Anna Coggeshall's iWatch. This is illustrated in Exhibits 5 and 6 to Judge Buckhannon's affidavit. On April 7, 2022, Anna Coggeshall's attorney Richard Whiting learned that Mr. von Herrman was advising that he had additional text messages from Anna Coggeshall's iWatch that he was about to disseminate. Mr. Whiting sent an email to Mr. von Hermann to caution him not to further violate the Homeland Security Act,

"... I would also particularly call your attention to your new paragraph 83 where you indicate that there are seven (7) text messages from July 27, 2021 that you believe are pertinent to your above outlined allegations. How were those text messages secured? Were they interceptions or were they recovered in violation of the Stored Communications Privacy Act? Are those additional messages, which need to be forwarded to the Court of Appeals to be considered with their order to suppress, illegally obtained communications? Do not provide those text messages to me if they were illegally obtained as sharing the contents of any illegally obtained electronic communications would be a separate and distinct violation of state and federal law. I know you are aware of that. ..." (Email of Richard

Whiting to Bert von Herrman, April 7, 2022, Exhibit 5 to Aff. of Melissa J. Buckhannon).

Later that same day, after receiving Mr. Whiting's cautionary email Defendant von Herrmann emailed the illegally obtained material to nine opposing attorneys, including Mr. Whiting. (Exhibit 6 to Aff. of Melissa J. Buckhannon).

Defendants' actual motives in bringing the *Fulmer* lawsuit using Plaintiffs intercepted communications were likely somewhere between being advocates for their client and wanting to punish the von Herrmann's political rivals. Given these motivations on the part of Defendants to punish their political rivals, they in fact did owe a duty to Plaintiffs arising out of their self-serving acts. Had Plaintiffs been aware of these plausible allegations of Defendants' self-serving motivations contained in Judge Buckhannon's affidavit and exhibits at the time of the writing of our Complaint, we would have included similar allegations of self-interest on the part of Defendants, enough we believe to permit the common law tort causes of action to survive Defendants' Motion to Dismiss. In that regard, Plaintiffs are currently working on a Notice of Motion and Motion for Leave to Amend and an Amended Complaint to include these allegations of self-interest as significant motivation for Defendants' use and dissemination of Plaintiffs' intercepted electronic communications in violation of the South Carolina Homeland Security Act.

II. Applying the Common-Law Defense of Attorney-Immunity Generally to Criminal Statutory Law Would Do Great Harm Making Attorneys Above the Law in Situations the Legislature Could Have Never Imagined or Condoned.

The South Carolina Homeland Security Act is codified at S.C. Code Ann. §17-30-10, *et seq.* The language regarding prohibited acts under the Homeland Security Act tracks nearly verbatim with the federal Wiretap Act as codified at 18 USC §2510 *et seq.* known as The

Electronic Communications Privacy Act. The Homeland Security Act makes it a felony for a “person” to intercept any wire, oral or electronic communication, or to use or disclose any intercepted wire, oral or electronic communication. Attorneys are included in the definition of “person” under the Homeland Security Act. Neither the South Carolina nor the federal wiretap acts expressly confer any immunity for attorneys to intercept, use or disclose illegally intercepted communications (wire, oral or electronic). To the contrary, S.C. Code Ann. §17-3-65 expressly prohibits the receipt of any wire, oral, or electronic communication that has been intercepted in violation of the Act into evidence in “any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision thereof.” It would therefore make no sense for the legislature to intend that attorneys be immune from conduct expressly prohibited by the South Carolina Homeland Security Act, e.g. the use of intercepted communications in litigation. The legislature did however expressly exempt certain persons in §17-30-25 whose job it is to maintain networks and communications facilities from penalties for intercepting or using communications in the course of their employment when it is needed to maintain service for their customers or when they receive a court order. The legislature could easily have exempted attorneys by expressly including them in §17-30-25. This was not the case. The clear intent of the legislature in drafting the SC Homeland Security Act was that attorneys be treated like every other “person” in regard to the use and disclosure of illegally intercepted communications.

It is important for this discussion to bear two things in mind. First, the South Carolina Homeland Security Act is a criminal statute. The conduct that Defendants engaged in are criminal (felony) offenses. Second, the legislature did not provide any express exemption in the Homeland Security Act for attorneys, as they had in other statutes in which attorneys are explicitly exempted from criminal penalties. For example, South Carolina law requires private

investigators to be licensed. Doing the work of a private investigator without a license is usually a misdemeanor offense. SC Code §40-18-140 (3) exempts “an attorney-at-law while in the performance of his duties” from criminal liability for violating the private investigator statute. Plaintiffs argue that if the legislature had wanted to allow lawyers to commit the felony offenses proscribed by the Homeland Security Act there would be some provision exempting attorneys written in the statute as there is in §40-18-140 (3).

Defendants argue that common law defenses should be applicable to all statutory provisions, including criminal statutes, where there is no language explicitly exempting common law defenses. This is absurd and would negate the efforts of the South Carolina legislature to draft and enact the criminal statutes we as a civilized society depend on to maintain law and order. If the common law defense of attorney-immunity is applicable to wiretap, why not other statutory criminal offenses? One could imagine a scenario where a Teflon coated attorney could be very helpful to one’s client in the commission of other criminal offenses. Obvious examples might be murder, arson or assault. This would lead to an absurd result never intended by the legislature.

Defendants cite several cases to support their premise, however only two are criminal cases. Unfortunately, while the quotes Defendants have cited for each of these criminal cases appears to be on point, a careful read of these cases finds that not a one involves a situation where a common law defense was used to exempt liability from a criminal statutory offense.

The first of these cases, *State v. Prince*, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993) deals with the effect of the legislature enacting new codified criminal statutes on preexisting common-law offenses. The holding in this case is that both criminal offenses remain in effect. This serves the public interest in allowing more options to the State in charging someone with a criminal offense and is not an example of common law creating an exemption from penalty for

criminal conduct, but just the opposite, allowing common law crimes to survive the creation of similar codified statutory crimes.

The other criminal law matter cited by Defendants is *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993). This case has to do with a death penalty case in which an individual who was mentally challenged was found to be unsuitable for capital punishment. For centuries English common law recognized that certain mentally challenged individuals would be inappropriate candidates for the death penalty. While there is an extensive discussion of English common law justifications for not executing an individual who is not aware of his impending execution or the reason for it, the United States Supreme Court in *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), boiled these common law requirements down to an argument under the Eighth Amendment that such an execution would amount to cruel and unusual punishment. The specific issue for Mr. Singleton was that the South Carolina legislature had not enacted a statute that specified a means to determine when a defendant was not fit for execution. Given the lack of legislative intent the court relied on the common law to determine what to do with Mr. Singleton. "This leaves South Carolina firmly in the arms of the English common law. In S.C.Code Ann. § 14-1-50 (1986), the General Assembly adopted the common law of England, where it was not altered by the code or inconsistent with the constitution or laws of the state..." *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (S.C. 1992).

In neither of the criminal cases cited by Defendants do common law defenses contravene the express language of the South Carolina legislature in enacting enforceable criminal statutes. Defendants cite no case in which a common law defenses trump the express language of criminal statute. Thus, they have cited no example to support the application of the attorney immunity defense to a criminal statute. Granting attorney-immunity as a "get out of jail free card" for attorneys elevates attorneys over the rest of South Carolina's citizens and makes

lawyers above the law. Holding lawyers out above the reach of criminal process would be bad public policy and would further erode the legal profession in the eyes of the public.

The Homeland Security Act is precisely modeled after the federal wiretap statute, the Electronic Communications Privacy Act. Both say exactly what they mean. Neither State nor Federal Acts contains an exemption for attorneys to violate the law. In keeping with the language from *Singleton*, here Plaintiffs would argue the express intent of the legislature *has* surpassed common law by enacting the South Carolina Homeland Security Act thus making common law “inconsistent with the constitution and laws of the state”.

III. *Taylor v Tolbert* Ruling is Unique to Texas, This Court Understood that Correctly.

Plaintiffs’ addressed the *Taylor v Tolbert* case, 644 S.W.3d 637 (Tex. 2022), from Texas in our original Reply to Defendant’s Motion to Dismiss. Texas law takes a rather different and unique approach to the application of common-law defenses to statutory offenses. While federal law and most states interpret statutes, especially criminal statutes, to exclude common-law defenses not expressly included in the text of the statute, the law in Texas adopts an “opt-out” approach that includes all common-law defenses to statutes unless the legislature expressly precludes them.

For this reason, the Texas Supreme Court held that the attorney-immunity defense was available to the causes of action for violations of the Texas state wiretap statute but was not available to causes of action for the same violations of the federal wiretap statutes. The Texas Supreme Court looked to the language of the federal statute (which tracks exactly with the South Carolina statute) to conclude there was no room in the statute to apply a privilege for attorneys that was not explicitly written in the text. “First, the statute applies to “any person” “[e]xcept as otherwise specifically provided” in the statute. This exclusivity language makes the terms of the federal statute materially different from the Texas statute. Based on this plain and explicit and “clear and unambiguous” language, federal courts have rejected exceptions and immunities that are

not specifically enumerated in the statute.” (*Id* at 653. *Referring* to 18 USC 2511(1)). South Carolina jurisprudence is much more like the federal system than like Texas. Like the federal system, our legal system is based on different assumptions than Texas law. Our law does not subscribe to the “opt-out” scheme regarding common law defenses that Texas law does. Our statutes are not written to contain express language regarding the inapplicability of common law defenses as Texas statutes apparently are. Therefore, as the Texas Supreme Court found in *Taylor v Tolbert*, while attorney immunity could be used as a defense to Texas state wiretap violations, it could not be used to defend against federal wiretap violations committed in the same scenario. Given that South Carolina law is almost exactly the same as the federal law on wiretap, we should adopt the holding from *Taylor v Tolbert* that common law attorney immunity is not available as a defense against the South Carolina Homeland Security Act.

Based on the creditable new allegations of Defendants’ self-serving motivations in the commission of the felonious violations of South Carolina Homeland Security Act, Plaintiffs allege Defendants owed a duty to Plaintiffs, which they breached in using Plaintiffs illegally intercepted communications in a scheme to damage their political rivals.

For all the reasons stated above the attorney immunity privilege should not apply to the South Carolina Homeland Security Act and these Defendants should not be afforded a pass on their criminal conduct in willfully violating the Act nearly 1,000 times, nor the consequences thereof. Plaintiffs implore this honorable Court to deny Defendants’ Motion for Reconsideration.

Respectfully submitted,

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Attorney for Plaintiffs

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CIVIL ACTION NUMBER: 2021-CP-26-06975
Justin Shayne Fulmer,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AFFIDAVIT OF MELISSA J. BUCKHANNON
Melissa Emery Buckhannon Esq.,	)	
Frazier Law Firm P.C., SC House	)	
Calls, Inc., Anna Coggeshall,	)	
Bryan Coggeshall, Katherine	)	
Coggeshall, Lauren Trent Fulmer,	)	
and Thomas Buckhannon,	)	
	)	
Defendants.	)	

PERSONALLY appeared before me, Melissa J. Buckhannon, who after being duly sworn, deposes and states the following:

An action was filed against me, along with other Defendants, by the Plaintiff and his attorney of record who filed the action on his behalf was attorney William B. von Herrmann. This affidavit is in support of my request for sanctions against Plaintiff and his attorney under the South Carolina Frivolous Civil Proceedings Sanctions Act, SC Code §15-36-10 et. seq. and Rule 11 of the South Carolina Rules of Civil Procedure. The request for sanctions is based primarily upon the fact that Plaintiff and his attorney ignored existing law, made claims that were not warranted under existing law and based their claims upon their own illegal acts. The request for sanctions is further supported by the fact that Plaintiff and Mr. von Herrmann's inclusion of me as a Defendant was for the purposes of harassment.

The Complaint filed by the Plaintiff alleges issues regarding his minor child (who was approximately three years old at the filing of this action) and his concerns that the child's mother and maternal grandparents (Defendant's Anna Coggeshall, Bryan Coggeshall and Katherine Coggeshall) were in a conspiracy to harm his relationship with the child, and he further alleged that me and my husband, Thomas Buckhannon, were involved in that conspiracy. There was no family court matter pending at the time of the filing of this action in October 2021 as the issues involving Plaintiff's minor child had been finalized in October 2020 by written agreement of the

parties which was approved by the Court. I had never presided over any issues involving the custody case in family court, nor had I ever met or spoken with Plaintiff, the Defendants Anna Coggeshall, Bryan Coggeshall or Katherine Coggeshall. However, Plaintiff and Mr. von Herrmann illegally obtained electronic transfers between Defendant Anna Coggeshall and her family and her attorney's office which alluded to the fact that Defendant Bryan Coggeshall had contacted my husband. Those same interceptions showed no collusion on my part regarding Plaintiff and his minor child, and in fact, showed that I had recused myself from any further issues due to the periphery contact with my husband. However, Plaintiff and Mr. von Herrmann chose to ignore the evidence that was in their possession when bringing the lawsuit, and alleged I used my position as a Family Court Judge to somehow damage the Plaintiff.

Mr. von Herrmann put no effort toward due diligence to determine the validity of his client's claims. In fact, the supporting information provided below will show that Mr. von Herrmann made no effort to comply with existing law, alleged no reasons for reversal of existing law, and went well beyond the scope of this lawsuit for the purpose of harassment for his own personal reasons.

What is important to note regarding the issue of the harassment intended by Mr. von Herrman, by and through this case, is that he had a personal interest in bringing the action for the purposes of harassing me and one other defendant. At the time that this action was filed, Mr. von Herrmann's wife was in a contested judicial race with Melissa M. Frazier of Frazier Law Firm, who was also a defendant in the initial Complaint. It is my belief that Mr. von Herrmann thought I was helping Ms. Frazier with her judicial campaign against his wife. In August Mr. von Herrmann assisted his client in filing a grievance against me and Ms. Frazier, as his office's fax coversheet was attached to the Complaint filed with ODC. However, the ODC filing did not result in Ms. Frazier dropping out of the judicial race with Ms. von Herrmann. The SC Bar released the results of their screening on October 12, 2021, and Ms. von Herrmann was found to be unqualified in certain areas. (Exhibit 1). Shortly thereafter, Ms. von Herrmann withdrew from the race almost simultaneously with the filing of this action less than two weeks later. I believe he took the opportunity to not only attack Ms. Frazier but to attack me as well via this lawsuit for the purposes of harassment. While I understand his primary target may have been his wife's judicial opponent, this did not keep him from targeting me with harassing behavior.

SC Code §15-36-10 et. seq. provides in pertinent part the following standards to show an action is frivolous and sanctionable:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party;

(c) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

SC Code §15-36-10 A(4)(a) & 15-36-10 C (1).

EXISTING LAW AND LACK OF A GOOD FAITH REASONABLE ARGUMENT

Mr. von Herrmann failed to plead any exception to judicial immunity in his Complaint against me. In fact, he completely ignored the statutory and common law regarding judicial immunity. He failed to address any of the exceptions that may have rendered judicial immunity inapplicable. Therefore, he certainly could not have been taking the stance that he believed there was a good faith argument that judicial immunity should be reversed or did not apply.

I do not believe there is any good reason for Mr. von Herrmann, as an attorney licensed to practice in South Carolian, not to know the applicable statutory and case law that regarding judicial immunity. On one hand he may take the position that he was not suing me in my capacity as a judge, even though he referenced me as “Judge Buckhannon” throughout the Complaint. However, this argument would be without merit as it would only be in the capacity as a *judge* that my alleged behavior would even be actionable. In that case, I could speak with anyone I wanted about any subject as a private citizen.

Clearly, Plaintiff and Mr. von Herrmann brought suit against me as a member of the judiciary. In fact, it was Mr. von Herrmann who contacted the Insurance Reserve Fund (IRF) to advise them I had been sued by his client. Therefore, having brought suit against me as a member of the judiciary, Mr. von Herrmann was under an obligation to at least conduct a due

diligence search of the law to know that including me as a defendant in the action was improper and against statutory and common law.

Plaintiff's case is based entirely upon information he and his attorney illegally obtained from Defendant Anna Coggeshall's Apple iWatch. The issue was brought before the Court of Appeals, as the Court of original jurisdiction regarding the admissibility of the electronic transmissions Plaintiff and his counsel obtain from the iWatch. The Court of Appeals found that the repeated use of this device to obtain hundreds of text messages "...amounted to interceptions under the Homeland Security Act," (Fulmer v. Buckhannon, et.al., Appellate Case no. 2022-000330). (Exhibit 2). While Plaintiff alleged the watch was his, the Court of Appeals found that Defendant Anna Coggeshall was the rightful owner of the watch; however, "...even if Fulmer was the original owner of the iWatch, we find there is no evidence Coggeshall gave him permission to access her communications on the device." (Fulmer v. Buckhannon, et. al., Appellate Case no. 2022-0003300).

As an attorney for the Plaintiff, Mr. von Herrmann should have known the use of the text messages obtained from Defendant Anna Coggeshall's iWatch was illegal under the South Carolina Homeland Security Act. The law pertaining to the interception of such information is clearly set out in statutory law as well as common law. Clearly Mr. von Herrmann knew or should have known the basis for the action he filed on behalf of the Plaintiff was illegally obtained information.

Mr. von Herrmann may argue that he believed the information was of such a nature that it should be admissible and that the existing law should be reversed to allow such information to be used. However, he made no argument about such in his pleadings. He did not mention or even address the Homeland Security Statute and how the allegations in the Complaint filed should overcome the statute. He failed to even address the existing statutory or case law that is directly on point to the facts of this case.

Mr. von Herrmann argued the iWatch belonged to the Plaintiff and the Defendant Anna Coggeshall only borrowed the watch from him, and Plaintiff took the watch back when he found it in their child's stroller pocket. (This argument was made to the Court of Appeals and not contained in the Complaint.) However, the Court of Appeals addressed this circumstance as well. Even if the watch did belong to Plaintiff, he had no permission to continue to go into the Defendant Anna Coggeshall's account and intercept her text messages. Through discovery it

was determined that several hundred text messages had been intercepted, and this certainly should have put Mr. von Herrmann on notice to verify the law before filing the action.

INTENT TO HARASS AND INJURE THE OTHER PARTY

The harassment started with his Summons and Complaint wherein he abandoned the truth and made statements as facts that were without basis. He knew he had no basis of proof for the statements. I believe he created a twenty-four-page Complaint with outlandish statements he presented as fact with intent to embarrass and harass without any concern for the validity of the Complaint. I believe the Complaint was worded in such a manner to shock the members of the Horry and SC Bar, the public and the Judicial Merit Selection Committee, without any concern to the truth of the facts asserted or the law which would apply to those alleged "facts". I do not think that it is a coincidence that, even though the vast majority of Plaintiff's complaints dealt with the issues of his daughter in regard to the mother and grandparents of his child as well as his estranged wife, Mr. von Herrmann chose to list my name first as a defendant in the action.

Purposeful Misleading of the Court in the Complaint and Amended Complaint

In Plaintiff's first Summons and Complaint (Exhibit 3) statements were made as fact, not allegations, pertaining to my actions. These facts, as included in the Complaint, were not true, and the Plaintiff either had no way of knowing the information he purported as facts, such as my conversations with others, or the Plaintiff had in his possession the intercepted information that proved the statements were false. His Complaint is replete with outlandish false statements, and both Plaintiff and Mr. von Herrmann knew the statements in the Complaint were false. The electronic communications in their possession, even though they had been illegally obtained, proved that the statements were false and had no basis. They needed nothing further than what they already had in their possession to know the statements were false.

Plaintiff and Mr. von Herrmann blatantly misled the Court in the first Complaint filed with such statements as:

- a. "Judge Buckhannon called up attorney Melissa Frazier of Defendant Frazier Law Firm, whom Judge Buckhannon knew represented Anne in her Family Court litigation against Justin." (Paragraph 81, Plaintiff's Complaint).

- b. "Judge Buckhannon told Frazier Law Firm numerous false details about Justin, including that Justin was violating his custody agreement with Anna. Among other advice, Judge Buckhannon urged Frazier Law Firm to return to court on Anna's behalf." (Paragraph 83, Plaintiff's Complaint).
- c. "But Judge Buckhannon listened to Tommy talk at length about Justin and Anna. Tommy conveyed to her false information about Justin's violation of his child custody agreement, and his unfitness to parent the child." (Paragraph 79, Plaintiff's Complaint).
- d. "With the encouragement of Judge Buckhannon, who was acting at the urging of her husband, Tommy, as well as Anna's parents Bryan and Katie, Frazier Law Firm prepared to return to court to recommence litigation on Justin and Anna's Final Order and Custody Agreement. Frazier Law Firm sent a letter to Justin in anticipation of this litigation." (Paragraph 88, Plaintiff's Complaint).

These "facts" were included in the Complaint; however, the illegally obtained text messages Mr. von Herrmann had in his possession, which he provided through discovery, proved these statements were false. In fact, through discovery, Mr. von Herrmann turned over correspondence from the Frazier Law Firm which informed their client that a judge had contacted them but did not know who the firm represented and did not know anything about the facts of the case. There is also correspondence that confirms I recused myself from any future dealings due to the fact that Defendant Bryan Coggeshall had contacted my husband who informed him that I would not speak with him. The correspondence further showed that none of the Coggeshall family even knew my name and only referred to me as "Tommy's Wife". There is absolutely no evidence to support the statements of my purported conversations with my husband, Tommy. Those statements are complete fabrication. It is my belief that Mr. von Herrmann cared more about the possibility of embarrassing me by making false statements than by making truthful statements on his client's behalf.

My Motion to Dismiss was heard in March and while the matter was under advisement, Mr. von Herrmann filed an Amended Summons and Complaint (Exhibit 4) without leave of Court or the consent of any of the Defendants. Contained in the Amended Complaint was a reiteration of the false statements from the first Complaint; however, the Amended Complaint contained additional statements that were false and intentionally meant to mislead the

Court. Plaintiff and Mr. von Herrmann blatantly misled the Court in the Amended Complaint filed with such statements as:

- a. "Judge Buckhannon listened to Tommy talk at length about Justin and Anna. Tommy conveyed to her false information about Justin's violation of his child custody agreement and his unfitness to parent the child." (Paragraph 82, Amended Complaint).
- b. Plaintiff has seven (7) text messages from July 27, 2021, pertaining to the above. Additional documentation will be provided if necessary." (Paragraph 83, Amended Complaint)
- c. "Defendant Buckhannon should not have acted personally and professionally on this information and should have formally recused herself immediately." (Paragraph 85, Amended Complaint)

The Amended Complaint was filed, as stated above, without consent or by order allowing it to be filed while the Court was considering motions that had been argued a few days prior, to include my Motion to Dismiss. I believe that Mr. von Herrmann intentionally filed the Amended Complaint for the purposes of further harassment before I could be dismissed from the case as a Defendant, which was done a few days later. Mr. von Herrmann not only reiterated his false statements regarding me, but he included new false statements that he knew to be false. For example, the seven text messages he referred to in Paragraph 83 as attached were not initially included. However, attorney Richard Whiting, who represents Defendant Anna Coggeshall, requested Mr. von Herrmann provide the referenced text messages so long as they were not illegally obtained. (Exhibit 5). Be that as it may, Mr. von Herrmann did send a copy of those text messages to all attorneys of record. (Exhibit 6). Upon review of those text messages, it was determined that the seven text messages he referenced were pulled out of a text conversation consisting of eighteen text messages. I determined this when it was clear the seven text messages did not flow together as a conversation would and it was clear that there were messages that were cut off in one picture and not included in the next picture. I went through the text messages received through discovery and found the eighteen-text message conversation. The seven text messages, when taken out of order and out of context, were used to disparage me. However, when the total conversation of the eighteen text messages is reviewed not only is the message, he alluded to false, but it shows Mr. von Herrmann purposefully misled the Court and

lied about me for the purpose of harassment. (I have not included the text messages for review by this Court due to the Court of Appeals ruling; however, they are available if this Court would like to review. The Amended Complaint was then dismissed by Mr. von Herrman on April 19, 2022. (Exhibit 7).

There are several instances of this case serving the purpose of harassment, with the actions of Mr. von Herrmann having nothing to do with any issues involving the Plaintiff's child, which is what the lawsuit was supposedly about. Such instances are as follows:

1. **1st FOIA Request:** After receiving a letter from my attorney on the Monday, October 25, 2021 (Exhibit 8) after the Complaint was filed advising Mr. von Herrmann that he would accept service on my behalf, Mr. von Herrmann submitted a FOIA request to the Horry County Clerk of Court's Office and to the Horry County attorney on the same day seeking to find out if anyone in those offices had contacted me about the lawsuit being filed. (Exhibit 9). I believe he did that to ensure it was brought to the Clerk of Court's attention that I was a defendant in his lawsuit for the purposes of embarrassment for me. He may have also been inquiring as to how I had found out about the lawsuit so quickly as I was out of town, and he had been unable to serve me at the courthouse the Friday before. However, as he had served Ms. Frazier in Charleston on Friday, October 22, 2021, while she moderated an intensive family law seminar in front of many family court attorneys, it was not a secret. Attorneys who were present at the seminar and witnessed her being served contacted me on my vacation. I believe he served her in that manner for the purposes of harassment and embarrassment, and he was upset that he was not able to serve me in the same manner at the courthouse.
2. **Fitsnews Article:** Plaintiff and/or Mr. von Herrmann contacted Fitsnews for the purposes of reporting on the lawsuit, and a copy of the lawsuit was submitted and was included as an attachment to the article published on October 29, 2021. The title of the article was "South Carolina Family Court Judge Accused of Improprieties in Civil Lawsuit". (Exhibit 10) The article quoted from the Complaint and was very disparaging to me and to Ms. Frazier. The article included information provided by Mr. von Herrmann which stated that a spoliation letter had been sent to the Horry County Clerk of Court as well as the FOIA letter referenced above. Fortunately, the

author of the article obtained further information regarding the lawsuit to include that Mr. von Herrmann's wife was Ms. Frazier's opponent in a judicial race and a second article was put out the next day on October 30, 2021, stating that "...an important bit of context was inadvertently omitted from my story." (Exhibit 11). Fortunately, this article shed more light on the situation, and the issue was never addressed by Fitsnews again.

I believe that Mr. von Herrmann amended his complaint as set out above, for the purpose of trying to have another article done which would include the more slanderous information contained in the Amended Complaint since the first article did little more than quote from the first Complaint. Fortunately, that did not happen.

3. **2nd FOIA Request:** The Order dismissing me as a defendant with prejudice was filed with the court on March 23, 2022. However, this did not stop Mr. von Herrmann from continuing to harass and attempt to obtain information that had nothing to do with the case. In December 2022, *nine months after I was dismissed with prejudice by the Court*, Mr. von Herrmann sent a FOIA request to the Clerk of Court for Georgetown County seeking a copy of my divorce file from 2007. (Exhibit 12). The Plaintiff's daughter was approximately three years old when this action was filed in October 2021 and the issues involving his daughter were supposedly the basis for the lawsuit being filed. Therefore, I find harassment to be the only basis for Mr. von Herrmann to send the other Clerk for the circuit, in which I am a resident judge, a FOIA request asking for information from 2007 that is public record (particularly when he could have gone and pulled the file). Instead, he sent the request to the Clerk asking for the following:

"RE: Melissa Johnson Emery, Case Number: 2007DR2200046 Melissa Johnson Emery vs. Joseph Emery: What year did the Court order a divorce decree; names of attorneys who represented both parties; If the file was sealed, when the file was sealed and the name of the judge who sealed it; copies of the complaint, answer, reply, financial declaration, affidavits; copy of the final Order, the name of any witnesses at the final hearing; copies of any transcripts available or contact information of the court reporter that was present during the hearing on the divorce file being sealed and final hearing."

FOIA does not require answers to such questions, and only calls for the production of documents. These requests were clearly without basis in the law, and once again for an ulterior motive other than Mr. Fulmer's case.

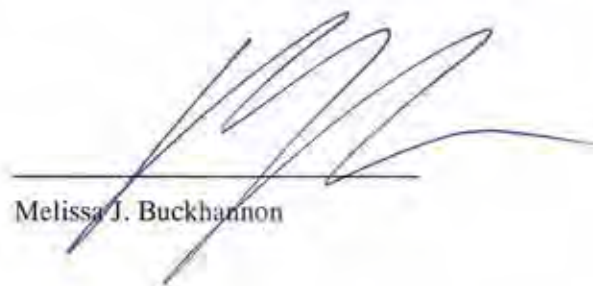
4. **Request to Admit:** Mr. von Herrman served me with Requests to Admit dated January 3, 2022. (Exhibit 13). Included in his requests, he asked me the following questions: "You have been in the past associated with a self-named group known as "The Bitches Club" and "You failed to disclose this information to anyone while a candidate for a Judgeship." These questions were for pure harassment, as he is referring to two or three female lawyer friends of mine who used to go to lunch together in 2007/2008, and some of our colleagues jokingly made reference to this name. It was all in jest and no offense was taken. I imagine he learned of the lunch group and the "nick name" from a paralegal in his firm who once worked for one of those female friends. When the matter of "The Bitches Club" was addressed in the motion hearing before Judge Maddox, Mr. von Herrmann abandoned the request and said it was just a few friends getting together and it was not really anything pertinent; therefore, he knew exactly what it was but chose to make it a discovery issue. There is absolutely no connection between my lunch group from 2007/2008 to the Plaintiff and his three-year-old daughter. However, Mr. von Herrmann furthered his harassment of this request by asking if I disclosed this information to anyone while a candidate for a judgeship. Once again, my judicial candidacy, past or present, had absolutely nothing to do with the Plaintiff or his minor child.
5. **Judicial Election Interference:** Plaintiff, along with the help of his counsel, filed to testify against me at my JMSC hearing in November 2021. It was their intent to appear at my public hearing and reiterate their false accusations for the purpose of discrediting and harassing me. However, JMSC would not allow the Plaintiff to testify regarding his open case as I could not respond or testify as to an open court case. After he was informed he could only testify about his personal knowledge of me, similar to what is asked in a ballot box survey, he declined to appear and testify as he did not know me personally. I believe this is because I have never met him, including those years he dated and lived with Anna Coggeshall.

The week prior to the judicial elections, it is my understanding that Mr. von Herrmann put out a message on his Facebook page asking if anyone knew where he could get signs made. The message was deleted shortly thereafter. However, on the day of the judicial elections, two people were standing in the State House lobby with signs reading "Vote No for Buckhannon and Frazier". (Exhibit 14). I firmly believe that Mr. von Herrmann was part of the plan for those signs to be there to embarrass and harass me and Ms. Frazier, who was elected that day.

6. A large aspect of the harassment that Mr. von Herrmann intended was for the local and state bar to be made aware of the lawsuit he had filed with me and Ms. Frazier as Defendants, as word quickly spread that the lawsuit had been filed. Mr. von Herrmann clearly intended for the other Bar members to know about the action, as he had Ms. Frazier so publicly served. Her attorney had been in contact with Mr. von Herrmann as early as August, around the time the ODC complaint had been filed. However, Mr. von Herrmann did not contact the attorney or offer Ms. Frazier the option to accept service, but instead had her served in Charleston at a seminar she was moderating in the presence of many other attorneys.
7. A target of harassment for Mr. von Herrmann was also my husband, Tommy. Tommy has worked with SCDNR since 2017. Even though the Plaintiff's child was born since Tommy started work with SCDNR, Mr. von Herrmann sent a FOIA request to all of Tommy's prior employers. Tommy has worked in law enforcement for almost twenty years, and each prior law enforcement agency received a FOIA request for Tommy's employment files with each agency. Mr. von Herrmann also filed a complaint with SCDNR alleging violations of their policy due to his supposed conversations with me, his wife. He was forced to go through an Internal Affairs investigation which was based on nothing but false allegations. Mr. von Herrmann also continually threatened to bring SCDNR into the case, and made false allegations against Tommy to his superiors that was outside the scope of this case and complete fabrications, as his "facts" changed each time he contacted them. He attempted to persuade SCDNR to settle with his client to avoid the public scrutiny that bringing them into the suit would bring. They refused to negotiate as it was clear the allegations were fabricated; however, it was very embarrassing for Tommy.

In conclusion, I would state that I fully believe that Plaintiff and his attorney William B. von Herrmann have most definitely violated the South Carolina Frivolous Civil Proceedings Sanctions Act. There is no question that the lawsuit was filed for the personal reasons of Mr. von Herrmann, and this is why he completely ignored the statutory and case law when bringing the lawsuit. Plaintiff would have no viable reason to believe that the actions taken to harass me during this case were for the benefit of his child or his relationship with her. Mr. von Herrmann's action was done to his and his client's detriment. I would ask that sanctions be granted both from Plaintiff and Mr. von Herrmann. Attorneys' fees have been generated due to defend me from the frivolous action that was filed and the harassing behavior that was present from the very beginning of this lawsuit and did not stop even after I was dismissed with prejudice. Clearly this frivolous lawsuit was filed by Mr. von Herrmann against me for the purposes of harassment and for his own personal vendetta due to his wife's failed attempt to obtain a judicial seat.

FURTHER AFFIANT SAYETH NOT!



Melissa J. Buckhannon

Sworn to and subscribed before me
this 11th day of October, 2023.



Notary Public for South Carolina
My Commission Expires: 10-18-24

EXHIBIT

1

Ms. Heather S. von Herrmann
Family Court, 15th Circuit, Seat 3

The South Carolina Bar's Judicial Qualifications Committee reports that the collective opinion of those Bar members surveyed regarding Ms. von Herrmann's candidacy for Family Court, 15th Circuit, Seat 3, is as follows:

Overall	Unqualified
Constitutional Qualifications	Qualified
Physical Health	Qualified
Mental Stability	Qualified
Ethical Fitness	Unqualified
Character	Unqualified
Professional and Academic Ability	Qualified
Experience	Qualified
Reputation	Unqualified
Judicial Temperament	Unqualified

Ms. Melissa M. Frazier
Family Court, 15th Circuit, Seat 3

The South Carolina Bar's Judicial Qualifications Committee reports that the collective opinion of those Bar members surveyed regarding Ms. Frazier's candidacy for Family Court, 15th Circuit, Seat 3, is as follows:

Overall	Well-Qualified
Constitutional Qualifications	Qualified
Physical Health	Qualified
Mental Stability	Qualified
Ethical Fitness	Well-Qualified
Character	Well-Qualified
Professional and Academic Ability	Well-Qualified
Experience	Well-Qualified
Reputation	Well-Qualified
Judicial Temperament	Well-Qualified

The Honorable Melissa J. Buckhannon
Family Court, 15th Circuit, Seat 2

The South Carolina Bar's Judicial Qualifications Committee reports that the collective opinion of those Bar members surveyed regarding Judge Buckhannon's candidacy for Family Court, 15th Circuit, Seat 2, is as follows:

Overall	Well-Qualified
Constitutional Qualifications	Qualified
Physical Health	Qualified
Mental Stability	Qualified
Ethical Fitness	Well-Qualified
Character	Well-Qualified
Professional and Academic Ability	Well-Qualified
Experience	Well-Qualified
Reputation	Well-Qualified
Judicial Temperament	Well-Qualified

EXHIBIT

2

The South Carolina Court of Appeals

Justin Shayne Fulmer, Respondent,

v.

Melissa Emery Buckhannon Esq., Frazier Law Firm P.C.,
SC House Calls, Inc., Anna Coggeshall, Bryan
Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer,
and Thomas Buckhannon, Defendants.

Of whom Anna Coggeshall is the Petitioner.

Appellate Case No. 2022-000330

ORDER

This case involves two ongoing family court and circuit court actions: Justin Fulmer (Fulmer) is the plaintiff in an ongoing civil matter (Civil Case) ¹ against Anna Coggeshall, Lauren Trent Fulmer (Trent), and Frazier Law Firm, P.C. (Frazier), and a party in a divorce action (Divorce Action) with Trent. Coggeshall filed a motion to suppress the contents of text messages pursuant to section 17-30-110 of the South Carolina Code (2014), a part of the South Carolina Homeland Security Act. *See* S.C. Code Ann. §§ 17-30-10 to -145 (2014). Sections 17-30-110 and 17-30-15 require that this court hear the motion to suppress. *See* § 17-30-110(A) (requiring motions to suppress the contents of intercepted wire or oral communications be made to the "reviewing authority"); § 17-30-15(9) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals"). Coggeshall contends Fulmer illegally intercepted text messages sent between her and several individuals utilizing an Apple iWatch that was stolen from her home. Trent and Frazier moved to join the motion because their communications with Fulmer were among those

¹ Justin claims he filed the Civil Case because he believed the communications involved "a scheme to undermine his relationship with his young daughter."

obtained by Fulmer using the iWatch. We grant the motions to join and the motion to suppress.

FACTS

Coggeshall and Fulmer have one child together, a daughter (Daughter). According to Coggeshall, she discovered her Apple iWatch—which was "synched" with her phone and received copies of text messages between herself and others—went missing while she and Fulmer were in the midst of paternity, child support, and custody litigation (Custody Litigation) over Daughter. When that litigation concluded in December 2021, Coggeshall discovered text messages obtained from her missing iWatch were being used by Fulmer as the basis for the Civil Case against Coggeshall, Trent, Frazier, and others.²

Fulmer claims the iWatch in question belongs to him and that he "allowed" Coggeshall to use his iWatch in the past. He asserts Coggeshall later returned the device to him and he noticed her "messages began appearing on the watch." He argues Coggeshall failed to delete her electronic information from the iWatch or take other "precautions to secure the contents of the device." While the parties dispute ownership of the iWatch, they agree Fulmer currently possesses the watch and used it to view text messages that were sent to and from Coggeshall's cell phone.

INTERPRETATION OF THE HOMELAND SECURITY ACT

"The Homeland Security Act is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–22 (2002) (Federal Act)." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). "[F]ederal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the Homeland Security Act" *Id.*

MOTIONS TO JOIN

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Gov't Emps. Ins. Co. (Ex parte*

² The Civil Case includes other named defendants, but they did not move to join Coggeshall's motion.

GEICO), 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). Rule 24(a), SCRCP provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Ex parte GEICO*, 373 S.C. at 138, 644 S.E.2d at 702. Accordingly, this court "should consider the practical implications of a decision denying or allowing intervention." *Id.* "A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a 'real party in interest.'" *Id.* (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, *any aggrieved person* may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that the: (1) communication was unlawfully intercepted The reviewing authority may, in its discretion, conduct a hearing and require additional testimony or documentary evidence.

§ 17-30-110(A) (emphasis added).

We find Frazier and Trent are "aggrieved person[s]" pursuant to the Homeland Security Act because their communications with Coggeshall were among those obtained by Fulmer and resolution of Coggeshall's motion inevitably impacts their rights in the Civil Case. *See* § 17-30-110(A) (stating any aggrieved person may move to suppress the contents of intercepted communications); Rule 24(a)(2), SCRCP (stating anyone claiming an interest related to the transaction at issue and "so situated that disposition of the action may . . . impair or impede his ability to

protect that interest" should be permitted to intervene in an action). Accordingly, we grant both motions to join.

MOTION TO SUPPRESS

"The interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter." § 17-30-10. The Act is violated when a person "intentionally intercepts . . . any wire, oral, or electronic communication"; "intentionally discloses or attempts to disclose to any other person the contents of any . . . electronic communication, knowing or having reason to know the information was obtained through the interception of a[n] . . . electronic communication"; or when a person "intentionally uses or attempts to use the contents of any . . . electronic communication, knowing or having reason to know that the information was obtained through the interception of a[n] . . . electronic communication." § 17-30-20(1), (3), (4).

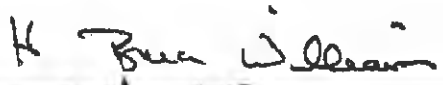
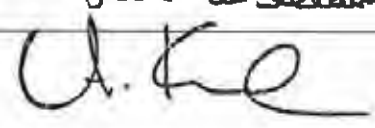
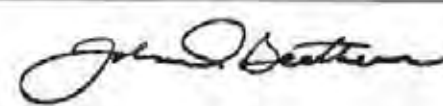
"'Intercept' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." § 17-30-15(3). An "[e]lectronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication." § 17-30-15(4). An "aggrieved person" is any person "who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." § 17-30-15(10). "Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court" § 17-30-65(A).

In *United States v. Szymuszkiewicz*, the Seventh Circuit observed an interception must be "contemporaneous" with the sending of the communication, which includes communications obtained while in transit between intended devices and also communications that are received by an intended recipient but then, through programming, automatically forwarded to an unintended recipient. 622 F.3d 701, 705-06 (7th Cir. 2010). In *Epstein v. Epstein*, the Seventh Circuit clarified its reasoning in *Szymuszkiewicz*, noting an interception "need not occur at the time the wrongdoer receives the [communication]" because "'copying [the communication] at the server was the unlawful interception.'" 843 F.3d 1147, 1150 (2016) (quoting *Szymuszkiewicz*, 622 F.3d at 704).

Based on the affidavits provided by the parties, we find the preponderance of the evidence indicates Coggeshall was the rightful owner of the iWatch. Accordingly, Fulmer's repeated use of the device to view her text messages amounted to interceptions under the Homeland Security Act. *See* § 17-30-15(3) (defining an interception as the acquisition of electronic communications through the use of any electronic device); § 17-30-20 (prohibiting the intentional interception of electronic communications). Further, even if Fulmer was the original owner of the iWatch, we find there is no evidence Coggeshall gave him permission to access her communications on the device. *See Berry v. Funk*, 146 F.3d 1003, 1010-11 (D.C. Cir. 1998) (stating that implicit consent to an interception, absent actual notice, may only be implied "when '[t]he surrounding circumstances [] convincingly show that the party knew about and consented to the interception'" (quoting *United States v. Lanoue*, 71 F.3d 966, 981 (1st Cir. 1995))).

CONCLUSION

Accordingly, we grant Coggeshall's motion to suppress and prohibit Fulmer from using these communications in the Civil Case and Divorce Action and any potential future litigation. *See* § 17-30-65(A) ("Whenever any wire, oral, or electronic communication has been *intercepted*, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in *any* trial, hearing, or other proceeding" (emphases added)). Additionally, we deny Coggeshall's request for attorney's fees.³ Any further motions concerning these cases should be addressed to the family and circuit courts.


 _____ C.J.

 _____ J.

 _____ J.

³ However, the parties may still pursue attorney's fees and damages in a civil action. *See* § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)).

FILED
Sep 02 2022

Columbia, South Carolina

cc:

William Bertram von Herrmann, Esquire

Richard Giles Whiting, Esquire

Steven Marc Abrams, Esquire

Amanda A. Bailey, Esquire

Hayes Kirkland Stanton, Esquire

Kevin Mitchell Barth, Esquire

EXHIBIT

3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-__

Justin Shayne Fulmer,

Plaintiff,

v.

Melissa Emery Buckhannon Esq.,
Frazier Law Firm P.C., SC House Calls, Inc.,
Anna Coggeshall, Bryan Coggeshall,
Katherine Coggeshall, Lauren Trent Fulmer,
and Thomas Buckhannon,

Defendants.

SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ William B. von Herrmann
William B. von Herrmann
S.C. Bar No. 15675
von Herrmann Law Firm
212 Elm Street
Conway, South Carolina 29526
(843) 488-1030

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-____

Justin Shayne Fulmer,

Plaintiff,

v.

Melissa Emery Buckhannon Esq.,
Frazier Law Firm P.C., SC House Calls, Inc.,
Anna Coggeshall, Bryan Coggeshall,
Katherine Coggeshall, Lauren Trent Fulmer,
and Thomas Buckhannon,

Defendants.

COMPLAINT
(Jury Trial Demanded)

Plaintiff, by and through his undersigned attorney, submits this Complaint and alleges as set forth below.

PARTIES

1. Plaintiff Justin Shayne Fulmer ("Justin") is a citizen of South Carolina, who resides in Horry County, South Carolina.
2. Defendant Melissa Emery Buckhannon, Esq., is citizen of South Carolina, who resides in Horry County, South Carolina.
3. Defendant Lauren Trent Fulmer is a citizen of South Carolina, who resides in Horry County, South Carolina, and she is a South Carolina licensed nurse practitioner treating patients in Horry County, South Carolina.
4. Defendant SC House Calls, Inc. employs Defendant Lauren Trent Fulmer in

Horry County, South Carolina. SC House Calls, Inc. is a South Carolina corporation doing business in Horry County, South Carolina.

5. Defendant Anna Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.
6. Defendant Bryan Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.
7. Defendant Katherine Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.
8. Defendant Frazier Law Firm, PC is South Carolina corporation doing business in the State of South Carolina, including in Horry County, South Carolina.
9. Defendant Thomas Buckhannon is a citizen of South Carolina, who resides in Horry County, South Carolina.

JURISDICTION AND VENUE

10. This Court has subject-matter jurisdiction over the claims in this lawsuit under Article V § 11 of the South Carolina Constitution and, *inter alia*, South Carolina Code §§ 14-5-350 *et seq.* and 15-7-10 *et seq.*
11. This Court has jurisdiction over the parties because they reside, own property, and do business in Horry County, and the actions alleged occurred in Horry County.
12. Venue is proper in this circuit under, *inter alia*, South Carolina Code § 15-7-30 *et seq.* because a substantial part of the events or omissions giving rise to the claim occurred in Horry County.

This lawsuit involves the concerted effort by numerous people to damage the Plaintiff, Justin, including by depriving him of his livelihood, his privacy, his reputation, and his three-year old child. Shockingly, many of the Defendants are in positions of power, which they have wielded to Justin's great detriment.

BACKGROUND FACTS

13. Justin has a little daughter, whom he dearly loves.
14. Justin has spent at least ten years gradually working his way up in the competitive and lucrative oval dirt-track racing industry. Justin got involved in the industry as a child, and it is a link for him to his auto-mechanic father, who died when Justin was 17 years old.
15. Since 2009, Justin has been employed by Palmetto Speedshop, LLC ("Palmetto Speedshop"). Palmetto Speedshop is not a party to this litigation.
16. Justin started out in Palmetto Speedshop's warehouse, handling the shipping and receiving of race car parts, fulfilling purchase orders, and performing general labor. Justin's annual salary for this warehouse position was approximately \$30,000/year. (See Exhibit 1, Affidavit of Matthew T. Bryant, incorporated herein by reference).
17. Justin was, and is, an exemplary employee. When Palmetto Speedshop began selecting people to learn driver development coaching, they included Justin in this opportunity. (*Id.*).
18. In 2017, Justin participated in a year-long training program, after which he was given the position of Palmetto Speedshop's Driver Development Coach. This

position entailed Justin working with and coaching young drivers, to refine their racing skills. Justin was working with children, ages 6-12 years old, and he was great at it. (*Id.*).

19. As a Driver Development Coach, Justin earned \$107,000/year. (*Id.*). This was a significant increase over his previous salary in his warehouse position.
20. This lawsuit is about the damage done to Justin's career, emotional well-being, relationship with his daughter, finances, and reputation in the community, by a group of people acting in concert with intent to harm him, as well as separately, by their individual acts. Because there are so many Defendants involved, and it may get confusing for the reader, Exhibit 2 is a chart of the parties to this lawsuit.
21. Several years ago, Justin fathered a baby daughter out of wedlock with Defendant Anna Coggeshall ("Anna"). Justin and Anna have a court-ordered custody and child support agreement in place.
22. Anna does not like Justin.
23. Anna has been actively working to destroy Justin's reputation, career, and relationship with his little daughter.
24. But Anna has not been acting alone.

Part 1, The Destruction of Justin's Livelihood and Reputation

25. Defendant Lauren Trent Fulmer ("Lauren") is in the midst of a divorce from Justin. Lauren is predisposed to wish ill against Justin.
26. Lauren and Anna know each other, and they communicate frequently. They are united in their animosity toward Justin.
27. Lauren is a registered nurse practitioner.
28. Lauren is, or was at all times relevant to this action, employed by Defendant SC House Calls, Inc. ("SC House Calls").
29. SC House Calls is a business that acts as a middleman, or broker, between patients and health care providers. SC House Calls provides "a network of over 250 Nurse Practitioners, Physician Assistants, and Doctors who see patients in private residences . . . or via Telemedicine throughout the State of South Carolina." (Exhibit 3, Screenshot of SC House Calls website <https://schousecalls.com/about> , last accessed on October 19, 2021).
30. SC House Calls performs patient intake and scheduling; it then connects patients with its network of healthcare providers. Defendant SC House Calls collects and maintains the confidential health records of its providers' numerous patients, which medical records can be accessed by its network of patient providers at any time. A chart on its website gives an overview of the intake process and the services that SC House Calls provides:



(Ex. 3).

31. Defendant SC House Calls maintains a database, which contains all of its patients' confidential information, including but not limited to its patients' personal and confidential:

- provider treatment charts,
- social histories,
- medical histories,
- records of physician visits,
- results of physical examinations,
- lists of prescription medications,
- family histories,
- sexual histories,
- demographic information,
- screening results,
- problems and concerns,
- test results,
- psychiatric histories,
- assessments,
- evaluations,
- diagnoses, and
- plans for treatment.

32. Justin has been a patient of various providers, through SC House Calls, for several years.

33. SC House Calls maintains within its database confidential information about Justin, which was gained from its providers' healthcare relationship with him over the course of years.
34. As an employee of SC House Calls, Lauren is capable of accessing its database full of confidential patient information.
35. Lauren accessed Justin's confidential information in SC House Calls' database.
36. Justin's confidential information includes his provider treatment charts, social history, medical history, records of physician visits, results of physical examinations, lists of prescription medications, family history, sexual history, demographic information, screening results, problems and concerns, test results, psychiatric history, assessments, evaluations, diagnoses, and plans for treatment (Justin's "Confidential Patient Information").
37. Lauren took this highly personal, sensitive, and confidential information about Justin, and she shared it with Anna.
38. Among other things, Lauren told Anna about medications that Justin was taking, and medications which he had taken in the past. Because Lauren is a nurse practitioner, with medical knowledge, and with access and reference to the Confidential Patient Information, she told Anna about why these medications were prescribed. Lauren gave Anna details about Justin's mental health conditions. Lauren told Anna about the side effects of Justin's prescription medications, including side effects such as potential mania and mood swings, among other things.

39. Lauren told Anna that Justin would need to be on these medications for life, and that they made him too unstable to be around small children. This was false information.
40. Anna took this Confidential Patient Information obtained from Lauren and SC House Calls, and she began to tell people about it.
41. Anna shared Justin's Confidential Patient Information with her parents, Defendants Bryan Coggeshall and Katherine Coggeshall ("Bryan" and "Katie").
42. Defendants Bryan and Katie are well-connected, influential people in the community.
43. Bryan and Katie shared Justin's Confidential Patient Information with members of the community, including parents and relatives of children that Justin coached in his Driver Development position with Palmetto Speedshop.
44. Bryan and Katie told members of the community that Justin was taking drugs.
45. Anna is a first-grade teacher at a local school, and she knows many parents in the community.
46. Anna told parents of the children that Justin coached in his Driver Development position with Palmetto Speedshop that Justin was on drugs that made him unstable.
47. Anna told other people in the community, including those involved in the racing industry, that Justin was on drugs that made him unstable.

48. Anna also told local parents, and other members of the community, that Justin was physically abusive. This is untrue.
49. The rumors spread.
50. Community parents, having learned of Justin's Confidential Patient Information from Anna, Bryan, and Katie, began to go to Justin's boss at Palmetto Speedshop and express their concerns about Justin's purported drug use and instability. (Ex. 1).
51. Anna, Bryan, and Katie had spread these sorts of rumors about Justin before, but the rumors were given new life, credibility, and urgency by Lauren's dissemination of Justin's Confidential Patient Information, which she accessed through the SC House Calls database.
52. The concerned parents, who were the customers of Palmetto Speedshop, were worried about Justin being around young children due to concerns related to the Confidential Patient Information that they had learned from Anna, Bryan, and Katie, as well as the lies about physical abuse.
53. Because the parents of the young children coached by Justin were so worried, Justin's boss at Palmetto Speedshop felt that he had no choice but to remove Justin from his position as a Driver Development Coach and return him to his warehouse position, although he nonetheless believed Justin to be an exemplary employee. (Ex. 1).
54. Palmetto Speedshop reduced Justin's annual salary to \$38,000—a massive reduction from the \$107,000/year that he was earning as a coach. (Ex. 1).

55. Justin has been financially and emotionally devastated, as well as mortified, by the disclosure of his Confidential Patient Information by Defendants Lauren and SC House Calls.
56. Justin has been financially and emotionally devastated by the rumors circulated about him by Anna, Bryan, and Katie, which were fueled by Confidential Patient Information improperly divulged by Lauren and SC House Calls.
57. The unauthorized and improper disclosure of Justin's Confidential Patient Information by the Defendants has destroyed Justin's reputation within the community, such that it will be very difficult—or impossible—for Justin to return to his career as a youth coach.

Part 2, The Destruction of Justin's Relationship with his Child

58. The allegations above and below are repeated herein verbatim.
59. As the reader may recall, Justin has a little three-year-old daughter with Defendant Anna, although he and Anna were never married.
60. Several years ago, Justin and Anna litigated and received a court-ordered Child Custody and Child Support Agreement.
61. Family Court litigation is expensive, time consuming, and emotionally taxing, and Justin was relieved, mentally and financially, when a final order and agreement were in place.
62. Anna was represented in the Family Court case by an attorney named Melissa Frazier, Esq., of Defendant Frazier Law Firm, P.C.

63. The judge who presided over the case and entered the Final Order was the Honorable Jan B. Bromell Holmes. She is not a party to this litigation.
64. For over a year, Justin and Anna harmoniously abided by the terms of the Final Order.
65. But, in or around the summer of 2021, Anna learned from Lauren about Justin's Confidential Patient Information stored within the SC House Calls database.
66. At that time, Lauren was in the beginning stages of divorce from Justin, which Anna encouraged. Anna told Lauren, as well as Lauren's family, that Justin was a terrible person.
67. Lauren told Anna, based on the Confidential Patient Information she accessed within the SC House Calls patient database, that Justin was too unstable to care for a child.
68. Anna told Lauren that she wanted to reduce Justin's visitation rights with his daughter. Anna and Lauren agreed that now was a good time to do so, since Justin was not in a position to afford a lawyer (because, among other things, they had caused Justin to lose his hard-won position as a Driver Development Coach). They strategized, planning to wait on him to run low on money and then hit him with a legal attack that he could not afford.
69. Anna talked to her parents, Defendants Bryan and Katie, about her desire to deprive Justin of visitation rights with his little girl.
70. Defendants Bryan and Katie dislike Justin.

71. Bryan, Katie, and Anna developed a plan to curtail Justin's visitation rights.

But they could not accomplish their plan alone.

72. Bryan is friends with Defendant Thomas Buckhannon ("Tommy"). Tommy is an officer with the South Carolina Department of Natural Resources ("SCDNR"), and Bryan is an avid boater.

73. Tommy is married to Defendant the Honorable Melissa Emery Buckhannon ("Judge Buckhannon").

74. Judge Buckhannon is a resident Family Court Judge for Horry County.

75. Bryan and Katie had numerous conversations with Tommy about Justin, in which they told Tommy, falsely, that Justin was a bad parent who was violating his child custody agreement with Anna. Bryan and Katie told Tommy these – and numerous other falsehoods about Justin – with a design to defame Justin in the eyes of Tommy and Judge Buckhannon.

76. On several occasions, Bryan and Katie urged Tommy to talk to his wife, Judge Buckhannon. Bryan and Katie asked Tommy to have Judge Buckhannon intervene on Anna's behalf within the Family Court system, and to help reduce or deprive Justin of his visitation rights.

77. Tommy assured Bryan and Katie that he would get Judge Buckhannon involved.

78. This is where the narrative should have stopped. Judge Buckhannon should not have entertained any information at all from Tommy, Bryan, or Katie about a Family Court case.

79. But Judge Buckhannon listened to Tommy talk at length about Justin and Anna. Tommy conveyed to her false information about Justin's violation of his child custody agreement, and his unfitness to parent the child.
80. Judge Buckhannon should not have acted on this information.
81. But Judge Buckhannon called up attorney Melissa Frazier of Defendant Frazier Law Firm, whom Judge Buckhannon knew represented Anna in her Family Court litigation against Justin.
82. Frazier Law Firm had nearly closed its file on the matter because Judge Jan Bromell Holmes had issued her Final Order over a year prior.
83. Judge Buckhannon told Frazier Law Firm numerous false details about Justin, including that Justin was violating his custody agreement with Anna. Among other advice, Judge Buckhannon urged Frazier Law Firm to return to court on Anna's behalf.
84. Judge Buckhannon's conversations with attorney Melissa M. Frazier, Esq., of Frazier Law Firm were **highly inappropriate** *ex parte* communications, and they *per se* caused Justin harm.
85. Frazier Law Firm knew that it should not engage in highly inappropriate *ex parte* communications with Judge Buckhannon, or with any judge whatsoever.
86. But Frazier Law Firm disregarded its ethical obligations. Instead, Frazier Law Firm chose to act to gain an unfair advantage for itself in its representation of Anna, to the detriment of Justin.

87. Among other things, Frazier Law Firm called up Anna and advised her that her father, Bryan, should not talk too much with Tommy and Judge Buckhannon, because then Frazier Law Firm and Anna might not be able to appear before Judge Buckhannon in court. Frazier Law Firm explained that this would be bad, because they might instead get a “bad judge” (like Judge Bromell Holmes, who entered the previous order), or an unknown visiting judge.
88. With the encouragement of Judge Buckhannon, who was acting at the urging of her husband Tommy, as well as Anna’s parents Bryan and Katie, Frazier Law Firm prepared to return to court to recommence litigation on Justin and Anna’s Final Order and Custody Agreement. Frazier Law Firm sent a letter to Justin in anticipation of this litigation.
89. Justin had no choice but to retain an attorney to defend against new and untrue allegations. This has been to his financial detriment.
90. Justin now worries constantly that he will lose his rights to see his little girl.
91. On his lesser salary, Justin worries constantly that he will face penalties if he cannot pay child support.
92. Justin is devastated to know that a Family Court Judge would intervene to assist a single party in a custody battle.
93. Justin is shocked and deeply unsettled to learn that Frazier Law Firm would act to keep secret its client’s advantageous relationship with a judge, and its own *ex parte* communications with that judge.

94. Because of Judge Buckhannon's and Frazier Law Firm's actions, Justin is now suspicious and untrusting of the Family Court system, and he has lost faith that it will fairly and impartially interpret and apply the law.
95. Justin has been experiencing, and continues to endure, extreme emotional and financial distress because of the Defendants' actions.
96. Justin's distress is taking an enormous mental and physical toll on him.

FIRST CAUSE OF ACTION

(Civil Conspiracy)

**Against: Defendants Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall,
and SC House Calls, Inc.**

97. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
98. As set forth above, Defendants Anna Coggeshall, Lauren Trent Fulmer, individually and as an employee of SC House Calls, SC House Calls, Inc., Bryan Coggeshall, and Katherine Coggeshall together engaged in a scheme of defaming Justin, including by unlawfully disseminating Justin's private and Confidential Patient Information to members of the community, causing Justin damages.
99. Defendants' concerted purposes were intentionally designed to injure Justin, including by embarrassing him, causing him to lose his position as a Driver Development Coach, rendering him incapable of working in his chosen career, destroying his reputation in the community, and otherwise harming him professionally and personally.

100. The conspiracy achieved much of its intent, as set forth above, including by causing Justin to lose his position and income, and by publicly humiliating him.
101. As such, Justin has been damaged by these Defendants' combined actions, including but not limited to by Justin's loss of his high-paying job, loss of his future earning power as a youth coach, loss of his chosen career, loss of his good reputation in the community, mental anguish, and numerous additional damages to be proven at trial, including attorney's fees.
102. Justin is entitled to actual damages, currently estimated to be well over Two Million Dollars, as well as punitive damages from these Defendants, and to his attorney's fees and the costs of this action.

**SECOND CAUSE OF ACTION
(Civil Conspiracy)**

**Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katie Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and Frazier Law Firm, P.A.**

103. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
104. As set forth above, Defendants Anna Coggeshall, Lauren Trent Fulmer, Bryan Coggeshall, Katie Coggeshall, Thomas Buckhannon, Melissa Emery Buckhannon, Esq., and Frazier Law Firm, P.A., together engaged in a scheme of collecting and spreading false information about Justin's purported ability to raise and interact with his young daughter.
105. Defendants' concerted purposes included the intent to injure Justin,

including by harming his relationship with his daughter and harming his ability to raise and spend time with his daughter.

106. The conspiracy achieved much of its intent, as set forth above, including by compromising and jeopardizing Justin's ability to raise and spend time with his daughter, and embroiling him in additional costly litigation of a Family Court case that had already been settled and resolved.

107. As such, Justin has been damaged by these Defendants' combined actions, including but not limited to by the accumulation of attorney's fees necessary to maintain visitation with his daughter, mental anguish, and for the cost and fees of the prosecution of this lawsuit.

108. Justin is entitled to actual and punitive damages from these Defendants, and to attorney's fees and the cost of this this action.

**THIRD CAUSE OF ACTION
(Defamation)**

**Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
and Melissa Emery Buckhannon, Esq.**

109. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

110. As described above, each of these Defendants made false and defamatory statements about Justin, including about his medical condition, his purported behavior while on medication, his purported inability to work with children, his purported drug use, his alleged physical abusiveness, his purported instability, his alleged impropriety or inadequacy in performing his trade or

profession, his purported violation of his custody agreement, and other matters discussed herein.

111. The defamatory statements were made (published) with actual or implied malice to numerous people within the community by each of these Defendants.
112. The publication of the false statements caused, and continues to cause, harm to Justin, including shame, mortification, loss of his livelihood and earning power, mental anguish, loss of reputation, and other damages to be proven at trial.
113. Justin is entitled to actual damages, currently estimated to be well over Two Million Dollars, and punitive damages from each of these Defendants.

FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and SC House Calls, Inc.

114. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
115. As discussed above, each of these Defendants intentionally and/or recklessly spread false rumors and/or revealed confidential information about, *inter alia*, Justin's medical condition, fitness for his work, drug use, purported physical abusiveness, and ability to care for his young daughter.
116. In doing so, each of these Defendants intentionally or recklessly inflicted severe emotional distress on Justin or were certain or substantially certain that

such distress would result from their conduct.

117. The actions of each of these Defendants was so extreme and outrageous as to exceed all possible bounds of decency.
118. Each of these Defendants' actions, including deliberately spreading false rumors, engaging in verboten *ex parte* communications, and divulging deeply personal medical information, all were atrocious and utterly intolerable in a civilized community.
119. The actions of each of these Defendants caused, and are causing, Justin extreme emotional distress.
120. The emotional distress suffered by Justin is so severe as not to be endured by a reasonable person.
121. Justin is entitled to actual and punitive damages from each of these Defendants.

FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and SC House Calls, Inc.

122. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
123. As discussed above, each of these Defendants negligently spread false rumors and/or revealed confidential information about, *inter alia*, Justin's medical condition, fitness for his work, drug use, purported physical abusiveness, and ability to care for his young daughter.

124. In doing so, each of these Defendants negligently inflicted severe emotion distress on Justin.
125. The actions of each of these Defendants was so extreme and outrageous as to exceed all possible bounds of decency.
126. Each of these Defendants' actions, including deliberately spreading false rumors, engaging in verboten *ex parte* communications, and divulging deeply personal medical information, all were atrocious and utterly intolerable in a civilized community.
127. The actions of each of these Defendants caused, and are causing, Justin emotional distress.
128. The emotional distress suffered by Justin is so severe as not to be endured by a reasonable person.
129. Justin is entitled to actual and punitive damages from each of these Defendants.

**SIXTH CAUSE OF ACTION
(Breach of Confidentiality)
Against Defendants SC House Calls, Inc.
and Lauren Trent Fulmer**

130. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
131. A confidential relationship existed and exists between Justin and SC House Calls and its employee Lauren Trent Fulmer.
132. These Defendants possessed, and continue to possess, Justin's Confidential Patient Information, including his medical history and medical treatment, as

discussed above.

133. These Defendants improperly disclosed Justin's Confidential Patient Information to third parties, including to Defendant Anna, to Palmetto Speedshop customers, to parents of young children, and to other members of the community.
134. Justin did not consent to that disclosure, and there was no applicable privilege.
135. As a result, Justin has been damaged, and continues to suffer damages, as discussed above.
136. Justin is entitled to actual and punitive damages from these Defendants.

**SEVENTH CAUSE OF ACTION
(Negligence)
Against: Anna Coggeshall, Lauren Trent Fulmer,
and SC House Calls, Inc.**

137. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
138. Defendant Lauren Trent Fulmer is married to Justin.
139. Defendant Laurent Trent Fulmer is an employee and agent of SC House Calls, Inc.
140. As such, Lauren Trent Fulmer has a special relationship with, and a duty to, Justin.
141. Defendant Anna Coggeshall has a child with Justin and the two of them are jointly engaged in raising and parenting their child.
142. As such, Anna Coggeshall has a special relationship with, and a duty to,

Justin.

143. Justin is a customer of SC House Calls, which holds and maintains confidential medical and other information belonging to Justin.
144. As such, SC House Calls has a special relationship with, and a duty to, Justin.
145. These Defendants breached their duties to Justin as set forth above, including by (*inter alia*) obtaining and divulging his confidential information with the intent of harming his employment and relationship with his child, and by spreading false and damaging rumors to harm his employment and relationship with his child.
146. As a result of the breach of their duties, these Defendants have proximately caused damages to Justin, as described above.
147. Justin is entitled to actual damages from these Defendants.

**EIGHTH CAUSE OF ACTION
(Negligent Supervision)
Against: SC House Calls, Inc.**

148. The allegations above and below are incorporated into this cause of action as if set forth fully herein.
149. At all relevant times, SC House Calls, Inc., employed Lauren Trent Fulmer.
150. SC House Calls allowed Lauren Trent Fulmer access to confidential information within the possession, custody, or control of SC House Calls.
151. As her employer, SC House Calls had the ability and duty to supervise Lauren Trent Fulmer and to control, *inter alia*, her access to the information in

the possession, custody, or control of SC House Calls.

152. As described above, SC House Calls had possession, custody, and/or control of confidential medical and other information belonging to Justin.
153. SC House Calls allowed Lauren Trent Fulmer access to Justin's confidential information, and it did not have adequate restrictions in place to limit, or properly control access to, that confidential information.
154. SC House Calls knew, or should have known, of the necessity of exercising control over confidential medical and other information, including that belonging Justin.
155. SC House Calls improperly failed to supervise its employee Lauren Trent Fulmer, resulting in the numerous egregious actions and damages described herein.
156. Justin is entitled to actual and punitive damages from Defendant SC House Calls.

WHEREFORE, Justin requests that judgment be entered against Defendants Anna Coggeshall, Bryan Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer, Frazier Law Firm PC, SC House Calls, Inc., Thomas Buckhannon, and Melissa Emery Buckhannon, Esq., on all causes of action alleged against them, and that Plaintiffs be awarded:

- A. Actual damages;
- B. Consequential damages;

- C. Punitive damages;
- D. Pre-judgment and post-judgment interest;
- E. Attorney's fees and costs; and
- F. Such other and further relief as the Court and jury deem just and appropriate.

Respectfully submitted,

s/ William B. von Herrmann
William B. von Herrmann
S.C. Bar No. 15675
von Herrmann Law Firm
212 Elm Street
Conway, South Carolina 29526
(843) 488-1030

October 21, 2021
Conway, South Carolina

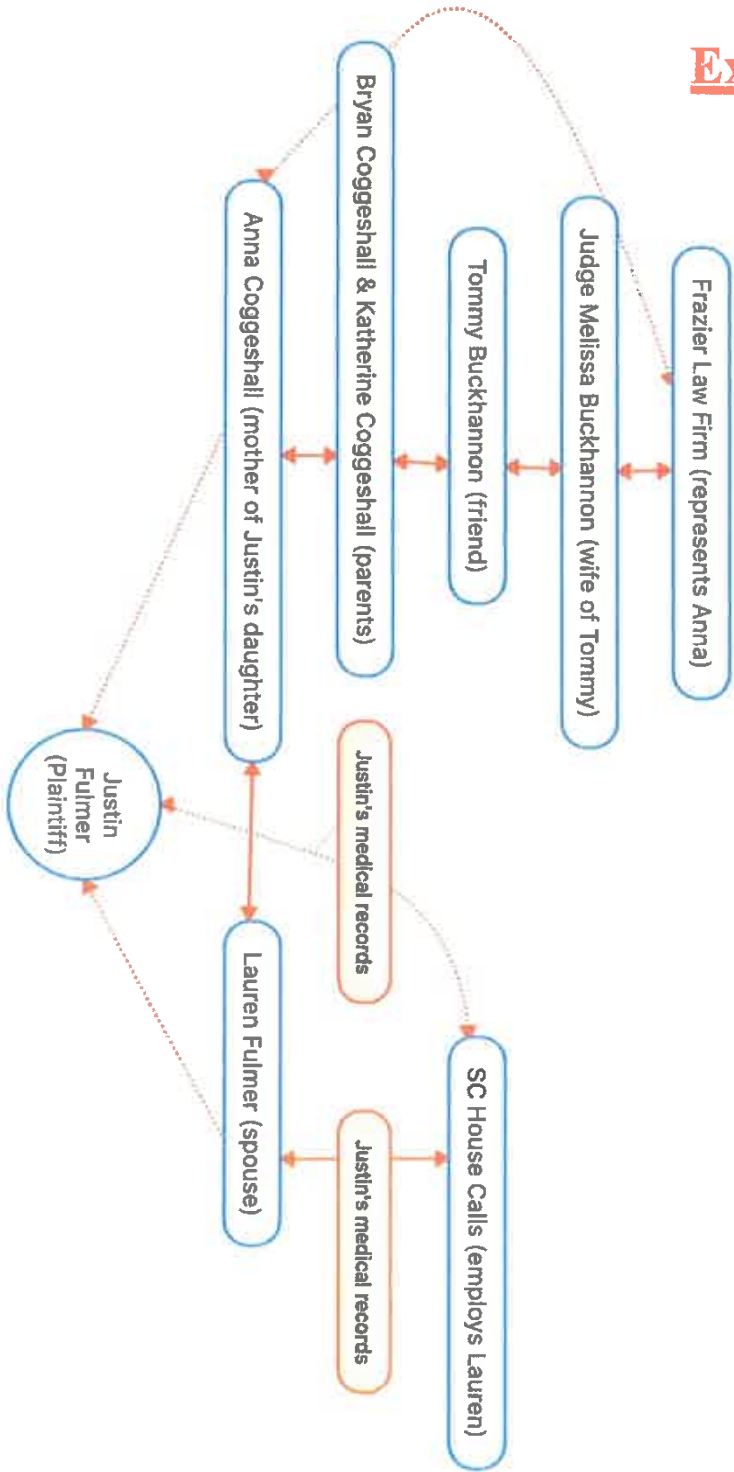
Exhibit 1

AFFIDAVIT OF MATTHEW THOMAS BRYANT

PERSONALLY APPEARED BEFORE ME, Matthew Thomas Bryant, who, after being duly sworn, deposes and states, under penalty of perjury:

1. My name is Matthew Thomas Bryant and I am the owner of Palmetto Speedshop, LLC, located in Conway, South Carolina. I have owned this business for 18 years. We service the dirt oval racing industry. My company sells parts, offers in-shop and at-track services.
2. Justin Fulmer began working for me in 2009 as warehouse manager with a salary of approximately 30,000.00 per year. His duties included shipping and receiving, purchase orders, and general labor. I knew Justin through the industry prior to my hiring him and had very good references.
3. In 2017, my company invested a substantial amount of money to learn driver development and coaching, which means we would be at race tracks coaching young drivers to refine their driving skills. A driver development coach works directly with drivers (ranging from ages 6-12) and mechanics (who are generally parents of the drivers). This issue has affected the income and profits of the company.
4. It took one year to learn the trade. In 2018, Justin began working with different teams and his salary was increased based on the customer base.
5. In 2019, Shane Mills, who, among many people, heard of the allegations from Bryan and Katherine Coggeshall, came to me and told me that he had heard that Justin was using drugs. I told him, and anyone else that brought this up, that Justin was not using drugs and for them not to worry about that. Customers were concerned because Justin worked closely with them and

Exhibit 2



Your Healthcare Experience

Call the TeleHealth Center at 1-800-491-0909 to request an appointment.

Care team members collect your information to coordinate your transition of care and promote collaboration.

An SC House Calls patient advocate will assist in entering information to complete your registration.

Once you are registered, our patient advocate will assist in scheduling a series of provider encounters at your convenience.

SC House Calls has the capability to offer telemedicine and in-person visits.

SC House Calls partners with lab and diagnostic services which can be performed in your home.

SC House Rx can deliver your medications directly to your doorstep.

Visit summaries can be viewed/shared with all of your healthcare providers and loved ones via the Patient Portal.

HAVE QUESTIONS? FIND ANSWERS

Frequently Asked Questions

Who are we?
 SC House Calls is a network of over 200 Nurse Practitioners, Physician Assistants, and Doctors who see just what a private resident is...

What we provide?

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

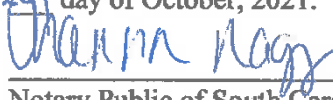
VERIFICATION

PERSONALLY appeared before me the Plaintiff in the foregoing action, who being duly sworn, deposes and says:

- (a) That this Deponent has read the allegations contained in the attached pleading.
- (b) That the attached pleading was prepared by this Deponent's attorney based upon information this Deponent has personally furnished to said attorney.
- (c) That the allegations contained in the attached pleading are true and correct, and are based upon the personal knowledge of this Deponent, except for those allegations which are based upon this Deponent's information and belief and, as to those, this Deponent verily believes the same to be true.
- (d) That this Deponent has authorized said attorney to file the attached pleading, to present the same to the court and secure any necessary Orders based thereon, and to secure service upon the adverse party of the attached pleading and necessary process based thereon.
- (e) That this Deponent understands that this Verification is sworn to and given under oath.


Justin Shayne Fulmer, Plaintiff

SWORN to before me this
20 day of October, 2021.



Notary Public of South Carolina

My Commission Expires 1-21-2030

Shannan Nagy

EXHIBIT

4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO.: 2021-CP-26-06975
Justin Shayne Fulmer)
Plaintiff,)
vs.)
Melissa Emery Buckhannon, Esq., Frazier) **AMENDED SUMMONS**
Law Firm P.C., SC House Calls, Inc., Anna) **(Jury Trial Demanded)**
Coggeshall, Bryan Coggeshall, Katherine)
Coggeshall, Lauren Trent Fulmer, and)
Thomas Buckhannon, Individually)
Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Amended Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/ William B. von Herrmann
William B. von Herrmann S.C.
Bar No. 15675
von Herrmann Law Firm
212 Elm Street Conway
South Carolina 29526
(843) 488-1030 Telephone
(843) 488-1035 Fax

April 6, 2022
Conway, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO.: 2021-CP-26-06975
Justin Shayne Fulmer)
Plaintiff,)
vs.)
Melissa Emery Buckhannon, Esq.,) **AMENDED COMPLAINT**
Frazier Law Firm P.C., SC House Calls, Inc.)
Anna Coggeshall, Bryan Coggeshall,)
Katherine Coggeshall, Lauren Trent Fulmer)
and Thomas Buckhannon,)
Defendants.)

Plaintiff, by and through his undersigned attorney, submits this Amended Complaint and alleges as set forth below.

PARTIES

1. Plaintiff Justin Shayne Fulmer ("Justin") is a citizen of South Carolina, who resides in Horry County, South Carolina.
2. Defendant Melissa Emery Buckhannon, Esq., is citizen of South Carolina, who resides in Horry County, South Carolina.
3. Defendant Lauren Trent Fulmer is a citizen of South Carolina, who resides in Horry County, South Carolina, and she is a South Carolina licensed nurse practitioner treating patients in Horry County, South Carolina.
4. Defendant SC House Calls, Inc., employs Defendant Lauren Trent Fulmer in Horry County, South Carolina. SC House Calls, Inc., is a South Carolina corporation doing business in Horry County, South Carolina.
5. Defendant Anna Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.

6. Defendant Bryan Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.
7. Defendant Katherine Coggeshall is a citizen of South Carolina, who resides in Horry County, South Carolina.
8. Defendant Frazier Law Firm, P.C., is a South Carolina corporation doing business in the State of South Carolina, including in Horry County, South Carolina.
9. Defendant Thomas Buckhannon is a citizen of South Carolina, who resides in Horry County, South Carolina and at all times during her involvement in this case she lacks jurisdiction or her conduct was outside of the judicial conduct.
10. The parties have known, had social engagements, and have been friends for approximately ten (10) years or more.

JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction over the claims in this lawsuit under Article V § 11 of the South Carolina Constitution and, inter alia, South Carolina Code §§ 14-5-350 et seq. and 15-7-10 et seq.
12. This Court has jurisdiction over the parties because they reside, own property, and do business in Horry County, and the actions alleged occurred in Horry County.
13. Venue is proper in this circuit under, inter alia, South Carolina Code § 15-7-30 et seq. because a substantial part of the events or omissions giving rise to the claim occurred in Horry County. This lawsuit involves the concerted effort by numerous people to damage the Plaintiff, Justin, including depriving him of his livelihood, his privacy, his reputation, and his three-year old child. Shockingly, many of the Defendants are in positions of power, which they have wielded to Justin's great detriment.

The Plaintiff believes the Defendant, Melissa Emery Buckhannon, Esq., did act without jurisdiction and not within the ordinary scope of her employment during the events giving rise to this action.

BACKGROUND FACTS SUPPORTING ALLEGATIONS

14. Justin has a little daughter, whom he dearly loves.

15. Justin has spent at least ten years gradually working his way up in the competitive and lucrative oval dirt-track racing industry. Justin got involved in the industry as a child, and it is a link for him to his auto-mechanic father, who died when Justin was 17 years old.

16. Since 2009, Justin has been employed by Palmetto Speedshop, LLC ("Palmetto Speedshop"). Palmetto Speedshop is not a party to this litigation.

17. Justin started out in Palmetto Speedshop's warehouse, handling the shipping and receiving of race car parts, fulfilling purchase orders, and performing general labor. Justin's annual salary for this warehouse position was approximately \$38,000/year. (Ex. 1, Affidavit of Matthew T. Bryant, incorporated herein by reference).

18. Justin was, and is, an exemplary employee. When Palmetto Speedshop began selecting people to learn driver development coaching, they included Justin in this opportunity. (Id.).

19. In 2017, Justin participated in a year-long training program, after which he was given the position of Palmetto Speedshop's Driver Development Coach. This position entailed Justin working with and coaching young drivers to refine their racing skills. Justin was working with children ages 6-12 years old, and he was great at it. (Id.).

20. As a Driver Development Coach, Justin earned approximately \$107,000/year. (Id.). This was a significant increase over his previous salary.

21. This lawsuit is about the damage negatively effecting Justin's career, emotional well-being, relationship with his daughter, finances, and reputation in the community, including infliction of emotional distress by a group of people acting in concert with intent to harm him, as well as separately, by their individual acts. Because there are so many Defendants involved, and it may get confusing for the reader, (Ex. 2) is a chart of the parties to this lawsuit.

22. The Plaintiff has shared with several Defendants the lack of familial support during his life as his father is deceased and his mother suffers from ailments causing virtually no supportive contact from her for over five (5) years.

23. The Defendants are aware and have exploited his need for stability in his professional and personal life.

24. Several years ago, Justin fathered a baby daughter out of wedlock with Defendant Anna Coggeshall ("Anna"). Justin and Anna have a court-ordered custody and child support agreement in place.

25. Anna does not like Justin and has done things to intentionally cause emotional harm using his child as a method to illicit unrest and benefit her position in litigation.

26. Anna has been actively working to destroy Justin's reputation, career, and relationship with his little daughter with whom she has intimate knowledge of his attachment.

27. Anna admitted that she listened and repeated lies that hurt the Plaintiff but she continued to repeat the lies. (Ex. 3)

28. But Anna has not been acting alone, having conspired with her other Co-Defendants presuming power and the resources of her parents.

Part 1, The Destruction of Justin's Livelihood and Reputation

29. Defendant Lauren Trent Fulmer ("Lauren") is in the midst of a divorce from Justin. Lauren is predisposed to wish ill against Justin and uses his extreme reduction of salary for her own benefit in litigation.

30. Lauren and Anna know each other, and they communicate frequently. They are united in their animosity toward Justin soliciting friends, family, attorneys and a judge's advice in an effort to "win".

31. Lauren is a registered nurse practitioner. As part of her duties, she has access to information not provided under the mandate of HIPAA protection.

32. Lauren is, or was, at all times relevant to this action, employed by Defendant SC House Calls, Inc. ("SC House Calls").

33. SC House Calls is a business that acts as a middleman, or broker, between patients and health care providers. SC House Calls provides "a network of over 250 Nurse Practitioners, Physician Assistants, and Doctors who see patients in private residences . . . or via Telemedicine throughout the State of South Carolina." (Screenshot of SC House Calls website <https://schousecalls.com/about>, last accessed on October 19, 2021) and is subject to the laws and regulations of HIPAA and other state privacy laws.

34. SC House Calls performs patient intake and scheduling; it then connects patients with its network of healthcare providers. Defendant SC House Calls collects and maintains the confidential health records of its providers' numerous patients, whose medical records can be accessed by its network of patient providers at any time. A chart on its website gives an overview of the intake process and the services that SC House Calls provides patients in private residences

... or via Telemedicine throughout the State of South Carolina.” (Exhibit 3, screenshot of SC House Calls website <https://schousecalls.com/about>, last accessed on October 19, 2021).



35. Defendant SC House Calls maintains a database, which contains all of its patients’ confidential information, including but not limited to its patients’ personal and confidential:

- provider treatment charts,
- social histories,
- medical histories,
- records of physician visits,
- results of physical examinations,
- lists of prescription medications,
- family histories,
- sexual histories,
- demographic information,
- screening results,
- problems and concerns,
- test results,
- psychiatric histories,
- assessments,
- evaluations,
- diagnoses, and
- plans for treatment.

However, SC House Calls, Inc. failed to use proper protocols to limit or transfer records covered under legislation such as HIPAA.

36. Justin while he has been a patient with SC House Calls, Inc. in the past and relied on them to maintain his records and protect his privacy as a medical warehouse under accepted governmental regulations and their stated policy, in belief that the information was collected only to assist in health-related concerns. This later proved not to be the case in so much as his medical records kept for storage were released without permission to unauthorized individuals causing him harm. This was foreseeable by SC House Calls, Inc.

37. SC House Calls, Inc. maintains within its database confidential medical information about Justin, which was gained from its providers' healthcare relationship with him over the course of many years. Justin's information and records could be accessed by healthcare providers acting in the course and scope of their employment with SC House Calls, Inc.

38. As an employee of SC House Calls, Lauren is capable of accessing its database containing confidential patient information. This access is inconsistent with the HIPAA Regulations and the Release as well as properly accessing the information.

39. Lauren accessed Justin's confidential information taken from in SC House Calls' database and shared the information with other Co-Defendants.

40. Justin's confidential information includes his provider treatment charts, social history, medical history, records of physician visits, results of physical examinations, lists of prescription medications, family history, sexual history, demographic information, screening results, problems and concerns, test results, psychiatric history, assessments, evaluations, diagnoses, and plans for treatment (Justin's "Confidential Patient Information").

41. Lauren took this highly personal, sensitive, and confidential information about Justin, and she shared it with Anna. Such information was obtained in the course and scope of her employment but was used outside of the course and scope of her employment.

42. Among other things, Lauren told Anna about medications that Justin was taking and medications which he had taken in the past. Because Lauren is a nurse practitioner, with medical knowledge and with access and reference to the Confidential Patient Information, she told Anna about why these medications were prescribed. Lauren gave Anna details about Justin's mental health conditions. Lauren told Anna about the side effects of Justin's prescription medications, including side effects such as potential mania among other things.

43. Lauren told Anna that Justin would likely need to be on medications and treatment for life, and that the medications made him too unstable to be around small children. This information was false.

44. Anna took this Confidential Patient Information obtained from Lauren and SC House Calls, Inc. and she disseminated this information to Justin's friends, family, other individuals, his employer and people who hire his employer.

45. Anna shared Justin's Confidential Patient Information with her parents, Defendants Bryan Coggeshall and Katherine Coggeshall ("Bryan" and "Katie") who used the information to cause harm to Justin. This was a calculated decision which was foreseeable by Defendant SC House Calls, Inc. Instead of limiting the access, no action was taken.

46. Defendants Bryan and Katie are well-connected, influential people in the community and have developed relationships, including a business relationship with Co-Defendant, Thomas Buckhannon, an employee of SCDNR while acting outside of the scope of his employment possessing the same knowledge and training, and husband to Co-Defendant, Melissa Emery Buckhannon.

47. Bryan and Katie shared Justin's Confidential Patient Information with members of the community, both known and unknown, including parents and relatives of children that Justin coached in his Driver Development position with Palmetto Speedshop.

48. Bryan and Katie told members of the community that Justin was taking drugs and had a violent past, among other things.

49. Anna is a paid teacher at a local school, where she and Justin's child attends, and she knows many parents in the community. She repeatedly violated the Plaintiff's privacy regarding his health information and alleged he was unstable mentally.

50. Anna told parents of the children that Justin coached in his Driver Development position with Palmetto Speedshop that Justin was on drugs that made him unstable, and that he had conditions that he did not have.

51. Anna also told local parents and other members of the community that Justin was physically abusive and had been in fights and had a bad temper. This is also untrue.

52. The rumors spread quickly causing additional harm to the Plaintiff in social circles and professional arenas.

53. Community parents, having learned of Justin's Confidential Patient Information from Anna, Bryan, and Katie, began to go to Justin's boss at Palmetto Speedshop and express their concerns about Justin's purported drug use and instability. (Ex. 1).

54. Anna, Bryan, and Katie took great pride in spreading these rumors about Justin before, but the rumors were given new life, credibility, and urgency by Lauren's dissemination of Justin's Confidential Patient Information, which she accessed through the SC House Calls Inc.'s database.

55. The concerned parents, who were the customers of Palmetto Speedshop, were worried about Justin being around their younger children due to concerns related to the Confidential Patient Information that they had learned about from Anna, Bryan, and Katie, as well as the lies about physical abuse.

56. Because the parents of the young children coached by Justin became worried and he was losing his market share, Justin's employer at Palmetto Speedshop felt that he had no choice but to remove Justin from his position as a Driver Development Coach and return him to his warehouse position, although he nonetheless believed Justin to be an exemplary employee. (Ex. 1).

57. Palmetto Speedshop reduced Justin's annual salary to \$38,000—a massive reduction from the \$107,000/year that he was earning as a coach. (Ex. 1).

58. Justin has been financially and emotionally devastated, as well as mortified, by the disclosure of his Confidential Patient Information by Defendants Lauren and SC House Calls, Inc.

59. Justin has been financially and emotionally devastated by the rumors circulated about him by Anna, Bryan, and Katie, which were fueled by Confidential Patient Information improperly divulged by Lauren and SC House Calls, Inc.

60. The unauthorized and improper disclosure of Justin's Confidential Patient Information by the Defendants has destroyed Justin's reputation within the community, such that it will be very difficult for Justin to return to his career as a youth coach.

Part 2, The Destruction of Justin's Relationship with his Child

61. The allegations above and below are repeated herein verbatim and should be used or interpreted as involved in the allegations.

62. As the reader may recall, Justin has a little three-year-old daughter with Defendant Anna, Coggeshall although he and Anna were never married.
63. Several years ago, Justin and Anna were involved in litigation which culminated in a final order which approved a Child Support Agreement.
64. Family Court litigation is expensive, time consuming, and emotionally taxing, and Justin was relieved, mentally and financially, when a final order and agreement were in place.
65. Anna was represented in the Family Court case by an attorney named Melissa Frazier, Esq., of Defendant Frazier Law Firm, P.C.
66. The judge who presided over the case and entered the Final Order was the Honorable Jan B. Bromell Holmes. She is not a party to this litigation.
67. For over a year, Justin and Anna abided by the terms of the Final Order. During this time Anna, along with Co-Defendants, developed a plan to disrupt the agreement filed with the Court.
68. In or around the summer of 2021, Anna learned from Lauren about Justin's Confidential Patient Information stored within the SC House Calls, Inc.'s database.
69. At that time, Lauren was in the beginning stages of divorce from Justin, which Anna encouraged Lauren and inflamed her as Anna told Lauren, as well as Lauren's family, that Justin was a terrible person with many life-long issues that required treatment.
70. Lauren told Anna, based on the Confidential Patient Information she accessed within the SC House Calls, Inc.'s patient database, that Justin was too unstable to care for a child.
71. Anna told Lauren that she wanted to reduce Justin's visitation rights and gain more control over their daughter. Anna and Lauren discussed a plan for the best time to do so, since Justin was not in a position to afford a lawyer (because, among other things, they had caused Justin to lose his hard-won position as a Driver Development Coach, losing approximately \$8,000.00 per

month in salary). They strategized, planning to wait on him to run low on money and with the help of the Frazier Law Firm, P.C., bring an action to modify the Agreement entered into by the parties.

72. Anna talked to her parents, Defendants Bryan and Katie, about her desire to deprive Justin of visitation rights with his young daughter and a plan to accomplish this endeavor was deployed and put into action involving the other Co-Defendants when necessary.

73. Defendants Bryan and Katie dislike Justin and were more than happy to use their financial help, and personal resources, along with Thomas Buckhannon and Melissa Emery Buckhannon as they also wanted to spend more time with and have greater influence over the minor child.

74.. Bryan, Katie, and Anna developed a plan to curtail Justin's visitation rights but, they could not accomplish their plan alone.

75. Bryan is friends with Defendant Thomas Buckhannon ("Tommy"). Tommy is an officer with the South Carolina Department of Natural Resources ("SCDNR"), and Bryan is an avid boater.

76. Tommy is married to Defendant The Honorable Melissa Emery Buckhannon ("Judge Buckhannon"). Defendant Tommy Buckhannon understands and is trained to not involve himself in cases he has no interest in and not to *ex parte* Judges or to utilize his wife's position for personal gain or for the granting of favors.

77. Judge Buckhannon has practiced in Family Court for many years and as an attorney and in judicial capacity.

78. Bryan and Katie had numerous conversations with Tommy about Justin, in which they told Tommy, falsely, that Justin was a bad parent who was violating his child custody agreement with Anna. Bryan and Katie told Tommy these—and numerous other falsehoods about Justin—with a

design to defame Justin in the eyes of Tommy and his wife, Melissa Emery Buckhannon who was friends with some of the Co-Defendants.

79. On several occasions, Bryan and Katie urged Tommy to talk to his wife, Judge Buckhannon. Bryan and Katie asked Tommy to have Judge Buckhannon intervene on Anna's behalf within the Family Court system, a request for which her jurisdiction did not control, the best way to help reduce or deprive Justin of his visitation rights.

80. Tommy assured Bryan and Katie that he would get Judge Buckhannon involved acting outside the scope of his employment and interfered with a case that she could have presided over.

81. This is where the narrative should have stopped. Judge Buckhannon should not have entertained any information at all from Tommy, Bryan, or Katie about a plan or potential family court case. Instead, she, acted outside of the course and scope of her duties.

82. Judge Buckhannon listened to Tommy talk at length about Justin and Anna. Tommy conveyed to her false information about Justin's violation of his child custody agreement and his unfitness to parent the child.

83. Plaintiff has seven (7) text messages from July 27, 2021, pertaining to the above. Additional documentation will be provided if necessary.

84. Tommy has had a long history of untruthfulness as he was terminated in 2006 from the Dorchester County Sheriff's Office for being untruthful while a law enforcement official. Moreover, as an officer of the court, Tommy Buckhannon has failed in fulfilling his obligation as defined in Kyles v. Whitley, 514 U.S. 419 (1995).

85. Defendant Buckhannon should not have acted personally and professionally on this information and should have formally recused herself immediately.

86. Defendant Buckhannon called Attorney Melissa Frazier of Defendant Frazier Law Firm, P.C. whom Melissa Emery Buckhannon knew represented Anna in her Family Court litigation against Justin and the plan was made to review the Final Order Custody Agreement.

87. There was no motion, issue or contention that came before Judge Buckhannon or other family court judge. However, after being prodded by her husband, a likely business partner of the Defendant's family, she used her position in contravention of the Rules of Ethics and the Tort Claims Act, causing the Frazier Law Firm, P.C., to provide advice, clear up misperceptions conspired to hear this matter. At no time did she indicate she would recuse herself. In fact, she indicated that she would be willing to hear the matter. The friendship of the parties was greater than the ethical behavior of Frazier Law Firm, P.C., and Defendant Buckhannon.

88. Frazier Law Firm, P.C. had nearly closed its file on the matter because Judge Jan Bromell Holmes had issued her Final Order over a year prior.

89. Defendant Buckhannon told Frazier Law Firm, P.C. numerous details, some false or exaggerated, about Justin, including that Justin was violating his custody agreement with Anna. Among other advice, Judge Buckhannon urged Frazier Law Firm, P.C. to return to court on Anna's behalf, provided information *ex parte* outside of the course and scope of her employment, but developed a plan so she could act within the scope of her duties as a Judge to affect the desired resolution of her and her husband's friends.

90. Judge Buckhannon's conversations with attorney Melissa M. Frazier, Esq., of Frazier Law Firm, P.C. were highly inappropriate *ex parte* communications, and they per se caused Justin harm. Members of Frazier Law Firm, P.C. also had inappropriate conversations with various Co-Defendants.

91. Frazier Law Firm, P.C. knew that it should not engage in highly inappropriate *ex parte* communications in violation of Canon 3(5), 7(a), et. seq., with Judge Buckhannon, or with any judge whatsoever. (Ex. 4)

92. Frazier Law Firm, P.C. disregarded its ethical obligations and South Carolina Code of Laws and instead, Frazier Law Firm, P.C. chose to act to gain an unfair advantage for itself in its representation of Anna, to the detriment of Justin, causing disrepute on the judiciary and practice of law.

93. Among other things, Frazier Law Firm, P.C. called Anna and advised her that her father, Bryan, should not talk too much with Tommy and Judge Buckhannon because then Frazier Law Firm, P.C. and Anna might not be able to appear before Judge Buckhannon in court. Frazier Law Firm explained that this would be bad, because they might instead get a “bad judge” (like Judge Bromell Holmes, who the previous consent order), or an unknown visiting judge. In other words, someone who would not have inside information would be willing to “help” Anna. In large part as the only African American Family Court Judge considering a higher office.

94. With the encouragement of Judge Buckhannon, acting outside of the ordinary course and scope of her employment, yet acting at the urging of her husband Tommy, as well as Anna’s parents Bryan and Katie, Frazier Law Firm, P.C. prepared to return to court to recommence litigation on Justin and Anna’s Final Order and Custody Agreement. Frazier Law Firm, P.C. sent a letter to Justin in anticipation of this litigation. Defendant Frazier Law Firm, P.C. encouraged, shared personal stories and assisted in the actions that have led to the expensive, unnecessary litigation and damages which the Plaintiff has been required to endure.

95. Justin had no choice but to retain an attorney and associate experts to defend against new and untrue allegations. This has been to his financial detriment just as the Defendants had planned.

96. Justin now worries about an uncertain future, that he will lose his rights to see his little girl, or be excluded from activities important to raising a child.

97. On his lesser salary of \$3,166.00 per month, Justin worries constantly that he will face penalties if he unable to support his child and provide for his daughter's future.

98. Justin is devastated to know that a Family Court Judge would intervene to assist a single party in a custody battle, to wit, calling opposing counsel and advising actions to be taken against him, working against his best interests and not maintaining judicial impartiality.

99. Justin is shocked and deeply unsettled to learn that Frazier Law Firm, P.C. would act to keep secret its client's advantageous relationship with a judge, and its own *ex parte* communications with that judge clearly in the hope that Judge Buckhannon would act inconsistent with her duties, of a Judge, and responsibilities and committing overt acts such as providing information to the Court.

100. Because of Judge Buckhannon's and Frazier Law Firm's actions, Justin is now suspicious and untrusting of the Family Court system, and he and many court observers have lost faith that it will fairly and impartially interpret and apply the law. A sad day for our judicial system.

101. Justin has been experiencing, and continues to endure, extreme emotional and financial distress because of the Defendants' actions individually and as a unified conspiracy. He has been a victim of bullying in Court by those with money and power in the current action. In particular, Judge Buckhannon has five (5) attorneys representing her alone while Justin struggles to pay bills and finance litigation costs at great personal expense.

102. Justin's distress is taking an enormous mental and physical toll on him as he has been forced to take a huge pay reduction and has remained largely unsupported by family.

FIRST CAUSE OF ACTION

(Civil Conspiracy)

**Against: Defendants Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall,
and SC House Calls, Inc.**

As in many civil conspiracy cases, it must be proven by direct evidence but relies on circumstantial evidence and results.

103. The allegations above and below are incorporated into this cause of action as if set forth verbatim herein in well pleaded facts.

104. As set forth above, Defendants Anna Coggeshall, Lauren Trent Fulmer, individually and as an employee acting sometimes within the scope of employment, of SC House Calls, SC House Calls, Inc., Bryan Coggeshall, and Katherine Coggeshall together engaged in a scheme of defaming Justin, including by unlawfully disseminating Justin's private and Confidential Patient Information to members of the community, thus causing Justin damages. This information was obtained by the illegal access of medical information pursuant to no valid HIPAA release. The harvesting of this information which was unauthorized, and obtained illegally, was one of many wrongful overt acts provable by circumstantial evidence.

105. Defendants' concerted purposes were intentionally designed to injure Justin, by embarrassing him, causing him to lose his position as a Driver Development Coach, rendering him incapable of working in his chosen career, destroying his reputation in the community, and otherwise harming him professionally and personally. He was defamed and accused of drug use and poor temperament, toward clients, causing him to lose the ability to make a gainful living.

106. The conspiracy achieved much of its intent, as set forth above, including causing Justin to lose his position and income, and publicly humiliating him through fraud and misrepresentation. The damages from this conspiracy exceeds \$1,000,000.00.

107. Justin has been damaged by these Defendants' combined actions, including, but not limited to, Justin's loss of his high-paying job, loss of his future earning power as a youth coach, loss of his chosen career, loss of his good reputation in the community, mental anguish, and numerous additional damages to be proven at trial, including attorney's fees.

All damages were the proximate cause of the co-conspirators acting against lawful possession. In typical fashion of judicial bullying, when the Defendant, Melissa Emery Buckhannon, through her attorney, authorized a threatening letter to Plaintiff's counsel in an attempt to scare the Plaintiff into a dismissal of the case. (Ex. 5) In addition, the Defendants having already proved their willingness to issue threats in an attempt to force the Plaintiff's lawyer to abandoned the Lawyer's Oath and not continue representation of Justin (Ex. 6).

**SECOND CAUSE OF ACTION
(Civil Conspiracy)**

**Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katie Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and Frazier Law Firm, P.C., SC House Calls, Inc.**

108. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

109. As set forth above, Defendants Anna Coggeshall, Lauren Trent Fulmer, Bryan Coggeshall, Katie Coggeshall, Thomas Buckhannon, Melissa Emery Buckhannon, Esq., and Frazier Law Firm, P.C., together engaged in a scheme of collecting and spreading false information about Justin's purported ability to raise and interact with his young daughter.

110. Defendants' concerted purposes included the intent to injure Justin, by harming his relationship with his daughter, harming his ability to raise and spend time with his daughter to wit: violation of privacy, defamation, breach of confidentiality, fraud and/or other lawful acts.

111. The conspiracy achieved much of its intent, as set forth above, including compromising and jeopardizing Justin's ability to raise and spend time with his daughter and embroiling him in additional costly litigation in Family Court.

112. The members of this conspiracy used several methods, including fraud and misrepresentation. The co-conspirators either knew or it was reasonably foreseeable that they were acting in a manner that caused significant damages. Furthermore, the Defendants committed overt acts of planning, recruited members to the conspiracy, including a law enforcement officer, targeting a law firm in committing unlawful acts, and hiring private investigators to harass or follow the Plaintiff for no reasonable purpose.

113. As such, Justin has been damaged by these Defendants' combined actions, including, but not limited to, the accumulation of attorney's fees necessary to maintain visitation with his daughter, mental anguish, for the cost and fees of the prosecution of this lawsuit.

114. Justin is entitled to \$2,000,000.00 in lost wages and actual and punitive damages from these Defendants, and attorney's fees and the cost of this this action.

**THIRD CAUSE OF ACTION
(Defamation)**

**Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
and Melissa Emery Buckhannon, Esq.**

115. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

116. As described above, each of these Defendants made false and defamatory statements about Justin, including about his medical condition, his purported behavior while on medication, his purported inability to work with children, his purported drug use, his alleged physical abusiveness, his purported instability, his alleged impropriety or inadequacy in performing his

trade or profession, his purported violation of his custody agreement, and other matters discussed herein.

117. The defamatory statements were made (published) with actual or implied malice to numerous people within the community by each of these Defendants.

118. The publication of the false statements caused, and continues to cause, harm to Justin, including shame, mortification, loss of his livelihood and earning power, mental anguish, loss of reputation, embarrassment, humiliation, damage to his reputation and other damages to be proven at trial. These actions eliminated his ability to maintain a salary commensurable to that which he earprior to the conspiring actions. Each and every action was assisted by, conducted with knowledge of criminal behavior or encouraged by members of Frazier Law Firm, P.C. Such overt acts did cause additional damages to be determined by a Jury in excess of \$1,000,000.00, not including damages sustained by other acts alleged within this document.

119. Justin is entitled to actual damages not included but in addition to in the conspiracy and punitive damages from each Defendant.

FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and SC House Calls, Inc.

120. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

121. As discussed above, each of these Defendants intentionally and/or recklessly spread false rumors and/or revealed confidential information about, inter alia, Justin's medical condition, fitness for his work, drug use, purported physical abusiveness, and inability to care for his young daughter.

122. In doing so, each of these Defendants intentionally or recklessly inflicted severe emotional distress on Justin or were certain, or substantially certain, that such distress would result from their conduct.

123. The actions of each of these Defendants were so extreme and outrageous as to exceed all possible bounds of decency.

124. Each of these Defendants' actions, including deliberately spreading false rumors, engaging in verboten *ex parte* communications, and divulging deeply personal medical information, were atrocious and utterly intolerable in a civilized community.

125. As discussed above, each of these Defendants negligently spread false rumors and/or revealed confidential information about, inter alia, Justin's medical condition, fitness for his work, drug use, purported physical abusiveness, and ability to care for his young daughter.

126. The actions of each of these Defendants caused, and are causing, Justin extreme emotional distress.

127. The emotional distress suffered by Justin is so severe as not to be endured by a reasonable person or by a reasonable person in the situation of the Plaintiff.

128. Justin is entitled to actual and punitive damages from each of these Defendants not awarded by the Jury for the conspiracy charge.

**FIFTH CAUSE OF ACTION
(Infliction of Emotional Distress)**

**Against: Anna Coggeshall, Lauren Trent Fulmer,
Bryan Coggeshall, Katherine Coggeshall, Thomas Buckhannon,
Melissa Emery Buckhannon, Esq., and SC House Calls, Inc.**

129. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

130. In doing so, each of these Defendants negligently inflicted severe emotion distress on Justin.

131. The actions of each of these Defendants were so extreme and outrageous as to exceed all possible bounds of decency.

132. Each of these Defendants' actions, including deliberately spreading false rumors, engaging in verboten *ex parte* communications, and divulging deeply personal medical information, were atrocious and utterly intolerable in a civilized community.

133. The actions of each of these Defendants caused, and are causing, Justin emotional distress.

134. The emotional distress suffered by Justin is so severe as not to be endured by a reasonable person.

135. Justin is entitled to actual and punitive damages from each of these Defendants separate and apart of the conspiracy on the case.

**SIXTH CAUSE OF ACTION
(Breach of Confidentiality)
Against Defendants SC House Calls, Inc.
and Lauren Trent Fulmer**

136. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

137. A confidential relationship existed and exists between Justin and SC House Calls, Inc. and its employee, Lauren Trent Fulmer.

138. The relationship was governed by spousal privilege but also as a medical provider.

139. These Defendants possessed, and continue to possess, Justin's Confidential Patient Information, including his medical history and medical treatment, as discussed above.

140. These Defendants improperly disclosed Justin's Confidential Patient Information to third parties, including to Defendant Anna, to Palmetto Speedshop customers, to parents of young children, and to other members of the community.

141. Justin did not consent to that disclosure, and there was no applicable privilege available to the Defendant.

142. As a result, Justin has been damaged, and continues to suffer damages, as discussed above.

143. The disclosure was made in contravention of HIPAA laws.

144. Justin is entitled to actual and punitive damages from these Defendants.

SEVENTH CAUSE OF ACTION

(Negligence)

**Against: Anna Coggeshall, Lauren Trent Fulmer,
and SC House Calls, Inc.**

145. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

146. Defendant Lauren Trent Fulmer is married to Justin and subject to all legal protection associated with that relationship.

147. Defendant Lauren Trent Fulmer is an employee and agent of SC House Calls, Inc.

148. As such, Lauren Trent Fulmer has a special relationship with, and a duty to Justin of confidentiality, privilege and adherence to the HIPAA standards. In the zeal to cause damage to and gain an advantage in proceedings, Defendants negligently abandoned all sentiments of decency.

149. Defendant Anna Coggeshall has a child with Justin and they are jointly engaged in raising and parenting their child.

150. As such, Anna Coggeshall has a special relationship with the Plaintiff and yet made a concerted effort to strengthen her position using Frazier Law Firm, P.C. to accomplish such tasks.

151. Justin is a customer of SC House Calls, Inc. which holds and maintains confidential medical and other information belonging to Justin. These records were mishandled and should not have been accessible.

152. As such, SC House Calls, Inc. has a special relationship with and a duty to the Plaintiff to protect his privacy, confidentiality and restrict access once illegally obtained without adequate permission.

153. These Defendants breached their duties to Justin as set forth above, including by, inter alia, obtaining and divulging his confidential information which was illegally obtained with the intent of harming his employment and relationship with his child, and by spreading false and damaging rumors to harm his employment and relationship with his child. It is foreseeable that the Defendants were negligent in the handling of Justin's records.

154. As a result of the breach of their duties, these Defendants have proximately caused damages to Justin as described above.

155. Justin is entitled to actual damages from these Defendants sufficient to make the Plaintiff as whole to as he was prior to disclosure.

**EIGHTH CAUSE OF ACTION
(Negligent Supervision Invasion of Privacy)
Against: SC House Calls, Inc.**

156. The allegations above and below are incorporated into this cause of action as if set forth fully herein.

157. At all relevant times, SC House Calls, Inc., employed Lauren Trent Fulmer.

158. SC House Calls, Inc. allowed Lauren Trent Fulmer access to confidential information within the possession, custody, or control of SC House Calls.

159. As her employer, SC House Calls, Inc. had the ability and duty to supervise Lauren Trent Fulmer and to control, inter alia, her access to the information in the possession, custody, or control of SC House Calls, Inc.

160. As described above, SC House Calls, Inc. had possession, custody, and/or control of confidential medical and other information belonging to Justin which was obtained by Defendants without adequate permission.

161. SC House Calls, Inc. allowed Lauren Trent Fulmer access to Justin's confidential information, and it did not have adequate restrictions in place to limit, or properly control access to that confidential information.

162. SC House Calls, Inc. knew, or should have known, of the necessity of exercising control over confidential medical and other information, including that belonging to Justin.

163. SC House Calls, Inc. improperly failed to supervise its employee Lauren Trent Fulmer, resulting in the numerous egregious actions and damages described herein.

164. Justin is entitled to actual and punitive damages from Defendant SC House Calls, Inc.

WHEREFORE, Justin requests that judgment be entered against Defendants Anna Coggeshall, Bryan Coggeshall, Katherine Coggeshall, Lauren Trent Fulmer, Frazier Law Firm PC, SC House Calls, Inc., Thomas Buckhannon, and Melissa Emery Buckhannon, Esq., on all causes of action alleged against them, and the Plaintiff be awarded:

A. Actual damages as requested by Jury in the amount of a combined amount of \$3,000,000.00 as determined by the Jury;

B. Consequential damages as awarded by the Jury;

C. Punitive damages;

D. Pre-judgment and post-judgment interest;

E. Attorney's fees and costs; and

F. Such other and further relief as the Court and jury deem just and appropriate.

In determining relief sufficient to financially settle the claim, the entities involved also possess special involvement in our system of justice. Frazier Law Firm, P.C., Judge Buckhannon and SCDNR Officer Tommy Buckhannon should be prohibited and/or punished for the lack of contrition, failure to show a modicum of grace and acceptance for their actions. They should be admonished and prohibited from engaging and using their positions of power for the purpose of bullying, and using the people's system of justice against the litigants. The Defendants have employed approximately fifteen (15) attorneys, likely unpaid, to obtain an advantage in litigation with meaning involvement, and rare if ever involved. They should be prohibited from using the Judicial System as a personal bully pit to air their grievances or profess their innocence in light of significant evidence while misrepresenting their involvement or acknowledging their involvement.

Respectfully submitted,

s/ William B. von Herrmann
William B. von Herrmann
S.C. Bar No. 15675
von Herrmann Law Firm
212 Elm Street
Conway, South Carolina 29526
(843) 488-1030 Telephone
(843) 488-1035 Fax

April 6, 2022
Conway, South Carolina

CERTIFICATE OF SERVICE

I, Shannon Nagy, an employee of von Herrmann Law Firm, certify the following document: **PLAINTIFF'S AMENDED SUMMONS AND AMENDED COMPLAINT** was served on counsel of record on the 6th day of April, 2022, electronically and by United States Postal Service first class mail and electronic mail, addressed as follows:

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111 Witcover Street
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Marion, SC 29571
pjj@rellawfirm.com

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George N. Spirakis, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
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Attorney for SC House Calls, Inc.

David B. Marvel, Esq.
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Facsimile: 843-773.4877
dave@marvel.lawyer

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kbarth@bblawsc.com

*Attorney for Frazier Law Firm P.C./Melissa
Frazier*

Andrew F. Lindemann, Esq.
Lindemann & Davis, P.A.
5 Calendar Court
Columbia, SC 29206

Attorney for Melissa Emery Buckhannon

Shannon Nagy

Shannon Nagy

Conway, South Carolina

EXHIBIT

5

From: Keri Hannon <Keri.Hannon@whitinglawsc.com>
Sent: Thursday, April 7, 2022 10:49 AM
To: Bert von Herrmann <bvhlaw00@gmail.com>
Cc: s abrams <steve@abramsforensics.com>; Amanda Bailey <abailey@burr.com>; Andrea <atata@clawsonandstaubes.com>; Andrew Lindemann <andrew@ldlawsc.com>; Betsy Atkinson <eba@rellawfirm.com>; C Kennedy <ckennedy@rogerslewis.com>; Chris Nickels <chris@cslaw.com>; Christine Badami <CBadami@burr.com>; Christopher Nickels <cnickels@clawsonandstaubes.com>; Christy <cgraves@bblawsc.com>; David B. Marvel <dave@marvel.lawyer>; George N. Spirakis <GeorgeSpirakis@wwpemplaw.com>; Hayes K. Stanton <hstanton@bellamylaw.com>; Jenkins M. Mann <jmann@rogerslewis.com>; Kenneth R. Moss <KennethMoss@wwpemplaw.com>; Kevin M. Barth <kbarth@bblawsc.com>; Richard L. Snyder <RichardSnyder@wwpemplaw.com>; Robert E. Lee <rel@rellawfirm.com>; Shannon <snagy@vhlf.myfirm.pro>; Shaun C. Blake <sblake@rogerslewis.com>
Subject: RE: Fulmer vs. Buckhannon, et al

Bert:

While I was not present at the motion hearing before Judge Cordell Maddox, it is my understanding that he is allowing you to withdraw your claim of Negligent Infliction of Emotional Distress as to all parties. It is my understanding that his order does not give you the ability to modify your Complaint in any other regard. If you insist that your Complaint will not be amended to comply with Judge Maddox's Order, then I will have no choice but to join in a Motion to Strike these new allegations.

I would also particularly call your attention to your new paragraph 83 where you indicate that there are seven (7) text messages from July 27, 2021 that you believe are pertinent to your above outlined allegations. How were those text messages secured? Were they interceptions or were they recovered in violation of the Stored Communications Privacy Act? Are those additional messages, which need to be forwarded on to the Court of Appeals to be considered with their order to suppress, illegally obtained communications? Do not provide those text message to me if they were illegally obtained as sharing the contents of any illegally obtained electronic communications would be a separate and distinct violation of the state and federal law. I know you are aware of that. If these are not illegally obtained text messages, who are they from and to? Please provide them with the consent of one of those parties.

Please let me know if you will agree to withdraw this Amended Complaint or if I need to file my Motion to Strike.

I look forward to hearing from you.

Very truly yours,

Richard G. Whiting
Law Offices of Richard G. Whiting
1515 Lady Street
Post Office 7877
Columbia, SC 29202
(803) 256-9067

8/4/22, 12:28 PM

Fwd: Fulmer vs. Buckhannon, et al - memery6903@gmail.com - Gmail

(803) 256-0223 (fax)
dick.whiting@whitinglawsc.com

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail, and delete the original message.

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ELECTRONICALLY FILED - 2023 Nov 16 10:54 AM - Horry - COMMON PLEAS - CASE#2022CP2606296

EXHIBIT

6



William B. von Herrmann, Esquire†
bvhlaw00@gmail.com

†Certified Civil Court Mediator
†Certified Family Court Mediator

Heather S. von Herrmann, Esquire
hvh@vhlf.myfirm.pro

April 7, 2022

VIA E-MAIL & U.S. MAIL

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Kevin M. Barth, Esq.
Barth, Ballenger and Lewis, LLP
P. O. Box 107 (29503)
205 N. Irby Street
Florence, SC 29501

Re: Justin Fulmer vs. Melissa Emery Buckhannon, et al

Dear Counsel:

In keeping with our continuing duty to disclose, enclosed please find the following:

- Photographs of Anna Coggeshall without the iWatch;
- Chat with Apple Support and Copy of iWatch Serial # GJ9DV3YGI5X0;
- Photographs of text messages referenced in Paragraph 83 of the Plaintiff's Amended Complaint.

Please be advised that the Plaintiff is disclosing the following expert:

Shanna Perry @ SJPerry Consulting, 28 Smokewood Drive, Elgin, SC 29045; Resume and report enclosed.

Please feel free to contact me with any questions. Thank you.

Sincerely,

VON HERRMANN LAW FIRM



William B. von Herrmann
WBvH/sn
Enclosures

EXHIBIT

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) CIVIL ACTION NO.: 2021-CP-26-06975
Justin Shayne Fulmer)
Plaintiff,)
vs.)
Melissa Emery Buckhannon, Esq.,)
Frazier Law Firm P.C., SC House Calls, Inc.)
Anna Coggeshall, Bryan Coggeshall)
Katherine Coggeshall, Lauren Trent Fulmer)
and Thomas Buckhannon,)
Defendants.)

**STIPULATION OF DIMISSAL
WITHOUT PREJUDICE
(As to Plaintiff's Amended
Complaint dated April 6, 2022)**

NOW COMES THE PLAINTIFF, by and through his attorney, William B. von Herrmann, and hereby dismisses without prejudice his Amended Complaint only that was e-filed with the Court on April 6, 2022.

VON HERRMANN LAW FIRM

s/William B. von Herrmann
William B. von Herrmann
SC Bar #15675
Attorney for Defendant
212 Elm Street
Conway, South Carolina 29526
843-488-1030
843-488-1035 (facsimile)
bvhlaw@aol.com

Dated: April 19, 2022
Conway, South Carolina

CERTIFICATE OF SERVICE

I, Shannon Nagy, an employee of von Herrmann Law Firm, certify the following document: PLAINTIFF'S STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO PLAINTIFF'S AMENDED COMPLAINT DATED APRIL 6, 2022 was served on counsel of record on the 19th day of April, 2022, electronically as follows:

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Shannon Nagy

Conway, South Carolina

EXHIBIT

8

October 25, 2021

ROBERT E. LEE

REL@RELLAWFIRM.COM

T: (843) 423-1313

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William B. von Herrmann, Esq.
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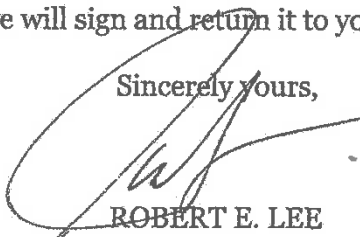
VIA U.S. MAIL & E-MAIL (BVHLAW00@GMAIL.COM)

Re: *Justin Shayne Fulmer v. Melissa Emery Buckhannon, Esq., et al.*
Civil Action No.: 2021-CP-26-6975

Dear Bert:

This letter is to advise you that Kenneth R. Moss, Esq., and I will be representing the Defendants, Melissa Emery Buckhannon, and Thomas Buckhannon in this matter. From this point, please direct all correspondence, etc. regarding this matter to Ken and me. The Buckhannons are currently out of State on a family vacation and have authorized either Ken or me to accept service on their behalf. I would appreciate you directing your process server to serve the Summons & Complaint at either Ken's office or mine or forward an Acceptance of Service to either of us and we will sign and return it to you.

Sincerely yours,



ROBERT E. LEE

REL:eba

cc: Kenneth R. Moss, Esq.
Melissa Emery Buckhannon, Esq.
Mr. Thomas Buckhannon
(All Via E-Mail Only)

ROBERT E. LEE, LLC
ATTORNEY - AT - LAW

111 WITCOVER STREET
MARION, SC 29571

MAILING ADDRESS
POST OFFICE BOX 1096
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FLORENCE MARION NORTH MYRTLE BEACH

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	DEFENDANTS' REPLY TO
Plaintiffs,	)	PLAINTIFF'S RESPONSE TO MOTION
	)	FOR RECONSIDERATION
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
	)	

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel, file this Reply to Plaintiffs' Response to Defendants' Motion for Reconsideration.

ARGUMENT

Plaintiffs' Response to the Motion for Reconsider makes two things clear: Plaintiffs are concerned about the application of attorney-immunity to the Homeland Security Act *civil* claim, and Plaintiffs continue to misunderstand attorney-immunity and misconstrue authorities deciding the application of the defense to wiretap-related claims. This Court should reconsider its order and grant the motion to dismiss.

I. This Court should disregard Plaintiffs' first argument because it is procedurally improper, but it does demonstrate Plaintiffs' concern the defense applies to their claims and runs counter to their assertion the defense would immunize attorneys as a class from criminal prosecution.

A party cannot raise an issue or argument for the first time in a Rule 59(e) motion. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (finding argument statute of limitations should be tolled was not presented until Rule 59(e) motion and, accordingly, could not be considered); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (stating a party cannot raise an issue for the first time via Rule

59(e) motion that could have been raised previously); *see also Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”).

This includes a prohibition on presenting additional evidence within a Rule 59(e) motion. *See Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding a financial form attached to a Rule 59(e) motion and not previously submitted could not be considered on appeal).

In their response Plaintiffs submit arguments and evidence for the first time, which is impermissible at the motion for reconsideration stage. They argue for the first time that Defendants were personally motivated to bring the Fulmer Lawsuit to punish their political rivals. They submit Judge Buckhannon’s affidavit and her exhibits in support of the argument. Plaintiffs then state, based on this personal motivation against other non-parties, Defendants owed a duty to the Plaintiffs. It is improper to submit at the motion for reconsideration stage additional evidence or argument and this Court should not consider Plaintiffs’ arguments or “evidence.” Even if this Court considered those arguments, any personal motivation of Defendants against a non-party could not, as a matter of law, give rise to a duty to Plaintiffs.

Instead, Plaintiffs’ arguments establish they are concerned that the attorney-immunity defense applies to the SC Homeland Security Act: for there would be no reason to allege Defendants were personally motivated or include that information in a threatened amended complaint if the defense did not apply.

In addition, Plaintiffs misconstrue the Court of Appeals ruling in the Fulmer Lawsuit to the detriment of their credibility. In their Response, Plaintiffs assert the “Court of Appeals found that the lawsuit brought by Mr. von Herrmann and Defendants was entirely based upon information that Mr. von Herrmann and his client had illegally obtained from Plaintiff Anna

Coggeshall's stolen iWatch.” Defendants welcome this Court to review the Court of Appeals opinion Plaintiffs included and search for any language in that opinion that could be construed as Plaintiffs represent it to this Court. Once it fails to do so, this Court will understand how far it can trust Plaintiffs’ representations about the case facts and law. Accordingly, this Court should reconsider its Order, find the attorney-immunity defense applies under the Act and according to Plaintiffs’ current allegations, and dismiss the claim.

II. This Court should refuse to be swayed by Plaintiffs’ illogic and parade of horrors allegedly occurring if it recognizes attorney-immunity as a defense under the Act because Plaintiffs’ claims are civil, not criminal, and Defendants are not advocating for a license to kill.

Plaintiffs broadly assert Defendants are advocating the attorney-immunity defense applies to criminal statutes, and such a holding would make attorneys above the law in a way the legislature could never have imagined. This is false and mischaracterizes Plaintiffs’ own claim.

The attorney-immunity defense is a protection from civil liability to third parties for claims arising from the attorney’s representation of his or her client. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 530, 339 S.E.2d 887, 890 (Ct. App. 1986). It is not a protection from criminal prosecution. Even the Texas Supreme Court in *Taylor* recognized that the attorney-immunity defense does not shield from “sanctions, professional discipline, or criminal penalties.” *See Taylor v. Tolbert*, 644 S.W.3d 637, 646 (Tx. 2022). Although our courts have not decided whether the immunity defense could shield from criminal prosecution, the very first case recognizing the attorney-immunity doctrine recognized similar restrictions as in *Taylor*, such as that the defense would not shield the attorney from disciplinary proceedings or client-brought legal malpractice claims. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 530, 339 S.E.2d 887, 890 (Ct. App. 1986). Because the defense is similar to Texas’s defense, and our courts have already recognized exceptions beyond what are built into the defense itself, the defense would

not shield from criminal prosecution in South Carolina – and Defendants are not advocating for that position.

Second, although the underlying Act is criminal in nature, Plaintiffs’ claims are civil—attempting to impose civil liability against their opponent’s attorney. See S.C. Code Ann. Sec. 17-30-135 (entitled “Civil action for wrongful interceptions” and providing a person with a “civil cause of action”). If Plaintiffs’ contention that the statutes under which they proceed are criminal in nature, then they would be required to prove their claims “beyond a reasonable doubt,” rather than the civil standard of “by a preponderance of the evidence.” Defendants doubt Plaintiffs would agree to that much higher burden, demonstrating the illogic of their position. The criminal nature of the Act is inconsequential to the application of the defense to Plaintiff’s civil claims.

Shockingly, Plaintiffs characterize Defendants’ position on the attorney-immunity defense as a license to kill: “One could imagine a scenario where a Teflon coated attorney could be very helpful to one’s client in the commission of other criminal offenses. Obvious examples might be murder, arson or assault.” Defendants are not advocating for the defense to apply to criminal prosecution, which would be absurd. But the defense does apply to shield attorneys from the very civil liability Plaintiffs are attempting to impose on Defendants.

Finally, Plaintiffs attempt to distinguish *Taylor* by arguing that, unlike South Carolina, Texas has an “opt out” approach that automatically includes all common law defenses unless expressly excluded. Then Plaintiffs argue South Carolina does not follow that approach, and is more similar to the federal wiretap act that the *Taylor* Court found its attorney-immunity defense did not apply. This is both a false statement of South Carolina law, and a mischaracterization of *Taylor*. First, South Carolina follows the opt-out approach in everything except name only—it is merely the moniker given to the principle that the common law remains in effect unless changed

by clear and unambiguous legislative enactment, which applies in the criminal and civil contexts. *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993); *Futch v. McAllister Towing of Georgetown, Inc.*, 328 S.C. 312, 318, 491 S.E.2d 577, 580 (Ct. App. 1997).

Second, although the *Taylor* court held the Texas common law attorney immunity did not prevent suit under the Federal Wiretap Act, it did so only by first recognizing *state* common-law defenses do not apply to federal statutes. *Taylor*, 644 S.W.3d. at 653 (“We conclude that attorney immunity, as recognized and defined under Texas law, is not a defense under the federal wiretap statute because, quite simply, a state’s common-law defense does not apply to federal statutes.”). Further, Plaintiffs voluntarily dismissed the Federal Wiretap Act claim to deprive the federal court of jurisdiction.

Certainly, if any of Plaintiffs’ arguments were true that adopting attorney immunity in this scenario would be a get out of jail free card, or would elevate attorneys above the law and be bad public policy, the supreme court of one of the most populous states would not have arrived at the logical conclusion that attorney immunity applies to the civil claims related to wiretapping.

CONCLUSION

This Court should reconsider its order denying the motion to dismiss, reach the logical conclusion that the attorney-immunity defense applies to *civil* claims under the S.C. Homeland Security Act and dismiss Plaintiffs’ Homeland Security Act claim because Plaintiffs’ current complaint does not make allegations sufficient to hold Defendants acted outside the attorney-immunity defense. This Court should refuse to be persuaded by Plaintiffs’ factually, legally, and procedurally incorrect arguments and issue an order dismissing the entire case.

[SIGNATURE PAGE TO FOLLOW]

This 22nd day of November, 2023.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
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SKYLER C. WILSON
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2022-CP-26-06296
	)	
Anna Coggeshall; Bryan Coggeshall; and	)	
Katherine Coggeshall,	)	
	)	DEFENDANTS' SUPPLEMENTAL
Plaintiffs,	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION TO COMPEL
vs.	)	
	)	
William Bertram von Herrmann and The Von	)	
Herrmann Law Firm,	)	
	)	
Defendants.	)	
	)	

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel, submit this supplemental response to Plaintiffs' Motion to Compel.

PROCEDURAL BACKGROUND

Plaintiffs filed their Motion to Compel on August 1, 2023, requesting the Court compel Defendants to respond to Plaintiffs Interrogatories, served April 25, 2023. At the time of the Motion to Compel, Defendants' Motion to Dismiss Plaintiffs' complaint in its entirety was pending and, therefore, Defendants had not responded to Plaintiffs' discovery requests.

Subsequently, the Court granted in part and denied in part Defendants' Motion to Dismiss, leaving the only remaining cause of action one for violation of the South Carolina Homeland Security Act. The order on the motion to dismiss was filed on November 2, 2023, and it found that the attorney-immunity doctrine did not apply to claims arising under the Homeland Security Act. **See Ex. A (11.2.23 Order)**. On November 6, 2023, Defendants submitted responses to Plaintiffs' Interrogatories and Requests for Production. Defendants filed a Memorandum in Opposition to Plaintiffs' Motion to Compel on November 11, 2023, which is incorporated herein by reference.

Since Defendants submitted their Memorandum in Opposition, however, there have been developments in this case and the Underlying Case (*Fulmer v. Buckhannon, et al.*, Case No.: 2021-CP-26-06975) of which the Court should be aware. In the present case, Defendants moved the Court to reconsider its order on the motion to dismiss, specifically, the finding that the attorney-immunity doctrine did not apply to claims under the Homeland Security Act. Judge Curtis heard oral arguments and issued an email ruling denying the motion on January 9, 2024, requesting Plaintiffs' counsel prepare a proposed order for Judge Curtis's review and signature. **See Ex. B.** Plaintiffs' counsel has circulated a proposed order, but it does not appear to have been filed or provided to Judge Curtis for her review and signature.

The Underlying Case was tried the week of November 27, 2023, resulting in a verdict against Mr. Fulmer that was subsequently entered on December 5, 2023. The parties filed post-trial motions, including Ms. Coggeshall's Motion to Reconsider and Mr. Fulmer's Motion for a New Trial, both of which were denied on February 16, 2024. On February 16, 2023, the Court also entered the following orders: (1) an order denying Mrs. Buckhannon's motion for sanctions, (2) an order affirming the punitive damages award, and (3) an order awarding Anna Coggeshall's attorney's fees. Mrs. Buckhannon moved to reconsider the order denying sanctions, and Mr. Fulmer moved to reconsider the Court's award of attorney's fees. Those two motions are still pending as of March 7, 2024.

Subsequent Developments' Impact on Motion to Compel

Given that the Underlying Case has been tried and is in the post-trial motion stage, there has been some impact on Defendants' arguments against the motion to compel, but that impact is minimal. Defendants primarily argue that the Motion to Compel should be denied because it is moot—it is asking the Court to compel Defendants to respond to discovery requests and Defendants have responded to the requests. That argument is unchanged by the status of the Underlying Case. If Plaintiffs wish to challenge the substance of the responses, they will need to

identify any deficiencies in the responses, attempt to resolve any alleged deficiencies with Defendants pursuant to Rule 11, and then move to compel based on any remaining disagreement over the substance of the responses. Thus, the motion to compel should still be denied.

In the event the Court addresses the substance of the responses, Defendants also argue the motion to compel should be denied because (1) it blatantly requests attorney-client privileged and work-product material; (2) is an improper use of discovery to gain a strategic advantage in the Underlying Case; and (3) under Plaintiffs' theory of the case, Plaintiffs are attempting to compel Defendants and their counsel to violate the Homeland Security Act by using or disclosing the allegedly intercepted text messages in discovery.

Arguments 1 and 3 above are not impacted by the status of the Underlying Case and remain valid grounds to deny the motion to compel. Argument 2, however, has been minimally impacted. As outlined in Defendants' November 11, 2023 memorandum, Plaintiffs' discovery requests ask for information relevant to the Underlying Case, apparently seeking to use discovery in this case to achieve a strategic advantage in the Underlying Case—an improper use of discovery. Although the Underlying Case has been tried, there remains concern that discovery in this case could be used to gain an advantage in certain post-trial motions in the Underlying Case. For example, any motions still viable under Rule 60, SCRCF. Thus, although any information obtained now cannot be used at trial for the Underlying Case, it could still be used in post-trial motions and, therefore, the “improper purpose” is still present.

In addition, because the Underlying Case was tried, Plaintiffs' interrogatories that request information expressly related to the claims in the Underlying Case (Interrogatories 10, 11, and 12) are objectionable as outside the scope of discovery and not reasonably calculated to lead to the discovery of admissible evidence in this case.

Finally, the issue of attorney-immunity's application to claims arising under the Homeland Security Act has been finally decided and has significant impacts on Defendants' and

their counsel's ability to participate in litigation, including discovery. Attorney-immunity typically applies to prevent third parties from imposing civil liability upon attorneys for actions taken in conducting litigation. *See Garr v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528–29, 339 S.E.2d 887, 889 (Ct. App. 1986) (“The attorney normally conducts the litigation solely in his professional capacity. . . . In his professional capacity the attorney is not liable . . . for injury allegedly arising out of the performance of his professional activities.”). Under normal circumstances, attorneys would be immune from claims by a third party arising out of that attorney's actions taken on behalf of a client, which would include initiating or defending litigation and participating in discovery. The immunity doctrine will prevent third-party claims against the attorney that, by the attorney litigating a case, the attorney is liable for malicious prosecution, abuse of process, conspiracy, or invasion of privacy, etc. *See Kozel v. Kozel*, 299 F. Supp. 3d 737, 753-58 (D.S.C. 2018); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Here, however, the Court decided that attorney immunity does not apply to claims under the Homeland Security Act, and there are no exceptions noted in the order. **See Ex. A.** Therefore, if Defendants and their counsel's actions run afoul of the Homeland Security Act while defending and litigating this case, it could give rise to a claim against them under the Act.

Defendants and their counsel running afoul of the Act is not merely a possibility, but a significant probability considering Plaintiffs' claims against Defendants in this case and the requested discovery. The Act defines as “prohibited acts” intentionally using or disclosing the contents of an intercepted communication. *See* S.C. Code Ann. § 17-30-20(3)-(4). Plaintiffs allege that Defendants violated the Act by “using” the communications to file suit, and that publishing the contents would constitute a “use.” **Amnd. Compl ¶¶ 7-8.** Further, Plaintiffs' counsel has taken the position that sharing the messages in discovery would be a violation of the Homeland Security Act. **See Ex. 3 to Defs'11.11.23 Memo** (emailing Mr. von Herrmann in the

Underlying Case that sharing the allegedly intercepted communications with Plaintiffs' counsel would be a separate and distinct violation of the Act).

In the present case in discovery, Plaintiffs request Defendants to send the same information to them that, by their logic, would violate the Act. Interrogatory 2 asks Defendants to list the photographs of the allegedly intercepted messages. The requests for production ask Defendants to send copies of the messages to Plaintiffs. If Defendants and their counsel were to respond with that information, under Plaintiffs' theory it would amount to a separate and distinct violation of the act by "using" and "disclosing" the contents of the communications. Plaintiffs' discovery is inviting Defendants and their counsel to violate the Act. Because responding more fully to Plaintiffs' discovery requests could violate the Act under Plaintiffs' theory of the case, this Court should deny Plaintiffs' motion to compel.

CONCLUSION

In sum, Defendants rely on their prior Memorandum in Opposition to the Motion to Compel with the differences noted above and request this Court deny Plaintiffs' motion to compel as moot or, in the event the Court addresses the substance of the requests, deny the motion to compel because it requests attorney-client and work-product privileged information, invites potential violations of the Act, and there is potential the discovery could be used for the improper purpose of securing strategic advantage in post-trial motions in the Underlying Case.

This 8th day of March, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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DOUGLAS W. MACKELCAN
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SKYLER C. WILSON
State Bar No.: 102865
Counsel for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
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Anna Coggeshall; Bryan Coggeshall; and	)	
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This 8th day of March, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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By: s/Skyler C. Wilson
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Counsel for Defendants

From: [Curtis, Kristi F.](#)
To: [Wilson, Skyler C.](#); [Curtis, Kristi F. Law Clerk \(Gulie Moore\)](#)
Cc: [Dick.whiting@whitinglawsc.com](#); [Steven Abrams](#); [Mackelcan, Douglas W.](#); [Moran, Rosie](#)
Subject: RE: Case No.: 2022-CP-26-06296 - Coggeshall v. Von Herrmann - Motion to Reconsider
Date: Tuesday, January 9, 2024 4:54:59 PM
Attachments: [image001.png](#)

Some people who received this message don't often get email from kcurtisj@sccourts.org. [Learn why this is important](#)

Dear all: After further review of the Motion to Reconsider in this matter, the Defendant's motion is respectfully denied. I recognize that this is a novel issue of law in South Carolina, but I am persuaded by the reasoning in Plaintiffs' original Reply to Defendant's Motion to Dismiss, filed May 7, 2023. The statute is very broad in scope. It mirrors the federal wiretap act in many respects, in that it prohibits the interception of electronic communication as well as the disclosure of the disclosed information. The South Carolina statute also expressly prohibits any evidence derived from intercepted communication from being entered into evidence in any trial, hearing, or other proceeding before any court. §17-30-65. Furthermore, the only exception for court proceedings is set forth in section 17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings only. The statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute. I find it illogical that the legislature would specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family matters. I further find that it would be illogical for the legislature to prohibit a *pro se* individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing the individual's attorney to take the exact same actions with absolute immunity.

I am asking Plaintiffs' attorneys to please draft a proposed order denying the Motion to Reconsider and circulate it to all attorneys of record before e-filing it for my review and signature.

Thank you,
 Kristi Curtis

From: Wilson, Skyler C. <swilson@csvg.law>
Sent: Friday, December 1, 2023 10:30 AM
To: Curtis, Kristi F. <kcurtisj@sccourts.org>; Curtis, Kristi F. Law Clerk (Gulie Moore) <kcurtislc@sccourts.org>
Cc: Dick.whiting@whitinglawsc.com; Steven Abrams <steve@abramsforensics.com>; Mackelcan, Douglas W. <dmackelcan@csvg.law>; Moran, Rosie <rmoran@csvg.law>
Subject: RE: Case No.: 2022-CP-26-06296 - Coggeshall v. Von Herrmann - Motion to Reconsider

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning Judge Curtis,

Please find attached Defendants' Reply to Plaintiffs' Response to the Motion to Reconsider. Defendants request a hearing on the motion if the Court is inclined to grant a hearing.

Respectfully,

Skyler



Skyler C. Wilson

Attorney

d: 843.266.8221 | f: 843.727.2995

swilson@csvl.law | www.csvl.law

40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Steven Abrams <steve@abramsforensics.com>

Sent: Thursday, November 16, 2023 3:39 PM

To: Wilson, Skyler C. <swilson@csvl.law>; Curtis, Kristi F. <kcurtisj@sccourts.org>; Curtis, Kristi F. Law Clerk (Gulie Moore) <kcurtislc@sccourts.org>

Cc: Dick.whiting@whitinglawsc.com; Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>

Subject: RE: Case No.: 2022-CP-26-06296 - Coggeshall v. Von Herrmann - Motion to Reconsider

Judge Curtis

Please find attached a copy of Plaintiffs' Reply to Defendants' Motion to Reconsider and our exhibits. We filed this today. If your honor would prefer a paper copy, I will gladly send you one.

Respectfully Submitted,

Steven Abrams

Steven M. Abrams, J.D., M.S.

Attorney at Law / Digital Forensics Examiner

Abrams Cyber Law & Forensics, LLC

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The contents of this email are confidential and may be a legally privileged communication. This email is intended to be read only by the addressed recipient. If you have received this communication in error, please delete it immediately.

From: Wilson, Skyler C. <swilson@csvg.law>
Sent: Monday, November 13, 2023 1:08 PM
To: Curtis, Kristi F. <kcurtisj@sccourts.org>; Curtis, Kristi F. Law Clerk (Gulie Moore) <kcurtislc@sccourts.org>
Cc: Dick.whiting@whitinglawsc.com; Steven Abrams <steve@abramsforensics.com>; Mackelcan, Douglas W. <dmackelcan@csvg.law>; Moran, Rosie <rmoran@csvg.law>
Subject: Case No.: 2022-CP-26-06296 - Coggeshall v. Von Herrmann - Motion to Reconsider

Good afternoon Judge Curtis,

Please find attached a copy of Defendants' motion to reconsider, which we filed November 10th, 2023. We are providing you a copy pursuant to Rule 59(g), SCRPC. If your honor would prefer a paper copy, our office would be happy to mail you a copy instead.

Respectfully,

Skyler



Skyler C. Wilson

Attorney

d: 843.266.8221 | f: 843.727.2995

swilson@csvg.law | www.csvg.law

40 Calhoun Street, Suite 400, Charleston, SC 29401

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

|                                          |   |                                    |
|------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS       |
|                                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY                          | ) | CASE NO.: 2022-CP-26-06296         |
|                                          | ) |                                    |
| Anna Coggeshall; Bryan Coggeshall; and   | ) |                                    |
| Katherine Coggeshall,                    | ) |                                    |
|                                          | ) | <b>DEFENDANTS' MOTION FOR</b>      |
| Plaintiffs,                              | ) | <b>RECONSIDERATION</b>             |
|                                          | ) |                                    |
| vs.                                      | ) |                                    |
|                                          | ) |                                    |
| William Bertram von Herrmann and The Von | ) |                                    |
| Herrmann Law Firm,                       | ) |                                    |
|                                          | ) |                                    |
| Defendants.                              | ) |                                    |
|                                          | ) |                                    |

---

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel, move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for a reconsideration of the this Court's March 20, 2024 Order granting Plaintiffs' Motion to Compel. See Exhibit 1.

Plaintiffs filed their Motion to Compel on August 1, 2023, requesting the Court compel Defendants to respond to Plaintiffs Interrogatories, served April 25, 2023. At the time of the Motion to Compel, Defendants' Motion to Dismiss Plaintiffs' Complaint in its entirety was pending and, therefore, Defendants had not responded to Plaintiffs' discovery requests.

Subsequently, the Court granted in part and denied in part Defendants' Motion to Dismiss, leaving the only remaining cause of action, one for violation of the South Carolina Homeland Security Act. The order on the motion to dismiss was filed on November 2, 2023, and it found that the attorney-immunity doctrine did not apply to claims arising under the Homeland Security Act. On November 6, 2023, Defendants submitted responses to Plaintiffs' Interrogatories and Requests for Production. Defendants filed a Memorandum in Opposition to Plaintiffs' Motion to Compel on November 11, 2023, which is incorporated herein by reference. In that memorandum, Defendants argued that the Motion to Compel was moot because

Defendants had responded to the requests and Plaintiffs had not disputed any of the substance of the responses. Defendants also contested the substance of many of the requests. Defendants supplemented their argument with an additional memorandum in opposition prior to the hearing on the Motion to Compel, which was scheduled for March 19, 2024.

This Court heard the Motion to Compel on March 19, 2024. During the hearing, counsel for Plaintiff discussed postponing the motion to allow them to review Defendants' discovery responses, working with Defendants' counsel to cure any alleged deficiencies, and returning to court via a motion to compel if necessary at a later date. As Defendants' counsel recalls, the Court indicated that proceeding in that fashion would be acceptable and it would enter an order to that effect. The following morning, however, the Court entered an order granting the motion to compel without any further explanation.

After the Order was entered, Defendants counsel contacted Plaintiffs' counsel to try and resolve the discrepancy between what the parties agreed to and the Court's order. See Exhibit 2. Plaintiffs' counsel did not indicate they agreed with Defendants' counsel about the hearing, and Defendants' counsel remains concerned that the order may be used against Defendants to compel responses over Defendants' objections to the substance of some of the requests, or be used to support a rule to show cause.

Because the order granting Plaintiffs' motion to compel does not reflect what the parties discussed at the hearing on March 20, 2024, and Defendants and Plaintiffs could not reach an agreement on the effect of the order, Defendants request this Court reconsider its March 20, 2024 order and deny Plaintiffs' motion to compel with leave to refile or without prejudice. This would prevent the order from being used in a manner not intended by the Court or parties, and avoid potential future disputes.

*[SIGNATURE PAGE TO FOLLOW]*

This 1st day of April, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400  
Charleston, SC 29401  
[dmackelcan@csvg.law](mailto:dmackelcan@csvg.law)  
[swilson@csvg.law](mailto:swilson@csvg.law)  
Ph: 843-727-0307

By: s/Skyler C. Wilson  
DOUGLAS W. MACKELCAN  
State Bar No.: 76332  
SKYLER C. WILSON  
State Bar No.: 102865  
***Counsel for Defendants***

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2022CP2606296

Anna Coggeshall et al  
 PLAINTIFF(S)

William Bertram Von Herrmann et al  
 DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

Plaintiff, Anna Coggeshall's Motion/Compel Discovery is Granted.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/19/2024 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

## Court Reporter:

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

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ELECTRONICALLY FILED - 2024 Mar 20 8:11 AM - HORRY - COMMON PLEAS - CASE#2022CP2606296  
ELECTRONICALLY FILED - 2024 Apr 01 4:12 PM - HORRY - COMMON PLEAS - CASE#2022CP2606296



Horry Common Pleas

**Case Caption:** Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann ,  
defendant, et al  
**Case Number:** 2022CP2606296  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED

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

Electronically signed on 2024-03-19 12:29:50 page 3 of 3

ELECTRONICALLY FILED - 2024 Mar 20 8:11 AM - HORRY - COMMON PLEAS - CASE#2022CP2606296  
ELECTRONICALLY FILED - 2024 Apr 01 4:12 PM - HORRY - COMMON PLEAS - CASE#2022CP2606296

**Wilson, Skyler C.**

**From:** Steven Abrams <steve@abramsforensics.com>  
**Sent:** Monday, April 1, 2024 9:56 AM  
**To:** Wilson, Skyler C.; Dick Whiting  
**Cc:** Moran, Rosie; Mackelcan, Douglas W.; Rewt, Teri J.  
**Subject:** Re: Coggeshall v. Von Herrmann - upcoming hearing

Skyler

I am in court right now. I'll look at it with Dick this afternoon. Thank you for reminding us.

Best Regards

Steve

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---

**From:** Wilson, Skyler C. <swilson@csvl.law>  
**Sent:** Monday, April 1, 2024 8:03:19 AM  
**To:** Steven Abrams <steve@abramsforensics.com>; Dick Whiting <Dick.whiting@whitinglawsc.com>  
**Cc:** Moran, Rosie <rmoran@csvl.law>; Mackelcan, Douglas W. <dmackelcan@csvl.law>; Rewt, Teri J. <trewt@csvl.law>  
**Subject:** RE: Coggeshall v. Von Herrmann - upcoming hearing

Good morning Steve and Dick,

I have not heard back from you on the matter below. Please read my email below and let me know what your position on this order is by 3:00 p.m. today. My recollection is that you all are going to identify what you believe are deficiencies in the discovery responses, we will try to work it out, and then we will go back to court if necessary. The order could be misconstrued because it simply grants your motion.

I am trying to save us all costs and fees by resolving this now and avoiding a dispute down the road. However, I must file a motion for reconsideration today if you disagree. If you do not let me know by 3:00 p.m., I'll assume that you all disagree with my assessment and a motion to reconsider is necessary.

Best regards,

Skyler



**Skyler C. Wilson**

**Partner**

d: 843.266.8221 | f: 843.727.2995

[swilson@csvl.law](mailto:swilson@csvl.law) | [www.csvl.law](http://www.csvl.law)

40 Calhoun Street, Suite 400, Charleston, SC 29401

---

**From:** Wilson, Skyler C. <swilson@csvl.law>  
**Sent:** Wednesday, March 20, 2024 9:14 AM  
**To:** Steven Abrams <steve@abramsforensics.com>; Dick Whiting <Dick.whiting@whitinglawsc.com>  
**Cc:** Moran, Rosie <rmoran@csvl.law>; Mackelcan, Douglas W. <dmackelcan@csvl.law>  
**Subject:** RE: Coggeshall v. Von Herrmann - upcoming hearing



Steve and Dick,

I've attached Judge Seals Form 4 order that he just filed as a result of your motion to compel, in which he simply grants the motion.

This wording is not what we discussed and agreed to with Judge Seals, which was that you all would identify specific deficiencies you believe exist in Defendants' discovery responses and file an amended motion to compel if we cannot work out those deficiencies. The correct way to deal with it was either to moot/deny the motion as written, or just grant a continuance to allow the parties to work it out. An order granting the motion is confusing.

Memories fade over time and I do not want you all to use this Form 4 order as support for obtaining discovery from us. Please confirm for me your understanding that we are proceeding as outlined above, i.e., that you will identify what you believe are deficiencies, we will try to work out what we can, and you will file an amended motion if necessary. If you disagree and intend to rely on Judge Seal's order, let me know so I can contact Judge Seals and/or file a motion for reconsideration.

Best regards,

Skyler



**Skyler C. Wilson**

**Partner**

d: 843.266.8221 | f: 843.727.2995

[swilson@csvl.law](mailto:swilson@csvl.law) | [www.csvl.law](http://www.csvl.law)

40 Calhoun Street, Suite 400, Charleston, SC 29401

---

**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>

**Sent:** Tuesday, March 19, 2024 10:25 AM

**To:** Wilson, Skyler C. <[swilson@csvl.law](mailto:swilson@csvl.law)>; Dick Whiting <[Dick.whiting@whitinglawsc.com](mailto:Dick.whiting@whitinglawsc.com)>

**Cc:** Moran, Rosie <[rmoran@csvl.law](mailto:rmoran@csvl.law)>

**Subject:** Re: Coggeshall v. Von Herrmann - upcoming hearing

Skyler

I noticed that it hadn't been filed by Judge Curtis. We will look into why. Thank you.

Steve

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---

**From:** Wilson, Skyler C. <[swilson@csvl.law](mailto:swilson@csvl.law)>

**Sent:** Tuesday, March 19, 2024 10:09:01 AM

**To:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>; Dick Whiting <[Dick.whiting@whitinglawsc.com](mailto:Dick.whiting@whitinglawsc.com)>

**Cc:** Moran, Rosie <[rmoran@csvl.law](mailto:rmoran@csvl.law)>

**Subject:** RE: Coggeshall v. Von Herrmann - upcoming hearing

Steve,

That is good with us, as we mentioned at the hearing with Judge Seals a second ago.

Also, I don't know if you all have noticed that the proposed order denying the motion for reconsideration has not been filed for Judge Curtis to sign. It looks like Dick filed a letter on March 1<sup>st</sup> (attached) that references the proposed order, but the order was never filed. I am guessing Judge Curtis is waiting for the proposed order to be electronically filed and then emailed to her office, and that is why she has not signed and entered it yet.

I'll wait to hear from you all on identifying what you believe is deficient in the discovery responses.

Best regards,

Skyler



**Skyler C. Wilson**

**Partner**

d: 843.266.8221 | f: 843.727.2995

[swilson@csvl.law](mailto:swilson@csvl.law) | [www.csvl.law](http://www.csvl.law)

40 Calhoun Street, Suite 400, Charleston, SC 29401

---

**From:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>

**Sent:** Tuesday, March 19, 2024 9:49 AM

**To:** Wilson, Skyler C. <[swilson@csvl.law](mailto:swilson@csvl.law)>; Dick Whiting <[Dick.whiting@whitinglawsc.com](mailto:Dick.whiting@whitinglawsc.com)>

**Cc:** Moran, Rosie <[rmoran@csvl.law](mailto:rmoran@csvl.law)>

**Subject:** RE: Coggeshall v. Von Herrmann - upcoming hearing

Skyler

Dick and I see your point and would be willing to file an amended motion to compel directed at the specific deficiencies in your previous reply to these interrogatories. Would that move things along and be acceptable to you?

Best Regards,  
Steve

Sent from [Mail](#) for Windows

---

**From:** Wilson, Skyler C. <[swilson@csvl.law](mailto:swilson@csvl.law)>

**Sent:** Monday, March 18, 2024 4:52:28 PM

**To:** Steven Abrams <[steve@abramsforensics.com](mailto:steve@abramsforensics.com)>; Dick Whiting <[Dick.whiting@whitinglawsc.com](mailto:Dick.whiting@whitinglawsc.com)>

**Cc:** Moran, Rosie <[rmoran@csvl.law](mailto:rmoran@csvl.law)>

**Subject:** Coggeshall v. Von Herrmann - upcoming hearing

Steve and Dick,

Apologies for not getting to you sooner. There was some talk during our conversation that I just remembered I wanted to reach out to you about.

If I recall correctly, Dick mentioned on the phone something about Plaintiffs agreeing to not hold my firm and I liable under the Homeland Security Act if we were to respond to the discovery and provided the text messages. We cannot

|                                         |   |                                     |
|-----------------------------------------|---|-------------------------------------|
| <b>STATE OF SOUTH CAROLINA</b>          | ) | <b>IN THE COURT OF COMMON PLEAS</b> |
|                                         | ) |                                     |
| <b>COUNTY OF HORRY</b>                  | ) | <b>FIFTEENTH JUDICIAL CIRCUIT</b>   |
|                                         | ) |                                     |
| <b>ANNA COGGESHALL,</b>                 | ) | <b>CASE NO.: 2022-CP-06296</b>      |
| <b>BRYAN COGGESHALL,</b>                | ) |                                     |
| <b>and KATHERINE COGGESHALL,</b>        | ) | <b>PLAINTIFFS' REPLY</b>            |
| <b>Plaintiffs,</b>                      | ) | <b>TO DEFENDANTS' MOTION</b>        |
| <b>vs.</b>                              | ) | <b>FOR RECONSIDERATION OF ORDER</b> |
|                                         | ) | <b>GRANTING MOTION TO COMPEL</b>    |
| <b>WILLIAM BERTRAM VON HERRMANN)</b>    | ) |                                     |
| <b>and THE VON HERRMANN LAW FIRM, )</b> | ) |                                     |
| <b>Defendants.</b>                      | ) |                                     |

---

Plaintiffs Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall, by and through their undersigned counsel oppose Defendant's Motion for Reconsideration. Plaintiffs served their First Set of Interrogatories and Requests for Production on Defendants on April 25, 2023. Plaintiffs filed this Motion to Compel on August 1, 2023. Defendants' pending Motion to Dismiss delayed their responses to Plaintiff's Interrogatories and Requests for Production until November 6, 2023. At the time these responses were provided to Plaintiffs, the underlying case, *Fulmer v. Buckhannon et al*, was on the eve of trial, and Defendants' responses were crafted so as not to provide information that might be used in the underlying case. The underlying case was tried before a jury at the end of November 2023. The jury found that Plaintiff Anna Coggeshall's electronic communications were intercepted in violation of the South Carolina Homeland Security Act. The jury further found that the iWatch that was used to intercept Anna Coggeshall's communications was her watch that Mr. Fulmer took from her. The hearing on the Motion to Compel was heard on March 19, 2024. At the hearing Plaintiff's counsel asked the Court to continue the hearing for 30 days to allow us time to work with Defendants on resolving our disagreements over the responses given to our discovery. On April 15, 2024, Plaintiffs sent a letter by email to Defendants counsel outlining our specific objections to specific responses given

by Defendants. (See attached). We are still in the process of trying to resolve these differences. We feel Defendants could easily supplement their responses in light of the jury verdict in the underlying case and provide us with the correspondence and financial information we requested.

After the March 19, 2023, hearing this honorable Court issued a Form 4 Order granting Plaintiffs' Motion to Compel. Defendants filed this Motion for Reconsideration because the discussion at the hearing was about Plaintiffs request for a continuance to allow us time to work out the discovery issues and did not touch on the substance of the Motion to Compel. Defendants through this Motion for Reconsideration have requested that the Motion to Compel be dismissed, requiring Plaintiffs to refile a new Motion to Compel. Plaintiffs disagree with and oppose this request. Dismissing the Motion to Compel would be grossly inefficient. Now that Plaintiffs have clearly identified Defendants' responses that we have disagreement over, and have provided our reasoning for our objections, we are in the final phases of trying to resolve these discovery issues.

Plaintiffs would ask that this Court grant a short continuance to allow the parties time to resolve these discovery issues, and if we are not successful, then to hold a hearing where the issues could be resolved.

Plaintiffs implore this honorable Court to deny Defendants' Motion for Reconsideration requesting that Plaintiffs' Motion to Compel be dismissed, and instead provide the parties a short continuance to try to resolve these discovery issues with the ability to get back before the Court without having to refile the Motion if the parties are unable to resolve this matter themselves.

Respectfully submitted,

s/Richard G. Whiting  
Richard G. Whiting  
SC Bar No. 6078  
1515 Lady Street (29201)  
Post Office Box 7877  
Columbia, SC 29202  
803-256-9067  
dick.whiting@whitinglawsc.com  
Attorney for Plaintiffs

s/Steven M. Abrams,  
Steven M. Abrams  
SC Bar No. 76230  
Abrams Cyber Law & Forensics, LLC.  
1154 Holly Bend Drive  
Mount Pleasant, SC 29466  
843.216.1100  
steve@abramsforensics.com  
Attorney for Plaintiffs



Steven M. Abrams, Esq.  
Attorney at Law  
Post Office Box 305  
Sullivan's Island, SC 29482-0305  
(843) 216-1100  
steve@abramscyberlaw.com

April 15, 2024

Via Email  
Skyler C. Wilson  
Copeland, Stair, Valz & Lovell, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401

*Re: Anna Coggeshall, et al. v. William Bertram von Herrmann, et al. Case No. 2022-CP-26-06296*

Skylar:

I appreciate you speaking with me on the phone last week. I have reviewed your answers to our First Set of Interrogatories and Requests for Production that are the subject of our Motion to Compel. Below I will explain our disagreements with your reasons for objecting to answering / fully answering our interrogatories, and withholding materials requested in our first set of Requests for Production.

As a starting point for this discussion, "... parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim. *Rule 26(b)(1), SCRPC.*" *In re Mt. Hawley Insurance Company*, 427 S.C. 159, 829 S.E.2d 707 (S.C. 2019). There are several examples in your answers to our interrogatories wherein you refuse to answer based on "attorney-client" or "work product" privileges. In some of these cases, as I discuss below, it does not appear that any legitimate privilege exists.

### **First Set of Interrogatories**

On December 1, 2023, a Horry County jury determined that the iWatch was Anna Coggeshall's property and she was awarded damages for the Trespass to Chattels which occurred when Justin Fulmer took that iWatch from her. The Jury further determined that interceptions of Anna Coggeshall's electronic communications occurred for nearly a month, and Anna Coggeshall was awarded statutory and punitive damages per the SC Homeland Security Act. Many of our disagreements with your answers to these interrogatories could be remedied by your revising and supplementing your answers now that the issue of whether interceptions occurred and the determination that the watch was Anna Coggeshall's has been determined by a jury.

Therefore, **Interrogatories number 5, 7, 8, 9, 13, 14, and 15**, should be revised in light of the fact that it has now been determined by a jury that these communications of Anna Coggeshall and the other Plaintiff's were intercepted in violation of the SC Homeland Security Act.

**Interrogatory 12** asks for an accounting of any fees paid by Justin Fulmer to the Defendants. This is relevant to the instant case because the fee arrangement with Mr. Fulmer could help establish proof for

the conduct and motivations of Defendants alleged in Plaintiff's Complaint. Details of the fees paid by Mr. Fulmer could also help to identify other potential defendants.

**Interrogatory 6** asks for a complete list of persons with whom Justin Fulmer, or defendants shared the photographs of Anna Coggeshall's iWatch displaying her text messages. This interrogatory seeks information that is relevant to the use and disclosure of the intercepted material, and as such goes to the heart of the allegations in Plaintiff's Complaint. As to your objections on the basis of Attorney-Client and Work Product privilege, we are not seeking a description of any legal advice requested by Mr. Fulmer, nor given by Mr. von Herrmann, but merely seeking to establish a pattern of conduct. Who had these images of the iWatch, and who did they give them to.

**Interrogatory 14** also asks for a description of conduct only. Who was involved in the "assembling, copying, or disclosing/disseminating" the images of the intercepted text messages, and how were they utilized by Defendants to prepare the complaint for Justin Fulmer. This interrogatory is not seeking a description of any legal advice but only a list of persons who had exposure to the photos of the intercepted communications, and what those people did with the images of the iWatch.

#### **Requests for Production**

**RFP number 4** requests any correspondence sent to Lester "Chip" Johnson who was the digital forensics expert hired by the von Herrman Law Firm to evaluate the iWatch and the evidence related to it. In South Carolina, correspondence with a named expert is not generally subject to protection from discovery under either attorney-client or work product privileges. The evidence that Mr. Johnson worked with in the underlying case is just as relevant to this case, and any correspondence to Mr. Johnson during the underlying case is not privileged.

**RFP number 10** requests all retainer agreements between the von Herrman Law Firm and Justin Fulmer. We believe that the payment arrangements between Mr. Fulmer and Defendants are relevant in helping establish proof for the conduct and motivations of Defendants alleged in Plaintiff's Complaint. Details of the fees paid by Mr. Fulmer could also help to identify other potential defendants.

If we could come to some mutually agreeable position on the items listed above, then I think we could avoid having to burden Judge Seals with this motion to compel any further. We would agree not to pursue the other items in this discovery not listed above, except for your usual duty to supplement your answers on all of this discovery if there are factual changes that occur.

Sincerely,

/Steven M. Abrams

Steven M. Abrams

(843) 813-1996 (Direct)

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

|                                          |   |                                   |
|------------------------------------------|---|-----------------------------------|
| Anna Coggeshall; Bryan Coggeshall; and   | ) |                                   |
| Katherine Coggeshall,                    | ) | CASE NO.:                         |
|                                          | ) |                                   |
| Plaintiffs,                              | ) | <b>NOTICE OF REMOVAL OF CIVIL</b> |
| vs.                                      | ) | <b>ACTION</b>                     |
|                                          | ) |                                   |
| William Bertram von Herrmann and The Von | ) |                                   |
| Herrmann Law Firm,                       | ) |                                   |
|                                          | ) |                                   |
| Defendants.                              | ) |                                   |

---

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, in this civil action filed by Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Civil Action No. 2022-CP-26-06296, in the Court of Common Pleas for Horry County, State of South Carolina (the “State Court Action”), file this Notice of Removal to the Florence Division, and through their undersigned attorneys, show the Court:

1.

On October 7, 2022, Plaintiffs Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall (“Plaintiffs”) commenced this pending civil action in the Court of Common Pleas for Horry County, South Carolina, as Civil Action No. 2022-CP-26-06296.

2.

A copy of the Summons and Complaint was served on Defendant William Bertram von Herrmann via personal service on October 13, 2022.

3.

A copy of the Summons and Complaint was served on Defendant The von Herrmann Law Firm via personal service on October 13, 2022.

4.

This Notice of Removal is filed within thirty (30) days of service, in accordance with the provisions of 28 U.S.C. §§ 1441 and 1446.

5.

In this action, Plaintiffs seek statutory, liquidated, punitive, compensatory, and actual damages, along with injunctive relief, arising from Defendants' alleged unauthorized interception of Plaintiffs' electronic communications. Based on this alleged conduct, Plaintiffs assert the four following causes of action: (1) violation of the South Carolina Electronic Communications Privacy Act, S.C. Code Ann. § 17-30-10, *et seq.*; (2) violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (3) Invasion of Privacy (Publicizing Private Affairs); and (4) Invasion of Privacy (Wrongful Intrusion and Outrage).

6.

This action is one over which this United States District Court has original jurisdiction and supplemental jurisdiction. This Court has Federal Question jurisdiction under 28 U.S.C. § 1331 over the Computer Fraud and Abuse Act claim. This Court has Supplemental Jurisdiction under 28 U.S.C. § 1367(a) of the remaining claims because the state law claims are so related to the federal claim that they form part of the same case or controversy—Plaintiffs' claims all concern the same common nucleus of operative fact, the alleged interception/access and disclosure of private electronic communications.

7.

Contemporaneously with the filing of this Notice of Removal, Defendants will give notice to Plaintiffs and will also file a copy of this Notice of Removal with the Court of Common Pleas of Horry County, South Carolina. A copy of the Notice to Plaintiffs of Removal of State



Court Action and the Notice to State Court of Filing of Notice of Removal are attached as Exhibit A-1 and A-2, respectively.

8.

Attached as Exhibit B to this Notice are true and accurate copies of all process, orders, or pleadings filed in the State Court Action.

9.

By filing this Notice of Removal, Defendants do not waive any defense that may be available to them.

WHEREFORE, Defendants remove the State Court Action to the United States District Court for the District of South Carolina, Florence Division.

This 11<sup>th</sup> day of November, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400  
Charleston, SC 29401  
[dmackelcan@csvg.law](mailto:dmackelcan@csvg.law)  
[swilson@csvg.law](mailto:swilson@csvg.law)  
Ph: 843-727-0307

By: s/Douglas W. MacKelcan  
DOUGLAS W. MACKELCAN  
Federal Bar No.: 10058  
SKYLER C. WILSON  
Federal Bar No.: 13008  
***Counsel for Defendants***

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Anna Coggeshall; Bryan Coggeshall; and  
Katherine Coggeshall,

Plaintiffs,

vs.

William Bertram von Herrmann and The Von  
Herrmann Law Firm,

Defendants.

)  
) CASE NO.:  
)  
)

**NOTICE TO PLAINTIFF OF REMOVAL  
OF STATE COURT ACTION**

Pursuant to 28 U.S.C. § 1446(d), William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned attorneys, give notice to Plaintiffs Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, that Defendants have filed in the United States District Court for the District of South Carolina, Florence Division, the Notice of Removal in accordance with 28 U.S.C. § 1441. Defendants also give notice that they have filed the Notice to State Court of Filing Notice of Removal in the Court of Common Pleas of Horry County, State of South Carolina. Defendants' filing of these Notices with the Clerks of the federal and state courts shall effect the removal of this action and the state court may proceed no further unless and until this case is remanded.

This 11<sup>th</sup> day of November, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400  
Charleston, SC 29401  
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***Counsel for Defendants***

|                                          |   |                                        |
|------------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS           |
|                                          | ) | FOR THE FIFTEENTH JUDICIAL CIRCUIT     |
| COUNTY OF HORRY                          | ) | CASE NO.: 2022-CP-26-06296             |
|                                          | ) |                                        |
| Anna Coggeshall; Bryan Coggeshall; and   | ) |                                        |
| Katherine Coggeshall,                    | ) |                                        |
|                                          | ) | <b>NOTICE TO STATE COURT OF FILING</b> |
| Plaintiffs,                              | ) | <b>NOTICE OF REMOVAL</b>               |
| vs.                                      | ) |                                        |
|                                          | ) |                                        |
| William Bertram von Herrmann and The Von | ) |                                        |
| Herrmann Law Firm,                       | ) |                                        |
|                                          | ) |                                        |
| Defendants.                              | ) |                                        |

---

Pursuant to 28 U.S.C. § 1446(d), Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned attorneys, give notice that they have filed in the United States District Court for the District of South Carolina, Florence Division, the Notice of Removal attached (Ex “A”) and its attached Ex’s A-1, and B. Defendants’ filing of this Notice and the attached Notice of Removal with the Clerk of this Court shall effect the removal of this action and this Court may proceed no further unless and until this case is remanded.

This 11<sup>th</sup> day of November, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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***Counsel for Defendants***

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

**RECEIVED**  
**May 13 2024**  
**SC Court of Appeals**

---

Appellate Case No. *Pending*

---

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ....Appellants.

---

**NOTICE OF APPEAL**

---

William Bertram von Herrmann and The Von Herrmann Law Firm appeals the order of the Honorable Kristi F. Curtis entered November 1, 2023. **See Ex. A (11.1.23 Order)**. Appellants timely filed a Motion to Alter or Amend on November 10, 2023. **Ex. B (11.10.23 Motion for Reconsideration)**. The Court denied the Motion to Alter or Amend on April 17, 2024. **Ex. C (4.17.24 Order)**. Appellants also appeal the Order denying their Motion to Reconsider.

Out of an abundance of caution, and to aid in the Court of Appeals' review, Appellants explain the background of the case and why they believe an immediate appeal is necessary under the circumstances.

**Background**

Respondents Anna, Bryan, and Katherine Coggeshall filed suit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the

use and disclosure of Respondents' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. Respondents assert Appellants used the electronic communications to bring a lawsuit against the Respondents on Mr. Fulmer's behalf (Fulmer Action). Respondents allege Mr. Fulmer intercepted the electronic communications and Appellants, with knowledge the information was "unlawfully obtained", disseminated the material. The Fulmer Action was tried to verdict in December 2023, and is being appealed.

In the present lawsuit, Appellants originally asserted claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. Respondents removed the case to federal court based on the federal claim and moved to dismiss based on the defense of attorney immunity. Appellants quickly voluntarily dismissed the federal claim to deprive the federal court of jurisdiction. As a result, the federal court remanded the case and did not rule on the motion to dismiss.

On remand, the circuit court granted in part and denied in part Appellants' motion to dismiss. **Ex. A.** The court ruled that attorney immunity barred Respondents' claims for Invasion of Privacy. The court noted that the Amended Complaint made clear Attorney von Herrmann's allegedly wrongful actions took place while he was representing Mr. Fulmer. Because the Amended Complaint did not allege Respondents breached an independent duty to Appellants, or that Respondents acted in their own interest and outside the scope of representing Mr. Fulmer, Respondents were protected by the attorney-immunity defense.

However, the court found, as a matter of law on a novel issue, that the common law attorney-immunity defense did not apply to claims under the South Carolina Homeland Security Act. The court denied Respondents' motion to dismiss the Homeland Security Act claim, and

found Respondents “cannot assert the defense going forward.” Respondents timely moved for reconsideration, but the court denied that motion. **See Exs. B & C.** As outlined below, Respondents assert the orders are immediately appealable.

### **Argument**

**I. The Circuit Court’s orders are immediately appealable because they involve the merits and have the effect of striking Respondents’ defense of attorney-immunity.**

The right to an appeal is governed by statute. Section 14-3-330(1) of the South Carolina Code permits appeal of “[a]ny intermediate judgment, order or decree in a law case involving the merits.” Section 14-3-330(2)(c) also permits immediate appeal of an “[a]n order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action.” An appeal can arise under either or both. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

“An order involves the merits under [section]14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense.” *Stone v. Thompson*, 426 S.C. 291, 294, 826 S.E.2d 868, 869-70 (2019) (finding that order determining couple were common-law married was immediately appealable despite the remaining claims for divorce and equitable distribution because the determination of marriage was a substantial part of the causes of action and defenses); *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

“An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). In determining whether an order “strikes” a material issue from the case, the court must examine “the effect of the

order, not the label given to the motion or to the order granting it.” *Id.* at 303, 705 S.E.2d at 479. “If the circuit court errs in striking out any material allegations of a good cause of action or good defense, *it is impossible to remedy it in the course of the trial*, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings.” *Id.* at 303-04, 705 S.E.2d at 479 (emphasis added) (quoting *Bowden v. Powell*, 194 S.C. 482, 484, 10 S.E.2d 8, 9 (1940)). Ultimately, appealability is determined on a case-by-case basis. *Stone*, 426 S.C. at 295, 826 S.E.2d at 870.

No court has decided the appealability of an order denying a motion to dismiss based on the attorney-immunity defense under *Gaar v. N. Myrtle Beach Realty Co.* In addition, no appellate court has addressed the common law attorney-immunity defense’s application under the South Carolina Homeland Security Act. As a general matter, denials of motions to dismiss are usually not immediately appealable. And some courts have held that denials of motions to dismiss on other immunity claims are not immediately appealable. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (finding denial of individual county council members’ motion to dismiss based on absolute immunity was not immediately appealable).

Orders denying motions to dismiss based on immunity claims are usually not appealable because the order denying the motion to dismiss is not supposed to finally decide anything about a case and the litigants are free to raise the issues at a later point in the case. *Id.* (“Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case.”); see *Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) (noting immunity under the Tort Claims Act must be proven at trial because it is an affirmative defense).

Considering that appealability is determined on a case-by-case basis and the court must examine the effect of the order appealed from, this Court must examine the effect of the order denying attorney-immunity's application to claims under the Homeland Security Act to determine appealability.

Here, the order is immediately appealable because it involves the merits and has the effect of striking a good defense. The order explicitly states that Appellants "cannot assert the [attorney-immunity] defense going forward." Because it prevents Appellants from asserting the attorney-immunity defense during litigation, the order has "finally determined" a substantial matter forming the whole or part of a defense and, therefore, "involves the merits" and is immediately appealable under 14-3-330(1). *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. In addition, because the order has the effect of striking a defense and removing the material issue from the case, it affects a substantial right, prevents the issue from being litigated on the merits and, therefore, is appealable under 14-3-330(2)(c). As stated in *Thorton*, the court's ruling that Respondents cannot assert the defense going forward is impossible to remedy in the course of a trial in this case because the evidence and issues submitted to the jury cannot extend beyond the issues in the pleadings. *Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. This deprives the appellate court from being able to evaluate on appeal if there is an error of law confining the evidence and jury charges to the pleadings, which would not include attorney-immunity because the court explicitly stated Respondents cannot assert the defense moving forward. *Id.* Because Appellants cannot assert the defense, they are prevented from raising the issue at a later point in time in the case. Therefore, the reasoning in *Brown* is not applicable because the council members could continue to litigate the issue of their claimed immunity. Appellants are foreclosed from continuing to litigate attorney-immunity.



Moreover, this case presents novel issues on the interplay of attorney-immunity and liability under the South Carolina Homeland Security Act. Respondents are attempting to impose liability on Appellants for quintessential attorney activities—bringing a lawsuit on behalf of a client and engaging in discovery. Because the claims relate to attorney activities, discovery and litigation will include getting into attorney-client privileged and work-product doctrine protected material generated in the underlying Fulmer Case. The novelty of the issues and the dangers of discovery intruding upon privileges essential to our justice system warrants finding the issue is immediately appealable and addressing the merits.

COPELAND, STAIR, VALZ & LOVELL, LLP

May 10, 2024.

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

**RECEIVED**

**May 13 2024**

**SC Court of Appeals**

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Appellate Case No. Pending

---

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. .... Appellants.

---

**PROOF OF SERVICE**

---

I certify that I have served ***Appellants' Notice of Appeal***, upon the parties below by electronic mail, addressed as follows:

Richard G. Whiting, Esq.  
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***Counsel for Plaintiffs/Respondents***

This 10<sup>th</sup> day of May, 2024.

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*s/Skyler C. Wilson*  
Douglas W. MacKelcan  
S.C. Bar No.: 76332  
Skyler C. Wilson  
S.C. Bar No.: 102865  
***Attorneys for Appellants***

**From:** [Rewt, Teri J.](#) on behalf of [Wilson, Skyler C.](#)  
**To:** [Dick.whiting@whitinglawsc.com](mailto:Dick.whiting@whitinglawsc.com)  
**Cc:** [steve@abramsforensics.com](mailto:steve@abramsforensics.com); [Mackelcan, Douglas W.](#); [Wilson, Skyler C.](#); [Moran, Rosie](#)  
**Subject:** Coggeshall v William Bertram von Herrmann; Case No.: 2022-CP-26-06296; CSVL File No.: 64549  
**Date:** Friday, May 10, 2024 12:44:00 PM  
**Attachments:** [image001.png](#)  
[Ltr to Pltfs" encl Notice of Appeal \(to be filed\)\(7319926.1\).pdf](#)

---

Good afternoon Dick,

On behalf of Attorneys Doug MacKelcan and Skyler Wilson, please see attached for service upon Plaintiffs/Respondents, Defendants'/Appellants' Notice of Appeal in this case, together with Exhibits A-C. We will be filing this Notice and Exhibits with the Courts on or before May 20, 2024.

Thank you and best regards,



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**REPLY TO SC OFFICE**

May 10, 2024

**RECEIVED**

**May 13 2024**

**SC Court of Appeals**

**VIA EMAIL ONLY**

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Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm  
Case No.: 2022-CP-26-06296  
CSVL File No.: 2283-64549

Dear Dick:

Please find enclosed, Defendants' Notice of Appeal of Judge Kristi Curtis's April 17, 2024 Order Denying Defendants' Motion for Reconsideration of her November 10, 2023 Order, Denying in Part Defendants' Motion to Dismiss this case. We will be filing the Notice of Appeal within ten (10) days of this letter, together with Exhibits A through C, attached to the enclosed Notice of Appeal. Let me know if you have any questions or concerns.

Sincerely yours,

*s/Skyler C. Wilson*

DOUGLAS W. MACKELCAN  
SKYLER C. WILSON

SCW:tjr  
Enclosures: *as stated above*  
cc: Steven Abrams, Esq. ([steve@abramsforensics.com](mailto:steve@abramsforensics.com))

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**REPLY TO SC OFFICE**

May 13, 2024

**VIA EMAIL and REGULAR MAIL**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
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Columbia, SC 29211  
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**RECEIVED**

**May 13 2024**

**SC Court of Appeals**

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall v William Bertram von Herrmann and The Von Herrmann Law Firm  
Case No.: 2022-CP-26-06296  
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Enclosed please find Appellants William Bertram von Herrmann and The Von Herrmann Law Firm's Notice of Appeal in the above-referenced case, together with Exhibits A through C, Proof of Service, and Appellants' service email and letter to Respondents, together with the \$250.00 filing fee. If anything further is required from Appellants at this time, please advise.

Sincerely yours,

*s/Skyler C. Wilson*

DOUGLAS W. MACKELCAN  
SKYLER C. WILSON

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Enclosures: *as stated above*

cc: Richard G. Whiting, Esq.; Steven Abrams, Esq.

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RECEIVED

Jun 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

---

Appellate Case No. 2024-000786

---

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. .... Appellants.

---

**PROOF OF SERVICE**

---

I certify that I have served ***Record on Appeal on behalf of Appellants***, upon the parties below by electronic mail (Exhibit A), addressed as follows:

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***Counsel for Respondents***

This 16<sup>th</sup> day of June, 2025.

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s/Skyler C. Wilson  
Douglas W. MacKelcan  
S.C. Bar No.: 76332  
Skyler C. Wilson  
S.C. Bar No.: 102865  
***Attorneys for Appellants***

**From:** [Rewt, Teri J.](#)  
**To:** [Dick Whiting](#); [Steven Abrams](#); [Kenneth R. Moss](#); [Robert E. Lee](#)  
**Cc:** [Mackelcan, Douglas W.](#); [Wilson, Skyler C.](#); [Davis, Lars](#)  
**Subject:** Appellate Case No. 2024-000786; Coggeshall v. William Bertram von Herrmann and The Von Herrmann Law Firm; CSVL File No.: 64549  
**Date:** Monday, June 16, 2025 10:43:22 AM  
**Attachments:** [image001.png](#)  
[Record on Appeal\(7730080.1\).pdf](#)

---

Good morning everyone,

On behalf of Appellants William Bertram von Herrmann and The Von Herrmann Law Firm, we are providing you with the Record on Appeal in this case, which will be filed with the Court with Appellants' Final Brief.

Best regards,



**Teri Rewt**  
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**Jun 16 2025**

**SC Court of Appeals**

June 16, 2025

**VIA EMAIL ONLY**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
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Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall (*Respondents*) v.  
William Bertram von Herrmann and The Von Herrmann Law Firm (*Appellants*)  
Appellate Case No. 2024-000786  
State Case No.: 2022-CP-26-06296  
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Please find enclosed, *Proof of Service of the Record on Appeal* upon all counsel of record in this case, via electronic mail today's date, attached as Exhibit A. By copy of this letter, we are providing the enclosed to Respondents' counsel and advising of our communication with the Court. Please let us know if anything further is required at this time.

Sincerely yours,

*s/Skyler C. Wilson*

DOUGLAS W. MACKELCAN  
SKYLER C. WILSON

SCW:tjr

Enclosures: *as stated above*

cc: Richard G. Whiting, Esq.; Steven Abrams, Esq.; Kenneth R. Moss, Esq.; Robert E. Lee, Esq.  
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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

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Appellate Case No. 2024-000786

---

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. .... Appellants.

---

**APPELLANTS' FINAL BRIEF**

---

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| <b>I. This Court should reverse the circuit court’s decision and find the Homeland Security Act claim is barred by the attorney-immunity defense because Appellants were acting in the course and scope of their representation, the Act did not abrogate the common law, the ruling is in line with other jurisdictions, and refusing to do so will chill zealous representation.....</b> | <b>4</b>  |
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### **STATEMENT OF ISSUE ON APPEAL**

- I. Did the Circuit Court err in refusing to dismiss the South Carolina Homeland Security Act claim asserted against an attorney and law firm when the acts complained of occurred in the course and scope of representing a client and the legislative intent in passing the Act was not to displace common law defenses such as attorney immunity?

### **STATEMENT OF THE CASE**

This is a civil action for an alleged violation of a state criminal statute brought by Respondents, Anna, Katherine, and Bryan Coggeshall, against an attorney and law firm, Mr. von Herrmann and the von Herrmann Law Firm, for allegedly using and disclosing Respondents' electronic communications when Mr. von Herrmann brought a lawsuit against Respondents on behalf of his client, Justin Fulmer, who had acquired the communications, and then providing those communications in response to Respondents' attorney's requests. Appellants moved to dismiss, which was granted in part and denied in part on November 1, 2023. Appellants moved to reconsider, which was denied on April 17, 2024. Appellants timely filed their notice of appeal on May 13, 2024.

### **STATEMENT OF FACTS**

Mr. Fulmer and Respondent Anna were in the midst of a custody dispute concerning their daughter when Mr. Fulmer came into possession of Respondent Anna's Apple Watch that was synched to her phone and receiving copies of her text messages with her parents, Respondents Bryan and Katherine. **R. 239-40.** Concerned with the content of those communications, Mr. Fulmer hired Appellants to represent him in a civil action against Respondents and others. On behalf of their client Mr. Fulmer, Appellants sued the Respondents based, in part, on the

information in the text messages. *See Fulmer v. Coggeshall, et al.*, Case No.: 2021-CP-26-06975 (Fulmer Action).<sup>1</sup>

Believing their communications were illegally intercepted under the South Carolina Homeland Security Act (Act), Respondents moved the South Carolina Court of Appeals to suppress the use of those text messages in the Fulmer Action. **R. 239**. The Court of Appeals found that the text messages were intercepted and suppressed their use in the Fulmer Action. **R. 243**.

Subsequently, Respondents brought the present lawsuit against Appellants, alleging Mr. Fulmer illegally intercepted the Respondents' electronic communications. **R. 30-31**. Respondents assert Mr. Fulmer "or his agent" copied the electronic communications, and Appellants printed them. **R. 30-31**. They assert Appellants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. **R. 30-31**. Respondents allege Appellants disseminated the electronic communications knowing the electronic communications were unlawfully obtained. Respondents further assert that Appellants, with knowledge the information was "unlawfully obtained," disseminated the material. **R. 31**. Apparently, the "disclosure" of the text messages is based on Mr. von Herrmann providing them in discovery in response to Respondents' attorneys' requests. **R. 91-92; 102-06**.

#### *Procedural History*

Respondents brought the lawsuit in the Horry County Court of Common Pleas asserting claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. **R. 20-24**. Because the lawsuit

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<sup>1</sup> The Fulmer Action is currently on appeal on different issues. *See* Appellate Case No. 2024-00562.



originally included a federal claim, Appellants removed the lawsuit to Federal Court and moved to dismiss based on attorney immunity. **R. 348-52; 83-89.** Respondents amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. **R. 30-35.** Respondents also opposed the motion to dismiss. **R. 90-101.** Appellants opposed remand, and replied to Respondents' opposition to the motion to dismiss. **R. 139-49.** The Federal Court remanded the case without deciding the motion to dismiss. **R. 1-2.**

Upon remand, the Horry County Court of Common Pleas heard Appellants' Motion to Dismiss on August 7, 2023. **R. 39-49.** On November 1, 2023, the circuit court entered its order granting in part and denying in part the Motion to Dismiss. **R. 3-8.** The circuit court agreed that Respondents' common law claims for invasion of privacy were barred by the attorney-immunity doctrine espoused in *Garr v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). **R. 6** ("This Court finds that Plaintiff's claims for Invasion of Privacy are barred by the attorney-immunity defense.").

The circuit court, however, denied Appellants' Motion to Dismiss with respect to the claim for violation of the Homeland Security Act, finding that the attorney-immunity defense does not apply to claims under the Act because the Act applies to attorneys as "persons" and the legislature did not explicitly exempt attorneys. **R. 7-8.** The circuit court also found that Appellants could not assert the defense going forward. **R. 7-8.** Appellants sought reconsideration, which was denied. **R. 193-204; R. 51-75; R. 13-14.**

Appellants timely appealed the Orders on May 13, 2024. **R. 353-62.**

#### **STANDARD OF REVIEW**

Appellate courts apply the same standard of review as a circuit court when reviewing a motion to dismiss. *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878

(2012). When ruling on a motion to dismiss, “[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff’s ‘failure to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). The circuit court must base its ruling on the allegations set forth in the complaint. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004).

The appellate court may decide questions of law without any deference to the circuit court. *Carolina Park Assocs.*, 400 S.C. at 6, 732 S.E.2d at 878. Questions of statutory interpretation are questions of law that appellate courts review *de novo*. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017).

### ARGUMENT

**I. This Court should reverse the circuit court’s decision and find the Homeland Security Act claim is barred by the attorney-immunity defense because Appellants were acting in the course and scope of their representation, the Act did not abrogate the common law, the ruling is in line with other jurisdictions, and refusing to do so will chill zealous representation.**

Although the circuit court correctly found that the allegations in the amended complaint fall squarely within the protections of attorney immunity, it erred when it found that the Act abrogated the attorney-immunity defense and denied the Motion to Dismiss. The legislature’s intent in passing the Act was not clearly to override existing common law, and finding the Act abrogated attorney immunity will have unintended consequences for the attorney-client relationship and privilege.

**A. Respondents’ allegations directly implicate the attorney-immunity doctrine and Respondents did not, and cannot now, allege facts to overcome attorney immunity.**

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022); *Stiles v. Onorato*, 318 S.C. 297, 298, 457 S.E.2d 601, 602 (1995); *Gaar*, 287 S.C. at 528, 339 S.E.2d at 889. Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client’s claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. “The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties.” *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client the attorney (a) breaches an independent duty to a third party; or (b) “acts in his own personal interest[] outside the scope of his representation of the client.” *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602.

Attorney immunity has barred claims for fraud and conversion, civil conspiracy, malicious prosecution, abuse of process, and intentional infliction of emotional distress. *See Hager*, 435 S.C.

at 747, 869 S.E.2d at 889 (applying attorney immunity to dismiss fraud and conversion claims); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (applying attorney immunity to dismiss civil conspiracy claims); *Gaar*, 287 S.C. at 530, 339 S.E.2d at 890 (applying attorney immunity to dismiss malicious prosecution claims); *see also Bertwell v. Allstate Ins. Co.*, 2008 WL 304735, at \*3 (D.S.C. Jan. 31, 2008) (dismissing claims against attorney for intentional infliction of emotional distress, malicious prosecution, abuse of process, fraud, civil conspiracy, negligence, and negligent misrepresentation because all claims were barred by the attorney-immunity defense).

Here, Respondents' claims are barred by attorney immunity. Respondents do not allege Appellants owed them an independent duty, or that Appellants acted in their own interest and outside the scope of representing their client. In fact, the allegations in the amended complaint indicate Appellants *were* acting within the scope of their representation of their client, Mr. Fulmer.

Respondents assert that Mr. Fulmer is Appellants' current client. **R. 30.** Respondents allege Mr. Fulmer illegally acquired Respondent Anna's Apple Watch, accessed her and her parents' electronic communications, and copied the communications. **R. 30-31.** They assert Appellants printed the communications, and used them to bring a lawsuit against the Respondents on Mr. Fulmer's behalf. **R. 31.** Respondents then reincorporate these allegations within their causes of action. The complaint is devoid of any allegations Appellants acted in their own interests and outside the scope of their representation of Mr. Fulmer. The complaint establishes the opposite, painting the quintessential portrait of an attorney advocate—a client comes to an attorney believing to have been wronged with evidence to support the claims, and the attorney brings a lawsuit attempting to vindicate the client's rights.

The circuit court correctly recognized this case “is precisely the scenario for which attorney immunity exists” and dismissed the common law claims. **R. 6.** Because the case falls squarely

within attorney immunity and Respondents did not allege or argue an independent duty or that Appellants acted outside the scope of their representation and in their own personal interest, the only question is whether the Act abrogated attorney immunity.

**B. The circuit court erred in refusing to dismiss the Homeland Security Act claim as barred by attorney immunity because the court incorrectly interpreted the Act.**

The attorney-immunity defense is a common law doctrine. *See Gaar*, 287 S.C. at 528-29, 339 S.E.2d at 889. Although originating in South Carolina through the Court of Appeals in *Gaar*, the defense has been repeatedly sanctioned by our supreme court. *See, e.g., Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

Determining legislative intent is the ultimate goal of interpreting a statute. The legislature’s intent is derived from the explicit statutory language of an unambiguous statute. *See State v. Leopard*, 348 S.C. 467, 471-72, 562 S.E.2d 342, 344 (Ct. App. 2002). But when a statute is ambiguous or contains undefined terms, the courts must resort to the rules of statutory construction and give words their plain and ordinary meaning. *See id.*

As it relates to a statute’s impact on common law, “it is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.” *State v. Prince*, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993). Furthermore, statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). Such statutes “will ‘not be extended beyond the clear intent of the legislature.’” *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 695 (2012)). “The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.” *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993).

These principles apply to statutes creating causes of action or rights where none existed at common law. *See, e.g., Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed); *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) (strictly construing statute creating cause of action for wrongful death of a “person” as against common law principle that tort action dies with injured person and, therefore, the statute did not apply to death of nonviable, stillborn fetus); *Davenport v. Summer*, 273 S.C. 771, 772-73, 259 S.E.2d 815, 816 (1979) (finding statute permitting joinder of insurer to action did not change well-established common law that in motor vehicle collision cases the insurance carrier of defendant cannot be joined, recognizing statutes in derogation of common law rights are strictly construed and not be extended beyond clear legislative intent).

Our courts have found common-law defenses were not abrogated under similar statutory schemes. For example, the Payment of Wages Act requires unconditional payment to an employee of wages due, and is silent on whether the common law defense of breach of loyalty would permit an employer to withhold wages due under the Payment of Wages Act. Our court of appeals found, and our supreme court affirmed, that nothing in the Payment of Wages Act “directly or indirectly abrogate[d] the common law duty of loyalty owed to an employer by an employee.” If the duty is breached, forfeiture of wages due under the Payment of Wages Act is appropriate. *See Futch v. McAllister Towing of Georgetown, Inc.*, 328 S.C. 312, 318, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) (“Futch I”), *overruled on other grounds by* 335 S.C. 598, 518 S.E.2d 591 (1999) (“Futch II”); *Futch II*, 335 S.C. at 605, 518 S.E.2d at 594 (affirming court of appeals and finding “the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims

against employees”). *Futch I* and *Futch II* were applications of strict construction of statutes in derogation of common law.

In addition, the Homeland Security Act is a criminal statute that provides for a civil action and remedies for its violation. *See* S.C. Code Ann. § 17-30-20 (stating that violation of the specifically named acts gives rise to a felony); § 17-30-135(A) (stating that a person has a civil cause of action against anyone who intercepts, discloses, or uses communications “in violation of this chapter”). Like statutes purportedly abrogating common law, penal statutes are to be strictly construed. *See Town of Sullivan’s Island v. Murray*, 435 S.C. 22, 28, 864 S.E.2d 909, 912 (Ct. App. 2021). Accordingly, the Homeland Security Act must also be strictly construed because the civil action and remedies are based on violations of a criminal statute.

The Act defines “person” to include “any individual, partnership, association, joint stock company, trust, or corporation.” § 17-30-15 (5). “Except as otherwise specifically provided in this chapter, a person who commits any of the following acts is guilty of a felony . . . :”

. . . .

(3) intentionally discloses or attempts to disclose to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) intentionally uses or attempts to use the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

S.C. Code Ann. § 17-30-20 (3)-(4). The Act creates a civil cause of action where one did not previously exist: “Any person whose . . . electronic communication is intercepted, disclosed or used in violation of this chapter has a civil cause of action against any person who intercepts, discloses, or uses . . . the communication . . . .” § 17-30-135(A). The statute creating the civil cause

of action lists only one defense for relying in good faith on a court order or subpoena. § 17-30-135(B).

Here, this Court should reverse the circuit court's ruling because the circuit court applied the incorrect standard, not strictly construing the Act. The circuit court interpreted the Act to apply to attorneys because the statute applies to "any person" and found that, because the Act does not expressly exempt attorneys as a class but exempts other individuals and it lists one defense, the common-law attorney immunity defense does not apply. **R. 7.** This ruling, however, begins with a presumption that the statute displaces common law—interpreting silence as to common-law defenses and classes of persons exempted from the Act to abrogate common law defenses. The circuit court's interpretation works only if we begin with a presumption the common law does not apply unless expressly included within a statute. If this was true, then every single statute would have to expressly incorporate the common law because most apply to any "person."

South Carolina case law is clear, however, that the opposite presumption applies: we presume the common law is unchanged by a statute unless the language in the statute explicitly, clearly, or unambiguously indicates an intention to change the common law. *Prince*, 316 S.C. at 66, 447 S.E.2d at 182. The common law here is the defense of attorney-immunity. Thus, this Court must presume the attorney-immunity defense applies unless *explicitly, clearly, or unambiguously* changed by the Act. Further, because the Act is penal and creates a cause of action where none existed, the Court must strictly construe the Act.

Presuming attorney immunity applies and strictly construing the Act establishes there is no explicit rejection of the attorney-immunity defense. The Act applying to "any person," and noting attorneys are people, is not an explicit legislative intent that the attorney-immunity defense does not apply. Most statutes, especially criminal statutes, apply to "any person." Simply because the



Act expresses one defense to its violation—good faith reliance—is not an explicit legislative intent that the attorney-immunity defense does not apply, let alone that all other defenses are eviscerated. This reasoning is precisely why *Futch I* and *Futch II* found the language of Payment of Wages Act *unconditionally* requiring payment of wages due an employee did not abrogate an employer’s common law “breach of loyalty” defense to paying those wages.

If attorney immunity applies to claims under the Act, then Respondents’ claim should have been dismissed. The defense applies to third-party claims against an attorney for actions taken on behalf of the client with the client’s knowledge, as long as there is no independent duty or allegations that the attorney acted in his own interest. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554. As established in Part I.A, Respondents did not allege Appellants owed an independent duty to them, or that Appellants acted in their own interest outside the scope of their representation of Mr. Fulmer. In reality, Respondents’ claims are alleged to have arisen within the scope of Appellants’ representation of Mr. Fulmer. Accordingly, the attorney-immunity defense would bar the claims.

Because the circuit court’s interpretation of the Act essentially presumed the common law was displaced by general, ambiguous language, it was in error. Applying the correct standard, presuming the attorney-immunity defense to civil liability applies unless expressly or unambiguously displaced, establishes the attorney-immunity defense was unchanged by the Act, and the attorney-immunity defense would bar Respondents’ remaining claim. Therefore, this Court should reverse the circuit court’s order, find the Act did not abrogate the attorney-immunity defense, and dismiss Respondent’s remaining claim.

**C. This Court should follow the reasoning of the Texas Supreme Court in *Taylor v. Tolbert* because it applies the same legal principles and found attorney immunity applied to a state statute prohibiting interception of electronic communications.**

Under similar circumstances and law to this appeal, the Supreme Court of Texas found that its common law attorney-immunity defense was not abrogated by the Texas wiretap statute. *See Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022). *Taylor* is eerily similar, involving an underlying child-custody dispute, a father who came into possession of an iPad that had begun receiving the mother's text messages with other people, and the father providing those to his attorney. *Id.* at 642.

Like South Carolina, Texas's wiretap statute makes it a crime to intercept electronic communications, or to intentionally use or disclose those communications knowing or having reason to know the communications were intercepted. *Compare* Tex. Penal Code Ann. § 16.02 *with* S.C. Code Ann. § 17-30-20. In addition, the two states' laws create a civil remedy for the interception, or use or disclosure of intercepted communications. *Compare* Tex. Code Crim. Proc. Ann. art. 18A.502 *with* S.C. Code Ann. § 17-30-135(A). Also, Texas' attorney-immunity defense is nearly identical to South Carolina's, and applies to an attorney's work in the scope of representing a client. *Compare Taylor*, 644 S.W.3d at 646 ("Under Texas law, attorneys are generally immune from civil liability to nonclients for action taken within the scope of legal representation if those actions involve 'the kind of conduct' attorneys engage in when discharging their professional duties to a client.") *with Argoe*, 388 S.C. at 400, 697 S.E.2d at 554.

The *Taylor* Court found that Texas's common-law attorney immunity defense applied to claims under Texas's wiretap statute pursuant to legal principles similar to South Carolina, and in the process rejected the exact arguments Respondents made below and the circuit court erroneously adopted.

The *Taylor* Court began by noting statutes purporting to abrogate common-law principles must do so expressly. 644 S.W.3d at 649. It also recognized the Texas wiretap statute created liability where none existed and, therefore, must be strictly construed and not extended beyond its plain meaning. *Id.* at 650. Thus, it presumed that the attorney immunity defense applied unless its wiretap statute expressly abrogated it. *Id.* It ultimately held “Texas’s wiretap statute does not expressly repudiate the common law or the attorney-immunity defense.” *Id.* at 649. Applying South Carolina’s exact same presumption and rules for strict construction should result in the same holding: South Carolina’s Act does not expressly repudiate the common law or the attorney-immunity defense.

In reaching its holding, *Taylor* rejected the plaintiff’s argument that the statute’s application to “any person” meant to include attorneys and abrogate the immunity defense. *Id.* at 651. The Court noted that, “[a]lthough ‘any person’ would inarguably include attorneys, we are not convinced the breadth of the statutory language—which is not at all uncommon—clearly shows legislative intent to abrogate common-law defenses generally or attorney immunity specifically.” *Id.*

The *Taylor* Court also rejected the plaintiff’s arguments that, by including specific defenses under the statute like the good-faith reliance defense, the Texas wiretap statute “fences out” all common law defenses not explicitly included in the statute. *Id.* at 650. The court noted that by plaintiff’s line of reasoning, the legislature would have to “opt-in” to the common law in every statute, and that reasoning is contrary to the presumption the common law remains in effect. *Id.* at 650. The court also found that the Act did not make the listed defenses exclusive, and the language could not be read as clearly repudiating all civil-liability defenses otherwise available. *Id.*

The Texas Supreme Court’s analysis in *Taylor* is highly persuasive considering Texas’s parallels to South Carolina’s legal principles regarding the attorney-immunity defense, statutory civil liability related to intercepted communications, and strictly construing statutes purportedly abrogating common law. But *Taylor* rejected the exact reasoning the circuit court adopted—relying on the breadth of the “any person” language and inclusion of certain defenses. Here, this Court should follow *Taylor*’s lead, find the South Carolina Homeland Security Act did not abrogate the common law attorney-immunity defense, and that Appellants are shielded by the defense based on Respondents’ allegations, dismissing the remaining claim.

**D. Applying attorney-immunity to claims under the Act does not have the effect of exempting all attorneys from violating the Act.**

The circuit court reasoned, in part, that the attorney-immunity defense does not apply because, if the legislature wanted to exempt attorneys from the Act, it could have expressly done so like it did for other groups. This is based, however, on a misunderstanding of the attorney-immunity defense.

The attorney-immunity defense is not absolute immunity for attorneys as a class of people. The defense is qualified. It immunizes attorneys from civil claims (1) by third parties; (2) for actions in the scope of representing a client; (3) with the client’s knowledge; (4) when there is no independent duty to the third-party. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554; *see also Taylor*, 644 S.W.3d at 646 (noting similar limitations on the attorney-immunity defense and recognizing it does not protect from liability from “sanctions, professional misconduct, or criminal penalties”). Neither does the defense magically legalize illegal conduct because it is conduct of an attorney. Its purpose is to shield attorneys for actions that are illegal, i.e., would expose the attorney to civil liability. It does not insulate attorneys from prosecution for committing crimes or for ethical

violations. *See generally Gaar*, 287 S.C. at 530, 338 S.E.2d at 890 (noting attorneys are subject to disciplinary proceedings not insulated by attorney immunity).

Recognizing the attorney-immunity defense would not be akin to exempting attorneys from liability for violations of the Act, attorneys could still be civilly liable if any of the four conditions to the application of attorney immunity are not met with respect to the Act. For example, attorney immunity would not shield an attorney against a *client's* claims that the attorney intercepted communications, or used or disclosed those communications, without the client's consent. Under the same scenario it would not shield the attorney against claims under the Act by the other party to the client's communications—client knowledge lacking. Further, the defense would not apply to criminal culpability or ethical violations.

Because recognizing attorney-immunity under the Act would not amount to absolute immunity from civil liability for attorneys from violation of the Act and would not shield them from criminal culpability, the circuit court erred in refusing to recognize the defense on those bases. Accordingly, this Court should reverse the circuit court and find the defense applicable to claims for civil liability under the Act.

**E. The circuit court's ruling that attorney immunity does not apply under the Act undercuts the policy of encouraging zealous client representation and will lead to an erosion of the attorney-client privilege.**

“The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties.” *Hunt*, 522 F. Supp. 2d at 758. “Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits.” *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Attorneys have ethical obligations to zealously assert a client's position. Rule 407, SCACR, Preamble (“As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.”). It would create a conflict of interest with an attorney's obligation to represent and support his or her client if attorneys

become liable for, and must safeguard against, acting overzealously. *Garr*, 287 S.C. at 529-30, 339 S.E.2d at 889-90. Allowing such suits “could conceivably prohibit attorneys from pursuing and developing new causes of action, and could hinder development of new legal theories.” *Id.* at 530, 339 S.E.2d at 890. In other words, with every exception recognized for attorney-immunity, it has a chilling effect on an attorney’s faithful discharge of his or her ethical obligations. *Taylor*, 644 S.W.3d at 647.

The breadth with which the circuit court interpreted the Act—it applies to “any person” and listing one defense excluded others—will have drastic consequences on the attorney-client relationship and zealous advocacy in relation to claims involving the Act.

Extending the circuit court’s logic, the Act also does not contain any language stating that attorneys are immune from liability for defending their clients against claims for violating the Act. Assuming an attorney represents a client who has been accused of intercepting communications in violation of the Act, there is no provision in the Act allowing the client to “disclose” the intercepted messages to the attorney, or allowing the attorney to “disclose” the content of the communications to his or her staff or experts in preparing a defense, or allowing the attorney to “use” those communications to mount a defense—all of which would fall outside the “good faith reliance” defense. An attorney representing his or her client would have to exercise even more caution when dealing with any electronic communications provided by a client. It would be nearly impossible to faithfully and zealously represent a client defending against civil or criminal claims for violations of the Act.

Indeed, if attorney-immunity does not apply, Appellants’ counsel could potentially be held responsible for “using” the messages to mount a defense to Respondents’ claims. Appellants’ counsel would be prohibited from sharing any of the messages with an expert to prepare a defense.

If Appellants would not be entitled to immunity under the Act for advocating on behalf of their client with their client's direction, then the same could be said for Respondents' counsel in this matter. Although the Act allows a party to consent to the interception of his or her messages before the interception, there is no language in the Act stating that a person can consent to the use and disclosure of those messages after they are intercepted. *See* § 17-30-30(C) (stating it is lawful to intercept an electronic communication when one of the parties gives "prior consent to the interception"). Thus, not applying attorney-immunity to claims under the Act has a chilling effect on an attorney's obligation to zealously represent his or her client defending or prosecuting claims under the Act.

For similar reasons, not recognizing attorney-immunity under the Act has a chilling effect on and erodes the attorney-client privilege. The attorney-client privilege is based on the wise policy that the "interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications." *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). First, if attorneys are liable under the Act for advocating on behalf of their clients, attorneys will take precautions in communicating with clients to reduce the likelihood of a violation of the Act and, accordingly, will discourage clients from being truthful with their attorney. Moreover, pursuing a claim under the Act when an attorney is involved would require disclosure of attorney-client protected communications and work-product material in discovery. Case in point, Respondents are directly requesting in discovery communications between Appellants and their client, Mr. Fulmer. **R. 202-03; R. 210-12.** Thus, refusing to recognize the attorney-immunity defense to claims under the Act

would chill and intrude upon the attorney-client privilege. This cannot be what the legislature intended.

In addition, under the circuit court's logic, judges could also face liability for violating the Act in the context of ruling on a motion to suppress or on claims for violation of the Act—"using" the messages to make their rulings. Judges are people and included in the definition of "any person." Judicial immunity is an absolute privilege from suit but it is a common law defense. *See O'Laughlin v. Windham*, 330 S.C. 379, 383, 498 S.E.2d 689, 691 (Ct. App. 1998) (describing judicial immunity before the Tort Claims Act as a common law immunity). Just like attorney immunity, the Act is silent on judicial immunity and, under the circuit court's logic, that silence is interpreted to exclude the defense.

Further, while the Act states claims made against the State or its employees "must be brought pursuant to the South Carolina Tort Claims Act," the Act expressly incorporates how the Tort Claims Act displaces the Act for the statute of limitations, limits on liability for damages, and prohibiting punitive damages. § 17-30-135 (F)(1)-(4). Thus, although the Tort Claims Act expressly preserves immunities (§ 15-78-20(b)) and contains its own judicial immunity (§ 15-78-60(1)&(2)), the Homeland Security Act does not incorporate those provisions. The express incorporation of some provisions of the Tort Claims Act into the Homeland Security Act necessarily excludes other provisions of the Tort Claims Act just as the expression of the "good faith reliance" defense excludes the common law attorney-immunity defense; it is the same principle in action. And, as mentioned above, there is no provision allowing a party whose communication is intercepted to consent to the use or disclosure of that message after it is intercepted. Therefore, if this Court follows the circuit court's logic, there is nothing stopping



persons who have had their communications intercepted from bringing claims against judges for using the messages in their rulings even if the aggrieved party asked for that ruling.

By finding the attorney-immunity defense does not apply to claims under the Act, the circuit court's ruling has a chilling effect on an attorney's ethical obligations to zealously represent his or her client, and will inevitably lead to intrusion upon the attorney-client privilege. This Court should reverse the circuit court and find attorney immunity applies to claims under the Act, because it would foster ethical obligations to zealously represent clients and preserve the attorney-client privilege.

### **CONCLUSION**

The circuit court erred when it found that the attorney-immunity defense did not apply to civil claims under the Homeland Security Act, because the Act does not contain an explicit or unambiguous indication that the legislature intended to abrogate all common law defenses to civil liability for violation of the Act. The circuit court's error, if uncorrected, will chill zealous advocacy and could impact the attorney-client relationship and privilege. This Court should reverse the circuit court and find the attorney-immunity defense applicable to Respondents' claim for civil liability for allegedly violating the Act.

COPELAND, STAIR, VALZ & LOVELL, LLP

July 7, 2025.

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

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Appellate Case No. 2024-000786

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Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. .... Appellants.

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**PROOF OF SERVICE**

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**APPELLANTS' FINAL REPLY BRIEF**

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## ARGUMENT

### **I. The Homeland Security Act must be strictly construed because it created a cause of action where none existed previously, and Respondents' cited authority do not support avoiding strict interpretation.**

Respondents argue that the statute should not be strictly construed because, although it is a penal statute, it is a “hybrid” statute with civil provisions and the civil provision should be interpreted separately, citing cases from New York. *See Bounkhoun v. Barnes*, 2018 WL 1805552 (W.D.N.Y. April 17, 2018); *Wiggins v. Gordon*, 455 N.Y.S.2d 205 (Civ. Ct. 1982). **Resp. Br. 14-15.** Respondents assert these cases somehow permit this Court to not strictly construe the Act. **Resp. Br. at 15.**

Respondents' argument is wrong for multiple reasons. First, the statute must be strictly construed regardless of whether it is a penal statute because the statute creates a cause of action where none previously existed and, therefore, is in derogation of common law. *See, e.g., Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed).

Second, although the statute authorizes a civil remedy, the civil remedy is available only if it is proven someone violated the crime. S.C. Code Ann. § 17-30-135 (A) (“Any person whose . . . electronic communication is intercepted, disclosed, or used *in violation of this chapter* has a civil cause of action . . . .” (emphasis added)). Thus, the civil remedy is linked to a criminal portion of the statute.

Last, the cases Respondents cite do not stand for the proposition that a court can avoid strict interpretation of a penal statute when the plaintiff is proceeding under a civil remedy the statute authorizes. *Bounkhoun* involved legal malpractice, and the client accused its former



attorneys of violating a criminal statute containing a civil remedy. *Bounkhoun*, 2018 W.L. 1805552, at \*2. The attorneys argued the client could not pursue a civil remedy without the attorneys first being convicted of violating the criminal statute because the statute included the language “in addition to” when authorizing the civil remedy. *Id.* at \*3. The court found that a conviction was not a prerequisite to the civil remedy because the civil remedy could be severed and was distinct from the criminal portion. *Id.* at \*5. The court said nothing of avoiding strict interpretation of a civil remedy in a penal statute. *See id.*

The court noted a split in case law in which some courts imposed an additional prerequisite to stating a claim, but did not address the “stricter standard” because the facts alleged stated a claim under both. *Id.* at \*5. *Wiggins* is merely an example of one court recognizing the stricter standard and also says nothing of ordinary versus strict interpretation. *Wiggins*, 455 N.Y.S.2d at 207 (stating the criminal statute should be “carefully reserved for the extreme pattern of legal delinquency, which falls within the restrictive contemplations of that statute”). The reference to meeting both standards in *Bounkhoun* is irrelevant here because if the Court finds attorney immunity applicable, then the facts alleged do not state a claim under the Act.

Therefore, this Court should strictly construe the Act regardless of Respondents proceeding under the authorized civil remedy.

**II. Federal cases interpreting the Federal Wiretap Act are not persuasive because attorney immunity is determined by state law, not federal, and states vary in whether they recognize attorney immunity and how it applies to statutes.**

Respondents argue that, even if the statute is strictly construed, this Court should conclude Appellants may still be held civilly liable. **Resp. Br. at 15.** Respondents assert that nothing in Act exempts attorneys and law firms from its requirements. Respondents highlight that the Act is patterned after the federal wiretap statute and, therefore, federal cases interpreting the federal

statute are persuasive in interpreting South Carolina's Act. **Resp. Br. at 16.** The federal cases cited, however, are unpersuasive because the strength and applicability of the attorney immunity doctrine varies by state and in its application.

First, there is a significant difference between the application of a state common law in the face of a state statute and state common law in the face of a federal statute, the latter of which raises preemption issues. *See, e.g., Eggleston v. United Parcel Serv., Inc.*, 428 S.C. 373, 379, 834 S.E.2d 713, 715 (Ct. App. 2019) (discussing preemption under the supremacy Clause of the United States Constitution and finding federal statute preempted state common law claims); *see also Taylor v. Tolbert*, 644 S.W.3d 637, 656 (Tx. 2022) (noting how state law cannot modify federal law when finding Texas' common law attorney immunity defense inapplicable to federal wiretap claims). Respondents voluntarily dismissed their federal wiretap claim and, therefore, there are no preemption issues. This case deals solely with the application of state common law to a state statute.

Second, the strength of attorney-immunity is determined by state law, not federal, and states vary in whether they recognize the immunity and how it applies to state statutes. For example, *Nix v. O'Malley* involved claims against an attorney arising under the federal wiretap act and Ohio's wiretap statute, where Nix, the party whose communications were intercepted, sued O'Malley and Weston, Hurd (O'Malley's attorney), arguing the pair violated federal and Ohio wiretap statutes when (1) O'Malley disclosed the communications to his attorney; (2) his attorney used the communications to prepare O'Malley's defense to wiretap allegations; and (3) his attorney disclosed the actual communications in a public filing for summary judgment. 160 F.3d 343, 348 (6th Cir. 1998).

The *Nix* court recognized that the disclosure to the attorney (1) and the attorney's use of the communication in a litigation context to prepare a defense (2) were privileged, and neither were subject to liability under implied "adjudication" and "defense" exceptions. *Id.* at 351. The court held the disclosure and use were necessary functions of wiretap law. *Id.* Importantly, these defenses were *implied* by the court because the wiretap statutes do not specifically provide for them. *Id.*

The *Nix* court found that disclosing the communications in a public filing was not entitled to Ohio's attorney immunity law. However, Ohio's attorney-immunity law was the common law privilege that protects attorneys who republish defamatory statements while defending their client. *Id.* at 352. The court did not discuss an equivalence to South Carolina's attorney immunity doctrine, which is a separate and much broader doctrine from the immunity from defamation for statements made during judicial proceedings. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002) ("Any communication, oral or written, uttered or published in the due course of a judicial proceeding is absolutely privileged and cannot form the basis for a cause of action for libel or slander." (quoting *Kropp v. Prather*, 526 S.W.2d 283, 286 (Tex. Civ. App. 1975))).

The other cases Respondents cite are just as irrelevant. *United States v. Wuliger* is from the same circuit as *Nix* and *Nix* cites *Wuliger*, but *Wuliger* involved an attorney's criminal conviction under the federal wiretap act and whether he should have been given a special jury instruction on the standard for "reason to know the communications were intercepted" to include his duties as an attorney, which the court declined. *United States v. Wuliger*, 981 F.2d 1497, 1504-05 (6th Cir. 1992). State common law, attorney immunity, and the civil remedy were not at issue in *Wuliger*.

*Pyankovska v. Abid* involved claims against an attorney under the federal wiretap statute and Nevada’s wiretap statute when he filed transcripts of intercepted communications on the public docket. 65 F.4th 1067, 1071 (9th Cir. 2023). The district court dismissed claims against the attorney under the *Noerr-Pennington* doctrine, which is an immunity based on the First Amendment ensuring “that those who petition the government for redress of grievances remain immune from liability for statutory violations, notwithstanding the fact that their activity might otherwise be proscribed by the statute involved.” *Id.* at 1076 (quoting *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000)). *Pyankovska* never addressed any form of state law attorney immunity as applied to either the federal wiretap statute or Nevada’s wiretap statute and, therefore, has no bearing on the question before this Court.

*Marsh v. Curran* involved claims against an attorney under the federal wiretap statute and Virginia’s wiretap statute, along with common law claims, when the attorney used intercepted communications in the context of a divorce proceeding, specifically when questioning an adverse witness—the wife’s romantic partner. 362 F. Supp. 3d 320, 325 (E.D. Va. 2019). The court first seemed to recognize the defense of unclean hands could apply, but not at the 12(b)(6) stage. *Id.* at 327. Unclean hands is not explicitly recognized under wiretapping statutes but the court’s willingness to entertain the defense despite no statutory language allowing it suggests implied common law defenses are applicable to wiretapping claims. Nevertheless, the issue was a litigation privilege and absolute immunity for attorneys, which the court declined to adopt. *Id.* at 328. The court, however, was never asked to address whether a qualified attorney immunity defense, such as that recognized in South Carolina, would apply to Virginia’s wiretap statute. *See generally id.* In fact, it does not appear that Virginia has formally recognized a similar attorney immunity doctrine. *DuBrueler v. Hartford Fire Ins. Co.*, 4 Va. Cir. 135, 1983 WL 210333, at \*3

(Va. Cir. Ct. Sept. 9, 1983) (citing Minnesota attorney-immunity doctrine and noting Virginia had not expressly adopted the doctrine).

*Babb v. Eagleton* involved federal wiretap claims against an attorney who asserted as a defense Oklahoma common law litigation privilege that purportedly shielded attorneys from defamation for statements made in the course of judicial proceedings. 616 F. Supp. 2d 1195, 1207 (N. D. Okla. 2007). There were no argument or analysis on the equivalent of South Carolina's attorney-immunity to state wiretapping claims and, therefore, *Babb* is not relevant to this Court's analysis.

*Lewton v. Divingnzzo* likewise involved only federal wiretap claims where the attorney asserted a common-law immunity and litigation privilege, but the court considered only federal cases and noted the only litigation privilege defense recognized to federal wiretap claims is for disclosure to an attorney defending wiretap claims. 772 F. Supp. 2d 1046, 1057 (D. Neb. 2011). The court refused to exercise supplemental jurisdiction over the state common law claims and defenses and claims under Nebraska's wiretap statutes. *Id.* at 1060-61. Therefore, the *Lewton* court's analysis is not relevant to the application of a state common law defense to a state statute in South Carolina.

Finally, *United States v. Crabtree* involved whether there was a "clean hands" exception to the prohibition on the court receiving evidence of intercepted communications under the federal wiretap statute if the government was not involved in the interception, which the court declined to recognize. 565 F.3d 887, 889 (4th Cir. 2009). State law was not at issue.

In sum, this Court should strictly construe South Carolina's Homeland Security Act to determine if the state common law defense of attorney immunity applies without relying on

unpersuasive and easily distinguishable federal cases from courts that did not address similar defenses to state claims.

### **III. Recognizing attorney immunity’s application to the Homeland Security Act does not have the effect of displacing the Act.**

Respondents misconstrue Appellants’ argument on attorney immunity’s application to the Act, stating Appellants assert it is an absolute bar to liability contrary to the express language of the Act. **Resp. Br. at 22.** Respondents segue that misconstruction into an argument that the legislature could have expressly excluded attorneys from application under the Act like it did with other categories of persons, or in other statutes. **Resp. Br. at 23.**

As Appellants argued in their brief, however, attorney immunity is not an absolute defense, it is qualified by requirements that the attorney act in the scope of representation with client knowledge and consent. It bars Respondents’ claims because Respondents allege the offending conduct took place within the qualifications of the defense. This is precisely why the circuit court dismissed Respondents’ common law invasion of privacy claims.

The clarification between absolute and qualifying is important because the doctrine insulates attorneys from liability for limited actions, not as a class of people in general. Because the defense doesn’t immunize attorneys absolutely, an attorney as a “person” could be civilly liable if the actions are outside the defense. If there are circumstances where an attorney could still be liable, then there is no reason to expressly exempt attorneys as a group from the Act’s application.

Respondents also misunderstand the effect of recognizing that the defense applies to the Act. It appears that Respondents believe recognizing the defense under the Act means it would exclude attorneys as a class from the Act’s definition of “person” or that it would “authorize” violations of the Act that are not authorized. **Resp. Br. at 23-24.** This reasoning is faulty. First, recognizing the defense applies does not remove attorneys from the definition of “person.”

Attorneys still come within the definition of “person” if the defense is recognized, the attorney would simply be immune if the actions fell within the scope of attorney immunity. *See Taylor v. Tolbert*, 644 S.W.3d 637, 651 (Tx. 2022) (“[Plaintiff] suggests a false dichotomy. In reality, attorneys can be persons to whom the statute applies and also immunized from civil liability for the kind of conduct the immunity defense protects.”).

Second, recognizing the defense applies to civil liability under the Act is not akin to “authorizing” the actions for interception or use. The very purpose of the defense is to immunize attorneys from civil liability for actions that would otherwise be unauthorized.

Respondents argue that the principle the common law is not displaced is limited to when the statute is on the same subject as the common law. **Resp. Br. at 25.** Respondents assert that, because the Homeland Security Act does not address the “same subject” as attorney immunity, “no presumption arises that the South Carolina Legislature intended the Homeland Security Act not to displace the common-law principle of attorney immunity.” **Resp. Br. at 26.** The argument is absurd. Certainly, some cases discussing a statute’s effect on common law mention a statute on the same subject as the common law does not change the common law unless clear and unambiguous. *See, e.g., Nuckolls v. Great Atl. & Pac. Tea Co.*, 192 S.C. 156, 5 S.E.2d 862, 864 (1939). However, Respondents’ argument would turn this presumption on its head and create an absurdity—a statute displaces common law on a *different* subject on which it is silent but does not displace common law on the *same* subject without clear and unambiguous language. If the goal of statutory interpretation is to determine legislative intent and that is primarily derived from the language of a statute, it could not be the legislature’s intent in passing a statute to displace common law on a totally different subject.

In addition, Respondents attempt to distinguish *Taylor* by referencing the differences between the Homeland Security Act and the Texas Wiretap statute, stating that unlike Texas' statute the Homeland Security Act contains an exclusivity clause. **Resp. Br. at 27.** This difference, however, does not compel the opposite conclusion because the *Taylor* court relied on other reasoning to support the conclusion the state common law defense did not apply to the federal statute and federal cases have implied a limited litigation privilege, indicating the statute is not "exclusive."

The *Taylor* court recognized that the Texas statute did not contain the phrase "[e]xcept as otherwise specifically provided" as the federal statute did. *Taylor*, 644 S.W.3d at 654. However, the court first concluded that a state common law defense would not apply to the federal wiretap statute. *Id.* The court also discussed that no federal cases had recognized a similar level of attorney immunity under the federal statute. *Id.* Therefore, although the court considered the exclusivity language, it was not the only or primary reasoning.

Further, despite this exclusivity language in the statute, federal courts have implied a litigation privilege that shields attorneys from liability when using or disclosing intercepted text messages to defend against wiretapping claims. *See, e.g., Nix*, 160 F.3d at 351 (finding the disclosure of intercepted communications to an attorney and that attorney's use of them to prepare a defense to wiretapping charges were implied "adjudication" and "defense" exceptions to federal wiretap claim, despite those exceptions not being explicit in the statute). If the exclusivity clause is truly exclusive, then there would not be adjudication and defense exceptions. The fact that courts recognize these exceptions to the federal statute indicates the exclusivity language isn't all that exclusive. Therefore, the provision in the Homeland Security Act does not mandate finding South Carolina's attorney immunity doctrine inapplicable. Further, as otherwise explained,



recognizing the defense would not authorize the interception or necessarily shield attorneys from criminal prosecution or ethical discipline.

**IV. When a claim is subject to dismissal as a matter of law, it must be dismissed even if the facts as alleged would support the purported claim.**

Respondents argue that Appellants misapprehend the circuit court’s reasoning, contending that dismissal is not appropriate because they have stated a claim under the 12(b)(6) standard; specifically, that they have alleged Respondents knew the communications were intercepted and used them. **Resp. Br. at 29.** But Respondents then argue that Appellants’ state of mind is outside this appeal and the only question is whether attorney immunity applies. **Resp. Br. at 29.**

Respondents’ argument is confusing. The facts as alleged assert Appellants’ actions occurred in the context of representing their client, Mr. Fulmer. If attorney immunity applies under the Homeland Security Act, Respondents’ allegations that Appellants knew the communications were intercepted are inconsequential to the appeal: dismissal is appropriate because the facts, as alleged and taken as true, do not state a cause of action as a matter of law because Appellants are entitled to immunity under those facts.

**V. Contrary to Respondents’ contentions, policy considerations apply to interpreting whether attorney-immunity applies under the Act.**

Respondents argue this Court should not consider the policy implications of the Act because the language is plain and unambiguous, and must be enforced as written. The statute, however, is capable of more than one interpretation on whether common law defenses apply to its violation. Because statute is silent on the topic and it is capable of more than one interpretation, the statute is ambiguous and must be construed, which opens up policy considerations of the various potential interpretations. *See S.C. Dept of Soc. Servs. v. Lisa C.*, 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008) (“If a statute is susceptible to two reasonable interpretations, it is ambiguous.”); *id* (“When ‘a statute is ambiguous, the Court must construe the terms of the

statute.” (quoting *Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002)). Thus, this Court should consider the policy implications of refusing to recognize attorney immunity’s application to the Act.

Also attempting to counter the policy implications, Respondents highlight an attorney’s ethical obligations (**Resp. Br. at 30-31**), that the violation of the Homeland Security Act is a felony (**Resp. Br. at 31**), that using the information from the communications falls within the crime/fraud exception to attorney-client privilege<sup>1</sup> (**Resp. Br. at 32**), and then analogize to the Rules of Professional Conduct and disciplinary cases (**Resp. Br. at 32-33**).

As Appellants argued in their brief, however, attorney immunity is a defense to civil liability. Attorney immunity does not shield an attorney from disciplinary proceedings or criminal prosecution. *See generally Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 530, 339 S.E.2d 887, 890 (Ct. App. 1986) (noting attorneys are subject to disciplinary proceedings not insulated by attorney immunity). Respondents are not agents of the State of South Carolina prosecuting a crime under the Homeland Security Act, or the Office of Disciplinary Counsel pursuing disciplinary proceedings for ethical misconduct. Respondents are private individuals seeking monetary relief for a civil claim. Because the attorney-immunity defense applies to civil claims and Respondents are pursuing a civil claim, references to crimes and ethical misconduct are not relevant to this Court’s determination.

Furthermore, while interpreting the ambiguous statute, the court must do so to avoid an absurd result. *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 218, 222, 670 S.E.2d 371, 373 (2008); *see Enos v. Doe*, 380 S.C. 295, 304, 669 S.E.2d 619, 623 (Ct. App.

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<sup>1</sup> The attorney-client privilege is not at issue and the crime/fraud exception to the prohibition on sharing privileged information is irrelevant.

2008) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”).

To hold that the Act abrogated attorney-immunity would lead to an absurd result, holding persons criminally liable for actions clearly not intended under the statute. Under the statute, a person who discloses or uses the contents of an intercepted communication knowing or having reason to know it is intercepted is guilty of a felony. S.C. Code Ann. § 17-30-20 (3), (4). There is no explicit exception under the statute for state prosecutors. It is lawful to intercept a communication when one of the parties gives prior consent to the interception. S.C. Code Ann. § 17-30-30 (B), (C). But there is no indication that later use of those intercepted communications can be consented to. There is an exception to the admissibility rule for *criminal* prosecution for violating laws prohibiting interception. S.C. Code Ann. § 17-30-65 (A). But there is no corresponding exception for civil claims of violating the Act. *See* S.C. Code Ann. § 17-30-135. And cases alleging civil liability are entitled to a jury trial. *Id.*

Thus, according to Respondents’ arguments on attorney-immunity and interpretation of the Act, Respondents’ attorney’s “use” of the intercepted communications to bring a civil lawsuit would violate the statute (note the statute for civil damages permits the person to bring a claim, but says nothing excluding the person’s attorney’s use of the communications to bring the claim); Respondents’ attorney’s disclosure of the evidence in discovery in this case would violate the Act, and Respondents would not be able to introduce evidence of the intercepted communications into evidence before the jury. Important here is that the Act does not indicate the person whose communications were intercepted can consent to their use *after* the interception.

In fact, the Act states intercepted communications are discoverable under the Act, and the judge on motion to use the intercepted communications must provide the intercepted communication and derivative evidence. S.C. Code Ann. § 17-30-105 (“Upon filing of a motion by an aggrieved person, the judge must make available to the aggrieved person or his counsel for inspection, the portions of the intercepted communication or evidence derived therefrom that would be otherwise discoverable under South Carolina law.”). Likewise, the Act suggests the party whose communications were intercepted can have an expert review the material. *Id.* (determining prejudice requires the court to consider “the party’s need to retain experts to review the material”). In a scenario where the communications are intercepted by the government, and attorney-immunity did not apply, the aggrieved party’s attorney would be liable for disclosing the intercepted communications to the expert in preparing a defense.

Moreover, Respondents’ arguments—that general language prohibiting conduct and silence on what defenses are incorporated— if carried to their logical conclusion, would result in abrogating all common law defenses and any statutory defenses not specifically mentioned in the Act. The Act does not mention the applicability of the Rules of Civil Procedure to the civil claim. By Respondents’ arguments, this would prohibit relying on any of the affirmative defenses referenced in Rule 8(c) of the South Carolina Rules of Civil Procedure. Another absurd result. Accordingly, this Court should reject Respondents’ arguments that lead to an absurd result and find attorney immunity applies to the Act.

### **CONCLUSION**

South Carolina’s Homeland Security Act does not clearly and unambiguously abrogate the common law attorney immunity defense. In reaching its determination, this Court should not rely on federal cases interpreting the federal wiretap statute because those cases do not address the

application of an South Carolina equivalent attorney immunity doctrine to a state wiretap statute. The closest example to the circumstances of this case is the Texas Supreme Court's opinion in *Taylor v. Tolbert*. This Court should follow Texas' example and find attorney immunity applies to the Act, reversing the circuit court and dismissing Respondents' remaining claim.

COPELAND, STAIR, VALZ & LOVELL, LLP

July 7, 2025.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge  
Case No.: 2022-CP-26-06296

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Appellate Case No. 2024-000786

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Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. .... Appellants.

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**PROOF OF SERVICE**

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I certify that I have served *Appellants' Final Reply Brief*, upon the parties below by electronic mail, addressed as follows:

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**Date:** Monday, July 7, 2025 12:05:37 PM  
**Attachments:** [image001.png](#)  
[Appellants' Final Reply Brief\(7757984.1\).pdf](#)  
[Appellants' Final Brief\(7757983.1\).pdf](#)

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Good morning everyone,

On behalf of Appellants William Bertram von Herrmann and The Von Herrmann Law Firm, we are providing you a copy of Appellants' Final Brief and Final Reply Brief in this case, which will be emailed to the Court today, along with the Record on Appeal, which was emailed to you on June 16<sup>th</sup>. Bound versions of the Record on Appeal, Final Brief and Reply Brief will be mailed to the court today.

Thank you and best regards,



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July 7, 2025

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**Jul 07 2025**

**SC Court of Appeals**

Re: Anna Coggeshall, Bryan Coggeshall, and Katherine Coggeshall (*Respondents*) v.  
William Bertram von Herrmann and The Von Herrmann Law Firm (*Appellants*)  
Appellate Case No. 2024-000786  
State Case No.: 2022-CP-26-06296  
CSVL File No.: 2283-64549

Dear Ms. Kitchings:

Please find enclosed, the following documents submitted on behalf of Appellants in this case:

1. Record on Appeal (previously provided to Respondent's counsel on June 16, 2025 via email (please see attached Proof of Service with service email) - one bound copy of the Record on Appeal (with white cover) will follow via regular mail;
2. Appellants' Final Brief, together with Proof of Service— one bound copy (with blue cover) and one unbound copy will follow via regular mail;
3. Appellants' Final Reply Brief, together with Proof of Service – one bound copy (with gray cover) and one unbound copy will follow via regular mail.
4. Copy of 7/7/2025 service email to Respondents' counsel providing Appellants' Final Brief and Final Reply Brief.

By copy of this letter, we are providing the enclosed to Respondents' counsel and advising of our communication with the Court. Please let us know if anything further is required at this time.

Sincerely yours,

*s/Skyler C. Wilson*

DOUGLAS W. MACKELCAN  
SKYLER C. WILSON

SCW:tjr

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