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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-000364

Richard A. Gorman . . . . . Respondent,

v.

John C. Monarch . . . . . Appellant.

RECORD ON APPEAL
Volume II of IV (ROA_00491-00980)

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V. CERTIFICATION

Consistent with Rule 210, SCACR, the undersigned counsel for Appellant hereby certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

Respectfully submitted,

s/ Steven Edward Buckingham

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Attorney for Appellant John C. Monarch

Greenville, South Carolina
October 31, 2025

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2. After over three (3) years of contentious litigation in multiple jurisdictions, the Plaintiff had yet to produce any substantive responses to the Defendant's Discovery Requests. Accordingly, on April 18, 2017, Defendant's previous counsel filed a Motion to Compel Discovery which was subsequently denied on the grounds that Defendants were, at that time, in default and, accordingly, did not have the right to compel discovery.[1]

3. On or about April 21, 2017, Plaintiff, upon information and belief, mailed Defendant's previous counsel responses to Defendant's Discovery Requests providing partial responses as to Plaintiff's damages and otherwise responding that "Plaintiff's allegations" were "deemed to be admitted" such that Defendant's Interrogatories and Requests for production were neither "relevant nor reasonably calculated to lead to the discovery of relevant [admissible] evidence." Plaintiff subsequently supplemented his Interrogatory and Request for Production Responses in May 2017, all supplemental responses pertained only to Plaintiff's alleged damages.

4. Defendants relieved their prior counsel and subsequently retained the undersigned counsel in May 2017. After multiple hearings on the issue of the entry of default, Judge Miller's law clerk informed the parties on December 27, 2017 that Judge Miller had decided to grant Defendants' relief from the entry of default and to allow the case to be litigated on the merits. On January 22, 2018, Judge Miller entered an Order setting aside the entry of default against Defendants.

[1] Plaintiff's prior counsel filed Affidavits of Default against Defendant Monarch and Defendant Direct Outbound Services, LLC on November 22, 2016 and March 3, 2017, respectively, while Defendants were represented by their prior attorney.

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5. After allowing Forty (40) days from the Order relieving Defendants from the entry of default and Sixty-six (66) days from Judge Miller informing the parties of his decision, Defendant's current counsel sent a letter to Plaintiff's then-counsel on or about March 2, 2018 (attached hereto as "Exhibit A") requesting that Plaintiff respond to Defendant's Discovery Requests within ten (10) days.

6. Despite the clear intent of the March 2, 2018 request, to obtain meaningful and substantive responses to the Defendant's Discovery Requests for purposes of expeditiously moving forward with the defense of this case on the merits, Plaintiff's prior counsel dismissively and open-endedly offered only that Plaintiff "will undoubtedly supplement [his Discovery Responses] again in light of the January 22 [O]rder [relieving Defendants from the entry of default]." See March 5, 2018 email from Plaintiff's prior counsel attached hereto as Exhibit B.

7. After receiving the March 5, 2018 email dismissing Defendants' request for substantive responses to Defendant's Discovery Requests, Plaintiff's prior counsel abruptly and without explanation moved to be relieved as counsel and to substitute the newest member of Plaintiff's counsel team, who had filed a Notice of Appearance in this case on February 27, 2018, as Plaintiff's sole counsel. In yet another good faith effort to resolve this matter prior to seeking judicial intervention, Defendant's counsel sent second letter to Plaintiff's now sole counsel on March 13, 2018 (attached hereto as "Exhibit C") requesting that Plaintiff provide responses to Defendant's Discovery Requests for the Nineteen (19) Interrogatories and Fourteen (14) Requests for Production to which Plaintiff previously refused to respond by 4:00 p.m., Friday, March 16, 2018.

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8. Rather than attempting to respond to the Defendant's Discovery Requests or trying to reach out to Defendants' counsel to discuss this or any other discovery matters, Plaintiff's current counsel simply filed a Motion to Compel Discovery against Defendants on March 15, 2018 on the alleged basis of discovery deficiencies outline in a February 16, 2015 letter from Plaintiff's prior to Defendants' prior counsel.

9. Remarkably, the Plaintiff's recent Motion to Compel Discovery contains certification "that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matters subject of this motion." In reality, and in violation of Rule 11(a), SCRCP, Plaintiff's counsel did not call, email, or otherwise attempt to communicate with the undersigned counsel to resolve any issues Plaintiff allegedly has with Defendant Monarch's Discovery Responses or Supplemental Responses, which were drafted and served by Defendants' prior counsel, before filing Plaintiff's Motion to Compel.[2]

10. Having exhausted reasonable efforts to try to resolve Plaintiff's refusal to respond to Defendant's Discovery Requests concerning the merits of this case prior to seeking judicial intervention, undersigned counsel for Defendants has been forced to pursue this Motion to Compel.

MOTION TO COMPEL DISCOVERY

11. Defendant incorporates all previous allegations as if fully set forth herein.

[2] After Defendant Monarch's prior attorney responded to Plaintiff's Interrogatories, Request for Production and Request for Admission (hereinafter "Plaintiff's Discovery Requests"), Plaintiff's prior counsel sent Defendant Monarch's attorney at the time a letter outlining alleged discovery deficiencies on February 16, 2015. In response to Plaintiff's February 16, 2015 letter, Defendant Monarch's prior attorney served supplemental responses to Plaintiff's Discovery Requests in May of 2015 and September of 2016. Neither Plaintiff's prior counsel nor Plaintiff's current counsel have ever raised any specific alleged deficiencies with either undersigned counsel, or, upon information and belief, with Defendants' prior counsel since the service of Defendant Monarch's supplemental responses to Plaintiff's Discovery Requests.

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12. As stated, Defendants have not received any substantive discovery responses from Plaintiff after three years of litigation and numerous attempts to resolve this matter prior to seeking to judicial intervention.

13. Because Plaintiff's refusal to answer the Defendant's Discovery Requests has forced Defendants to pursue this Motion, Defendants request a hearing and move for an Order compelling discovery and an award of "reasonable expenses incurred in obtaining the order, including attorney's fees[.]" Rule 37(a)(4), SCRCP.

WHEREFORE, Defendants respectfully pray for the following relief:

a. That a hearing be scheduled to hear the Defendants' Motion to Compel Discovery;

b. That Plaintiff be compelled to answer the Defendants' Discovery Requests;

c. That Plaintiff be ordered to pay the Defendants' court costs, attorney's fees, and any and all other expenses associated with this Motion; and

d. For such other and further relief as this Court deems fair and equitable.

Respectfully Submitted,

BRUMBACK & LANGLEY, LLC

s/ Christopher T. Brumback

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March 16, 2018
Greenville, South Carolina

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BRUMBACK & LANGLEY, LLC

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GENERAL & COMPLEX LITIGATION
BUSINESS & CORPORATE LAW
APPELLATE PRACTICE
CRIMINAL DEFENSE
PERSONAL INJURY

March 2, 2018

VIA U.S. FIRST CLASS MAIL AND ELECTRONIC MAIL

Kirby D. Shealy, III
Adams and Reese, LLP
P.O. Box 2285
Columbia, South Carolina 29202

Re: *Gorman v. Monarch, et. al.*, Case 2014-CP-23-04432; Discovery Matters

Dear Kirby:

Upon reviewing our case file in the above-referenced matter, it appears that the Plaintiff was served with discovery requests in or about January 2015, including Interrogatories and Requests for Production (hereinafter "Discovery Requests"). It is our understanding that the Plaintiff has never responded to the Discovery Requests in the three (3) years since they were served.

Plaintiff's failure to respond to the Discovery Requests was previously brought to the Court's attention in a Motion to Compel, which was filed on or about April 18, 2017. As you may recall, the Court denied said Motion to Compel on or about April 20, 2017 on the grounds that, at that time, default had been entered against Defendants. Now that the Court's Order dated January 22, 2018 has set aside the entry of default against Defendants, I respectfully request that Plaintiff respond immediately to the outstanding Discovery Requests. Given that Plaintiff's responses are several years late, please serve Plaintiff's responses to the Discovery Requests within ten (10) days of receipt of this letter.

Should our office fail to receive Plaintiff's discovery responses in a timely and sufficient manner, we will be forced to file a Motion to Compel. Please do not hesitate to contact me if you have any questions concerning the issues raised in this letter. Thanking you for your prompt attention to this matter, I am

Exhibit A

Truly yours,

Christopher T. Brumback, Esq.
Brumback & Langley, LLC

CTB/jhs

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From: **Kirby D. Shealy III** Kirby.Shealy@arlaw.com
Subject: RE: Gorman v. Monarch/DOS - Outstanding Discovery Responses
Date: March 5, 2018 at 12:21 PM
To: Christopher Brumback chris@brumbacklangley.com
Cc: Drew Radeker Drew@harrisonfirm.com

KS

ShareFile Attachments — Expires September 01, 2018

2017-04-21 Pltf_s Responses to Monarch_s F.....pdf	5.6 MB
2017-05-04 Pltf_s 1st Supplemental Discove...rch.pdf	1.5 MB
2017-05-23 Pltf_s 2ND Supp Answers to Def .....pdf	4.1 MB
2017-05-31 Pltf_s 3RD Supp Answers to Def .....pdf	4.5 MB

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Chris:

Thanks for your letter, but you are mistaken about our discovery responses. We did serve responses, notwithstanding the entry of default. We will undoubtedly supplement them again in light of the January 22 order.

Kirby

Kirby D. Shealy III
Partner
ADAMS AND REESE LLP

1501 Main Street, 5th Floor | Columbia, SC 29201
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website bio vCard map

From: Christopher Brumback [mailto:chris@brumbacklangley.com]
Sent: Friday, March 02, 2018 4:56 PM
To: Kirby D. Shealy III
Cc: Spencer Langley
Subject: Gorman v. Monarch/DOS - Outstanding Discovery Responses

Kirby,

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Ruby,

I hope this correspondence finds you well. Please find attached hereto a letter concerning Plaintiff's responses to Defendant John Monarch's Interrogatories and Request for Production that were served back in 2015.

Best Regards,

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General & Complex Litigation, Criminal Defense, Family Law, and Personal Injury

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ELECTRONICALLY FILED - 2020 Aug 07 3:16 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

BRUMBACK & LANGLEY, LLC

ATTORNEYS & COUNSELORS AT LAW

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GENERAL & COMPLEX LITIGATION
BUSINESS & CORPORATE LAW
APPELLATE PRACTICE
CRIMINAL DEFENSE
PERSONAL INJURY

March 13, 2018

VIA FIRST CLASS U.S. MAIL &
ELECTRONIC MAIL
Mr. Andrew Radeker
923 Calhoun Street
Columbia, South Carolina 29201

Re: *Richard A. Gorman v. John C. Monarch and Direct Outbound Services, LLC*
C.A. No.: 2014-CP-23-04432

Dear Andrew:

I am writing today concerning Plaintiff's Responses to Defendant's First Set of Interrogatories and Requests for Production to Plaintiff (hereinafter collectively "Plaintiff's Discovery Responses"), which were apparently served upon Svend Deal, Defendants John C. Monarch and Direct Outbound Services, LLC's prior counsel, via First Class United States Mail in or about April and May of 2017. Upon review of Plaintiff's Discovery Responses to Defendant John C. Monarch's Interrogatories and Request for Production (hereinafter collectively "Discovery Requests"), I must request your immediate attention to the concerns raised in this letter.

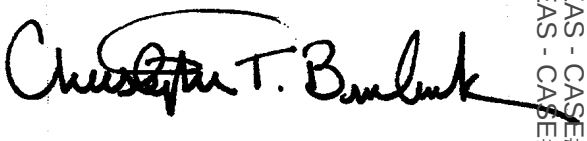
First and foremost, in my correspondence of March 2, 2018 to Mr. Kirby Shealy, I expressly requested that, in light of the Court having set aside the entry of default against Defendants, Plaintiff serve timely and complete answers to Defendant Monarch's Discovery Requests. Despite the clear intent of my request, to obtain meaningful and substantive responses to the Discovery Requests for purposes of expeditiously moving forward with the defense of this case on the merits, Mr. Shealy dismissively and open-endedly offered only that Plaintiff "will undoubtedly supplement [his Discovery Responses] again in light of the January 22 [O]rder [relieving Defendants from the entry of default]." Even ignoring the fact Plaintiff has had over three (3) years to gather evidence and formulate responses to Defendant Monarch's Discovery Requests, it has been over seventy-five (75) days since the Court informed the parties of its decision to grant relief from the entry of default on December 27, 2017, and Plaintiff has still yet to supplement his prior refusals to respond on the grounds that Defendants were in default with

substantive responses that comply with Plaintiff's discovery obligations. Given the exceptional length of time that Plaintiff has had to gather evidence and formulate responses to Defendant Monarch's Discovery Requests as well as the exceedingly ample time Plaintiff has had to supplement his refusals with substantive responses, I must now set a deadline of 4:00 p.m., Friday, March 16, 2018 for receipt of Plaintiff's substantive supplementation of Plaintiff's Discovery Responses. In the event there is any confusion as to the Interrogatories and Request for Production that this correspondence concerns, please direct your attention to Plaintiff's Responses to Interrogatories Nos. 3, 6, 11, 13-14, 17-25, and 28-32 and Request for Production Nos. 3-4, 6, 14-18, 20-22, and 25-27, to which Plaintiff failed to respond other than stating that "Plaintiff's allegations" were "deemed to be admitted" so that the interrogatories or requests for production in question were neither "relevant nor reasonably calculated to lead to the discovery of relevant [admissible] evidence." Should Plaintiff fail to comply with the deadline provided in this letter, I will unfortunately be left with no option other than to file a Motion to Compel.

Please do not hesitate to contact me if you have any questions concerning the issues raised in this letter or if you need additional clarification or information to further respond to Defendant's Interrogatories and Requests for Production.

With kindest regards, I am

Truly yours,



Christopher T. Brumback, Esq.
Brumback & Langley, LLC

CTB/

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION FOR SANCTIONS FOR DESTRUCTION OF EVIDENCE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 37, SCRCP, and all other applicable law, for an order that issues sanctions against Defendant John C. Monarch for his destruction of evidence, such evidence being electronic data and an electronic communication device, an iPhone 5. Sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence.

Incorporated into this motion are the following documents:

a. Plaintiff's discovery requests filed in connection with previous motions in this case;

b. Defendant Monarch's previous discovery responses filed in connection with previous motions in this case;

c. The affidavit of Christopher J. Watkins, filed with this motion;

d. Defendant Monarch's December 2020 responses to Plaintiff's supplemental discovery requests, filed with this motion;

e. A December 20, 2013, letter from a lawyer for the Plaintiff to Defendant Monarch requesting the preservation of documents and data, including the electronic data that Defendant Monarch ultimately destroyed; and

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f. A Facebook message conversation between Defendant Monarch and "Ilya Putin" (now believed, based on information Defendant Monarch provided in 2020, to be named Ilya Shpetrik) in which the Defendant discusses the online attacks on the Plaintiff and which tends to indicate his knowledge of and involvement in the same.

The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case's beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. Even before this case began, though, in December of 2013, counsel for the Plaintiff wrote to Defendant Monarch notifying him of the need for him to keep all documents relating to the Plaintiff or this matter, including the electronic data the Defendant ultimately destroyed.
4. After years of delay, some wrangling about discovery, and an agreed revision of Plaintiff's discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5 altogether, but his counsel advises he kept the 2013 MacBook Pro, albeit with its data wholly removed.
5. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data.

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6. Defendant Monarch knew better than to destroy this data and get rid of his phone. He has an extensive background in computer technology, and he knew that he was destroying data that he had been warned to keep and which the Plaintiff had been seeking in discovery in this case for years at the time Defendant Monarch destroyed it.
7. It is likely that the data lost by Defendant Monarch's actions would have pointed to his involvement in the blackmail and defamation subject of this case, including, but not limited to, for the following reasons:
    a. The data destruction itself under the circumstances present here;
    b. Defendant Monarch's messages in 2013 with the person then identified as Ilya Putin, which indicate that they were both already familiar with the attacks on the Plaintiff before the message conversation began (Defendant Monarch has previously indicated that this Ilya acted alone, without his involvement); and
    c. The fact, as shown by earlier filings in this case, that Defendant Monarch is much more familiar with the cryptocurrency bitcoin (in which the blackmail payment involved here was demanded) than he testified he was in a deposition in a Pennsylvania case when asked about the events of this case.
8. The Plaintiff notes that sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence and likely only learned of it after it had already been done.
9. To be sure, the Plaintiff will be entitled to adverse inference charges as a result of Defendant Monarch's spoliation. But that does not address the fact that Defendant Monarch willfully and knowing destroyed evidence he knew was sought in discovery requests in this case.

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10. It is right, proper, and fitting for this court to sanction Defendant Monarch. As permitted under Rule 37, SCRCP, this court should sanction him by adjudging that the evidence he destroyed would have revealed his involvement in creating, directing, or arranging the blackmail communications and defamatory internet postings involved in this case.
11. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that consultation with opposing counsel in an effort to resolve the matter subject of this motion would not have served a useful purpose.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
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David L. Moore Jr.
S.C. Bar No. 1509
TURNER PADGET GRAHAM & LANEY, P.A.
E-mail: dmoore@turnerpadget.com
Post Office Box 1509
Greenville, South Carolina 29602
Telephone: (864) 552-4600
Fax: (864) 552-462

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**AFFIDAVIT OF CHRISTOPHER J. WATKINS**

Personally appeared before me Christopher J. Watkins, who, first being duly sworn, deposes and says as follows:

1. My name is Christopher J. Watkins. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them.

2. I am a SLED Licensed Investigator, and I have an educational background in Computer Science, Information Technology, Computer Programming, and Systems Engineering for Hardware and Software. I am recognized as a Certified Forensic Computer Examiner (CFCE) by the International Association of Computer Investigative Specialists (IACIS), which is, in turn, accredited by the Forensic Specialties Accreditation Board (FSAB). The FSAB is an independent organization established to accredit professional bodies that certify forensic scientists. I am also an associate member of the IACIS and a member of the American Society of Digital Forensics & eDiscovery.

3. Since 2010, I have worked as a Licensed Private Investigator in South Carolina. From 2010 to 2016, I worked as a SLED Licensed Investigator for Stillinger Investigations. In 2016, I founded my own company, Watkins Digital Forensic &

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Investigations, and in 2019, I founded a second company, Certified Computer Forensics, LLC. In these positions, I have completed hundreds of digital forensic investigations involving computer systems, computer networks, servers, and various cellular and digital devices. These investigations involved the disciplined use of specialized methods and techniques, adhering to the scientifically accepted standards and practices for recovery, authentication and analysis of electronically stored information, reconstruction of computer usage, examination of residual data, authentication of data by technical analysis, and explanation of technical features of data and computer usage.

4. Since 2014, I have been qualified twenty-three times as an expert in matters of Digital Forensic Science in the South Carolina Family Court, General Sessions Court, and Court of Common Pleas, and in the United States District Court for the District of South Carolina.

5. I have had the opportunity to review discovery in this matter and discuss key details with the Attorneys for Plaintiff Richard A. Gorman. I am aware that on or about December 20, 2013, Defendant John C. Monarch received a spoliation letter, data preservation request, and request for production of discovery items related to his electronic devices. (See Exhibit A.)

    a. The five-page spoliation letter, addressed to Defendant, provides clear and concise information and instructions regarding how to immediately preserve his electronically stored information (ESI). The letter details specific examples of types of ESI and details examples of ways to adequately preserve such ESI.

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6. In Defendant's Responses to Plaintiff's Supplemental Requests for Production, dated September 28, 2020, Defendant indicates that he no longer has in his possession his iPhone 5, iPhone X, or 2013 MacBook Pro because those items were either sold, traded-in at the time of upgrade, or intentionally erased following an upgrade to a newer device. (See Exhibit B.)

    a. On page three (3) of Defendant's Responses to Plaintiff's Supplemental Requests for Production, Defendant indicates: 1) "Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded," and 2) "As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device."

7. In Defendant's Answers to Plaintiff's Supplemental Interrogatories, dated September 28, 2020, Defendant indicates that "as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro" and "upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively." (See Exhibit C.)

8. Based on the discovery responses provided by Defendant, it is evident that rather than adequately taking measures to preserve the ESI contained on his electronic devices,

Defendant admittedly took steps contrary to and in defiance of the spoliation letter and data preservation request.

9. When Defendant took steps to upgrade his devices, he could have done so without erasing data or disposing of his previous devices.

10. For example, Defendant could have taken steps to preserve the ESI contained on this electronic devices by: 1) performing a good faith backup of each device in his possession and documenting the date and time of each backup, 2) contracting a third party expert to perform these actions on his behalf, or 3) retaining possession of his electronic devices.

11. Due to the actions of Defendant concerning erasing and/or disposing of the devices that he owned at the time that he received and was aware of the spoliation letter, Defendant has effectively made it impossible for Plaintiff's Expert and Attorneys to examine ESI believed to be pertinent to this matter.

12. Moreover, in view of Defendant's education and experience, it is reasonable to conclude Defendant knew that taking the actions he did would result in the destruction of evidence.

13. According to Defendant's LinkedIn profile, Defendant minored in Computer Science at Clemson University and completed courses that cover advanced concepts related to computer science and computer programming, including Theoretical Computer Science (Clemson University course CPSC 350), Programming in C (Clemson University course CPSC 105), and Advanced Data Structures and C Programming (Clemson University course CPSC 205).

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14. Based on my review of the facts in this matter, it is reasonable to believe and to suggest that Defendant has knowledge regarding: 1) how ESI is retained on electronic devices, 2) the fact that data migration during a device upgrade does not transfer deleted or unallocated data that would have been present and discoverable on his previous devices, and 3) the fact that he could have retained his previous devices, in good faith, in compliance to the spoliation letter.

15. While it is possible to examine ESI contained on Defendant's current devices, it is acknowledged and understood that any data that was not migrated from Defendant's previous devices (i.e. deleted, unallocated, or data that was selectively abnegated from the data migration process) will not be discoverable and present for examination pursuant to Plaintiff's legal request because the ESI on Defendant's previous devices has effectively been destroyed by Defendant.

FURTHER AFFIANT SAYETH NOT.

Christopher J. Watkins

SWORN to before me this

4th day of November, 2020.

Katie D. McC (L.S.)

Notary Public for South Carolina

My Commission Expires: 11/03/25

KATIE D MCCLARAN
Notary Public-State of South Carolina
My Commission Expires
November 03, 2025

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BLANK ROME LLP
COUNSELORS AT LAW

Phone: (215) 569-5352
Fax: (215) 832-5352
Email: Lee-M@BlankRome.com

December 20, 2013

John C. Monarch
404 Gatewood Drive
Greenwood, SC 29646-9260

Dear Mr. Monarch:

This law firm represents Rich Gorman and his related companies. Mr. Gorman has recently received a number of extremely disturbing email communications which threaten harm to Mr. Gorman, his businesses, and his customers, if he does not make a payment of several thousand hundred dollars worth of Bitcoins as directed in the emails. The threatening tone of the emails has been escalating in recent days. In addition, derogatory and/or defamatory information about Mr. Gorman has been recently posted on numerous websites.

Our preliminary investigation into this matter suggests to us that you have a connection with www.performoutsider.com, a web site which appears to be related to these threatening emails and defamatory postings. We therefore hereby demand that you immediately cease and desist from posting, or causing to be posted, any derogatory or defamatory information about Mr. Gorman, or any of his affiliates, employees, business associates, and/or customers.

Please be advised that Mr. Gorman is presently evaluating his legal options and intends to take appropriate action to protect his legal rights, including the possible referral of the matter to appropriate legal authorities.

Finally, please regard this letter as requesting that you preserve documents, tangible things, and electronically stored information potentially relevant to the issues referenced in this letter. You should anticipate that much of the information relevant to this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Electronically stored information (hereinafter "ESI") should be afforded the broadest possible meaning and includes, by way of example and not as an exclusive list, potentially relevant information electronically, magnetically, optically, or otherwise stored as:

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- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB)
- Word processed documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both sources of ESI, even if you do not anticipate producing such ESI.

Preservation Requires Immediate Intervention

If you have not already done so, you should act immediately to preserve potentially relevant ESI concerning this matter. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents, or running any application may irretrievably alter the evidence it contains and constitute unlawful spoliation of evidence. As such, preservation of potentially relevant information requires your immediate attention and action. Federal and state laws require that you retain certain documents. This preservation letter includes those documents to be retained under state and federal law as well as documents and date described herein.

Nothing in this request for preservation of ESI should be understood to diminish your concurrent obligation to preserve documents, tangible things, and other potentially relevant evidence. Moreover, this request to preserve information for this litigation is both retroactive and prospective in application, which means that it extends to all documents, tangible things, and electronically stored information that currently exist relating to this lawsuit, as well as all

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documents, tangible things, and electronically stored information that are created in the future during the course of this litigation.

Suspension of Routine Destruction
You are requested to immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further requested to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity, or other criteria;
- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server, packet, or local instant messaging logging; and,
- Executing drive or file defragmentation or compression programs.

Guard Against Deletion and Act to Prevent Spoliation
You should take affirmative steps to prevent anyone with access to your data, systems, and archives from seeking to modify, destroy, or hide ESI on network or local hard drives and on other media or devices (such as by deleting or overwriting files; using data shredding and overwriting applications; defragmentation, re-imaging, damaging, or replacing media; encryption; or compression).

Preservation of Backup Tapes
You are requested to preserve complete backup tape sets (including differentials and incrementals) containing ESI related to this matter.

You should anticipate that ESI will be sought in the form or forms in which it is ordinarily maintained (i.e., native form). The forensically sound image described above will preserve ESI in such native form. You should not employ methods to preserve ESI that remove or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use the information. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

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Metadata
You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files.

Servers
With respect to servers used to manage e-mail (e.g., Microsoft Exchange, Lotus Domino) and network storage (often called a "network share"), the complete contents of each user's network share and e-mail account should be preserved if that user has potential relevance to this matter. There are several ways to preserve the contents of a server. If you are uncertain whether the preservation method you plan to employ is one that we will accept as sufficient, please immediately contact the undersigned.

Home Systems, Laptops, Online Accounts and Other ESI Venues
Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems or devices may contain potentially relevant data. To the extent that you have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, memory stick, CDR/DVD-R disks, and the user's PDA, smart phone, voice mailbox, or other forms of ESI storage.). Similarly, if you used online or browser-based e-mail accounts or services (such as Gmail, AOL, or Yahoo Mail) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted, and Archived Message folders) should be preserved.

Ancillary Preservation
You should preserve documents and other tangible items that may be required to access, interpret, or search potentially relevant ESI, including but not limited to logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction

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sheets, data entry forms, abbreviation keys, and user ID and password rosters. You should preserve passwords, keys, and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals, and license keys for applications required to access the ESI. You should preserve cabling, drivers, and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives, and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate
As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

Agents, Attorneys, and Third Parties
Your preservation obligation extends beyond ESI in your care, possession, or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you should notify any current or former agent, attorney, employee, custodian, and contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you should take reasonable steps to secure their compliance.

Sincerely yours,

MATTHEW D. LEE

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

EXHIBIT B

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

EXHIBIT B

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT B

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

EXHIBIT C

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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and

EXHIBIT C

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MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

EXHIBIT C

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT C

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John Monarch

Profile
Contact Info
Wall
Photos
Synced Photos
Videos
Friends
Messages
Pokes
Events
Settings
Security
Ads

Ilya Putin, John Monarch

Ilya Blt — Tuesday, February 19, 2013 at 3:46am EST

http://www.facebook.com/gamlin/posts/426553947423355

John Monarch — Tuesday, February 19, 2013 at 3:46am EST

Mobile, not loading for some reason

John Monarch — Monday, May 27, 2013 at 11:47am EDT

LOL

John Monarch — Monday, May 27, 2013 at 11:47am EDT

yeees

John Monarch — Monday, May 27, 2013 at 11:48am EDT

I'll join hers if Karl falls through which it appears he has

Ilya Blt — Tuesday, June 11, 2013 at 12:47am EDT

http://imgur.com/a/Il8ug

Ilya Blt — Tuesday, June 11, 2013 at 12:47am EDT

lol

John Monarch — Tuesday, June 11, 2013 at 12:48am EDT

lol goddamn

John Monarch — Saturday, October 26, 2013 at 12:26pm EDT

https://twitter.com/RichGorman101/status/390508848357724161 I guess he knows from experience

John Monarch — Saturday, October 26, 2013 at 12:30pm EDT

Sadly written by Zac Johnson actually, but still applicable

Ilya Putin — Saturday, October 26, 2013 at 1:40pm EDT

haha

John Monarch — Friday, December 20, 2013 at 2:10am EST

Looks like he got your twitter banned already

Gorman 00526
ROA_00526

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Ilya Putin — Friday, December 20, 2013 at 7:32am EST

na refresh

John Monarch — Saturday, December 21, 2013 at 3:45pm EST

Guess who else just got a legal threat from Gorman

Ilya Putin — Saturday, December 21, 2013 at 4:01pm EST

karl

John Monarch — Saturday, December 21, 2013 at 4:06pm EST

me

John Monarch — Saturday, December 21, 2013 at 4:06pm EST

lol

Ilya Putin — Saturday, December 21, 2013 at 4:06pm EST

oh lawd lol

John Monarch — Saturday, December 21, 2013 at 4:07pm EST

he's doing hail mary legal threats hoping this goes away lol

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

wonder who else got one

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

prolly arikka lolol

John Monarch — Saturday, December 21, 2013 at 4:08pm EST

will laugh if richter did too

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

did you get one from both rich and pace?

John Monarch — Saturday, December 21, 2013 at 4:09pm EST

just rich

John Monarch — Saturday, December 21, 2013 at 4:09pm EST

So far

Ilya Putin — Saturday, December 21, 2013 at 4:09pm EST

so you're john doe 1 and karl is john doe 2?

Gorman 004512
ROA_00527

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Ilya Putin — Saturday, December 21, 2013 at 4:12pm EST

did you see the letter he sent pace as well? lol

John Monarch — Saturday, December 21, 2013 at 4:14pm EST

lol yes - and I don't think I'm any of the John Does

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

since that suit happened before my name came up

Ilya Putin — Saturday, December 21, 2013 at 4:15pm EST

hes just grasping at straws

Ilya Putin — Saturday, December 21, 2013 at 4:15pm EST

cause he has no case against PO n such

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

yep

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

trying to shut everyone up

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

the funnier part to me is he can't find me - the threat went to my mom

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

she was like ???

Ilya Putin — Saturday, December 21, 2013 at 4:16pm EST

lol

Ilya Putin — Saturday, December 21, 2013 at 4:16pm EST

guess i have to do seo on my site now.....

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:17pm EST

this is the third time someone has tried suing or threatening me and couldn't find where I live

John Monarch — Saturday, December 21, 2013 at 4:17pm EST

they tried serving someone else for me for a lawsuit over a car accident and it got dropped due to improper service

ROA_00528

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Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

i should somehow make it look like someone else owns po

Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

so he keeps sending stuff there

Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:18pm EST

pace lol

Ilya Putin — Saturday, December 21, 2013 at 4:18pm EST

ill redirect phili to performinsider or meatspin

Ilya Putin — Saturday, December 21, 2013 at 4:18pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:18pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:19pm EST

this just all keeps getting better

John Monarch — Saturday, December 21, 2013 at 4:20pm EST

he knows his industry rep is in jeopardy

Ilya Putin — Saturday, December 21, 2013 at 4:20pm EST

the funny thing is

Ilya Putin — Saturday, December 21, 2013 at 4:20pm EST

the whole main claim on that letter - is that someone sent him emails

John Monarch — Saturday, December 21, 2013 at 4:20pm EST

yes lol

John Monarch — Saturday, December 21, 2013 at 4:21pm EST

ahaha

John Monarch — Saturday, December 21, 2013 at 4:21pm EST

it's probably the whole thing with anonymous getting involved

ROA_00529

Ilya Putin — Saturday, December 21, 2013 at 4:21pm EST

yup

John Monarch — Saturday, December 21, 2013 at 4:21pm EST

how did you even find that

Ilya Putin — Saturday, December 21, 2013 at 4:22pm EST

find what?

John Monarch — Saturday, December 21, 2013 at 4:22pm EST

pastebin, anon etc

John Monarch — Saturday, December 21, 2013 at 4:22pm EST

cray

Ilya Putin — Saturday, December 21, 2013 at 4:23pm EST

oh - it ranked for his name

Ilya Putin — Saturday, December 21, 2013 at 4:23pm EST

before he got it removed

John Monarch — Monday, January 6, 2014 at 2:03pm EST

Apparently Gorman is asking around about me, he thinks I own PO and that you're fake

Ilya Putin — Monday, January 6, 2014 at 2:04pm EST

lol

John Monarch — Monday, January 6, 2014 at 2:15pm EST

Finding out more he's been asking just about everyone he knows

John Monarch — Monday, January 6, 2014 at 2:16pm EST

Like Peter Nguyen

Ilya Putin — Monday, January 6, 2014 at 2:16pm EST

lol

Ilya Putin — Monday, January 6, 2014 at 2:16pm EST

hes retarded

John Monarch — Monday, January 6, 2014 at 2:17pm EST

yep - I'm going to find out if he's been spreading untrue BS about me

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Gorman 004645
ROA_00530

John Monarch Thursday, January 16, 2014 at 11:19am EST

in the mean time it may be a good idea for the DO logo to be off of PO

Ilya Putin Thursday, January 16, 2014 at 11:19am EST

Na. I think it's time to do seo for his name/company names

Ilya Putin Thursday, January 16, 2014 at 11:19am EST

and rank it #1-3

Ilya Putin Thursday, January 16, 2014 at 11:20am EST

I can remove it if you'd like, let me know

John Monarch Thursday, January 16, 2014 at 11:23am EST

yeah for now I think take the logo down until this is all over if you don't mind, it's easy to prove you aren't me

Ilya Putin Thursday, January 16, 2014 at 11:23am EST

kk

Ilya Putin Thursday, January 16, 2014 at 11:23am EST

ill do it later today

Ilya Putin Saturday, January 25, 2014 at 9:50pm EST

Gorman got his domain buy friend to make an offer on his behalf for one of the domains I own on the same host as PO. It's a random $7 domains and he's offering $22,000 for it lmao. I'm going to go through with it and then give him pace's payment details

John Monarch Saturday, January 25, 2014 at 10:18pm EST

Lmao

Downloaded by John Monarch on Tuesday, April 29, 2014 at 3:33pm EDT

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Drew Radeker

From: Drew Radeker
Sent: Tuesday, November 24, 2020 8:37 AM
To: Doc Morgan; 'Moore Jr., David L'; Christopher Brumback (chris@brumbacklangley.com); 'Spencer Langley'; Robert L. Mebane, Jr.
Cc: Rhonda Schaub; Gail Inzero; Dorothy Huskey
Subject: RE: Gorman v. Monarch

Doc:

We have Chris Watkins at Certified Computer Forensics on standby to examine the MacBook. Here are the procedures he outlined for us.

CCF's procedures for processing digital evidence (ESI) are summarized as follows:

1. Procedures for collection of digital evidence:
    a. General:
        i. CCF member shall complete a chain of custody record prior to beginning forensic processing. The chain of custody record shall be updated at the completion of the work to document the return of the evidence to the law enforcement officer, evidence custodian, or device owner, where applicable. Forensic processing shall begin at the moment that the CCF member receives custody of the evidence and begins manual inspection.
        ii. CCF member shall document the evidence via photography, to include the make, model, serial number, product number, and other identifiers.
        iii. CCF member shall document the date and time that forensic processing begins and ends.
        iv. CCF member shall utilize certified, licensed forensic software for processing and examination efforts.
        v. CCF member shall take notes and document each step taken throughout the examination process.
        vi. CCF member shall adhere to all laws and policies regarding handling of evidence containing contraband materials (if applicable).

    b. Computers

In matters where third-party examiners are allowed to independently acquire data from a computer device in evidence, the following steps shall be taken by CCF members:

i. Devices should be received in a power-off state. If the device is received in a power-on state, the CCF member shall document this prior to powering off the device.

ii. If possible, CCF member shall power-on the device into BIOS for the sole purpose of documenting the system time. The device shall be powered off at the completion of this task. This task shall be completed after the data storage device has been removed, disconnected, or disabled.

iii. If the device is a laptop, the battery should be removed from the device prior to removing the data storage device.

iv. CCF member shall remove the data storage device (i.e. hard disk drive or solid-state drive). The data storage device shall be connected to the forensic duplicator and a pre-hash function shall be executed to determine the MD5 and SHA1 hash values of the data.

v. Upon completion of the pre-hash function, CCF member shall acquire an E01 formatted forensic image of the device onto a pre-wiped external hard disk drive. A post-hash function shall commence following the acquisition procedure.

vi. In the event that the hash values are mismatched, the CCF member shall review the acquisition log to determine whether any bad sectors were reported. In the event that no bad sectors were reported, the CCF member shall attempt a second acquisition of the data.

vii. Upon completion of the acquisition process, the CCF member shall relinquish custody of the device back to the evidence custodian and the acquired evidence container files shall be taken to CCF lab for examination.

In this matter, CCF will be examining a MacBook, which will likely not require the data storage device to be removed in order to forensically acquire the data. CCF intends to photograph the data storage drive for verification purposes, but for MacBooks, CCF would utilize a forensic software called MacQuisition--a bootable forensic collection environment--to forensically acquire the data from the MacBook. MacQuisition will enable CCF to forensically acquire and execute pre-hash and post-hash functions securely.

As for the examination procedures that would follow the collection process, CCF intends to utilize a combination of forensic tools, including but not limited to Cellebrite BlackBag Blacklight, GetData Forensic Explorer, and Magnet Axiom.

Please let us know whether you have any problem with this process and when you could make the MacBook available to us.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Thursday, November 5, 2020 12:45 PM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>; Dorothy Huskey <dorothy.huskey@mgclaw.com>
Subject: RE: Gorman v. Monarch

Drew,

Hope all is well and sorry for any delay. I understand he has his old MacBook, but when migrating files from his old one to his new one, the hard drive on the old one was deleted in the normal course. On a related topic, we would need to address, as we go forward in this area, the issues raised in our discovery responses regarding procedures for forensic

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examination, determining who would conduct any examinations, search limitations, etc. Feel free to let us know if you guys want to discuss further.

Doc

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VCARD | BIO

COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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Please consider the environment before printing this email.

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, November 05, 2020 9:53 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Doc, not having heard from you on this, I will assume that we read the discovery answers correctly to say that Mr. Monarch destroyed the MacBook too. If I'm wrong about that, please let me know.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Tuesday, October 27, 2020 9:55 AM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Let us check Drew and we will get back to you.

Doc Morgan, *Attorney*
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55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | **Direct**:864-239-4028 | **Fax**:864-242-3199
VCARD | **BIO**

COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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Please consider the environment before printing this email.

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, October 27, 2020 9:49 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: Gorman v. Monarch

Doc:

Did your client keep the MacBook Pro from which he migrated his data? If so, how soon may we have someone analyze it?

Thank you.

Drew Radeker

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 34 and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch to provide his 2013 MacBook Pro and other electronic devices, identified in his discovery responses filed herewith, for examination by the Plaintiff. The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case's beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. After some wrangling about discovery and an agreed revision of Plaintiff's discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5, but his counsel advises that he kept the 2013 MacBook Pro.

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4. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data, but such evidence may still be on the 2013 MacBook Pro.
5. Plaintiff's counsel have attempted but have not yet been successful in arranging examination of the devices the Defendant has identified; hence, this motion, so that this matter be resolved by the court if it remains unresolved between counsel.
6. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
7. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004).
8. The discovery sought is proper and is material to the issues in this case.
9. The court should order production for examination accordingly.
10. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

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and

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September 28, 2020

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
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Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
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Post Office Box 11889
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Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

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BRUMBACK & LANGLEY, LLC

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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

ELECTRONICALLY FILED - 2020 Dec 09 2:37 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
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Email: smatthews@hsblawfirm.com
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September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

ELECTRONICALLY FILED - 2021 Jan 04 5:23 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304432

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, Defendant.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION AND MOTION FOR SANCTIONS FOR DESTRUCTION OF EVIDENCE**

Defendant John C. Monarch offers the following memorandum of law in opposition to Plaintiff's Motion to Compel Production of Electronic Devices for Examination and Motion for Sanctions for Destruction of Evidence filed on December 9, 2020.

Factual and Procedural Background

This lengthy and contentious dispute, which has been litigated across multiple jurisdictions, including Arizona, Pennsylvania, and South Carolina, over the expanse of more than three (3) years, arises out of certain online statements concerning the Plaintiff's criminal history that were posted by a "Ilya Putin," a/k/a Ilya Shpetrik, a third party that Gorman falsely alleges to be Monarch and which Gorman now acknowledges is in fact not Monarch as evidenced by Gorman just recently filing suit against Ilya Shpetrik and his family in the Eastern District of Pennsylvania, Richard A. Gorman v. Ilya Shpetrik, Oleg Shpetrik, Anna Shpetrik and Mark Shpetrik, C.A. No. 2:20-cv-04759-JCJ .

The protracted history of the litigation between the parties began in February of 2014 when Gorman sued Monarch for defamation in federal court in the Eastern District of Pennsylvania, Richard A. Gorman v. John C. Monarch et al., C.A. No. 2:14-CV-00890-NS (E.D.Pa.). After Monarch successfully contested personal jurisdiction in the above lawsuit, Monarch and DOS

countersued Gorman for defamation in Eastern District of Pennsylvania, John C. Monarch and Direct Outbound Services, LLC, v. Richard A. Gorman, et al., C.A. No. 2:14-cv-05980-GAM (E.D.Pa.) (the "PA Case"). In response to the dismissal won by Monarch in Gorman's Pennsylvania lawsuit, Gorman filed the present lawsuit (the "SC Case") in August of 2014. Defendant has vigorously defended and litigated the SC Case and the Pennsylvania and Arizona cases since their commencement and has fully participated in discovery throughout these cases.

Defendant began to move forward with the defense of this case on the merits until Gorman, in July of 2015, moved to stay the SC Case in the interest of pursuing the PA Case, which as admitted by counsel for Gorman were the exact "same claims." See Mot. to Stay Hr'g Tr. 3:19-20. Over Defendant's objections, Gorman's request to stay the SC Case was granted on November 20, 2015.

After pitched litigation that included extensive discovery on the "same claims" as presented in the SC Case, settlement was reached on Monarch's claims in the PA Case. Having failed to obtain his desired outcome in Pennsylvania, Gorman moved to lift the stay in this case on July 6, 2016. By Order dated August 16, 2016, the stay was ultimately lifted over a full year after Gorman originally requested the stay. Thereafter, Gorman, filed a Motion to Amend his Complaint in order to assert claims against Direct Outbound Services, the company of which Monarch was CEO at the time, "identical to the present claims already asserted against Monarch." Pl.'s Mot. to Amend 3–4 (emphasis added). Gorman's Motion to Amend was granted on or about October 5, 2016. Since Plaintiff's Motion to Amend was granted, the case has involved a lengthy and protracted procedural history, including the changing of counsel for Plaintiff and Defendant Monarch. For purposes of brevity, the procedural posture has been defined by time consuming and futile machinations on Plaintiff's behalf, including: three separate and unfounded attempts by Plaintiff

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to obtain a default judgment against Defendants, each of which was denied by the Court[1]; the dismissal of several individual Defendants named in the Second Amended Complaint filed in August 2018; a subsequent appeal filed by Plaintiff on January 14, 2019; Plaintiff's withdrawal of the appeal on July 7, 2019 after Plaintiff failed to timely file an initial brief or designation of matter to be included in the record on appeal with the Court of Appeals, and four unsuccessful mediations conducted between May and November 2017.

The case is currently removed from the active roster as the parties filed a Consent Order pursuant to Rule 40(j), SCRCP, on October 26, 2020. On October 21, 2020, over four years after filing of the original Complaint on August 8, 2016, Plaintiff dismissed previously named Defendants ShipChain, Inc. and Direct Outbound Services, LLC without prejudice, leaving John Monarch the only remaining Defendant and essentially returning this case to square one.

Argument

In Plaintiff's Motion to Compel, Plaintiff seeks an Order compelling Defendant Monarch to produce his personal computer, a 2013 MacBook Pro for imaging by Plaintiff. Plaintiff's Motion for Sanctions is closely related to the Motion to Compel, and asks the Court to impose sanctions on Defendant for allegedly destroying evidence contained on his personal electronic devices following a prior request by Plaintiff's prior counsel to preserve all electronic evidence for purposes of litigation. For the reasons set forth herein below, Plaintiff's Motions should be denied.

A. Plaintiff Has Failed to Demonstrate That He Is Entitled to Image Defendant's MacBook Pro

Rule 26(b)(6), SCRP, governs the discovery of electronically stored information and provides:

[1] Plaintiff actually moved for entry of default four times and for default judgment three times on March 3, 2017, July 31, 2018, and July 7, 2019, each of which was denied and default set aside, respectively, on January 22, 2018, August 27, 2018, and September 23, 2019.

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> (A) A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery, including allocation of expenses associated with discovery of the electronically stored information.
>
> (B) On motion or on its own motion, the court shall limit the frequency or extent of discovery otherwise allowed by these rules if the court determines that:
>
> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).
>
> Rule 26(b)(6), SCRCP.

For purposes of Plaintiff's Motion, a review of Defendant's written discovery responses is necessary to determine what is at issue in Plaintiff's Motion to Compel and Motion for Sanctions. In Defendant's supplemental written discovery responses to Plaintiff's Supplemental Request for Production Number 9 dated September 28, 2020, Defendant identified three electronic devices in response to Plaintiff's request, including an iPhone X, a MacBook Pro, and an iPhone 5, subject to multiple objections raised in his response. (See Defendant's Response attached as Exhibit 2 to Plaintiff's Motion to Compel). Plaintiff seeks to image the MacBook Pro, which is the only device that Defendant currently has in his possession. Most importantly, as set forth in Defendant's written response, Defendant has provided all relevant and discoverable information to Plaintiff at

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issue in the present litigation, as well as having also provided such information in connection with the PA Case. Id. As further set forth in Defendant's written response, the migration of data from the 2013 device was transferred over to the 2017 device, as such, there is no evidence in this case that anything has been deleted. Id. Additionally, as set forth in Defendant's objections, Plaintiff's request to image the MacBook Pro seeks information that is completely irrelevant to the claims at issue in this case, and involves an invasion of Defendant's privacy and confidential information that is wholly irrelevant to this case. Moreover, the Plaintiff's present motion is nothing more than a fishing expedition, which is not the type of discovery provided for in the South Carolina Rules of Civil Procedure. See Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (ruling on a motion for summary judgment and holding that "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition").

There do not appear to be any South Carolina appellate court decisions directly on point with the present issue, however courts in other jurisdictions have addressed the issue of compelling the forensic imaging of a device. In an Ohio appellate decision, Fasteners For Retail, Inc. v. DeJohn, 2014-Ohio-1729, P24 Ohio App. (2014), the court examined factors courts should consider before compelling production of a litigant's computer for forensic imaging and search. Fasteners for Retail (FFR) sued two former employees and a competitor alleging patent infringement, misuse of trade secrets, false advertising, and other claims. Id. at 3. After various discovery skirmishes between the parties, FFR moved to compel production of the employees' computer hard drives. Id. at 5. In support of the motion, FFR contended that the former employees engaged in evasive conduct and "potentially" spoliated critical evidence. Id. at 13. The trial court ordered production of the computer hard drives and the employees appealed. Id. at 15-16. The

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Court of Appeals for Ohio, Eighth District, reversed noting that courts are reluctant to compel forensic imaging of computer hard drives "largely due to the risk that the imaging will improperly expose privileged and confidential material . . . ." Id. at 21.

In support of its opinion, the court took guidance from Bennett v. Martin, 186 Ohio App.3d 412 (10th Dist. 2009) which cautioned:

> . . . before compelling forensic imaging, a court must weigh the significant privacy and confidentiality concerns inherent in imaging against the utility or necessity of the imaging. . . . In determining whether the particular circumstances justify forensic imaging, a court must consider whether the responding party has withheld requested information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests. . . When a requesting party demonstrates either discrepancies in a response to a discovery request or the responding party's failure to produce requested information, the scales tip in favor of compelling forensic imaging.

Id. at 24.

The FFR court, citing several federal cases, noted that federal courts are also reluctant to order examination of a litigant's computer as a matter of course or on the mere suspicion that a party withheld evidence. Id. at 25; see Playboy Enterprises v. Welles, 60 F.Supp. 2d 1050, 1054 (S.D. Cal. 1999) (allowing access to party's computer system on a finding of systematic deletion of relevant e-mails after litigation had commenced). See, e.g., Williams v. Mass. Mut. Life Ins. Co., 226 F.R.D. 144, 146 (D. Mass. 2005) (denying motion to appoint computer forensic expert because moving party failed to present any "credible evidence that Defendants are unwilling to produce computer-generated documents, whether now or in the future, . . . or that Defendants have withheld relevant information . . ."); Bethea v. Comcast, 218 F.R.D. 328, 329-30 (D.D.C. 2003) (denying motion to compel because, "[i]n the context of computer systems and computer records, inspection or seizure is not permitted unless the moving party can demonstrate that the documents they seek to compel do, in fact, exist and are being unlawfully withheld"); Simon Prop. Group L.P.

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v. Simon, Inc., 194 F.R.D. 639, 641 (S.D. Ind. 2000) (allowing plaintiff to inspect defendant's computer system because plaintiff demonstrated "troubling discrepancies with respect to defendant's document production"); Ameriwood Indus., Inc. v. Liberman, Case No. 4:06CV524-DJS, 2006 U.S. Dist. LEXIS 93380, 2006 WL 3825291, *1 (E.D. Mo. Dec. 27, 2006) (unpublished) (granting motion to compel imaging of defendant's hard drive because the court had "cause to question whether defendants have produced all responsive documents"); Balboa Threadworks, Inc. v. Stucky, Case No. 05-1157-JTM-DWB, 2006 U.S. Dist. LEXIS 29265, 2006 WL 763668, at *4 (D. Kan. Mar. 24, 2006) (unpublished) (permitting imaging of defendants' computer where defendants' representation that no responsive materials existed on computer was contradicted by their production of e-mail created on that computer).

Applying the Bennett principles to FFR's motion, the court concluded that the trial court erred in ordering the former employees to produce their computers for forensic imaging because FFR did not establish the defendants' noncompliance with discovery and noted that FFR, itself, failed to fully comply with discovery requests served upon it. Id. at 28-29. The court also noted that the trial court also erred in compelling the production of the hard drives without a protocol governing the forensic examination of the hard drives. Id. at 34.

In applying the Bennett factors to the present motion, it is evident that Plaintiff has failed to meet his burden of showing that the imaging of the Defendant's MacBook Pro is warranted in this instance, as Defendant has fully complied with Plaintiff's discovery requests and has not withheld any requested information. If anything, Plaintiff's motion is based merely upon unsupported suspicion and conjecture that Defendant has withheld information in discovery and that any such information that might allegedly exist, which Monarch expressly denies, is both material and located on Defendant's computer. CFRE, LLC v. Greenville County Assesor, 395

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S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions despite non-moving party's failure to answer standard interrogatories or production requests because moving party provided "no evidence of what material facts were not produced" by the non-moving party) (emphasis added). Moreover, Plaintiff has failed to show any discrepancies in Defendant's discovery responses with any information that has already been produced by Defendant in discovery, which is insufficient to warrant the imaging of Defendant's MacBook Pro. Plaintiff's Motion only contains conclusory allegations that Defendant has failed to comply with discovery, but fails to cite specific facts, reasons, or examples why Plaintiff is entitled to an invasive imaging of Defendant's MacBook.

Additionally, when applying Rule 26(b)(6)(B)(ii), SCRCP, to the present motion, it is further evident that the imaging of Defendant's MacBook is unwarranted, as this case has been pending for over six years. Plaintiff's present motion was filed in December 2020. Defendant concedes that the procedural posture of the case has been lengthy and involved substitutions of counsel for both Plaintiff and Defendant, however six years is more than enough time to obtain the necessary information in discovery.

As set forth above, Plaintiff is not entitled to image Defendant's MacBook and Plaintiff's Motion to Compel should be denied.

B. Plaintiff's Motion for Sanctions Is Unwarranted

Rule 37(f), SCRCP, pertains to the sanctions of a party for the failure to participate in electronic discovery and provides in pertinent part:

> Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

"A court must consider four factors when determining the appropriate discovery sanction: the nature of discovery sought, the discovery stage of the case, willfulness, and the degree of

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prejudice. If the court does not consider these factors, an abuse of discretion occurs." Richardson v. Twenty-One Thousand & no/100 Dollars ($21,000.00) United States Currency & Various Jewelry, 430 S.C. 594, 600, 846 S.E.2d 14, 17 (Ct. App. 2020).

Plaintiff's Motion for Sanctions is based upon the conclusory allegation that Defendant destroyed electronic evidence through the process of Defendant's wiping of the data on his iPhone 5 and MacBook Pro. However, as set forth in Rule 37(f), SCRCP, "[a]bsent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system." As clearly set forth in Defendant's written discovery responses to Plaintiff's Supplemental Requests for Production, the wiping of the devices at issue occurred during the routine, good-faith operation, and upgrading of Defendant's iPhone and MacBook Pro. (See **Exhibit 2** to Plaintiff's Motion to Compel filed on December 9, 2020). Moreover, the data from the 2013 device was transferred over to the 2017 MacBook, therefore, there has not been a destruction of evidence in this case. Id. This is the exact type of data migration that Rule 37(f) addresses, which is what occurred in the present case.

In applying the factors set forth in Richardson, it is important to note that this case has been pending for over six years in multiple jurisdictions and the nature of discovery sought by Plaintiff involves a fishing expedition by way of the imaging of a private computer owned by the Defendant, which contains confidential and private information wholly unrelated to the Plaintiff's claims.[2] Despite Defendant having fully responded to Plaintiff's written discovery requests and produced, in the format in which they were stored, responsive documentation in Monarch's custody and control, Plaintiff presents "no evidence of what material facts were not produced." CFRE, LLC v.

[2] Plaintiff's Motion was filed on December 9, 2020.

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Greenville County Assesor, 395 S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions because moving party provided "no evidence" of "material facts" "not produced" by the non-moving party) (emphasis added). In the absence of the requisite evidence, Plaintiff cannot and does not demonstrate a specific fact or reason why sanctions are warranted.

Far from providing any specifics upon which a foundation to justify sanctions could even begin being built, Plaintiff provides the court with nothing more than conclusory allegations and conjecture that because Defendant's electronic devices were upgraded during the normal course and good-faith operation of the devices over the course of more than half a decade, they must have contained information allegedly relevant to the Plaintiff's claims. Furthermore, Plaintiff has failed to show any exceptional circumstances in the present case which warrant any willfulness on behalf of the Defendant to destroy any information relevant to the Plaintiff's claims. Additionally, Defendant would be greatly prejudiced by an award of sanctions against him, but it could also prove to be damaging to his defense if the case proceeds to trial and the jury is allowed to consider the award of sanctions as part of the case. As such, Plaintiff's Motion for Sanctions should be denied.

Conclusion

For the reasons set forth above, Plaintiff's Motion to Compel Electronic Discovery and Motion for Sanctions for Destruction of Evidence should be denied.

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January 4, 2021
Greenville, South Carolina

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendants.**	**PLAINTIFF'S REPLY MEMORANDUM**

The Plaintiff, Richard A. Gorman, hereby submits this memorandum in reply to the Defendant's memorandum submitted on January 4, 2021.

As to the Defendant's argument that he does not have to provide the electronic devices he does have for inspection, that ship has sailed. In a consent order filed on August 21, 2020, the Defendant agreed and the court ordered as follows:

> With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

The Defendant has violated this order and now seeks to continue to violate it, running afoul of Rule 37(b)(2), SCRCP. Having agreed to and been ordered to provide the devices to the Plaintiff expeditiously for examination, he is not now permitted to argue that he does not have to do that.

After a motion to compel in 2018, which was withdrawn when it was believed to be resolved, a phone conference in the spring of 2020 that the undersigned believed resolved all discovery issues, the Plaintiff's extensive supplementation of discovery in the summer of 2020 without corresponding supplementation by the Defendant, another motion to compel, and the

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consent order described above, the Defendant still refuses to comply with his discovery obligations and produce his electronic devices for examination.

With regard to the device he got rid of, the Defendant's evidence destruction made it impossible for himself to comply with the order to which he already agreed.

It is interesting that the Defendant brings up "Ilya Putin" a/k/a Ilya Shpetrik. The Defendant at first took the position that he did not know this person. The Defendant later admitted he knew this person but took the position that he did not know Ilya's real name or where to find him and that the Defendant and Ilya had not communicated about matters concerning this case. The Defendant then produced a copy of electronic messages between the Defendant and Ilya discussing the blackmail and defamation communications subject of this case and the Plaintiff's reaction to them. (These messages are from 2013, when the communications occurred.) Then, in finally supplementing discovery responses in the fall of 2020, the Defendant produced an actual name for Ilya and an address for him.

As to the Defendant's contention that there is no authority to support the sanction sought by the Plaintiff, the Plaintiff points the court to the plain language of Rule 37(b)(2)(A), SCRCP, which lists as an available sanction "[a]n order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order" – exactly the sort of sanction sought here.

We also know very well what evidence the Defendant destroyed: the evidence that was wiped from his phone and MacBook, as well as any and all data, including data showing the deletion of other data, that was on the device the Defendant no longer has. We do not know exactly what was *in* that evidence, but that is because the Defendant has made it so that we now cannot look at it. This is not CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 83-84, 716 S.E.2d

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877, 886 (2011), in which the party seeking sanctions could not point to any documents actually having been withheld from discovery.

Here, the Defendant's actions have made it impossible for the Plaintiff ever to have any access to electronic documents – data – that may well go to the heart of this case. That evidence may have exonerated the Defendant (doubtful) or may have confirmed his liability (likely), but, because he destroyed it, we will never know. The evidence he destroyed was evidence that he was notified before this lawsuit to retain, with specific instructions, and in which had been sought from him in discovery in this case since November 14, 2014 – over three years before when the Defendant states he destroyed it.

The Defendant has a computer science background and has spent his career working on digital internet businesses. He knew better. He knew what he was doing when he destroyed this evidence.

In Silvestri v. Gen. Motors Corp., 271 F.3d 583 (4th Cir. 2001), a case in which the sanction of dismissal was imposed for the plaintiff's failure to take steps to prevent *someone else* from getting rid of evidence *that other person* owned, id. at 587, the court stated that the need for sanctions when a party destroys evidence arises from

> the need to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth. Because no one has an exclusive insight into truth, the process depends on the adversarial presentation of evidence, precedent and custom, and argument to reasoned conclusions – all directed with unwavering effort to what, in good faith, is believed to be true on matters material to the disposition. The courts must protect the integrity of the judicial process because, as soon as the process falters the people are then justified in abandoning support for the system.

Id. at 590 (internal citations and quotation marks omitted),

"Overly lenient sanctions are to be avoided where they result in inadequate protection of discovery." Samples v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 217 (Ct. App. 1997).

Sanctions for willful discovery abuse should be granted "[u]nless the party who has failed to submit to discovery can show lack of prejudice[.]" Id. The Defendant has not and cannot show that here.

The court's sanction should be "meaningful enough to protect the rights of discovery provided by the Rules." Id. The Plaintiff does not propose an overly harsh sanction, such as striking the Defendant's pleading. The Plaintiff does not ask the court to sanction the Defendant's lawyers, who had no involvement in the Defendant's evidence destruction. The Plaintiff asks for a sanction against the Defendant himself that is appropriately aimed at his discovery misconduct: that this court sanction him by adjudging that the evidence he destroyed would have revealed his involvement in creating, directing, or arranging the blackmail communications and defamatory internet postings involved in this case. This is expressly contemplated an authorized by Rule 37(b)(2)(A), SCRCP.

Respectfully submitted,

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Columbia, South Carolina
January 6, 2021

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 34 and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch to provide his 2013 MacBook Pro and other electronic devices, identified in his discovery responses filed herewith, for examination by the Plaintiff. This filing is made to assist in putting on the docket a motion previously made under the old case number for this restored case. A copy of that motion is filed as an exhibit to this one and is incorporated herein by reference as if here set forth verbatim.

Respectfully submitted,

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Columbia, South Carolina
August 17, 2021

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 34 and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch to provide his 2013 MacBook Pro and other electronic devices, identified in his discovery responses filed herewith, for examination by the Plaintiff. The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case's beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. After some wrangling about discovery and an agreed revision of Plaintiff's discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5, but his counsel advises that he kept the 2013 MacBook Pro.

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4. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data, but such evidence may still be on the 2013 MacBook Pro.
5. Plaintiff's counsel have attempted but have not yet been successful in arranging examination of the devices the Defendant has identified; hence, this motion, so that this matter be resolved by the court if it remains unresolved between counsel.
6. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
7. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004).
8. The discovery sought is proper and is material to the issues in this case.
9. The court should order production for examination accordingly.
10. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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and

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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
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Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

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BRUMBACK & LANGLEY, LLC

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
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September 28, 2020
Date

Gail V. Inzero
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Drew Radeker

From: Drew Radeker
Sent: Tuesday, November 24, 2020 8:37 AM
To: Doc Morgan; 'Moore Jr., David L'; Christopher Brumback (chris@brumbacklangley.com); 'Spencer Langley'; Robert L. Mebane, Jr.
Cc: Rhonda Schaub; Gail Inzero; Dorothy Huskey
Subject: RE: Gorman v. Monarch

Doc:

We have Chris Watkins at Certified Computer Forensics on standby to examine the MacBook. Here are the procedures he outlined for us.

CCF's procedures for processing digital evidence (ESI) are summarized as follows:

1. Procedures for collection of digital evidence:
   a. General:
      i. CCF member shall complete a chain of custody record prior to beginning forensic processing. The chain of custody record shall be updated at the completion of the work to document the return of the evidence to the law enforcement officer, evidence custodian, or device owner, where applicable. Forensic processing shall begin at the moment that the CCF member receives custody of the evidence and begins manual inspection.
      ii. CCF member shall document the evidence via photography, to include the make, model, serial number, product number, and other identifiers.
      iii. CCF member shall document the date and time that forensic processing begins and ends.
      iv. CCF member shall utilize certified, licensed forensic software for processing and examination efforts.
      v. CCF member shall take notes and document each step taken throughout the examination process.
      vi. CCF member shall adhere to all laws and policies regarding handling of evidence containing contraband materials (if applicable).

   b. Computers

In matters where third-party examiners are allowed to independently acquire data from a computer device in evidence, the following steps shall be taken by CCF members:

i. Devices should be received in a power-off state. If the device is received in a power-on state, the CCF member shall document this prior to powering off the device.

ii. If possible, CCF member shall power-on the device into BIOS for the sole purpose of documenting the system time. The device shall be powered off at the completion of this task. This task shall be completed after the data storage device has been removed, disconnected, or disabled.

iii. If the device is a laptop, the battery should be removed from the device prior to removing the data storage device.

iv. CCF member shall remove the data storage device (i.e. hard disk drive or solid-state drive). The data storage device shall be connected to the forensic duplicator and a pre-hash function shall be executed to determine the MD5 and SHA1 hash values of the data.

v. Upon completion of the pre-hash function, CCF member shall acquire an E01 formatted forensic image of the device onto a pre-wiped external hard disk drive. A post-hash function shall commence following the acquisition procedure.

vi. In the event that the hash values are mismatched, the CCF member shall review the acquisition log to determine whether any bad sectors were reported. In the event that no bad sectors were reported, the CCF member shall attempt a second acquisition of the data.

vii. Upon completion of the acquisition process, the CCF member shall relinquish custody of the device back to the evidence custodian and the acquired evidence container files shall be taken to CCF lab for examination.

In this matter, CCF will be examining a MacBook, which will likely not require the data storage device to be removed in order to forensically acquire the data. CCF intends to photograph the data storage drive for verification purposes, but for MacBooks, CCF would utilize a forensic software called MacQuisition--a bootable forensic collection environment--to forensically acquire the data from the MacBook. MacQuisition will enable CCF to forensically acquire and execute pre-hash and post-hash functions securely.

As for the examination procedures that would follow the collection process, CCF intends to utilize a combination of forensic tools, including but not limited to Cellebrite BlackBag Blacklight, GetData Forensic Explorer, and Magnet Axiom.

Please let us know whether you have any problem with this process and when you could make the MacBook available to us.

Thank you.

Drew Radeker

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ATTORNEYS AT LAW

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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Thursday, November 5, 2020 12:45 PM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>; Dorothy Huskey <dorothy.huskey@mgclaw.com>
Subject: RE: Gorman v. Monarch

Drew,

Hope all is well and sorry for any delay. I understand he has his old MacBook, but when migrating files from his old one to his new one, the hard drive on the old one was deleted in the normal course. On a related topic, we would need to address, as we go forward in this area, the issues raised in our discovery responses regarding procedures for forensic

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examination, determining who would conduct any examinations, search limitations, etc. Feel free to let us know if you guys want to discuss further.

Doc

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COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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Sent: Thursday, November 05, 2020 9:53 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Doc, not having heard from you on this, I will assume that we read the discovery answers correctly to say that Mr. Monarch destroyed the MacBook too. If I'm wrong about that, please let me know.

Thank you.

Drew Radeker

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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Tuesday, October 27, 2020 9:55 AM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Let us check Drew and we will get back to you.

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VCARD | BIO

COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, October 27, 2020 9:49 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: Gorman v. Monarch

Doc:

Did your client keep the MacBook Pro from which he migrated his data? If so, how soon may we have someone analyze it?

Thank you.

Drew Radeker

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION FOR SANCTIONS FOR DESTRUCTION OF EVIDENCE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 37, SCRCP, and all other applicable law, for an order that issues sanctions against Defendant John C. Monarch for his destruction of evidence, such evidence being electronic data and an electronic communication device, an iPhone 5. This filing is made to assist in putting on the docket a motion previously made under the old case number for this restored case. A copy of that motion is filed as an exhibit to this one and is incorporated herein by reference as if here set forth verbatim.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
August 17, 2021

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION FOR SANCTIONS FOR DESTRUCTION OF EVIDENCE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 37, SCRCP, and all other applicable law, for an order that issues sanctions against Defendant John C. Monarch for his destruction of evidence, such evidence being electronic data and an electronic communication device, an iPhone 5. Sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence.

Incorporated into this motion are the following documents:

a. Plaintiff's discovery requests filed in connection with previous motions in this case;

b. Defendant Monarch's previous discovery responses filed in connection with previous motions in this case;

c. The affidavit of Christopher J. Watkins, filed with this motion;

d. Defendant Monarch's December 2020 responses to Plaintiff's supplemental discovery requests, filed with this motion;

e. A December 20, 2013, letter from a lawyer for the Plaintiff to Defendant Monarch requesting the preservation of documents and data, including the electronic data that Defendant Monarch ultimately destroyed; and

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f. A Facebook message conversation between Defendant Monarch and "Ilya Putin" (now believed, based on information Defendant Monarch provided in 2020, to be named Ilya Shpetrik) in which the Defendant discusses the online attacks on the Plaintiff and which tends to indicate his knowledge of and involvement in the same.

The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case's beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. Even before this case began, though, in December of 2013, counsel for the Plaintiff wrote to Defendant Monarch notifying him of the need for him to keep all documents relating to the Plaintiff or this matter, including the electronic data the Defendant ultimately destroyed.
4. After years of delay, some wrangling about discovery, and an agreed revision of Plaintiff's discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5 altogether, but his counsel advises he kept the 2013 MacBook Pro, albeit with its data wholly removed.
5. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data.

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6. Defendant Monarch knew better than to destroy this data and get rid of his phone. He has an extensive background in computer technology, and he knew that he was destroying data that he had been warned to keep and which the Plaintiff had been seeking in discovery in this case for years at the time Defendant Monarch destroyed it.
7. It is likely that the data lost by Defendant Monarch's actions would have pointed to his involvement in the blackmail and defamation subject of this case, including, but not limited to, for the following reasons:
    a. The data destruction itself under the circumstances present here;
    b. Defendant Monarch's messages in 2013 with the person then identified as Ilya Putin, which indicate that they were both already familiar with the attacks on the Plaintiff before the message conversation began (Defendant Monarch has previously indicated that this Ilya acted alone, without his involvement); and
    c. The fact, as shown by earlier filings in this case, that Defendant Monarch is much more familiar with the cryptocurrency bitcoin (in which the blackmail payment involved here was demanded) than he testified he was in a deposition in a Pennsylvania case when asked about the events of this case.
8. The Plaintiff notes that sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence and likely only learned of it after it had already been done.
9. To be sure, the Plaintiff will be entitled to adverse inference charges as a result of Defendant Monarch's spoliation. But that does not address the fact that Defendant Monarch willfully and knowing destroyed evidence he knew was sought in discovery requests in this case.

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10. It is right, proper, and fitting for this court to sanction Defendant Monarch. As permitted under Rule 37, SCRCP, this court should sanction him by adjudging that the evidence he destroyed would have revealed his involvement in creating, directing, or arranging the blackmail communications and defamatory internet postings involved in this case.
11. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that consultation with opposing counsel in an effort to resolve the matter subject of this motion would not have served a useful purpose.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**AFFIDAVIT OF CHRISTOPHER J. WATKINS**

Personally appeared before me Christopher J. Watkins, who, first being duly sworn, deposes and says as follows:

1. My name is Christopher J. Watkins. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them.

2. I am a SLED Licensed Investigator, and I have an educational background in Computer Science, Information Technology, Computer Programming, and Systems Engineering for Hardware and Software. I am recognized as a Certified Forensic Computer Examiner (CFCE) by the International Association of Computer Investigative Specialists (IACIS), which is, in turn, accredited by the Forensic Specialties Accreditation Board (FSAB). The FSAB is an independent organization established to accredit professional bodies that certify forensic scientists. I am also an associate member of the IACIS and a member of the American Society of Digital Forensics & eDiscovery.

3. Since 2010, I have worked as a Licensed Private Investigator in South Carolina. From 2010 to 2016, I worked as a SLED Licensed Investigator for Stillinger Investigations. In 2016, I founded my own company, Watkins Digital Forensic &

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Investigations, and in 2019, I founded a second company, Certified Computer Forensics, LLC. In these positions, I have completed hundreds of digital forensic investigations involving computer systems, computer networks, servers, and various cellular and digital devices. These investigations involved the disciplined use of specialized methods and techniques, adhering to the scientifically accepted standards and practices for recovery, authentication and analysis of electronically stored information, reconstruction of computer usage, examination of residual data, authentication of data by technical analysis, and explanation of technical features of data and computer usage.

4. Since 2014, I have been qualified twenty-three times as an expert in matters of Digital Forensic Science in the South Carolina Family Court, General Sessions Court, and Court of Common Pleas, and in the United States District Court for the District of South Carolina.

5. I have had the opportunity to review discovery in this matter and discuss key details with the Attorneys for Plaintiff Richard A. Gorman. I am aware that on or about December 20, 2013, Defendant John C. Monarch received a spoliation letter, data preservation request, and request for production of discovery items related to his electronic devices. (See Exhibit A.)

    a. The five-page spoliation letter, addressed to Defendant, provides clear and concise information and instructions regarding how to immediately preserve his electronically stored information (ESI). The letter details specific examples of types of ESI and details examples of ways to adequately preserve such ESI.

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6. In Defendant's Responses to Plaintiff's Supplemental Requests for Production, dated September 28, 2020, Defendant indicates that he no longer has in his possession his iPhone 5, iPhone X, or 2013 MacBook Pro because those items were either sold, traded-in at the time of upgrade, or intentionally erased following an upgrade to a newer device. (See Exhibit B.)

    a. On page three (3) of Defendant's Responses to Plaintiff's Supplemental Requests for Production, Defendant indicates: 1) "Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded," and 2) "As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device."

7. In Defendant's Answers to Plaintiff's Supplemental Interrogatories, dated September 28, 2020, Defendant indicates that "as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro" and "upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively." (See Exhibit C.)

8. Based on the discovery responses provided by Defendant, it is evident that rather than adequately taking measures to preserve the ESI contained on his electronic devices,

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Defendant admittedly took steps contrary to and in defiance of the spoliation letter and data preservation request.

9. When Defendant took steps to upgrade his devices, he could have done so without erasing data or disposing of his previous devices.

10. For example, Defendant could have taken steps to preserve the ESI contained on this electronic devices by: 1) performing a good faith backup of each device in his possession and documenting the date and time of each backup, 2) contracting a third party expert to perform these actions on his behalf, or 3) retaining possession of his electronic devices.

11. Due to the actions of Defendant concerning erasing and/or disposing of the devices that he owned at the time that he received and was aware of the spoliation letter, Defendant has effectively made it impossible for Plaintiff's Expert and Attorneys to examine ESI believed to be pertinent to this matter.

12. Moreover, in view of Defendant's education and experience, it is reasonable to conclude Defendant knew that taking the actions he did would result in the destruction of evidence.

13. According to Defendant's LinkedIn profile, Defendant minored in Computer Science at Clemson University and completed courses that cover advanced concepts related to computer science and computer programming, including Theoretical Computer Science (Clemson University course CPSC 350), Programming in C (Clemson University course CPSC 105), and Advanced Data Structures and C Programming (Clemson University course CPSC 205).

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14. Based on my review of the facts in this matter, it is reasonable to believe and to suggest that Defendant has knowledge regarding: 1) how ESI is retained on electronic devices, 2) the fact that data migration during a device upgrade does not transfer deleted or unallocated data that would have been present and discoverable on his previous devices, and 3) the fact that he could have retained his previous devices, in good faith, in compliance to the spoliation letter.

15. While it is possible to examine ESI contained on Defendant's current devices, it is acknowledged and understood that any data that was not migrated from Defendant's previous devices (i.e. deleted, unallocated, or data that was selectively abnegated from the data migration process) will not be discoverable and present for examination pursuant to Plaintiff's legal request because the ESI on Defendant's previous devices has effectively been destroyed by Defendant.

FURTHER AFFIANT SAYETH NOT.

Christopher J. Watkins

SWORN to before me this

4th day of November, 2020.

Katie D. McC (L.S.)

Notary Public for South Carolina

My Commission Expires: 11/03/25

KATIE D MCCLARAN
Notary Public-State of South Carolina
My Commission Expires
November 03, 2025

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BLANK ROME LLP
COUNSELORS AT LAW

Phone: (215) 569-5352
Fax: (215) 832-5352
Email: Lee-M@BlankRome.com

December 20, 2013

John C. Monarch
404 Gatewood Drive
Greenwood, SC 29646-9260

Dear Mr. Monarch:

This law firm represents Rich Gorman and his related companies. Mr. Gorman has recently received a number of extremely disturbing email communications which threaten harm to Mr. Gorman, his businesses, and his customers, if he does not make a payment of several thousand hundred dollars worth of Bitcoins as directed in the emails. The threatening tone of the emails has been escalating in recent days. In addition, derogatory and/or defamatory information about Mr. Gorman has been recently posted on numerous websites.

Our preliminary investigation into this matter suggests to us that you have a connection with www.performoutsider.com, a web site which appears to be related to these threatening emails and defamatory postings. We therefore hereby demand that you immediately cease and desist from posting, or causing to be posted, any derogatory or defamatory information about Mr. Gorman, or any of his affiliates, employees, business associates, and/or customers.

Please be advised that Mr. Gorman is presently evaluating his legal options and intends to take appropriate action to protect his legal rights, including the possible referral of the matter to appropriate legal authorities.

Finally, please regard this letter as requesting that you preserve documents, tangible things, and electronically stored information potentially relevant to the issues referenced in this letter. You should anticipate that much of the information relevant to this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Electronically stored information (hereinafter "ESI") should be afforded the broadest possible meaning and includes, by way of example and not as an exclusive list, potentially relevant information electronically, magnetically, optically, or otherwise stored as:

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- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB)
- Word processed documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both sources of ESI, even if you do not anticipate producing such ESI.

Preservation Requires Immediate Intervention

If you have not already done so, you should act immediately to preserve potentially relevant ESI concerning this matter. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents, or running any application may irretrievably alter the evidence it contains and constitute unlawful spoliation of evidence. As such, preservation of potentially relevant information requires your immediate attention and action. Federal and state laws require that you retain certain documents. This preservation letter includes those documents to be retained under state and federal law as well as documents and date described herein.

Nothing in this request for preservation of ESI should be understood to diminish your concurrent obligation to preserve documents, tangible things, and other potentially relevant evidence. Moreover, this request to preserve information for this litigation is both retroactive and prospective in application, which means that it extends to all documents, tangible things, and electronically stored information that currently exist relating to this lawsuit, as well as all

documents, tangible things, and electronically stored information that are created in the future during the course of this litigation.

Suspension of Routine Destruction
You are requested to immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further requested to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity, or other criteria;
- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server, packet, or local instant messaging logging; and,
- Executing drive or file defragmentation or compression programs.

Guard Against Deletion and Act to Prevent Spoliation
You should take affirmative steps to prevent anyone with access to your data, systems, and archives from seeking to modify, destroy, or hide ESI on network or local hard drives and on other media or devices (such as by deleting or overwriting files; using data shredding and overwriting applications; defragmentation, re-imaging, damaging, or replacing media; encryption; or compression).

Preservation of Backup Tapes
You are requested to preserve complete backup tape sets (including differentials and incrementals) containing ESI related to this matter.

You should anticipate that ESI will be sought in the form or forms in which it is ordinarily maintained (i.e., native form). The forensically sound image described above will preserve ESI in such native form. You should not employ methods to preserve ESI that remove or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use the information. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

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Metadata
You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files.

Servers
With respect to servers used to manage e-mail (e.g., Microsoft Exchange, Lotus Domino) and network storage (often called a "network share"), the complete contents of each user's network share and e-mail account should be preserved if that user has potential relevance to this matter. There are several ways to preserve the contents of a server. If you are uncertain whether the preservation method you plan to employ is one that we will accept as sufficient, please immediately contact the undersigned.

Home Systems, Laptops, Online Accounts and Other ESI Venues
Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems or devices may contain potentially relevant data. To the extent that you have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, memory stick, CDR/DVD-R disks, and the user's PDA, smart phone, voice mailbox, or other forms of ESI storage.). Similarly, if you used online or browser-based e-mail accounts or services (such as Gmail, AOL, or Yahoo Mail) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted, and Archived Message folders) should be preserved.

Ancillary Preservation
You should preserve documents and other tangible items that may be required to access, interpret, or search potentially relevant ESI, including but not limited to logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction

sheets, data entry forms, abbreviation keys, and user ID and password rosters. You should preserve passwords, keys, and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals, and license keys for applications required to access the ESI. You should preserve cabling, drivers, and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives, and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate
As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

Agents, Attorneys, and Third Parties
Your preservation obligation extends beyond ESI in your care, possession, or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you should notify any current or former agent, attorney, employee, custodian, and contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you should take reasonable steps to secure their compliance.

Sincerely yours,

MATTHEW D. LEE

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

EXHIBIT B

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar No. 75410
Spencer D. Langley / S.C. Bar No. 77898
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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT B

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

EXHIBIT C

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

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and

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September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

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September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT C

John Monarch

Profile
Contact Info
Wall
Photos
Synced Photos
Videos
Friends
Messages
Pokes
Events
Settings
Security
Ads

Ilya Putin, John Monarch

Ilya Blt — Tuesday, February 19, 2013 at 3:46am EST

http://www.facebook.com/gamlin/posts/426553947423355

John Monarch — Tuesday, February 19, 2013 at 3:46am EST

Mobile, not loading for some reason

John Monarch — Monday, May 27, 2013 at 11:47am EDT

LOL

John Monarch — Monday, May 27, 2013 at 11:47am EDT

yeees

John Monarch — Monday, May 27, 2013 at 11:48am EDT

I'll join hers if Karl falls through which it appears he has

Ilya Blt — Tuesday, June 11, 2013 at 12:47am EDT

http://imgur.com/a/Il8ug

Ilya Blt — Tuesday, June 11, 2013 at 12:47am EDT

lol

John Monarch — Tuesday, June 11, 2013 at 12:48am EDT

lol goddamn

John Monarch — Saturday, October 26, 2013 at 12:26pm EDT

https://twitter.com/RichGorman101/status/390508848357724161 I guess he knows from experience

John Monarch — Saturday, October 26, 2013 at 12:30pm EDT

Sadly written by Zac Johnson actually, but still applicable

Ilya Putin — Saturday, October 26, 2013 at 1:40pm EDT

haha

John Monarch — Friday, December 20, 2013 at 2:10am EST

Looks like he got your twitter banned already

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German 004610
ROA_00610

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Ilya Putin — Friday, December 20, 2013 at 7:32am EST

na refresh

John Monarch — Saturday, December 21, 2013 at 3:45pm EST

Guess who else just got a legal threat from Gorman

Ilya Putin — Saturday, December 21, 2013 at 4:01pm EST

karl

John Monarch — Saturday, December 21, 2013 at 4:06pm EST

me

John Monarch — Saturday, December 21, 2013 at 4:06pm EST

lol

Ilya Putin — Saturday, December 21, 2013 at 4:06pm EST

oh lawd lol

John Monarch — Saturday, December 21, 2013 at 4:07pm EST

he's doing hail mary legal threats hoping this goes away lol

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

wonder who else got one

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

prolly arikka lolol

John Monarch — Saturday, December 21, 2013 at 4:08pm EST

will laugh if richter did too

Ilya Putin — Saturday, December 21, 2013 at 4:08pm EST

did you get one from both rich and pace?

John Monarch — Saturday, December 21, 2013 at 4:09pm EST

just rich

John Monarch — Saturday, December 21, 2013 at 4:09pm EST

So far

Ilya Putin — Saturday, December 21, 2013 at 4:09pm EST

so you're john doe 1 and karl is john doe 2?

ROA_00611
Gorman 004612

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Ilya Putin — Saturday, December 21, 2013 at 4:12pm EST

did you see the letter he sent pace as well? lol

John Monarch — Saturday, December 21, 2013 at 4:14pm EST

lol yes - and I don't think I'm any of the John Does

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

since that suit happened before my name came up

Ilya Putin — Saturday, December 21, 2013 at 4:15pm EST

hes just grasping at straws

Ilya Putin — Saturday, December 21, 2013 at 4:15pm EST

cause he has no case against PO n such

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

yep

John Monarch — Saturday, December 21, 2013 at 4:15pm EST

trying to shut everyone up

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

the funnier part to me is he can't find me - the threat went to my mom

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

she was like ???

Ilya Putin — Saturday, December 21, 2013 at 4:16pm EST

lol

Ilya Putin — Saturday, December 21, 2013 at 4:16pm EST

guess i have to do seo on my site now.....

John Monarch — Saturday, December 21, 2013 at 4:16pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:17pm EST

this is the third time someone has tried suing or threatening me and couldn't find where I live

John Monarch — Saturday, December 21, 2013 at 4:17pm EST

they tried serving someone else for me for a lawsuit over a car accident and it got dropped due to improper service

ROA_00612

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Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

i should somehow make it look like someone else owns po

Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

so he keeps sending stuff there

Ilya Putin — Saturday, December 21, 2013 at 4:17pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:18pm EST

pace lol

Ilya Putin — Saturday, December 21, 2013 at 4:18pm EST

ill redirect phili to performinsider or meatspin

Ilya Putin — Saturday, December 21, 2013 at 4:18pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:18pm EST

lol

John Monarch — Saturday, December 21, 2013 at 4:19pm EST

this just all keeps getting better

John Monarch — Saturday, December 21, 2013 at 4:20pm EST

he knows his industry rep is in jeopardy

Ilya Putin — Saturday, December 21, 2013 at 4:20pm EST

the funny thing is

Ilya Putin — Saturday, December 21, 2013 at 4:20pm EST

the whole main claim on that letter - is that someone sent him emails

John Monarch — Saturday, December 21, 2013 at 4:20pm EST

yes lol

John Monarch — Saturday, December 21, 2013 at 4:21pm EST

ahaha

John Monarch — Saturday, December 21, 2013 at 4:21pm EST

it's probably the whole thing with anonymous getting involved

ROA_00613

Ilya Putin Saturday, December 21, 2013 at 4:21pm EST

yup

John Monarch Saturday, December 21, 2013 at 4:21pm EST

how did you even find that

Ilya Putin Saturday, December 21, 2013 at 4:22pm EST

find what?

John Monarch Saturday, December 21, 2013 at 4:22pm EST

pastebin, anon etc

John Monarch Saturday, December 21, 2013 at 4:22pm EST

cray

Ilya Putin Saturday, December 21, 2013 at 4:23pm EST

oh - it ranked for his name

Ilya Putin Saturday, December 21, 2013 at 4:23pm EST

before he got it removed

John Monarch Monday, January 6, 2014 at 2:03pm EST

Apparently Gorman is asking around about me, he thinks I own PO and that you're fake

Ilya Putin Monday, January 6, 2014 at 2:04pm EST

lol

John Monarch Monday, January 6, 2014 at 2:15pm EST

Finding out more he's been asking just about everyone he knows

John Monarch Monday, January 6, 2014 at 2:16pm EST

Like Peter Nguyen

Ilya Putin Monday, January 6, 2014 at 2:16pm EST

lol

Ilya Putin Monday, January 6, 2014 at 2:16pm EST

hes retarded

John Monarch Monday, January 6, 2014 at 2:17pm EST

yep - I'm going to find out if he's been spreading untrue BS about me

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Gorman 004615
ROA_00614

John Monarch — Thursday, January 16, 2014 at 11:19am

in the mean time it may be a good idea for the DO logo to be off of PO

Ilya Putin — Thursday, January 16, 2014 at 11:19am

Na. I think it's time to do seo for his name/company names

Ilya Putin — Thursday, January 16, 2014 at 11:19am

and rank it #1-3

Ilya Putin — Thursday, January 16, 2014 at 11:20am

I can remove it if you'd like, let me know

John Monarch — Thursday, January 16, 2014 at 11:23am

yeah for now I think take the logo down until this is all over if you don't mind, it's easy to prove you aren't me

Ilya Putin — Thursday, January 16, 2014 at 11:23am

kk

Ilya Putin — Thursday, January 16, 2014 at 11:23am

ill do it later today

Ilya Putin — Saturday, January 25, 2014 at 9:50pm

Gorman got his domain buy friend to make an offer on his behalf for one of the domains I own on the same host as PO. It's a random $7 domains and he's offering $22,000 for it lmao. I'm going to go through with it and then give him pace's payment details

John Monarch — Saturday, January 25, 2014 at 10:18pm

Lmao

Downloaded by John Monarch on Tuesday, April 29, 2014 at 3:33pm EDT

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German 004615
ROA_00615

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, Defendant.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION AND MOTION FOR SANCTIONS FOR DESTRUCTION OF EVIDENCE**

Defendant John C. Monarch offers the following memorandum of law in opposition to Plaintiff's Motion to Compel Production of Electronic Devices for Examination and Motion for Sanctions for Destruction of Evidence filed on August 17, 2021.

Factual and Procedural Background

This lengthy and contentious dispute, which has been litigated across multiple jurisdictions, including Arizona, Pennsylvania, and South Carolina, over the expanse of more than seven (7) years, arises out of certain online statements concerning the Plaintiff's criminal history that were posted by a "Ilya Putin," a/k/a Ilya Shpetrik, a third party that Gorman falsely alleges to be Monarch and which Gorman now acknowledges is in fact not Monarch as evidenced by Gorman just recently filing suit against Ilya Shpetrik and his family in the Eastern District of Pennsylvania, Richard A. Gorman v. Ilya Shpetrik, Oleg Shpetrik, Anna Shpetrik and Mark Shpetrik, C.A. No. 2:20-cv-04759-JCJ .

The protracted history of the litigation between the parties began in February of 2014 when Gorman sued Monarch for defamation in federal court in the Eastern District of Pennsylvania, Richard A. Gorman v. John C. Monarch et al., C.A. No. 2:14-CV-00890-NS (E.D.Pa.). After

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Monarch successfully contested personal jurisdiction in the above lawsuit, Monarch and DOS countersued Gorman for defamation in Eastern District of Pennsylvania, John C. Monarch and Direct Outbound Services, LLC, v. Richard A. Gorman, et al., C.A. No. 2:14-cv-05980-GAM (E.D.Pa.) (the "PA Case"). In response to the dismissal won by Monarch in Gorman's Pennsylvania lawsuit, Gorman filed the present lawsuit (the "SC Case") in August of 2014. Despite having filed the SC Case, Gorman, in the interest of pursuing the PA Case, thereafter moved to stay the SC Case

> [B]ased on the ground that a separate legal proceeding between the parties is presently pending[, the PA Case,] in which discovery is now being exchanged…[and] that the discovery being exchanged in the [PA Case] will significantly overlap with whatever discovery is undertaken in this case, and staying this case may allow the parties to avoid the duplication of efforts and the needless waste of time and resources that would surely occur if both cases proceeded simultaneously.

See Pl.'s Mot. to Stay, p.1. During the hearing on Gorman's Motion to Stay, Gorman's counsel admitted that the SC Case involved the "same claims" and "same parties" as the PA Case. See Mot. to Stay Hr'g Tr. 3:17-25 (emphasis added) (attached as Exhibit 1). Due to the "overlapping legal issues in both cases and a potential for significant duplication of efforts if both cases [were] allowed to proceed simultaneously," the Court granted Gorman's Motion to Stay the SC Case in favor of the PA Case by way of Order filed December 1, 2015. See Order filed December 1, 2015 by Judge Barber. Defendant has vigorously defended and litigated the SC Case, the Pennsylvania cases, as well as an Arizona action between the parties on similar claims, since their commencement and has fully participated in discovery throughout these cases.

After pitched litigation that included extensive discovery on the "same claims" as presented in the SC Case, settlement was reached on Monarch's claims in the PA Case. Having failed to obtain his desired outcome in Pennsylvania, Gorman moved to lift the stay in this case on July 6, 2016. By Order dated August 16, 2016, the stay was ultimately lifted over a full year after Gorman

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originally requested the stay. Thereafter, Gorman, filed a Motion to Amend his Complaint in order to assert claims against Direct Outbound Services, the company of which Monarch was CEO at the time, "identical to the present claims already asserted against Monarch." Pl.'s Mot. to Amend 3–4 (emphasis added). Gorman's Motion to Amend was granted on or about October 5, 2016. Since Plaintiff's Motion to Amend was granted, the case has involved a lengthy and protracted procedural history, including the changing of counsel for Plaintiff and Defendant Monarch. For purposes of brevity, the procedural posture has been defined by time consuming and futile machinations on Plaintiff's behalf, including: three separate and unfounded attempts by Plaintiff to obtain a default judgment against Defendants, each of which was denied by the Court; the dismissal of several individual Defendants named in the Second Amended Complaint filed in August 2018; a subsequent appeal filed by Plaintiff on January 14, 2019; Plaintiff's withdrawal of the appeal on July 7, 2019 after Plaintiff failed to timely file an initial brief or designation of matter to be included in the record on appeal with the Court of Appeals, and four unsuccessful mediations conducted between May and November 2017.

The case was removed from the active roster as the parties filed a Consent Order pursuant to Rule 40(j), SCRCP, on October 26, 2020. On October 21, 2020, over four years after filing of the original Complaint on August 8, 2016, Plaintiff dismissed previously named Defendants ShipChain, Inc. and Direct Outbound Services, LLC without prejudice, leaving John Monarch the only remaining Defendant and essentially returning this case to square one. The case was restored to the active roster via Consent Order filed on July 15, 2021.

Argument

In Plaintiff's Motion to Compel, Plaintiff seeks an Order compelling Defendant Monarch to produce his personal computer, a 2013 MacBook Pro for imaging by Plaintiff. Plaintiff's Motion

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for Sanctions is closely related to the Motion to Compel, and asks the Court to impose sanctions on Defendant for allegedly destroying evidence contained on his personal electronic devices following a prior request by Plaintiff's prior counsel to preserve all electronic evidence for purposes of litigation. For the reasons set forth herein below, Plaintiff's Motions should be denied.

A. Plaintiff Has Failed to Demonstrate That He Is Entitled to Image Defendant's MacBook Pro

Rule 26(b)(6), SCRP, governs the discovery of electronically stored information and provides:

> (A) A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery, including allocation of expenses associated with discovery of the electronically stored information.
>
> (B) On motion or on its own motion, the court shall limit the frequency or extent of discovery otherwise allowed by these rules if the court determines that:
>
> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).
>
> Rule 26(b)(6), SCRCP.

For purposes of Plaintiff's Motion, a review of Defendant's written discovery responses is necessary to determine what is at issue in Plaintiff's Motion to Compel and Motion for Sanctions.

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In Defendant's supplemental written discovery responses to Plaintiff's Supplemental Request for Production Number 9 dated September 28, 2020, Defendant identified three electronic devices in response to Plaintiff's request, including an iPhone X, a MacBook Pro, and an iPhone 5, subject to multiple objections raised in his response. (See Defendant's Response attached as **Exhibit C** to Plaintiff's Motion to Compel). Plaintiff seeks to image the MacBook Pro, which is the only device that Defendant currently has in his possession. Most importantly, as set forth in Defendant's written response, Defendant has provided all relevant and discoverable information to Plaintiff at issue in the present litigation, as well as having also provided such information in connection with the PA Case. Id. As further set forth in Defendant's written response, the migration of data from the 2013 device was transferred over to the 2017 device, as such, there is no evidence in this case that anything has been deleted. Id. Additionally, as set forth in Defendant's objections, Plaintiff's request to image the MacBook Pro seeks information that is completely irrelevant to the claims at issue in this case, and involves an invasion of Defendant's privacy and confidential information that is wholly irrelevant to this case. Moreover, the Plaintiff's present motion is nothing more than a fishing expedition, which is not the type of discovery provided for in the South Carolina Rules of Civil Procedure. See Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (ruling on a motion for summary judgment and holding that "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition").

There do not appear to be any South Carolina appellate court decisions directly on point with the present issue, however courts in other jurisdictions have addressed the issue of compelling the forensic imaging of a device. In an Ohio appellate decision, Fasteners For Retail, Inc. v. DeJohn, 2014-Ohio-1729, P24 Ohio App. (2014), the court examined factors courts should

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consider before compelling production of a litigant's computer for forensic imaging and search. Fasteners for Retail (FFR) sued two former employees and a competitor alleging patent infringement, misuse of trade secrets, false advertising, and other claims. Id. at 3. After various discovery skirmishes between the parties, FFR moved to compel production of the employees ' computer hard drives. Id. at 5. In support of the motion, FFR contended that the former employees engaged in evasive conduct and "potentially" spoliated critical evidence. Id. at 13. The trial court ordered production of the computer hard drives and the employees appealed. Id. at 15-16. The Court of Appeals for Ohio, Eighth District, reversed noting that courts are reluctant to compel forensic imaging of computer hard drives "largely due to the risk that the imaging will improperly expose privileged and confidential material . . . ." Id. at 21.

In support of its opinion, the court took guidance from Bennett v. Martin, 186 Ohio App.3d 412 (10th Dist. 2009) which cautioned:

> . . . before compelling forensic imaging, a court must weigh the significant privacy and confidentiality concerns inherent in imaging against the utility or necessity of the imaging. . . . In determining whether the particular circumstances justify forensic imaging, a court must consider whether the responding party has withheld requested information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests. . . When a requesting party demonstrates either discrepancies in a response to a discovery request or the responding party's failure to produce requested information, the scales tip in favor of compelling forensic imaging.

Id. at 24.

The FFR court, citing several federal cases, noted that federal courts are also reluctant to order examination of a litigant's computer as a matter of course or on the mere suspicion that a party withheld evidence. Id. at 25; see Playboy Enterprises v. Welles, 60 F.Supp. 2d 1050, 1054 (S.D. Cal. 1999) (allowing access to party's computer system on a finding of systematic deletion of relevant e-mails after litigation had commenced). See, e.g., Williams v. Mass. Mut. Life Ins.

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Co., 226 F.R.D. 144, 146 (D. Mass. 2005) (denying motion to appoint computer forensic expert because moving party failed to present any "credible evidence that Defendants are unwilling to produce computer-generated documents, whether now or in the future, . . . or that Defendants have withheld relevant information . . ."); Bethea v. Comcast, 218 F.R.D. 328, 329-30 (D.D.C. 2003) (denying motion to compel because, "[i]n the context of computer systems and computer records, inspection or seizure is not permitted unless the moving party can demonstrate that the documents they seek to compel do, in fact, exist and are being unlawfully withheld"); Simon Prop. Group L.P. v. Simon, Inc., 194 F.R.D. 639, 641 (S.D. Ind. 2000) (allowing plaintiff to inspect defendant's computer system because plaintiff demonstrated "troubling discrepancies with respect to defendant's document production"); Ameriwood Indus., Inc. v. Liberman, Case No. 4:06CV524-DJS, 2006 U.S. Dist. LEXIS 93380, 2006 WL 3825291, *1 (E.D. Mo. Dec. 27, 2006) (unpublished) (granting motion to compel imaging of defendant's hard drive because the court had "cause to question whether defendants have produced all responsive documents"); Balboa Threadworks, Inc. v. Stucky, Case No. 05-1157-JTM-DWB, 2006 U.S. Dist. LEXIS 29265, 2006 WL 763668, at *4 (D. Kan. Mar. 24, 2006) (unpublished) (permitting imaging of defendants ' computer where defendants 'representation that no responsive materials existed on computer was contradicted by their production of e-mail created on that computer).

Applying the Bennett principles to FFR's motion, the court concluded that the trial court erred in ordering the former employees to produce their computers for forensic imaging because FFR did not establish the defendants 'noncompliance with discovery and noted that FFR, itself, failed to fully comply with discovery requests served upon it. Id. at 28-29. The court also noted that the trial court also erred in compelling the production of the hard drives without a protocol governing the forensic examination of the hard drives. Id. at 34.

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In applying the Bennett factors to the present motion, it is evident that Plaintiff has failed to meet his burden of showing that the imaging of the Defendant's MacBook Pro is warranted in this instance, as Defendant has fully complied with Plaintiff's discovery requests and has not withheld any requested information. If anything, Plaintiff's motion is based merely upon unsupported suspicion and conjecture that Defendant has withheld information in discovery and that any such information that might allegedly exist, which Monarch expressly denies, is both material and located on Defendant's computer. CFRE, LLC v. Greenville County Assesor, 395 S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions despite non-moving party's failure to answer standard interrogatories or production requests because moving party provided "no evidence of what material facts were not produced" by the non-moving party) (emphasis added). Moreover, Plaintiff has failed to show any discrepancies in Defendant's discovery responses with any information that has already been produced by Defendant in discovery, which is insufficient to warrant the imaging of Defendant's MacBook Pro. Plaintiff's Motion only contains conclusory allegations that Defendant has failed to comply with discovery, but fails to cite specific facts, reasons, or examples why Plaintiff is entitled to an invasive imaging of Defendant's MacBook.

Additionally, when applying Rule 26(b)(6)(B)(ii), SCRCP, to the present motion, it is further evident that the imaging of Defendant's MacBook is unwarranted, as Plaintiff "has had ample opportunity by discovery in the action to obtain the information sought." This case was originally commenced by Plaintiff over seven years ago, after which Plaintiff, so as to allegedly avoid wasteful and duplicative discovery efforts, chose to stay this case in favor of pursing "full discovery" of the "same claims" (see Exhibit 1, p. 3:17-25) in the PA Case so as "to avoid the duplication of efforts and the needless waste of time and resources." See Pl.'s Mot. to Stay p. 1. During the PA Case, extensive and "full discovery" was conducted by both parties on the "same

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claims," including multi-day long depositions of Monarch and Gorman, interrogatories, requests for production, and hundreds of requests for admission, Four Hundred and Sixty-One (461) of which were propounded by Gorman alone. As further evidence of the parties' satisfaction that "full discovery" had been satisfactorily completed, after the conclusion thereof, the parties ultimately settled the PA Case, resulting in Monarch and DOS "recover[ing] a substantial amount of money" through settlement. See Report and Recommendation, C.A. No. 2:14-cv-05980-GAM (E.D.Pa. Aug. 21, 2017). If such copious and complete discovery does not constitute "ample opportunity…to obtain the information sought," nothing does.

As set forth above, Plaintiff is not entitled to image Defendant's MacBook and Plaintiff's Motion to Compel should be denied.

B. Plaintiff's Motion for Sanctions Is Unwarranted

Rule 37(f), SCRCP, pertains to the sanctions of a party for the failure to participate in electronic discovery and provides in pertinent part:

> Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

"A court must consider four factors when determining the appropriate discovery sanction: the nature of discovery sought, the discovery stage of the case, willfulness, and the degree of prejudice. If the court does not consider these factors, an abuse of discretion occurs." Richardson v. Twenty-One Thousand & no/100 Dollars ($21,000.00) United States Currency & Various Jewelry, 430 S.C. 594, 600, 846 S.E.2d 14, 17 (Ct. App. 2020).

Plaintiff's Motion for Sanctions is based upon the conclusory allegation that Defendant destroyed electronic evidence through the process of Defendant's wiping of the data on his iPhone 5 and MacBook Pro. However, as set forth in Rule 37(f), SCRCP, "[a]bsent exceptional

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circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system." As clearly set forth in Defendant's written discovery responses to Plaintiff's Supplemental Requests for Production, the wiping of the devices at issue occurred during the routine, good-faith operation, and upgrading of Defendant's iPhone and MacBook Pro. (See **Exhibit C** to Plaintiff's Motion to Compel). Moreover, the data from the 2013 device was transferred over to the 2017 MacBook, therefore, there has not been a destruction of evidence in this case. Id. This is the exact type of data migration that Rule 37(f) addresses, which is what occurred in the present case.

In applying the factors set forth in Richardson, it is important to note that this case has been pending for over seven years in multiple jurisdictions and the nature of discovery sought by Plaintiff involves a fishing expedition by way of the imaging of a private computer owned by the Defendant, which contains confidential and private information wholly unrelated to the Plaintiff's claims. Despite Defendant having fully responded to Plaintiff's written discovery requests and produced, in the format in which they were stored, responsive documentation in Monarch's custody and control, Plaintiff presents "no evidence of what material facts were not produced." CFRE, LLC v. Greenville County Assesor, 395 S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions because moving party provided "no evidence" of "material facts" "not produced" by the non-moving party) (emphasis added). In the absence of the requisite evidence, Plaintiff cannot and does not demonstrate a specific fact or reason why sanctions are warranted.

Far from providing any specifics upon which a foundation to justify sanctions could even begin being built, Plaintiff provides the court with nothing more than conclusory allegations and conjecture that because Defendant's electronic devices were upgraded during the normal course

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and good-faith operation of the devices over the course of more than half a decade, they must have contained information allegedly relevant to the Plaintiff's claims. Furthermore, Plaintiff has failed to show any exceptional circumstances in the present case which warrant any willfulness on behalf of the Defendant to destroy any information relevant to the Plaintiff's claims. Additionally, Defendant would be greatly prejudiced by an award of sanctions against him, but it could also prove to be damaging to his defense if the case proceeds to trial and the jury is allowed to consider the award of sanctions as part of the case. As such, Plaintiff's Motion for Sanctions should be denied.

Conclusion

For the reasons set forth above, Plaintiff's Motion to Compel Electronic Discovery and Motion for Sanctions for Destruction of Evidence should be denied.

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September 13, 2021
Greenville, South Carolina

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EXHIBIT 1

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2014-CP-23-04432
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	
	)	
	)	
RICHARD A. GORMAN,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JOHN C. MONARCH, et al,	)	
DEFENDANT.	)	
	)	

October 15, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE JAMES R. BARBER, III, JUDGE

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

LYNDEY ZWING, ESQ.
Attorney for the Plaintiff

SVEND DEAL, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

NO	DESCRIPTION	ID	EVD

There were no exhibits introduced.

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PROCEEDINGS

(WHEREUPON, proceedings began at 9:28 a.m.)

THE COURT: This Mr. Gorman's motion to stay. What do y'all want to tell me about it?

You Mr. Deal?

MR. DEAL: Yes, Your Honor.

THE COURT: All right.

MS. ZWING: Your Honor, there's is a ---

THE COURT: You know Ms. Zwing?

MR. DEAL: Yes, Your Honor. We met and we had something else that went on in the other courthouse.

MS. ZWING: We had a status conference about a month ago.

THE COURT: Okay. All right. Tell me what you want to tell me.

MS. ZWING: There is a pending case between the parties that is in the Federal Court in Pennsylvania. That case was filed in January of 2014, and it's the same claims, Your Honor. It's my understanding there was some jurisdictional issues and limited jurisdictional discovery in that matter, and now full discovery is moving forward. And because of the significant overlap in the claims, same parties, there are a couple additional defendants in that case. But we would ask that this case, which was later

filed, be stayed until that case is resolved.

MR. DEAL: Your Honor, you know, to kind of bring you up to speed, this is kind of, a in general, he said/she said situation in which it is our contention and has been our contention, and we filed a motion to that effect and, of course, it was denied and that's in the record, but that this is, in essence, a retaliation case for what's going on in the Pennsylvania action. And the reason that we're here to oppose it is because it's the substance has been admitted by the plaintiff, the substance of the lawsuit is more or less identical. This is a pointless case. It shouldn't even be in the courtroom.

THE COURT: Well, then they are the exact same lawsuits?

MR. DEAL: I wouldn't say exact same, Your Honor, but, again, there's representation of the plaintiff, it's similar such that the discovery and the point behind this motion to stay is that the facts and circumstances and the evidence that's going to be developed up there is going to be substantially the same that's going to be developed here. And, again, this is -- it's pointless to even be in this courtroom. And if, in fact, it has merit, they should either go forward or should dismiss it. And that's our contention, Your Honor, is if it's essential to have it to go forward at all, then they can -- they should just go

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ahead and go forward. If not, we could get a 40(j), and we can all, you know, sit on our hands until what happens in Pennsylvania happens and we all go home happy, or not, as the case may be.

THE COURT: Why don't you all 40(j) it?

MS. ZWING: I mean, that's an option, Your Honor. It's my understanding that that Pennsylvania case was filed first, and I think Mr. Monarch moved to dismiss based on lack of personal jurisdiction. There was jurisdictional discovery. Subsequently, this case was filed, and that Pennsylvania case is moving forward. And so a 40(j) is an option.

THE COURT: Well, if you've got two cases that are the exact same in two different jurisdictions, they're entitled to have one of them dismissed if they move that way anyway, aren't they?

MS. ZWING: Potentially, Your Honor. But that motion to dismiss is not before the Court.

THE COURT: Oh, I understand that. So y'all are waiting to see what's going to happen up in the other case? Is that what you want?

MS. ZWING: We would ask that this case be stayed.

THE COURT: For how long?

MS. ZWING: Your Honor, at least six months, I would say. That Pennsylvania case, the discovery needs time to

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temporary and we're doing it again. If you 40(j) it, you could restore it, and I assume it comes back with a new number. Is that correct, Mr. Lopez?

THE CLERK: Yes, Your Honor.

THE COURT: And you've got a year anyway.

MS. ZWING: Yes, Your Honor.

THE COURT: You can restore it right away or you can sit on it for a year and then restore it so you've got two years before you have to try the case. If you want to try it quicker, both of you, then you can petition the Court to allow you to move it up on the roster. So I think 40(j)ing it is probably the best thing to do.

MS. ZWING: Yes, Your Honor. I'd be happy to ---

THE COURT: If not, we'll let you fool with it quickly.

MS. ZWING: Okay. I'd be happy to talk with my client.

THE COURT: All right. Can you let me know something in how long?

MS. ZWING: As soon as I can get in touch with them. I can probably let you know something by the end of the day today.

THE COURT: That would be wonderful.

MR. DEAL: Thank you, Your Honor.

MS. ZWING: Thank you, Your Honor.

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THE COURT: Thank you.

(WHEREUPON, Proceedings concluded at 9:34 a.m.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 15th day of October, 2017.

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

July 7, 2017

Cheryl A. Smith, CVR-M
Court Reporter

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Richard A. Gorman, Plaintiffs, v. John C. Monarch, Defendant.	C.A. No. 2021-CP-23-03414 **Rule 59(e) Motion to Reconsider**

Defendants John C. Monarch (hereinafter "Monarch") respectfully move this court pursuant to Rule 59(e), SCRCP, to alter or amend the Order Granting Motion to Compel Production of Electronic Devices, which Order was entered by the Clerk of this Court on April 28, 2022 (hereinafter the "Order"). Monarch respectfully request that the Court reconsider the Order for the following reasons[1]:

1. **The Court's Order and the protocol contained therein ordering forensic imaging of Monarch's computers does not adequately protect privileged information, proprietary, personal, and confidential electronically stored information ("ESI"), appropriately limit the scope of discoverable materials, or appropriately minimize the burdensomeness of forensic imaging on Monarch.**

[1] In addition to the arguments highlighted herein, Monarch incorporates herein by reference the arguments he has previously presented to the Court in his Memorandum previously filed on September 13, 2021 and the email correspondence submitted to the Court by Monarch's counsel concerning the development of an appropriate protocol for imaging of Monarch's computer systems that were sent between October 1, 2021 and March 14, 2022 and which are attached hereto for ease of reference as Exhibit A.

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"Courts have repeatedly found that Rule 34 does not create a routine right of direct access to an opposing party's electronic information system. Inspection of an opposing party's computer system under Rule 34 [of the Federal Rules of Civil Procedure] and state equivalents is the exception and not the rule for discovery of ESI." The Sedona Conference, The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1, Commt. 6.d., p. 128 (2018) [hereinafter Sedona Principles][2]. When requested to allow forensic imaging of a party's computer system the "Court must be mindful of the potential intrusiveness of ordering forensic imaging." Crosmun v. Trs. of Fayetteville Technical Cmty. Coll., 832 S.E.2d 223, 233(N.C. App. 2019) (quoting Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687 (S.D. Fla. 2012)); see In re Ford Motor Co., 345 F.3d 1315, 1317 (11th Cir. 2003) (vacating the district court's order to provide the requesting party unlimited, direct access to the responding party's databases without any protocol for the search, including no search terms, and finding that direct access is not permissible without a factual finding of non- compliance with discovery rules); Exec. Air Taxi Corp. v. City of Bismarck, 518 F.3d 562, 569 (8th Cir. 2008) (holding that the district court did not abuse its discretion in declining to order a forensic analysis of a computer because the responding party had provided all relevant documents in hard copy and forensic discovery could

[2] As recently noted by the North Carolina Court of Appeals, "The Sedona Principles, first published in 2004, seek to 'serve as best practice recommendations and principles for addressing ESI issues in disputes —whether in federal or state court, and whether during or before the commencement of litigation.' Sedona Principles at 29. They were drafted and published by The Sedona Conference, 'a 501(c)(3) research and educational institute that exists to allow leading jurists, lawyers, experts, academics, and others at the cutting edge of issues in the areas of antitrust law, complex litigation, and intellectual property rights, to come together in conferences and mini-think tanks ... to engage in true dialogue—not debate—in an effort to move the law forward in a reasoned and just way.' Id. at 8. The Sedona Principles and other publications of The Sedona Conference have been relied upon by federal and state courts nationwide…" Crosmun v. Trs. of Fayetteville Technical Cmty. Coll., 832 S.E.2d 223, 227 n.3 (N.C. App. 2019).

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disclose privileged documents). “ESI productions in civil litigations can be ripe targets for corporate espionage and data breach as they may contain trade secrets and other proprietary business information; highly sensitive and private medical, health, financial, religious, sexual preference, and other personal information; or information about third parties subject to contractual confidentiality agreements.” Sedona Principles, Comment 12.b.ii n.147, p. 179 Accordingly, “[p]ursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.” Rule 34, SCRCP, Note to 2011 Amendment. Further, “[u]nless the requesting party can prove that the actual operation of a particular system is at issue in the litigation, if the responding party provides the informational content of the data, there is no need or justification for direct inspection of the responding party’s computer systems.” Sedona Principles, Commt 6.d., p. 128.

Even assuming arguendo that Monarch had engaged in misconduct during discovery making forensic imaging appropriate “a court must protect the defendant's confidential information as well as preserve any private and privileged information. A party's purported failure to produce discovery as requested or ordered will rarely warrant unfettered access to a party's computer system. A trial court abuses its discretion when its judgment entry permits unfettered forensic imaging of a party's electronic devices and contains none of the Bennett protections required to conduct such forensic analysis.” Allied Debt Collection of Va., L.L.C. v. Nautica Entm't, L.L.C., 146 N.E.3d 1222, 1234 (Ohio App. 2019) (citing Bennett v. Martin, 928 N.E.2d 763 (10th District, 2009)). As discussed at length by the Sedona Conference in the third edition of The Sedona Principals:

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> Special issues may arise with any request for direct access to ESI or to computer devices or systems on which it resides. Protective orders should be in place to guard against any release of proprietary, confidential, or personally identifiable ESI accessible to the adversary or its expert. Indeed, the widespread adoption of state and federal privacy laws (as well as the application of foreign data protection laws) demands protective orders and procedures that provide adequate personal privacy safeguards and meet applicable statutory and common law legal standards. Similar concerns exist regarding the potential disclosure of attorney client privileged or work product information that may occur during such an inspection, notwithstanding Rule 502[, FRCP]. See Comments 6.d. and 10.b. Thus, even with a protective order in place, court-ordered inspections of computer systems should be used sparingly. Such orders should be narrowly tailored to the circumstances, accompanied by a sufficient protective order, and usually should provide that either a special master or a neutral forensic examiner undertake the inspection.

Sedona Principles, Commt. 10.e., pp. 152-53. Accordingly a protocol ordering a forensic imaging must be narrowly restricted to protect confidential and personally identifiable information and system integrity as well as to avoid giving the discovering party access to information unrelated to the litigation. Sedona Principles, Commt. 6.d., p. 129; see also id., Commt. 8.c., pp. 140-41 ("When ordered, it should be accompanied by an appropriate protocol or other protective measures that take into account any applicable privacy rights and privileges, as well as the need to avoid copying ESI that is not relevant."); see also Balboa Threadworks, Inc. v. Stucky, D.Kan. No. 05-1157-JTM-DWB, 2006 WL 763668, 3 (Mar. 24, 2006) ("Courts have been cautious in requiring the mirror imaging of computers where the request is extremely broad in nature and the connection between the computers and the claims in the lawsuit are unduly vague or unsubstantiated in nature.").

Despite the broad consensus amongst courts around the nation and legal scholars alike that a protocol allowing for a forensic imaging must protect a responding party's right to privacy with regard to privileged and other confidential information that is not relevant or otherwise

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within the scope of discovery, the Order entered by the Court, "[a]lthough [it] provided a protocol in which the parties could arguably prevent the disclosure of attorney-client privilege (i.e. the creation of a privilege log), there is nothing in the order — through search terms or other instructions — that expressly required the third-party vendor or expert to limit its search to information relevant to [Plaintiff's] claims against [Monarch] or to exclude personal or confidential information, such as [Monarch's] personal or financial information or [Monarch's] proprietary information." Allied Debt Collection, 146 N.E.3d at 1237. Rather, the Court's Order "broadly" allows Plaintiff access to every byte of information on Monarch's computers that is not privileged, regardless of how unrelated to Plaintiff's claims it might be or how highly sensitive, private, and personal the information might be. Id. "Without relevant search terms, or other limiting instructions, the court is essentially permitting unfettered access to irrelevant and confidential information contained in [Monarch's] computers." Id. Moreover, the Court's failure to include limiting instructions and thereby granting Plaintiff access to volumes of private and personal information about Monarch despite it being completely unrelated and irrelevant to the claims and defenses in this case puts the Court's Order in direct conflict with the requirement that "electronic discovery must relate to the claims and defenses asserted in the pleadings." Rule 34, SCRCP, Note to 2011 Amendment.[3]

[3] The Court's Order is also deficient in that it is unclear whether the privilege log contemplated by Paragraph 1 is to include only documents and information subject to attorney client privilege and the work product doctrine or whether the privilege log is permitted to include "documents [that] contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, [and] information that is not within the timeframe relevant to this case." See Order at Paragraph 8(b).

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In addition to allowing unfettered access to all personal and private information on Monarch's laptop regardless of how unrelated it might be to this litigation, the Court's Order fails to provide Monarch sufficient time in which to review responsive documents for privileged. The court's order provides that "[p]rior to turning over the hard drives [which shall occur '[w]ithin twenty-one (21) days of the date of this Order'], Defendant shall complete a log of what he believes to be privileged information." Due to the Court's failure to narrowly tailor the protocol to ensure that only information and data that is related to the claims and defenses asserted in the pleadings is subject to production, the Court is requiring the production of all non-privileged data on not one, but two MacBook Pro computers, over one terabyte of data. "Considering that one terabyte is generally estimated to contain 75 million pages, a one-terabyte case could amount to 18,750,000 documents, assuming an average of 4 pages per document. Further assuming that a lawyer or paralegal can review 50 documents per hour (a very fast review rate), it would take 375,000 hours to complete the review. In other words, it would take more than 185 reviewers working 2,000 hours each per year to complete the review within a year." See Anne Kershaw, Automated Document Review Proves Its Reliability, 5 Digital Discovery and e-Evidence 11, p. 10-12 (2005); see also, The Sedona Conference, The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery, 15 Sedona Conf. J. 217, 220 n.2 (2014) ("One gigabyte of electronic information can generate approximately 70,000 to 80,000 pages of text, or 35 to 40 banker's boxes of documents (at 2,000 pages per box). Thus, a 250 gigabyte storage device (e.g., a laptop or hard drive), theoretically, could hold as much as the equivalent of 8,750 to 10,000 banker's boxes of documents…Even if only 10% of a computer's available capacity today contains user-created information (as

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distinguished from application programs, operating systems, utilities, etc.), attorneys still would need to consider and potentially review 1,750,000 to 2,000,000 pages per device."). Given this large amount of data, the court's allowance of only twenty-one days to review the records for privilege and create a privilege log that expressly describes the nature of the documents or communications that are protected is unreasonable and would in effect compel Monarch to disclose privileged information.

Although the protocol contained in the Order seemingly acknowledges the infeasibility of such an enormously burdensome review by providing that "[i]f Defendant cannot sufficiently produce or complete a privilege log," the Court's solution thereto, which directs Defendant to "provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert" as a substitute for an actual privilege review of all electronic information that would be produced, effectively compels Monarch's waiver of privilege, if not in this case, then "in proceedings in another state or in a federal proceeding in which the privileged information may be relevant."[4] Sedona Principles, Commt. 10.f., pp. 154-55 n.124 ("If the action is pending in a state jurisdiction without a Rule 502(d)[, FRCP,] equivalent, the party must be aware that another jurisdiction might determine that the disclosure of privileged information was voluntary and the privilege waived. Moreover, subject matter waiver might be found if another court finds that fairness requires the disclosure of other privileged or work product protected documents pertaining to the same subject matter."); see also Crosmun, 832 S.E.2d at 238 ("While the use of

[4]The possibility that privilege could be deemed waived in a proceeding in another jurisdiction is further heightened by the fact that Plaintiff has recently instituted another action concerning the defamation alleged in this case against another defendant in the United States District Court of the Eastern District of Pennsylvania. See Richard A. Gorman v. Ilya Shpetrik, C.A. No. 2:20-cv-04759-JCJ (E.D. Pa. Filed Sep. 28, 2020).

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search terms assists in preventing disclosure of privileged materials, it is far from a panacea. '[A]ll keyword searches are not created equal; and there is a growing body of literature that highlights the risks associated with conducting an unreliable or inadequate keyword search or relying exclusively on such searches for privilege review.') (quoting Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251, 256-57 (D. Md. May 29, 2008)). Moreover, the Court's statement that "[i]nadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege" does not cure its compelled violation of Monarch's sacrosanct right to maintain and protect privilege. Order at p. 3; see In re Dow Corning Corp., 261 F.3d 280, 284 (2d Cir. 2001) ("[C]ompelled disclosure of privileged attorney-client communications absent waiver or an applicable exception, is contrary to well-established precedent" and "we have found no authority…that holds that imposition of a protective order…permits a court to order disclosure of privileged attorney-client communications."); Murphy Oil USA, Inc. v. Fluor Daniel, Inc., No. Civ. A. 99-3564, 2002 WL 246439, at *7 (E.D. La. Feb. 19, 2002) (noting that the court cannot compel the disclosure of privileged communications in clawback arrangements); see also Sedona Principles, Commt. 10.f., p. 154 ("[T]he disclosure of privileged and work product protected information is contrary to fundamental tenets of the privilege pertaining to the scrupulous protection of the confidentiality of the information.").

Furthermore, the clawback language in the first paragraph of the Court's protocol applies only to privileged documents produced through "[i]nadvertent production" and it is not immediately clear whether production of any privileged information not captured in the keyword/phrase search and delivered to Plaintiffs would fall within that language. Crosmun, 832

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S.E.2d at 238-39 (“[T]he clawback here applies only to privileged documents produced 'through inadvertence, error or oversight,’ and it is not immediately clear whether production of any privileged information not captured in the Privilege Search Hits and delivered to Plaintiffs… would fall within that language. Assuming arguendo that such a production would be inadvertent and subject to the clawback provision's language, the Protocol Order nevertheless compels Defendants to violate their privilege as to any documents given to [forensic expert] and Plaintiffs that are not contained within the Privilege Search Hits, leaving Defendants with, at best, an imperfect clawback remedy to rectify the compulsory violation.”); see also Blythe v. Bell, 2012 WL 3061862, at *10 (N.C. Super. Ct. July 26, 2012) ("Protections to guard against privilege cannot be deferred by first addressing the risk of waiver only after a production has been made.”).

2. **Pursuant to Rule 26(b)(6)(B)(i)-(iii), SCRCP, the Court should have denied or otherwise limited Plaintiff’s demand for forensic imaging of Monarch’s electronic devices because Plaintiff’s demand for forensic imaging 1) is unreasonably cumulative and duplicative of the “full discovery” conducted on the “same claims” in the PA case; 2) because Plaintiff had ample opportunity to obtain the information sought through discovery in this action and “full discovery” of the “same claims” in the previously resolved Pennsylvania federal court action between the parties; and 3) because the forensic imaging is unduly burdensome and expensive and is unlikely to produce any additional discoverable material.**

With specific regard to the burdensomeness and expense raised Rule 26(b)(6)(B), SCRCP, “costs cannot be calculated solely in terms of the expense of computer technicians to

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retrieve the ESI, but must factor in other litigation costs, including the accessibility of the ESI, the interruption and disruption of routine business processes and [] practices, and the costs of reviewing the ESI. These burdens on information technology personnel and the resources required to review ESI for relevance, privilege, confidentiality, and privacy should be considered in any calculus of whether to allow discovery, and, if so, under what terms. In addition, the non-monetary costs (such as the invasion of privacy rights, risks to business and legal confidences, and risks to privileges) should be considered." Sedona Principles, Commt. 2.d., pp. 68-69.

3. Plaintiff failed to present any credible evidence that Defendant was or is unwilling to produce computer-generated documents or that Defendant has withheld discoverable information to justify the forensic imaging of Monarch's electronic devices.

To determine whether forensic imaging is warranted, as opposed to standard discovery procedures, the trial court must (1) weigh the parties' interest in obtaining discovery against privacy concerns; and (2) institute a protective protocol to ensure that forensic imaging is not unduly intrusive. Allied Debt Collection of Va., L.L.C. v. Nautica Entm't, L.L.C., 146 N.E.3d 1222, 1232 (Ohio App. 2019). Forensic examinations of ESI may be warranted when there exists some factual basis to conclude that the responding party has not met its duties in the production of discoverable information. Crosmun, 832 S.E.2d at 234. However, a Court must be mindful of the potential intrusiveness of ordering forensic imaging. Bennett v. Martin, 186 Ohio App.3d 412, 425, 928 N.E.2d 763 (10th District, 2009). Before compelling such imaging the court must weigh 'the significant privacy and confidentiality concerns' inherent in imaging against the utility or necessity of the imaging." Id., (citing, John B. v. Goetz, 531 F.3d 448, 460 (6th Cir.2008)). The Court should consider "whether the responding party has withheld requested

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information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests." Id. (citing, Henderson v. U.S. Bank, N.A., 2009 WL 1152019, *2 (E.D.Wis., Apr. 29, 2009); Bianco v. GMAC Mtg. Corp., 2008 WL 4661241, *2 (E.D.Pa., Oct. 22, 2008); Williams v. Massachusetts Mut. Life Ins. Co., 226 F.R.D. 144, 146 (D.Mass.2005); see also CFRE, LLC v. Greenville County Assesor, 395 S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions despite non-moving party's failure to answer standard interrogatories or production requests because moving party provided "no evidence of what material facts were not produced" by the non-moving party) (emphasis added). "When a requesting party demonstrates…the responding party's failure to produce requested information, the scales tip in favor of compelling forensic imaging." Bennett, 186 Ohio App.3d at 426, 928 N.E.2d 763 citing, White v. Graceland College Center for Professional Development & Lifelong Learning, Inc., 2009 WL 722056, *7 (D.Kan., Mar. 18, 2009). "'[M]ere skepticism that an opposing party has not produced all relevant information is not sufficient to warrant drastic electronic discovery measures.'" IHS Glob. Ltd. v. Trade Data Monitor LLC, No. 2:18-cv-01025-DCN (D.S.C. Dec. 23, 2019)(quoting John B. v. Goetz, 531 F.3d 448, 460 (6th Cir. 2008)).

Given the fact that Monarch has willingly and fully participated in the discovery process both in this case and the prior PA case between these parties and that Plaintiff has provided nothing but naked suspicion that Monarch has withheld discoverable material, it is inappropriate for the Court to allow forensic imaging of Monarch's computer systems in this case.

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4. The Court abused its discretion in concluding that the August 21, 2020 Consent Order agreed to by the Parties required Monarch to permit forensic imaging of all of Monarch's electronic devices without objection or appropriate protection of privileged and other personal, private, proprietary, or otherwise confidential information that is not properly subject to discovery in this case.

Plaintiff's claim, and the Court's apparent agreement, that Monarch agreed to allow unfettered access to all of his computing devices by Plaintiff is directly contrary to the language of the August 21, 2021 Consent Order that expressly provided that Monarch's responses to Plaintiff's revised interrogatories and request for production "may be made subject to objections." Accordingly, when Monarch responded to Plaintiff's revised request for production, he provided a list of the devices in question subject to objections to Plaintiff's entitlement to obtain a forensic imaging of those devices.[5] Further evidence of the fact that the Consent Order did not contemplate Monarch consenting to unfettered access to all of his computing devices is the fact that the Consent Order provided for Plaintiff to revise his interrogatories and requests for

[5]Monarch expressly objected to Plaintiff's request for production of his computing devices stating that "[t]o the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question." Monarch hereby incorporates herein his responses and objections to Plaintiff's interrogatories and requests for production.

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production to "limit[] them to specific date ranges and subject matter tailored more narrowly to time frames and matters at issue in this case." If, as Plaintiff argues and the Court seemingly agrees, Monarch consented to simply handing over all of his information on all of his computing devices, no matter how private, confidential, and/or unrelated to this case, there would have been no reason for Plaintiff to revise his interrogatories and request for production to limit them to "specific date ranges and subject matter tailored more narrowly to…matters at issue in this case." Consequently, it was an abuse of discretion for the Court to order a forensic imaging of Monarch's computing devices without consideration of Monarch's objections thereto and an analysis of whether Plaintiff was in fact entitled to forensic imaging in this case.

Defendant John C. Monarch respectfully moves the Court to reconsider its March 28, 2022 Order and deny the forensic imaging of Monarch's computing devices or, in the alternative, revise the protocol for the forensic imaging of Monarch's computing devices to provide appropriate protection against unfettered access to Monarch's computing devices that would jeopardize privilege and cause the production of vast amounts of irrelevant, private information.

[SIGNATURE ON FOLLOWING PAGE]

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar No. 75410
Spencer D. Langley / S.C. Bar No. 77686
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ATTORNEYS FOR JOHN MONARCH

April 7, 2022
Greenville, South Carolina

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: March 14, 2022 at 11:10 AM
To: Kinlaw, Alex akinlawj@sccourts.org, Kinlaw, Alex Law Clerk (Arielle Jeter) akinlawlc@sccourts.org
Cc: Kinlaw, Alex Secretary (Shannon N. Thurman) akinlawsc@sccourts.org, David Moore DMoore@turnerpadget.com, Rhonda Schaub Rhonda@harrisonfirm.com, Drew Radeker Drew@harrisonfirm.com, Robert L. Mebane, Jr. robert.mebane@mgclaw.com, Sarah Larabee sarah@harrisonfirm.com

Dear Judge Kinlaw:

After having reviewed the latest revision to Plaintiff's proposed protocol, I still have obvious objections to the proposal, the lack of appropriate balancing between Plaintiff's right to access discoverable information and Defendant's right to privilege and the privacy of non-discoverable information, and the undue burden and cost created by Plaintiff's proposed protocol. Contrary to Plaintiff's suggestions during the Friday conference call that Defendant use keyword searches to conduct our privilege review, Plaintiff's proposed protocol expressly requires that "Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, or information that is not within the timeframe relevant to this case." See Plaintiff's proposed protocol, Paragraph 6.b. (Emphasis added). Given that Plaintiff is demanding all data on not one, but two MacBook Pro computers, Plaintiff's proposed protocol is functionally requiring Defense counsel to review more than a terabyte of data in 21 days. See id. at Paragraph 1 (requiring Defendant to create a privilege log "[p]rior to turning over the hards drives," which is required to happen [w]ithin twenty-one (21) days of the date of th[e] Order"). "Considering that one terabyte is generally estimated to contain 75 million pages, a one-terabyte case could amount to 18,750,000 documents, assuming an average of 4 pages per document. Further assuming that a lawyer or paralegal can review 50 documents per hour (a very fast review rate), it would take 375,000 hours to complete the review. In other words, it would take more than 185 reviewers working 2,000 hours each per year to complete the review within a year. Assuming each reviewer is paid $50 per hour (a bargain), the cost could be more than $18,750,000." See Anne Kershaw, Automated Document Review Proves Its Reliability, 5 Digital Discovery and e-Evidence 11, p. 10-12 (2005); see also, The Sedona Conference, The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery, 15 SEDONA CONF. J. 217, 220 n.2 (2014), https://thesedonaconference.org/publication/ Commentary_on_Search_and_Retrieval_Methods ("One gigabyte of electronic information can generate approximately 70,000 to 80,000 pages of text, or 35 to 40 banker's boxes of documents (at 2,000 pages per box). Thus, a 250 gigabyte storage device (e.g., a laptop or hard drive), theoretically, could hold as much as the equivalent of 8,750 to 10,000 banker's boxes of documents. In contrast, in 1990, a typical personal computer held just 200 megabytes of data – less than 1/1000 the capacity of a typical hard drive today. Even if only 10% of a computer's available capacity today contains user-created information (as distinguished from application programs, operating systems, utilities, etc.), attorneys still would need to consider and potentially review 1,750,000 to 2,000,000 pages per device."). Given the volume of information that Plaintiff is demanding, and which Defense Counsel would necessarily be required to review under the language of the proposed protocol, it is physically impossible to meet a 21 day deadline for the production of a privilege log. Moreover, the short 21 day deadline is a bit disingenuous given that Plaintiff's Counsel waited over three months from the October 6, 2021 conference call with your Honor and my email providing a proposed protocol used by various federal courts to even contact Defense Counsel by email on January 11, 2022 to discuss the protocol to be utilized in this case.

Additionally, and despite the representation of Plaintiff's Counsel during the conference call with your Honor last Friday, Plaintiff's proposed protocol does not contain a clawback agreement/stipulation that would protect the inadvertent disclosure of privileged information and explicitly confirm that inadvertent disclosure would not constitute a waiver of any applicable privilege. Rather Plaintiff's proposed protocol merely provides that "[i]nadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential." See Plaintiff' proposed protocol, Paragraph 6.a. (emphasis added). Accordingly, the proposed protocol is also deficient for its lack of appropriate language to define the scope, nature, and procedure of the clawback stipulation/agreement to protect all confidential and privileged information.

Kindest Regards,

Chris Brumback
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531 South Main Street, Suite 307
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On Mar 3, 2022, at 11:37 AM, Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org> wrote:

Mr. Brumback,

Judge Kinlaw has received your email dated March 2nd, 2022 and is agreeable with your request for a conference call. Please send available dates to me and I will coordinate the conference call.

Sincerely,

Arielle E. Jeter

Law Clerk to the Honorable Alex Kinlaw, Jr.

305 East North Street

Greenville, South Carolina 29601

Office: (864) 467-8046

Fax: (864) 467-8035

akinlawlc@sccourts.org

From: Chris Brumback <chris@brumbacklangley.com>
Sent: Wednesday, March 2, 2022 4:51:50 PM
To: Kinlaw, Alex; Kinlaw, Alex Law Clerk (Arielle Jeter)
Cc: Kinlaw, Alex Secretary (Shannon N. Thurman); David Moore; Rhonda Schaub; Drew Radeker; Robert L. Mebane, Jr.; Sarah Larabee
Subject: Re: Gorman v. Monarch, 2021CP2303414

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Kinlaw,

I hope you are doing well today. Although Defense Counsel agrees with the proposal to request a conference call with you to help resolve issues upon which the parties cannot agree with regard to the proposed protocol for the electronic forensic examination, I

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disagree with Plaintiff's attempt to imply that Defense Counsel has been anything less than fully engaged in a good faith effort to agree upon a protocol, consistent with the parties' conference call with you on October 6, 2021, that provides Plaintiff with access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive. To ensure that the Court has an accurate picture of the "back-and-forth" and the issues in question, I have attached the email chain between myself and Ms. Larabee for your consideration. Also attached hereto for your Honor's ease of reference is my October 6, 2021 email, sent to your Honor as well as all counsel, that includes the protocol that Defense Counsel proposed following the parties' October 6, 2021 conference call with you.

For your Honor's information, please also be aware that Defense Counsel has reached out to Opposing Counsel to explore potential settlement options for the resolution of this case.

Kindest Regards,

Chris

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On Mar 2, 2022, at 3:20 PM, Sarah Larabee <sarah@harrisonfirm.com<mailto:sarah@harrisonfirm.com>> wrote:

Good afternoon, Judge Kinlaw,

After some back-and-forth with Defendant, the parties have yet to agree on the appropriate protocol for Defendant's production of his electronic devices, which he agreed to provide. Plaintiff has tried to address as many of Defendant's concerns as we can while also remaining within the ambit of the consent order and Your Honor's order granting Plaintiff's motion to compel. However, there are still some points that Defendant disagrees with. We would respectfully ask for a telephone conference with Your Honor to hopefully resolve those issues.

I've attached Plaintiff's draft of the proposed protocols. If you have any questions or concerns, kindly let me know.

Best,

Sarah Larabee

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: March 2, 2022 at 4:51 PM
To: akinlawj@sccourts.org, akinlawlc@sccourts.org
Cc: akinlawsc@sccourts.org, David Moore DMoore@turnerpadget.com, Rhonda Schaub Rhonda@harrisonfirm.com, Drew Radeker Drew@harrisonfirm.com, Robert L. Mebane, Jr. robert.mebane@mgclaw.com, Sarah Larabee sarah@harrisonfirm.com

Judge Kinlaw,

I hope you are doing well today. Although Defense Counsel agrees with the proposal to request a conference call with you to help resolve issues upon which the parties cannot agree with regard to the proposed protocol for the electronic forensic examination, I disagree with Plaintiff's attempt to imply that Defense Counsel has been anything less than fully engaged in a good faith effort to agree upon a protocol, consistent with the parties' conference call with you on October 6, 2021, that provides Plaintiff with access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive. To ensure that the Court has an accurate picture of the "back-and-forth" and the issues in question, I have attached the email chain between myself and Ms. Larabee for your consideration. Also attached hereto for your Honor's ease of reference is my October 6, 2021 email, sent to your Honor as well as all counsel, that includes the protocol that Defense Counsel proposed following the parties' October 6, 2021 conference call with you.

For your Honor's information, please also be aware that Defense Counsel has reached out to Opposing Counsel to explore potential settlement options for the resolution of this case.

Kindest Regards,

Chris

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have received this message in error, please notify the sender immediately by telephone at (864) 414-9097 or by electronic mail, and delete this message and all copies and backups thereof. Personal messages express views solely of the sender and are not attributable to Brumback & Langley, LLC. For technical reasons, Brumback & Langley, LLC, is unable to screen your e-mail immediately upon receipt for time sensitivity, including meeting deadlines. Please be advised that Brumback & Langley, LLC, must decline responsibility for the reading of e-mails in time to take measures to meet deadlines or to comply with their time sensitivity and denies any liability in connection therewith. Kindly re-transmit by fax any documents containing deadlines. Thank you.

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On Mar 2, 2022, at 3:20 PM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

Good afternoon, Judge Kinlaw,

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I've attached Plaintiff's draft of the proposed protocols. If you have any questions or concerns, kindly let me know.

Best,

Sarah Larabee

<image001.png>

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<Plaintiff's Proposed Protocol.docx>

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch Independent Expert
Date: March 2, 2022 at 1:59 PM
To: Sarah Larabee sarah@harrisonfirm.com
Cc: robert.mebane@mgclaw.com, Drew Radeker Drew@harrisonfirm.com, Moore Jr., David L DMoore@TurnerPadget.com

Sarah,

Although I appreciate your email and agree that any electronic forensic expert involved in this process needs to be an officer of the court and that the forensic expert may be able to be of assistance in establishing appropriate timeframes in which to accomplish various steps of the process, it appears that we still have a difference of opinion with regard to other portions of the proposed protocol. Although I have already engaged in extensive discussion of Defense Counsel's position in my prior emails, I do want to take this opportunity to specifically address one point from your February 16, 2022 email. Contrary to your email, I never said that waiver of privilege through failure to preform an actual privilege review of all electronic information is "not South Carolina law." What I did say, and my concern remains valid, is that South Carolina courts have not yet had an opportunity to address that question. The fact that the South Carolina appellate courts have not had the opportunity to illuminate this emerging area of law does not mean that they would not conclude that a substituted privilege "review" did not result in a waiver of privilege, particularly in light of the numerous other jurisdictions, treatises, and commentators that have cautioned that use of search terms in lieu of an actual privilege review would constitute a privilege waiver for any documents that were inadvertently produced. Although I believe the other protocols and safeguards that I have previously discussed are also important and appropriate for inclusion in the final protocol, the issue of privilege waiver, due to its potential ramifications moving forward, is, itself, sufficient justification for another telephone conference with Judge Kinlaw. I am glad we are able to gain some consensus on the forensic expert being an officer of the court and on deciding upon reasonable timeframes. Hopefully, additional discussion with Judge Kinlaw will allow us to come together on the other issues that remain in dispute regarding the protocol. Depending on Judge Kinlaw's schedule, I am flexible the remainder of this week and most of next week.

Thanks,

Chris

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On Feb 28, 2022, at 9:49 AM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

Good morning,

Just following up on this. If I don't hear from you by tomorrow, I'll send the draft over to Judge Kinlaw.

Thanks,

Sarah Larabee

<image001.png>

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From: Sarah Larabee
Sent: Wednesday, February 16, 2022 1:58 PM
To: Christopher Brumback <chris@brumbacklangley.com>
Cc: robert.mebane@mgclaw.com; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@TurnerPadget.com>
Subject: RE: Gorman v. Monarch Independent Expert

Good afternoon, Chris,

I think I've boiled down your concerns to a few points, and I hope that this new draft addresses most of them.
This draft makes the independent expert an officer of the court (see para. 1).
While we certainly appreciate your concern regarding waiver of privilege through the use of key words/phrases, you said it yourself—that's not South Carolina law. Nonetheless, we are more than happy to specifically agree that use of or information yielded from the search terms won't constitute a privilege waiver. I added language at the end of Paragraph 1 agreeing that "[i]nadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege." Inadvertent disclosure is also addressed generally in Paragraph 8(a). Moreover, this draft (and the draft prior to this one) contemplates Defendant getting *two* opportunities to ensure privileged information is not turned over to the Plaintiff: once prior to the initial turnover of the hard drives (para. 1), and again after the neutral expert flags and logs the data, and provides the log to Defendant for him to verify that the information is privileged (para. 2-3).
To your concern about the timeframe, I've changed the time in Paragraph 1 to 21 days. A forensic expert would likely be the better person to ask to get a more accurate idea on whether 21 days will be sufficient, and, if not, what a better timeframe should be. My thinking is that once we agree on an expert, we run this

timeframe should be. My thinking is that once we agree on an expert, we run this draft by them and they can make suggestions on the timeline.
You're right that the draft protocol contemplates Plaintiff receiving access to all of John's files and data, with exception to privileged material. That's because the consent order called for the production of the devices—not information yielded by keywords or key phrases, or "sufficient access" to the devices.
If you are agreeable to these terms, you're welcome to submit the order. If not, we think another teleconference with Judge Kinlaw would be the most efficient way to come to a resolution.
I look forward to hearing from you.
Best,
Sarah Larabee

<image001.png>
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From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Tuesday, January 25, 2022 4:10 PM
To: Sarah Larabee <sarah@harrisonfirm.com>
Cc: robert.mebane@mgclaw.com; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@TurnerPadget.com>
Subject: Re: Gorman v. Monarch Independent Expert

Sarah,

After reviewing and comparing Plaintiff's September 30, 2021 proposed protocol with your January 12, 2022 proposed protocol it appears that the only substantive change to the Plaintiff's proposed protocol is that the expert is now "independent." However, even as to the independence of the expert, Plaintiff's proposed protocol fails to make the expert an officer of the court so as to avoid issues of privilege waiver. Although Defense Counsel certainly is in agreement with an independent expert, who is made an officer of the court, performing the forensic examination, Plaintiff's January 12, 2022 proposed protocol still fails to address the fact that pursuant to Plaintiff's proposed protocol Defense Counsel would be required to review EVERY file and byte of data on Defendant's 2013 MacBook Pro for purposes of making a privilege determination. Although Plaintiff's January 12, 2022 proposed protocol seemingly acknowledges the infeasibility of such an enormously burdensome review by contemplating "[i]f Defendant cannot sufficiently produce or complete a privilege log," Plaintiff's proposal for Defendant to "provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert" as a substitute for an actual privilege review of all electronic information that would be produced would constitute a Court ordered violation of Defendant's privilege rights. South Carolina courts have not addressed privilege waiver in such a context, but numerous other jurisdictions, treatises, and commentators have cautioned that use of search terms in lieu of an actual privilege review would constitute a privilege waiver for any documents that were inadvertently produced. In addition to

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the Plaintiff's January 12, 2022 proposed protocol not providing adequate protection to privileged materials, a ten day timeframe in which to complete even the proposed search term privilege review is infeasible given the unlimited scope of Plaintiff's protocol that contemplates production of every byte of information on the 2013 MacBook Pro.

Beyond the privilege issues, Plaintiff's proposed January 12, 2022 protocol still contemplates Plaintiff receiving access to all of John's files and data regardless of how wildly irrelevant and private such information might be. The lack of Plaintiff generated search terms and search protocol has resulted in an overbroad protocol that risks including information irrelevant to the underlying claims and information that may be personal, private, proprietary, or otherwise confidential. Without relevant search terms generated by Plaintiff, or other limiting instructions, Plaintiff's January 12, 2022 proposed protocol is essentially permitting unfettered access to irrelevant and confidential information contained in Defendant's computer. The proposal to mark certain irrelevant and undiscoverable information as "confidential" does not address the underlying fact that the information is not subject to discovery in the first place. There are certainly situations in which "confidential" information is relevant and discoverable and should be produced subject to the protections of a confidentiality order or agreement, but producing an entire hard drive that largely contains private and confidential information that is completely unrelated to the litigation at hand both in time and nature is not that case. Furthermore, any protection Plaintiff's proposed protocol attempts to provide to private and unrelated information of Defendant by having the independent expert maintain the hard drives in a locked and secure room, such protection is obliterated by the fact that the proposed protocol directs the independent expert, after removal of privileged information, to send a mirror image of Defendant's hard drive to Plaintiff. In contrast to Plaintiff's January 12, 2022 proposed protocol, a protocol that outlines a process by which the Plaintiff could submit search terms to identify responsive documents, Defendant could object to proposed search terms, and, after decision by the court, such search terms could be provided to the independent third-party computer expert would give Plaintiff appropriate and sufficient access to Defendant's hard drive to recover any and all useful, relevant information, while also providing adequate procedural safeguards to protect any privileged, proprietary, personal, and confidential electronically stored information. In addition to balancing the interests of access for Plaintiff and protection for Defendant from undue intrusion, Plaintiff generated search terms and a search protocol also avoid the undue burden created by Paragraph 8 of Plaintiff's January 12, 2022 proposed protocol that requires Defense Counsel, for purposes of designating information as confidential, to review Defendant's hard drive in its entirety within ten days of the Judge's execution of the protocol. See Plaintiff's January 12, 2022 proposed protocol, Paragraph 8(a)-(b) ("Documents shall be designated as confidential prior to, or contemporaneously with, the production or disclosure of the documents…Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney….").

All this said, let me reiterate that Defense Counsel is agreeable to a protocol that provides Plaintiff with sufficient access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive within a ten day period. If the goal of Plaintiff is to obtain only that information that would be

day period. If the goal of Plaintiff is to obtain only that information that would be reasonable calculated to lead to the discovery of admissible evidence and not to gain access to the private and irrelevant intimate details of Defendant's life, then I do not understand Plaintiff's objection to the use of Plaintiff generated search terms, subject to objection by Defendant and approval by Judge Kinlaw, and a search protocol. Frankly, my goal is to arrive at a reasonable protocol that can be effectuated in a timely and cost effective manner that utilizes the independent expert's skills to avoid either party having to review the entirety of Defendant's hard drive, whether that be to conduct a privilege/confidentiality review, or to find useful, relevant information. Again, I am open to a telephone call amongst all counsel to achieve this goal and would be happy to find a time in my schedule this week to conduct such a call.

Kindest Regards,

Chris
Brumback & Langley, LLC
Attorneys and Counselors at Law
Christopher T. Brumback
531 South Main Street, Suite 307
Greenville, SC 29601
Phone: 864-414-9097
Fax: 866-728-1205
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On Jan 12, 2022, at 11:58 AM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

Chis,

No, we are not in agreement with the Defense's proposed protocol. We drafted the attached, which comports with the agreement that we came to in our meeting with Judge Kinlaw. We just need to come to an agreement on an independent expert. Once we agree on an expert, we may want to run the deadlines by them to ensure that they have sufficient time to comply with the order.

Kindly let me know if you have any questions or concerns.

Best,

Sarah M. Larabee

<image.png>

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From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Tuesday, January 11, 2022 4:29 PM
To: Sarah Larabee <sarah@harrisonfirm.com>
Cc: robert.mebane@mgclaw.com<robert.mebane@mgclaw.com>; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>
Subject: Re: Gorman v. Monarch Independent Expert

Sarah,

Thank you for your email. I will look into Mr. Johnson and discuss his involvement as a possible independent expert with my Client and Co-Counsel. Although Defense Counsel is certainly willing to meet and confer regarding the designation of an independent computer expert, we have not received any comment or counter proposal to the protocol for the computer forensic examination that Defense Counsel proposed via email following the telephone conference with Judge Kinlaw on October 6, 2021. Consequently, the protocol for the forensic examination has not yet been established. In Drew's October 27, 2021 email concerning sealing/removal of one of Plaintiff's Exhibits from the record of this case, Drew mentioned that he thought he had a "process outlined that will be coming in a proposed order," but that was the last Defense Counsel heard regarding efforts to agree on a protocol for submission to and approval by Judge Kinlaw. If Plaintiff's Counsel is in agreement with the protocol proposed in my October 6, 2021 email, we will still need to 1) agree on a due date by

which the parties must confer and agree upon the independent expert so we can include that in Paragraph 2 of the proposed protocol, and 2) present the proposed protocol to Judge Kinlaw for his consideration and approval prior to deciding on/retaining the independent computer expert. In the event Plaintiff's Counsel is not in agreement with the protocol proposed in my October 6, 2021 email, please provide Defense Counsel with any comments and proposed revisions to the proposed protocol so that we can discuss and hopefully resolve any issues prior to submission to Judge Kinlaw. Once the protocol is established, Defense Counsel will be happy to confer regarding the designation of an independent computer expert.

Kindest Regards,

Chris

Brumback & Langley, LLC

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On Jan 11, 2022, at 12:25 PM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

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wrote:

Good afternoon, Chris and Robert:

Apologies for the delay on getting a name to you for the neutral expert on this, but we suggest Chip Johnson. Mr. Johnson used to run the SLED Computer Crimes Lab some years ago and indicated that he would be interested in assisting in this matter as an independent expert. After providing him with the case name and attorneys involved, he indicated that he did not have any conflicts. His direct number is (803) 331-9036 and his email is cjohnson@thejg.net, should you have any questions for him.

Kindly let us know whether you are agreeable to Mr. Johnson serving as the expert.

Best,

Sarah M. Larabee

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<draft of proposed protocol.docx>

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From: **Christopher Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: October 6, 2021 at 4:14 PM
To: Moore Jr., David L DMoore@turnerpadget.com, Drew Radeker Drew@harrisonfirm.com
Cc: Robert L. Mebane, Jr. Robert.Mebane@mgclaw.com, Kinlaw, Alex Law Clerk (Arielle Jeter) akinlawlc@sccourts.org, Kinlaw, Alex akinlawj@sccourts.org

Gentlemen (and your Honor),

It was nice speaking with everyone this afternoon and I am glad we were able to find some middle ground to work towards for purposes of establishing a protocol for the computer forensic examination in this case. As indicated during our conference call, the following is the forensic examination protocol, termed "collection and review," utilized by the United States District Court for the Southern District of Florida in Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687-688 (S.D.Fla.2012):

1. An independent computer expert shall be appointed by the Court and shall mirror image [producing party's] computer system. (To the extent it is possible, the independent expert shall conduct his examination in a manner that minimizes the disruption to the operation of [producing party's]' business.)

2. The parties have up through and including [date], to meet and confer regarding their designation of an independent computer expert. If the parties cannot agree, on or before [date], each party shall submit its recommendation to the Court, and the Court will select the expert.

3. The appointed expert shall serve as an Officer of the Court. Thus, to the extent that this computer expert has direct or indirect access to information protected by attorney-client privilege, such disclosure will not result in any waiver of the [producing party's] privilege.

4. The independent expert shall sign a confidentiality order. Additionally, the expert shall be allowed to hire other outside support if necessary in order to mirror image the [producing party's] computer system. Any outside support shall be required to sign the same confidentiality order.

5. The expert shall mirror image the [producing party's] computer system.

6. The [requesting party] shall provide a list of search terms to the Court to identify responsive documents to [requesting party's] document requests on or before [date]. After [requesting party] has submitted the search terms to the Court, [producing party] shall have 5 days to submit [his] objections to the Court regarding any of the search terms, which the court will rule upon. The Court will provide the search terms to the independent expert.

7. Once the expert has mirror imaged the [producing party's] computer system, the expert shall search the mirror image results using the search terms. The results of the search terms and an electronic copy of all responsive documents shall be provided to the [producing party] and to the Court.

8. The [producing party] shall review the search term results provided by the independent expert and identify all responsive documents. The [producing party] shall either produce all responsive documents to the [requesting party] or identify those responsive documents not produced on a privilege log to the [requesting party] within 20 days of the date that the [producing party] receive[s] the search term results from the independent expert. Any privilege log produced shall comply strictly with the [Rules of Civil Procedure].

9. [Requesting party] shall pay for all fees and costs of hiring the independent expert at this time. However, if at a later time there is evidence of the [producing party's] improper deletion of electronic documents or any other associated improper conduct, the Court will revisit this issue and consider charging the [producing party] for the fees and costs of the independent expert or imposing the fees and costs on the parties in a duly appropriate apportioned manner.

10. The independent expert shall provide a signed affidavit detailing the steps he or she took in mirror imaging the [producing party's]' computer system and searching the mirror image for the search terms within 5 days of providing the [producing party] and the Court with the results of the search for search terms in the mirror image.

This seems to be an efficient protocol for the utilization of an independent expert that "should ensure that all responsive electronic documents will be identified, while minimizing the intrusion into [a producing party's] records." Bank of Mong. v. M&P Glob. Fin. Servs., Inc., 258 F.R.D. 514, 521 (S.D. Fla. 2009). That said, and as I indicated during our call, if there are certain elements of the above-protocol that the parties feel need revision, defense counsel is open to making such revisions or, in the alternative, taking such parts of this protocol that everyone agrees are useful and crafting other necessary elements on our own. Should a variation on the above protocol or more signification changes thereto be desired, I have attached, in addition to the Wynmoor case, several other cases that have extensive discussions of forensic imaging protocols involving independent experts and provide numerous citations to courts in various jurisdictions that have crafted their own forensic imaging protocols that may prove useful as source material.

I look forward to hearing everyone's thoughts so we can work towards an agreement on this issue.

Best Regards,

Chris

Wynmoor Comm...orp.pdf

Bank of Mong. v. M&P...Inc.pdf

Crosmun v Trs of Faye...19.pdf

Allied Debt Collect...19.pdf

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Greenville, SC 29601
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On Oct 4, 2021, at 3:13 PM, Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org> wrote:

Ok thank you.

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 2:54 PM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Thank you. Here is the conference call information: Dial 1-206-388-4501 and enter PIN 6290964.

I look forward to talking with everyone at 2:00 on Wednesday.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Sent: Monday, October 4, 2021 2:49 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Judge Kinlaw said Wednesday at 2pm works better for him

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 12:10 PM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Subject: RE: Gorman v. Monarch, 2021CP2303414

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Thank you. Either Wednesday or Thursday at 2:00 should be fine.

Chris, congratulations on your child's upcoming birth.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Sent: Monday, October 4, 2021 11:15 AM
To: Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Good Morning,

Judge Kinlaw is in Columbia on Judicial business until Tuesday evening. He will be in Chambers Wednesday and Thursday. Please let me know if one of those days at 2p.m. will work for everyone.

Mr. Radeker thank you for offering the conference call line. Once I hear from all parties then we can move forward with relaying info to call in.

Thank you in advance,

Shannon N. Thurman
Administrative Assistant to
The Honorable Alex Kinlaw, Jr.
Circuit Court Judge
305 East North Street Suite 213
Greenville SC 29601
864-467-8043
864-467-8035 – fax
akinlawsc@sccourts.org

From: Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Sent: Monday, October 4, 2021 10:42 AM
To: 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Ms. Thurman,

I am co-counsel for the Defendant John Monarch along with Mr. Brumback. I am working at home this week with my two young children due to COVID quarantine protocol. As a result, I will be letting Mr. Brumback handle the call for the defense.

In the event that Mr. Brumback cannot be available tomorrow afternoon due to his wife's pregnancy, I would respectfully request that we re-schedule the call for next week. I plan to call in tomorrow in the event that the call goes forward, but will be muted to avoid any interruptions.

Thank You,

Robert Mebane

<image002.png>

Robert L. Mebane, Jr., *Attorney*
robert.mebane@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | **Direct**:864-239-4023 | **Fax**:864-242-3199
VCARD

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<image003.png>

From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Monday, October 4, 2021 10:25 AM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; Moore Jr., David L <DMoore@turnerpadget.com>
Subject: Re: Gorman v. Monarch, 2021CP2303414

Miss Thurman,

Subject to my wife going into labor (our expected due date is October 7) and having to run to the hospital, I am available tomorrow afternoon as well.

Thanks,

Chris

Brumback & Langley, LLC
Attorneys and Counselors at Law
Christopher T. Brumback
531 South Main Street, Suite 307
Greenville, SC 29601
Phone: 864-414-9097
Fax: 866-728-1205
www.BrumbackLangley.com

General & Complex Litigation, Criminal Defense, Family Law, and Personal Injury

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On Oct 4, 2021, at 10:19 AM, Moore Jr., David L <DMoore@turnerpadget.com> wrote:

I am available tomorrow afternoon.

David L. Moore Jr.
Shareholder
PO Box 1509 | Greenville, SC 29602
200 East Broad Street, Suite 250 | Greenville, SC 29601
864-552-4625 | Fax 864-282-5966
dmoore@turnerpadget.com
Bio | vCard | Location

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 9:53 AM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; Christopher Brumback <chris@brumbacklangley.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Ms. Thurman:

I hope this finds you doing well. Judge Kinlaw wants to set up a conference about this matter. I can provide a conference line for a call. Tomorrow afternoon would work for me, but I do not yet know about other counsel's schedules.

Thank you. Please let us know what you need from us next.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Sunday, October 3, 2021 8:18 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@turnerpadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

I think a conference call would be helpful. Please contact my Administrative Assistant Shannon Thurman to arrange. Please give her the contact information for all who would be participating. Thanks akjr

---

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Friday, October 1, 2021 2:42 PM
To: Christopher Brumback <chris@brumbacklangley.com>
Cc: Kinlaw, Alex <akinlawj@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@turnerpadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: Re: Gorman v. Monarch, 2021CP2303414

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Judge Kinlaw:

The defendant's counsel were given our proposed protocols. They insisted on a process that would have violated the existing consent order. Any further review would have been futile, in my opinion.

Thank you.

Drew Radeker

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Sent from my iPhone - please excuse any typos

> On Oct 1, 2021, at 2:33 PM, Christopher Brumback <chris@brumbacklangley.com> wrote:
>
> Judge Kinlaw,
>
> I hope you are doing well this Friday. I am writing to respond to Drew's email yesterday afternoon concerning the proposed Order, which included a protocol for the examination of Defendant's computer hard drives. First and foremost I need to inform the court that, despite your direction at the end of the motion hearing that Drew would prepare the proposed Order and circulate it to defense counsel for review and comment prior to submitting it to your chambers, neither Robert Mebane, my co-counsel, nor I were provided a draft of the proposed Order until after it was e-filed with the Court. In fact, the first time defense counsel received a copy of the proposed Order was the email to your chambers yesterday afternoon with the proposed Order attached. While waiting to receive Drew's draft of the proposed Order, Robert and I worked to create a reasonable protocol that would produce to Plaintiff the mirror images of the requested hard drives while balancing concerns regarding, and restricting Plaintiff's access to, privileged information, private and/or confidential information regarding Defendant's personal life and finances and Defendant's business trade-secrets and other proprietary information that is wholly irrelevant to this case the non-privileged and discoverable parts, and minimizing the burdensomeness of producing the mirror image hard drives by minimizing cost that will be incurred by Defendant and the disruption of Defendant's business, which he conducts from his current MacBook. Having researched extensively how various federal courts have balanced production of a mirror image of a party's hard drive with protecting confidential and personal information and system integrity and avoiding giving the discovering party access to information unrelated to the litigation (see e.g., Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687-688 (S.D.Fla.2012) (providing a "collection and review protocol" to address "potential intrusiveness" when compelling forensic computer examination); Ferron v. Search Cactus, L.L.C., No. 2:06-CV-327, 2008 WL 1902499 (S.D.Ohio Apr. 28, 2008) (ordering protective protocol for forensic mirror imaging of plaintiff's hard drives) , I sent Drew the following proposed protocol last Thursday morning:
>
> 1. Within ten days of the date of this Order, Defendant Monarch shall create two mirror image copies of both of Monarch's laptop computer systems' hard drives.
> 2. Defendant shall preserve one copy of each laptop computer systems' hard drive unmodified in the event in camera review of the hard drives by the Court were to become necessary. Defendant shall then remove Defendant's confidential personal information, any privileged information, any information that is irrelevant to this case, and any information that is not within the timeframe relevant to this case from the other mirror image copies of Defendant's laptop computer systems' hard drives within 60 days from the date of imaging of the hard drives. Defendant shall provide Plaintiff with the protocol he utilized to remove the confidential, privileged, irrelevant, or untimely information along with a privilege log of any discoverable information for which Defendant claims privilege, and a verification thereof. Communications involving Defendant's counsel that post-date the filing of the Complaint need not be placed on a privilege log. Communications and information may be identified on a privilege log or in the protocols Defendant utilized to remove information from the redacted hard drives by category, rather than individually, if appropriate.
> 3. Defendant shall then provide Plaintiff's computer forensic expert access to the redacted mirror image copies of Defendant's laptop computer systems' hard drives.
> 4. Plaintiff's' expert shall provide a copy of his findings to Defendant's counsel prior to making any findings and information available to Plaintiff.
> 5. Following Plaintiff's expert's review, Defendant shall identify for deletion any additional information that is irrelevant, privileged, or otherwise not subject to discovery and supplement Defendant's privilege log as necessary, within 60 days upon receipt from Plaintiff's expert. Upon the completion of Defendant's counsel's review, Plaintiff's computer forensic expert shall remove the information claimed as irrelevant, privileged, or otherwise not subject to discovery and provide all other information to Plaintiff.
> 6. Plaintiff's expert shall provide Defendant with the protocol he utilized to remove any additional information that is irrelevant, privileged, or otherwise not subject to discovery that was not previously removed by Defendant.
> 7. In the event material not relevant to this litigation is nonetheless received by Plaintiff, the Defendant shall have the right to demand the return of any irrelevant material produced by Defendant, and the Parties agree to meet and confer in good faith to resolve any disputes that arise regarding irrelevant materials. Once Plaintiff receives notice or reasonably determines that a document constitutes irrelevant material, Plaintiff shall refrain from any further examination or disclosure of such irrelevant material, other than as agreed to by Defendant or to review to the

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disclosure of such irrelevant material, other than as agreed to by Defendant or to review to the limited extent necessary to engage in the meet and confer process with the Defendant.
8. The production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.
9. In the event there is a dispute over information that is not made available to Plaintiff, the Parties shall confer in good faith after Plaintiff is provided the information by his expert and prior to bringing all objections before the Court to request an in camera review by the Court to make a final determination as the whether particular information on Defendant's hard drives is subject to discovery.
10.Because copies of the Defendant's hard drives will contain electronically stored information that is private, confidential, and/or privileged, the Parties agree that this Order will prevent any private, confidential, and/or privileged material from being made public or used in any unlawful manner. The hard drives provided to Plaintiff by Defendant shall be maintained in a locked and secure room, cabinet, and/or safe and shall only be accessible to Plaintiff's counsel and Plaintiff's computer forensic expert. Plaintiff's counsel shall have access to and may use information contained on Defendant's hard drives only for the purpose of this action. Anyone employed in the office of Plaintiff's counsel assisting Plaintiff's counsel for purposes of this action is also bound by the terms of this Order. The hard drives given to Plaintiff's counsel and any computer from which the hard drives may be accessed shall not be connected the internet or to any other computer network while the hard drives produced pursuant to this Order is attached thereto. Once participation in the prosecution of this case by any person obtaining Defendant's hard drives pursuant to this Order has been terminated, all hard drives and information obtained therefrom shall be returned to Defendant within twenty (20) days. The physical computers, data drives, and components used to examine Defendant's hard drives will be scrubbed to remove any and all information obtained from Defendant's hard drives, except that data which is developed by Plaintiff's counsel may be retained by counsel consistent with attorney work product.

Defense counsel believes that the proposed protocol satisfies the Court's obligation to protect Defendant's privileged information as well as Defendant's sensitive confidential and private and personal information, including personal financial information and communications with family and friends, that have no bearing on the claims in this case. See Sedona Principles, Commt. 6d, pp. 127-30 (3d ed. 2018) (discussing concerns over allowing "direct access to an opposing party's computer systems"; courtesy copy is attached hereto for the Court's consideration). Although defense counsel is aware there are variations on Defendant's proposed protocol that still provide appropriate protections to a party producing a mirror image of his hard drives, when Plaintiff's counsel responded to defense counsel with Plaintiff's own proposed protocol on Wednesday, Sep. 29, at 3:03 p.m., it was immediately clear that Plaintiff's proposal completely disregarded the protections the Court is required to afford Defendant's privileged, confidential, and private information. Specifically, Plaintiff's proposed protocol has Plaintiff's expert creating the mirror images of the hard drives and then "examin[ing] the drives and summariz[ing] their contents", in their entirety, before counsel for Defendant is ever given a copy of the mirror image or permitted to conduct a privilege review to ensure that privileged information is protected and ensure that privilege is not waived or otherwise lost. See Proposed Order, Page 4, Paragraph No. 4. Not only does Plaintiff' proposed protocol not provide appropriate protection to privileged material, it also contemplates Plaintiff receiving all of Defendant's private and confidential information, subject only to 1) the material being marked as "confidential," which would not prevent Plaintiff from reviewing ALL of Defendant's private and confidential information, and 2) an ambiguous right for Defendant to later "demand the return of any irrelevant material produced by Defendant." See Proposed Order, Page 4, Paragraph Nos. 5 and 6. Unfortunately, once the Plaintiff has been given unfettered access to all of Defendant's non-privileged, but nonetheless private and confidential information, the toothpaste cannot be put back in the tube simply by Plaintiff returning the information to Defendant.

Despite receiving the language of Plaintiff's proposed protocol at 3:03 p.m. on Wednesday and being given a scant two hours before Plaintiff's counsel indicated that he would be submitting it as part of the proposed Order, which Plaintiff's counsel had not circulated per your Honor's ruling from the bench, defense counsel quickly reviewed and responded to Plaintiff's counsel by 4:26 p.m. that afternoon raising issues via email with the Plaintiff's proposed protocol and specifically noting that Plaintiff's failure to rest of the proposed Order for review and comment. Despite requesting in three separate emails to have a conference call with Plaintiff's counsel to discuss and confer in good faith, Plaintiff's counsel, ignoring defense counsel's requests to discuss, providing no explanation, and still having not circulated the rest of the proposed Order, indicated that there could be no agreement, but that Plaintiff's counsel would "add some language stating that expert's examination doesn't waive privilege." In short, the "add[ition] [of] some language stating that

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expert's examination doesn't waive privilege," is wholly inadequate to protect the sacrosanct right to attorney-client privilege or other privileges that may apply.

In addition to disregarding the Court's obligation to protect privilege and private and confidential information of the producing party, Plaintiff's proposed protocol and insistence on Plaintiff's expert creating the mirror images ignores the fact that the issues in this litigation relate to the informational content of the data stored on computer systems, not the actual operations of the systems. Given that it is the obligation of the producing party to produce relevant content, it is reasonable for Defendant to produce the mirror images, which minimizes expense associated with the production, avoids
unreasonably disrupting the Defendant's ongoing business, and protects Defendant's privileged, private, and confidential information as well as Defendant's system security and stability. Furthermore, allowing Defendant to produce the mirror images also "allows the party with the greatest knowledge of the computer systems to search and utilize the systems to produce responsive information," which will avoid imposing an unreasonable burden on defense counsel to attempt to review over a terabyte of information in 21 days. See Sedona Principles, Commt. 6d, pp. 129 (3d ed. 2018); Proposed Order, Page 4, Paragraph No. 5. Review of over a terabyte of information in 21 days in unreasonable under the best of circumstances, however, for the Court's information, my wife is expected to give birth to our first child in the next week or so, and, as such, review of over a terabyte in 21 days, even with co-counsel, would not just be unreasonable, but frankly impossible.

As previously stated, there are many proposed protocols that have been utilized for the production of a forensic computer examination that still provide appropriate protections to Defendant's privileged, private, and confidential information and minimize the burdensomeness of such an endeavor. To that point, defense counsel is open to conferring in good faith to arrive at an appropriate protocol that is acceptable to the Court and to both parties, however, at this point it appears that your Honor participating in a conference call with counsel for both parties to reach an agreed upon protocol will be necessary.

Kindest Regards,

Chris

Brumback & Langley, LLC
Attorneys and Counselors at Law
Christopher T. Brumback
531 South Main Street, Suite 307
Greenville, SC 29601
Phone: 864-414-9097
Fax: 866-728-1205
www.BrumbackLangley.com

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On Sep 30, 2021, at 3:39 PM, Drew Radeker <Drew@harrisonfirm.com> wrote:

Judge Kinlaw:

Attached is the proposed order we are submitting through e-filing. We've been unable to come to agreement with the Defendant on some points of the particulars of the examination process. Perhaps the one that makes agreement most unlikely is the defendant's desire, despite the terms of the existing consent order, to turn over not the devices themselves but only copies of drives to our expert. In other words, the Defendant wants to make drive copies himself and turn over only the copies he has made. We do not agree to that, and the consent order already provides for him to provide his devices, not a copy of drives on them.

Thank you. Of course, please do not hesitate to contact me should you or you staff have any questions or concerns.

Drew Radeker

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From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Thursday, September 30, 2021 1:09 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

That will be fine. Thanks akjr

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Wednesday, September 29, 2021 4:30 PM
To: Kinlaw, Alex <akinlawj@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Judge Kinlaw:

While we're fairly close to agreement on language of the examination protocols, Defense counsel has asked for some time to review with their client some proposed language they got from me today. Accordingly, if we could have through tomorrow to submit the proposed order, we would be most appreciative. I have an order drafted now, but I would rather submit one with agreed examination protocol language if possible.

Thank you. I hate to keep bothering you about this.

Drew Radeker

<image001.png>
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tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) Thank you.

From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Monday, September 27, 2021 12:37 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Wednesday will be fine. Thanks akjr

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, September 27, 2021 11:17 AM
To: Kinlaw, Alex <akinlawj@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Judge Kinlaw:

I write to let Your Honor know that we're hashing out the details of proposed device examination protocols now. I was out of town for depositions when defense counsel sent me his proposed parameters on Thursday and had missed his email until now. If it's all right with you, we plan to submit a proposed order by Wednesday (rather than today, as you had previously directed).

Thank you. If you are not all right with us taking a couple more days to work on this, please let me know so that we can get something in today.

Drew Radeker

<image001.png>
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From: Drew Radeker
Sent: Tuesday, September 14, 2021 11:54 AM
To: akinlawj@sccourts.org
Cc: akinlawlc@sccourts.org; akinlawsc@sccourts.org; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: Gorman v. Monarch, 2021CP2303414

Judge Kinlaw:

In addition to the materials already filed under this case number concerning the motions to compel and for sanctions set to be heard by Your Honor tomorrow, I provide the attached consent order and memorandum, which were filed under the old case number in this restored case.

Thank you. If you have any questions or concerns or would like me to send copies of the documents filed under the 2021 case number, please let me know.

Drew Radeker

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<Order granting motion to compel production of electronic devices.docx>

<The Sedona Principles Third Edition.19TSCJ1.pdf>

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2021-CP-23-03414

Richard A. Gorman . . . . . Respondent,

v.

John C. Monarch . . . . . Appellant.

NOTICE OF APPEAL

John C. Monarch hereby appeals the following Orders of the Honorable Alex Kinlaw, Jr.: (1) an Order dated March 28, 2022, which is attached hereto as **Attachment A**; and (2) an Order dated April 27, 2022, which is attached hereto as **Attachment B**. Appellant received written notice of the entry of each Order on the date stamped on each respective Order's margins.

Respectfully submitted,

s/ Steven Edward Buckingham

Steven Edward Buckingham (S.C. Bar No. 0075089)
The Law Office of Steven Edward Buckingham, LLC
16 Wellington Avenue
Greenville, South Carolina 29609
(o) 864.735.0832
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Filed this 17th Day of May, 2022.
Greenville, South Carolina

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ATTACHMENT A

ELECTRONICALLY FILED - 2022 May 23 2:53 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2303414

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**ORDER GRANTING MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES**

This matter came before me at a hearing in the above-captioned action on September 15, 2021, set for the Plaintiff's motion to compel production of electronic devices for examination and the Plaintiff's motion for sanctions. As noted in previously filed Form 4 orders, the court grants the motion to compel production and continues the motion for sanctions to be heard at a later time.

This case (now restored after having been stricken pursuant to Rule 40(j), SCRCP) began over seven years ago under Case No. 2014-CP-23-04432. It concerns allegations that the Defendant participated in a blackmail scheme to extort money from the Plaintiff and that the Defendant, having failed to succeed at the blackmail, undertook efforts to defame the Plaintiff and ruin his reputation professionally and personally. Since near this case's beginning, Plaintiff has sought in discovery to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case. The Defendant has maintained that he had no involvement with these blackmail communications and internet postings.

Following years of disagreement about discovery and two previous motions to compel, the parties entered into a consent order filed on August 21, 2020, under which the Plaintiff agreed to serve supplemental interrogatories and requests to produce and the court ordered as follows:

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> With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

Following the Plaintiff's service of the supplemental interrogatories and requests to produce, the Defendant served discovery responses in late September of 2020 in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which, according to him, he had the data transferred or removed. The Defendant got rid of the iPhone 5, despite the pendency of discovery requests seeking it; his counsel advises that he kept the 2013 MacBook Pro but transferred data from it to a new MacBook Pro. However, Defendant's counsel later advised the Court and Plaintiff's counsel that Defendant found the 2013 MacBook Pro, and allegedly discovered that he did *not* have data transferred from the device.

Plaintiff's counsel attempted to arrange cooperative provision by the Defendant of the devices for examination, but Defendant's counsel objected to providing the devices, despite the agreed language in the consent order requiring it. Plaintiff's motion to compel production followed. At the hearing, Defendant's counsel argued that the Defendant was not required under the consent order to provide the devices for examination. Based on the plain language of the consent order, the court disagrees with the Defendant. As he previously agreed to do under the consent order, the Defendant shall provide the devices for examination. The Defendant raised concerns about the Plaintiff having access to privileged or irrelevant information through the examination of the devices, and the court agrees steps should be taken to prevent disclosure to the Plaintiff of privileged or truly irrelevant material through the examination.

Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id. As examination of the devices to be produced

may shed further light on whether and to what extent sanctions are proper, the court finds it appropriate to continue the Plaintiff's motion for sanctions.

Accordingly, IT IS THEREFORE HEREBY ORDERED that:

1) Within twenty-one (21) days of the date of this Order, Defendant Monarch shall provide to a neutral third party forensic expert (hereinafter "independent expert") to be agreed upon by the parties and to be made an officer of the court, all electronic devices subject of a consent order filed on August 21, 2020, and subject of the Plaintiff's supplemental interrogatories and supplemental requests for production that are of record in this action (including the devices' the hard drives, internal flash memory, and/or solid-state drives, the Defendant's 2013 MacBook Pro and the MacBook to which Defendant transferred data from the 2013 MacBook Pro, all of which are hereinafter collectively referred to as "the drives" or "the hard drives"). Prior to turning over the hard drives, Defendant shall complete a log of what he believes to be privileged information. If Defendant cannot sufficiently produce or complete a privilege log, Defendant shall provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert. Inadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege.

2) Within the twenty-one (21) days, the neutral expert shall examine the drives and summarize their contents. The neutral expert shall make and preserve two (2) copies of each hard drive. One (1) copy shall be preserved by the neutral expert unmodified in the event *in camera* review of the hard drives by the Court were to become necessary. From the second copy, the neutral expert shall parse and index the forensic images using industry standard forensic tools, and then execute a search of any keywords and/or key phrases provided by Defendant. Any and all positive search results shall be flagged for exclusion from the copy.

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The neutral expert shall make note of and export any relevant information pertaining to the flagged data to be included in the privilege log and document the physical locations of the flagged data. The physical location/addresses shall include the beginning of the selection or file extent, to the end of the selection or file extent.

3) The neutral expert shall provide an updated privilege log containing any and all relevant information pertaining to the flagged data to Defendant. Defendant shall then have ten (10) days to verify whether this data flagged by the third-party forensic expert is, in fact, privileged. Defendant shall provide the verified privilege log to the neutral expert.

4) The neutral expert shall have twenty-one (21) days to refer to the verified privilege log and utilize appropriate forensic software to sanitize the data from the copy of the forensic images that were acquired from Defendant's devices and subject to processing. The process of sanitizing the forensic images shall include navigating to the physical address of each selection of data or file that has been verified as privileged data, and replacing the data contained at that address with zeros, from the beginning to the end of the selection or file extent. The neutral expert shall then re-execute a search for the data contained on the privilege log to ensure the image is sanitized. The neutral expert shall prepare and provide to the parties a detailed report indicating the steps taken to sanitize the forensic images.

5) The neutral expert shall create three (3) mirror image copies of the sanitized drive. One shall be preserved by the neutral expert, one shall be sent to Plaintiff's counsel, and one shall be sent to Defendant's counsel.

6) The hard drives provided to the neutral expert by Defendant shall be maintained by the neutral expert in a locked and secure room, cabinet, and/or safe when not in use by the neutral expert. The neutral expert shall have access to and may use information contained on Defendant's hard drives only for the purpose of this action. Plaintiff's counsel shall have

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access to and may use information contained on the sanitized hard drives only for the purpose of this action. Anyone employed in the office of Plaintiff's counsel and anyone assisting Plaintiff's counsel for purposes of this action is also bound by the terms of this Order.

7) Once participation in the litigation of this case by any person obtaining Defendant's hard drives pursuant to this Order has been terminated, all hard drives and electronic data obtained therefrom shall be returned to Defendant within twenty-one (21) days.

8) Certain material and information on the hard drives shall be treated as confidential, subject to the following terms:

   a) Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document, and which will permit complete removal of the designation. Documents shall be designated as confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential.

   b) Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, or information that is not within the timeframe relevant to this case.

   c) Any confidential designation is subject to challenge in good faith. The burden of proving the necessity of a confidential designation remains with the party asserting

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confidentiality. A party who contends that documents designated as confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation. The parties shall confer in good faith prior to bringing all objections before the Court to request an *in camera* review for a determination of whether the challenged information is subject to confidentiality.

d) Documents designated as confidential under this Order shall not be used or disclosed by the parties, counsel for the parties, or any experts for the parties for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of the litigation).

e) The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated as confidential under the terms of this Order to any other person or entity except as to, or contemporaneously with, the production or disclosure of the documents to those persons. Persons to whom disclosure is to be made shall execute an acknowledgment (in the form set forth as Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. The following categories of persons may be allowed to review documents which have been designated as confidential pursuant to this Order:

   i) Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

   ii) Parties and certain members or employees of a party to this Order, but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;

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iii) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

iv) Witnesses during depositions, hearings, and trial;

v) Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation of the lawsuit; and

vi) Other person only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

f) The parties and counsel for the parties shall not make any information designated as confidential public or use such information in any unlawful manner.

9) The provisions of this order may be modified upon good cause shown or by consent of the parties, and any dispute concerning the matters subject of this order, if the parties are unable to resolve it, may be determined by the court upon motion.

And IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Circuit Judge

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Greenville Common Pleas

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

Case Number: 2021CP2303414

Type: Order/Compel

So Ordered

s/Alex Kinlaw, Jr., #2763

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ATTACHMENT B

ELECTRONICALLY FILED - 2022 May 27 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2303414

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**ORDER GRANTING MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES**

This matter came before me at a hearing in the above-captioned action on September 15, 2021, set for the Plaintiff's motion to compel production of electronic devices for examination and the Plaintiff's motion for sanctions. As noted in previously filed Form 4 orders, the court grants the motion to compel production and continues the motion for sanctions to be heard at a later time.

This case (now restored after having been stricken pursuant to Rule 40(j), SCRCP) began over seven years ago under Case No. 2014-CP-23-04432. It concerns allegations that the Defendant participated in a blackmail scheme to extort money from the Plaintiff and that the Defendant, having failed to succeed at the blackmail, undertook efforts to defame the Plaintiff and ruin his reputation professionally and personally. Since near this case's beginning, Plaintiff has sought in discovery to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case. The Defendant has maintained that he had no involvement with these blackmail communications and internet postings.

Following years of disagreement about discovery and two previous motions to compel, the parties entered into a consent order filed on August 21, 2020, under which the Plaintiff agreed to serve supplemental interrogatories and requests to produce and the court ordered as follows:

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> With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

Following the Plaintiff's service of the supplemental interrogatories and requests to produce, the Defendant served discovery responses in late September of 2020 in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which, according to him, he had the data transferred or removed. The Defendant got rid of the iPhone 5, despite the pendency of discovery requests seeking it; his counsel advises that he kept the 2013 MacBook Pro but transferred data from it to a new MacBook Pro. However, Defendant's counsel later advised the Court and Plaintiff's counsel that Defendant found the 2013 MacBook Pro, and allegedly discovered that he did *not* have data transferred from the device.

Plaintiff's counsel attempted to arrange cooperative provision by the Defendant of the devices for examination, but Defendant's counsel objected to providing the devices, despite the agreed language in the consent order requiring it. Plaintiff's motion to compel production followed. At the hearing, Defendant's counsel argued that the Defendant was not required under the consent order to provide the devices for examination. Based on the plain language of the consent order, the court disagrees with the Defendant. As he previously agreed to do under the consent order, the Defendant shall provide the devices for examination. The Defendant raised concerns about the Plaintiff having access to privileged or irrelevant information through the examination of the devices, and the court agrees steps should be taken to prevent disclosure to the Plaintiff of privileged or truly irrelevant material through the examination.

Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id. As examination of the devices to be produced

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may shed further light on whether and to what extent sanctions are proper, the court finds it appropriate to continue the Plaintiff's motion for sanctions.

Accordingly, IT IS THEREFORE HEREBY ORDERED that:

1) Within twenty-one (21) days of the date of this Order, Defendant Monarch shall provide to a neutral third party forensic expert (hereinafter "independent expert"; at the office of _____, addressed to the attention of _____), to be agreed upon by the parties and to be made an officer of the court, all electronic devices subject of a consent order filed on August 21, 2020, and subject of the Plaintiff's supplemental interrogatories and supplemental requests for production that are of record in this action (including the devices' the hard drives, internal flash memory, and/or solid-state drives, the Defendant's 2013 MacBook Pro and the MacBook to which Defendant transferred data from the 2013 MacBook Pro, all of which are hereinafter collectively referred to as "the drives" or "the hard drives"). Prior to turning over the hard drives, Defendant shall complete a log of what he believes to be privileged information. If Defendant cannot sufficiently produce or complete a privilege log, Defendant shall provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert. Inadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege.

2) Within the twenty-one (21) days, the neutral expert shall examine the drives and summarize their contents. The neutral expert shall make and preserve two (2) copies of each hard drive. One (1) copy shall be preserved by the neutral expert unmodified in the event *in camera* review of the hard drives by the Court were to become necessary. From the second copy, the neutral expert shall parse and index the forensic images using industry standard forensic tools, and then execute a search of any keywords and/or key phrases provided by

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Defendant. Any and all positive search results shall be flagged for exclusion from the copy. The neutral expert shall make note of and export any relevant information pertaining to the flagged data to be included in the privilege log and document the physical locations of the flagged data. The physical location/addresses shall include the beginning of the selection or file extent, to the end of the selection or file extent.

3) The neutral expert shall provide an updated privilege log containing any and all relevant information pertaining to the flagged data to Defendant. Defendant shall then have ten (10) days to verify whether this data flagged by the third-party forensic expert is, in fact, privileged. Defendant shall provide the verified privilege log to the neutral expert.

4) The neutral expert shall have twenty-one (21) days to refer to the verified privilege log and utilize appropriate forensic software to sanitize the data from the copy of the forensic images that were acquired from Defendant's devices and subject to processing. The process of sanitizing the forensic images shall include navigating to the physical address of each selection of data or file that has been verified as privileged data, and replacing the data contained at that address with zeros, from the beginning to the end of the selection or file extent. The neutral expert shall then re-execute a search for the data contained on the privilege log to ensure the image is sanitized. The neutral expert shall prepare and provide to the parties a detailed report indicating the steps taken to sanitize the forensic images.

5) The neutral expert shall create three (3) mirror image copies of the sanitized drive. One shall be preserved by the neutral expert, one shall be sent to Plaintiff (at the office of _____), and one shall be sent to Defendant (at the office of _____).

6) The hard drives provided to the neutral expert by Defendant shall be maintained by the neutral expert in a locked and secure room, cabinet, and/or safe when not in use by the

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neutral expert. The neutral expert shall have access to and may use information contained on Defendant's hard drives only for the purpose of this action. Plaintiff's counsel shall have access to and may use information contained on the sanitized hard drives only for the purpose of this action. Anyone employed in the office of Plaintiff's counsel and anyone assisting Plaintiff's counsel for purposes of this action is also bound by the terms of this Order.

7) Once participation in the litigation of this case by any person obtaining Defendant's hard drives pursuant to this Order has been terminated, all hard drives and electronic data obtained therefrom shall be returned to Defendant within twenty-one (21) days.

8) Certain material and information on the hard drives shall be treated as confidential, subject to the following terms:

    a) Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document, and which will permit complete removal of the designation. Documents shall be designated as confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential.

    b) Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, or information that is not within the timeframe relevant to this case.

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c) Any confidential designation is subject to challenge in good faith. The burden of proving the necessity of a confidential designation remains with the party asserting confidentiality. A party who contends that documents designated as confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation. The parties shall confer in good faith prior to bringing all objections before the Court to request an *in camera* review for a determination of whether the challenged information is subject to confidentiality.

d) Documents designated as confidential under this Order shall not be used or disclosed by the parties, counsel for the parties, or any experts for the parties for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of the litigation).

e) The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated as confidential under the terms of this Order to any other person or entity except as to, or contemporaneously with, the production or disclosure of the documents to those persons. Persons to whom disclosure is to be made shall execute an acknowledgment (in the form set forth as Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. The following categories of persons may be allowed to review documents which have been designated as confidential pursuant to this Order:

    i) Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

    ii) Parties and certain members or employees of a party to this Order, but only to the extent counsel shall certify that the specifically named individual

party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;

iii) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

iv) Witnesses during depositions, hearings, and trial;

v) Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation of the lawsuit; and

vi) Other person only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

f) The parties and counsel for the parties shall not make any information designated as confidential public or use such information in any unlawful manner.

9) The provisions of this order may be modified upon good cause shown or by consent of the parties, and any dispute concerning the matters subject of this order, if the parties are unable to resolve it, may be determined by the court upon motion.

And IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Circuit Judge

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Greenville Common Pleas

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

Case Number: 2021CP2303414

Type: Order/Compel

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION FOR SANCTIONS FOR DEFENDANT'S CONTINUED REFUSAL TO COMPLY WITH ORDERS OF THIS COURT**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 37, SCRCP, and all other applicable law, for an order that issues sanctions against Defendant John C. Monarch for his continued refusal to comply with this court's discovery orders directing him to turn electronic devices over for examination. In light of the Defendant's stubborn and repeated disobedience of this court's orders, a sanction such as the striking of the Defendant's pleading is appropriate. The Plaintiff does not seek sanctions against Defendant's counsel, who is just carrying out his client's directions; rather, sanctions are sought against the Defendant himself, who continues to thumb his nose at the court.

The grounds for this motion are as follows:

1. Since near this case's beginning almost nine years ago[1], Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case. Despite orders directing him to turn the devices over for examination in discovery, the Defendant's course of obstruction and

[1] This case bears a 2021 case number because it was stricken and then restored under Rule 40(j), SCRCP.

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disobedience of those orders has to this day prevented the Plaintiff from ever examining the devices.

2. As the record shows, the Defendant entered into a consent order in 2020 under which he agreed to produce electronic devices to the Plaintiff for examination. The Defendant then refused to comply with the consent order. Judge Kinlaw granted the Plaintiff's motion to enforce the order and compel production of the devices, adding numerous protections and safeguards for the Defendant concerning production of the devices and providing for them to be produced to a neutral expert.
3. Instead of complying with that order, the Defendant moved to reconsider and brought an interlocutory appeal of the order, an appeal which the Court of Appeals dismissed *sua sponte* as being an appeal of an unappealable discovery order. The Defendant petitioned for rehearing of the dismissal of the appeal, and that petition was denied by the Court of Appeals. Judge Kinlaw denied the motion to reconsider.
4. Despite this, the Defendant continues to refuse to comply with Judge Kinlaw's order.
5. The exhibits filed with this motion lay out most of the history:
    a. In December of 2013, before this action was brought, a lawyer for the Plaintiff wrote a letter to the Defendant noting that the Defendant needed to preserve evidence, including electronic data.
    b. In 2014, just after the commencement of the suit, the Plaintiff served the Defendant with discovery requests seeking access to such electronic data. In early 2015, the Defendant objected and refused to provide the data in discovery.
    c. The Defendant went into default of an amended complaint, then was ultimately successful in getting out of that default. Following that, the Plaintiff engaged

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the undersigned counsel, and the Plaintiff made a motion to compel discovery in 2018.

d. Believing that the motion had been resolved with earlier counsel for the Defendant, Plaintiff's counsel advised the court that motion had been resolved.

e. But it had not been resolved. Plaintiff supplemented his discovery production with over 4,000 pages of documents, but the Defendant still refused to provide discovery, including refusing to provide the electronic data.

f. Accordingly, in June of 2020, the Plaintiff made another motion to compel.

g. That motion to compel was resolved by a consent order filed on August 21, 2020. Among other things, that consent order stated that the Defendant would provide electronic devices for examination by the Plaintiff.

h. Monarch then served discovery responses that listed electronic devices he had used concerning this matter. He had given away one of them and stated that he had had all data removed from another one.

i. Anxious to get a hold of the devices and at least examine them for evidence of what was deleted from them, Plaintiff's counsel tried to work with Defendant's counsel to arrange for examination of the devices, to no avail. Despite the consent order, the Defendant still refused to provide the devices for examination.

j. Accordingly, the Plaintiff moved to compel production of the devices and for sanctions for the Defendant's destruction of evidence after he was given a spoliation letter and served with discovery requests that sought information he had destroyed or allowed to be destroyed.

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k. The Defendant is a sophisticated computer user with an extensive background in computer technology. He knew how to keep this evidence but got rid of it anyway.

l. The Honorable Alex Kinlaw, Jr., heard the Plaintiff's motions. He decided to grant the Plaintiff's motion to compel production of the devices, with protocols in place to protect the Defendant's privilege and privacy. He continued the motion for sanctions, as it might be best decided once an examination revealed what was on the Defendant's electronic devices.

m. Judge Kinlaw asked counsel to come up with a mutually agreeable framework of protocols. After a few conference with counsel and after receiving much input from Defendant's counsel about requested protective measures, the Defendant still refused to agree to actually part with his device temporarily so that an examination of it could be made by a neutral expert.

n. Eventually, Judge Kinlaw issued an order on March 28, 2022, without the Defendant's agreement, though the order contained multiple pages of protocols to protect the Defendant's privilege and privacy claims.[2] The order directed the Defendant to turn the devices over within 21 days (i.e., on or before April 18, 2022) to a neutral expert (to be chosen cooperatively) for examination.

o. The Defendant moved for reconsideration of that order. The Defendant also appealed that order.

p. *Sua sponte*, the Court of Appeals dismissed the Defendant's appeal, noting that the appealed order was an unappealable discovery order.

[2] This order was actually issued twice, apparently as a clerical error.

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q. Plaintiff's counsel reached out to Defendant's counsel about compliance with the order, and Defendant's counsel advised him that the Defendant was not going to cooperate in choosing a neutral expert and would be refusing to comply with the order.

r. The Defendant petitioned the Court of Appeals for rehearing of the dismissal of the appeal, then moved for the appeal proceedings to be held in abeyance pending Judge Kinlaw deciding the motion to reconsider. This delayed the end of the appeal proceedings by several months.

s. During the pendency of the appeal, the Plaintiff received an affidavit from the Defendant's former friend Illya Shpetrik, who stated that the Defendant was indeed behind online efforts to attack and discredit the Plaintiff. This affidavit reveals that the Defendant's subject electronic devices almost certainly contain or contained data relevant to how involved the Defendant really was in the conduct that led to this case.

t. While the appeal was pending, the parties also sought designation of this action as a complex case, and the case was so designated and assigned to the Honorable Perry H. Gravely.

u. Judge Kinlaw heard the motion to reconsider and denied it, noting the Defendant's stubborn refusal to comply with the court's orders. Judge Kinlaw ruled that Judge Gravely should decide the sanctions issues.

v. The Court of Appeals issued the remittitur for the Defendant's appeal in late January of 2023.

w. Plaintiff's counsel reached out to Defendant's counsel to see whether the Defendant intends to comply with the court order now that the remittitur has

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been sent on his appeal. Defendant's counsel advised that his client is still not going to comply with the court's directives as ordered.

6. The Defendant still refuses to comply with Judge Kinlaw's order, even with all its safeguards, upon which the Defendant had insisted.
7. The Defendant has made it clear that he is not going to comply with this court's orders.
8. The sanction that is most appropriate here is the striking of the Defendant's answer and counterclaim. Such a sanction is rarely warranted, but the Defendant's continued obstruction of this court's orders demands such a meaningful punishment.
9. "A sanction that results in a default or dismissal is a severe punishment that should be imposed only if there is some showing of *bad faith, willful disobedience, or gross indifference* to the rights of the adverse party." Rickerson v. Karl, 412 S.C. 215, 770 S.E.2d 767, 770 (Ct. App. 2015) (emphasis in original); accord Davis v. Parkview Apts., 409 S.C. 266, 762 S.E.2d 535, 544 (2014).
10. Unfortunately, all of that is present here.
11. The Defendant has acted in bad faith. The Defendant has entered into a consent order to provide the devices for examination, then refused to comply with it, was ordered to provide the devices, and brought an appeal of an unappealable order just to avoid providing the discovery. Now that that appeal has been dismissed and the Defendant's motion to reconsider Judge Kinlaw's order has been denied, the Defendant still flatly refuses to comply with the order and provide the discovery.
12. The Defendant's disobedience of this court's orders is willful. His refusal to obey this court's directives is not the product of accident, mistake, inadvertence, or inability to comply. He is able to comply. He knows he has been ordered to turn over the electronic

devices, and he has made and continues to make the conscious choice to violate this court's orders.

13. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004). Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
14. The Defendant's conduct shows gross indifference to the Plaintiff's right to conduct discovery on the merits of the case. The Defendant's conduct shows gross indifference to the Plaintiff's rights under the orders to have the electronic devices examined. The Defendant's conduct has shown gross indifference to the authority of this court, with the Defendant treating orders as innocuous pieces of paper rather than solemn decrees.
15. The Defendant's repeated refusal to comply with discovery – even when the court has gone out of its way to craft safeguards to avoid any privilege invasion or undue invasion of the Defendant's privacy – is reminiscent of the conduct in Davis v. Parkview Apts., 409 S.C. 266, 762 S.E.2d 535 (2014), where the Supreme Court upheld dismissal as the sanction for failure to comply with discovery orders.
16. The Defendant's conduct has made sanctions the only way to deal with the problems he has created. He wants the benefits of being a party to a civil case (burden of proof on the Plaintiff, etc.) without the burdens (having to provide relevant information in discovery and having to abide by court orders). It does not work like that.
17. Since the Defendant refuses to play by the rules and allow discovery on the merits to take place, it is fitting and fair that the court limit the Defendant's participation to that

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of a defaulting defendant. Limehouse v. Hulsey, 404 S.C. 93, 114, 116-17, 744 S.E.2d 566, 578, 579 (2013) (holding that "a defendant's participation in a post-default hearing [is limited] to cross-examination and objection to the plaintiff's evidence"); Howard v. Holiday Inns, Inc., 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978) (holding that "the defendant will be permitted to participate [in a damages hearing] by cross-examining witnesses and objecting to evidence").

18. It is right, proper, and fitting for this court to sanction Defendant Monarch. As permitted under Rule 37, SCRCP, this court should sanction him by striking his pleading. His continued willful refusal to comply with orders of this court and provide important material in discovery leaves the court no other meaningful option to address the Defendant's conduct.

Pursuant to Rule 11, SCRCP, the undersigned certifies that he consulted with opposing counsel in an effort to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

February 10, 2023

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BLANK ROME LLP
COUNSELORS AT LAW

Phone: *(215) 569-5352*
Fax: *(215) 832-5352*
Email: *Lee-M@BlankRome.com*

December 20, 2013

John C. Monarch
404 Gatewood Drive
Greenwood, SC 29646-9260

Dear Mr. Monarch:

This law firm represents Rich Gorman and his related companies. Mr. Gorman has recently received a number of extremely disturbing email communications which threaten harm to Mr. Gorman, his businesses, and his customers, if he does not make a payment of several thousand hundred dollars worth of Bitcoins as directed in the emails. The threatening tone of the emails has been escalating in recent days. In addition, derogatory and/or defamatory information about Mr. Gorman has been recently posted on numerous websites.

Our preliminary investigation into this matter suggests to us that you have a connection with www.performoutsider.com, a web site which appears to be related to these threatening emails and defamatory postings. We therefore hereby demand that you immediately cease and desist from posting, or causing to be posted, any derogatory or defamatory information about Mr. Gorman, or any of his affiliates, employees, business associates, and/or customers.

Please be advised that Mr. Gorman is presently evaluating his legal options and intends to take appropriate action to protect his legal rights, including the possible referral of the matter to appropriate legal authorities.

Finally, please regard this letter as requesting that you preserve documents, tangible things, and electronically stored information potentially relevant to the issues referenced in this letter. You should anticipate that much of the information relevant to this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Electronically stored information (hereinafter "ESI") should be afforded the broadest possible meaning and includes, by way of example and not as an exclusive list, potentially relevant information electronically, magnetically, optically, or otherwise stored as:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB)
- Word processed documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both sources of ESI, even if you do not anticipate producing such ESI.

Preservation Requires Immediate Intervention

If you have not already done so, you should act immediately to preserve potentially relevant ESI concerning this matter. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents, or running any application may irretrievably alter the evidence it contains and constitute unlawful spoliation of evidence. As such, preservation of potentially relevant information requires your immediate attention and action. Federal and state laws require that you retain certain documents. This preservation letter includes those documents to be retained under state and federal law as well as documents and date described herein.

Nothing in this request for preservation of ESI should be understood to diminish your concurrent obligation to preserve documents, tangible things, and other potentially relevant evidence. Moreover, this request to preserve information for this litigation is both retroactive and prospective in application, which means that it extends to all documents, tangible things, and electronically stored information that currently exist relating to this lawsuit, as well as all

Exhibit 1 to motion re: refusal to obey order
EXHIBIT A 00705
Confidential 0583

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documents, tangible things, and electronically stored information that are created in the future during the course of this litigation.

Suspension of Routine Destruction
You are requested to immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further requested to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity, or other criteria;
- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server, packet, or local instant messaging logging; and,
- Executing drive or file defragmentation or compression programs.

Guard Against Deletion and Act to Prevent Spoliation
You should take affirmative steps to prevent anyone with access to your data, systems, and archives from seeking to modify, destroy, or hide ESI on network or local hard drives and on other media or devices (such as by deleting or overwriting files; using data shredding and overwriting applications; defragmentation, re-imaging, damaging, or replacing media; encryption; or compression).

Preservation of Backup Tapes
You are requested to preserve complete backup tape sets (including differentials and incrementals) containing ESI related to this matter.

You should anticipate that ESI will be sought in the form or forms in which it is ordinarily maintained (i.e., native form). The forensically sound image described above will preserve ESI in such native form. You should not employ methods to preserve ESI that remove or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use the information. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

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Metadata
You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files.

Servers
With respect to servers used to manage e-mail (e.g., Microsoft Exchange, Lotus Domino) and network storage (often called a "network share"), the complete contents of each user's network share and e-mail account should be preserved if that user has potential relevance to this matter. There are several ways to preserve the contents of a server. If you are uncertain whether the preservation method you plan to employ is one that we will accept as sufficient, please immediately contact the undersigned.

Home Systems, Laptops, Online Accounts and Other ESI Venues
Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems or devices may contain potentially relevant data. To the extent that you have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, memory stick, CDR/DVD-R disks, and the user's PDA, smart phone, voice mailbox, or other forms of ESI storage.). Similarly, if you used online or browser-based e-mail accounts or services (such as Gmail, AOL, or Yahoo Mail) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted, and Archived Message folders) should be preserved.

Ancillary Preservation
You should preserve documents and other tangible items that may be required to access, interpret, or search potentially relevant ESI, including but not limited to logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction

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sheets, data entry forms, abbreviation keys, and user ID and password rosters. You should preserve passwords, keys, and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals, and license keys for applications required to access the ESI. You should preserve cabling, drivers, and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives, and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate
As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

Agents, Attorneys, and Third Parties
Your preservation obligation extends beyond ESI in your care, possession, or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you should notify any current or former agent, attorney, employee, custodian, and contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you should take reasonable steps to secure their compliance.

Sincerely yours,

MATTHEW D. LEE

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC,** **Defendants.**	**MOTION TO COMPEL DISCOVERY**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 33, 34, 36, and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch (hereinafter "the Defendant") to serve complete responses to discovery. The grounds for this motion are as follows:

1. Exhibits A through H attached hereto are incorporated herein by reference as if here set forth verbatim.
2. The letter from Plaintiff's predecessor counsel attached as Exhibit A to this motion sets out a number of deficiencies in the Defendant's discovery responses. These deficiencies have yet to be corrected.
3. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
4. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004). The Plaintiff would like to take a meaningful deposition of the Defendant in this case. If the Defendant is not compelled

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to provide full and complete responses to the Plaintiff's discovery requests and to do so significantly before his deposition, the Plaintiff will be prejudiced unfairly in this action.

5. In addition, without full, complete responses from the Defendant to the discovery requests subject of this motion, trial would essentially be the guessing game or ambush that discovery is designed to prevent.
6. In the event that an order compelling responses to the Plaintiff's discovery requests is insufficient, the court should render such other relief in favor of the Plaintiff as is appropriate.
7. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matters subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
March 15, 2018

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Exhibit A

Letter concerning discovery responses

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February 16, 2015

VIA U.S. MAIL AND E-MAIL: sdeal@cozen.com
Svend H. Deal, Esquire
COZEN O'CONNOR
301 South College Street, Suite 2100
Charlotte, NC 28202

RE: *Richard A. Gorman v. John C. Monarch*
Case No. 2014-CP-23-04432
AR File No. 024015-000001

Dear Svend:

We received Defendant John C. Monarch's responses to Plaintiff Richard A. Gorman's First Set of Requests for Production, First Set of Interrogatories, and First Set of Requests to Admit in this matter (collectively, the "Discovery Responses"). Please allow this letter to respectfully address a number of issues that relate to your Discovery Responses.

1. Amendments and Exhibits to Requests and Interrogatories

As indicated in your Discovery Responses, we neglected to enclose the exhibits referenced in Request to Admit No. 4 and Interrogatory No. 8. Please allow us to amend Request to Admit No. 4 to read, "Admit that you published, or caused to be published, the statements shown in **Exhibit A** made by the Monarch Facebook Account to an account bearing the name "Ilya Putin" or "Ilya Blt." Moreover, I have enclosed herein the referenced Exhibit A.

Please also allow us to amend Interrogatory No. 8 to read, "Identify all persons who own, operate or control the Facebook account bearing the name "Ilya Putin" as shown in **Exhibit A** attached hereto." I have enclosed herein the referenced Exhibit A.

Finally, please allow the first line of Interrogatory No. 9 to read, "For every person identified in your answer to Interrogatories **No. 7 and No. 8**..." We respectfully request that you respond to Request to Admit No. 4 and Interrogatories No. 8 and No. 9, as amended herein, within ten (10) days of the date of this letter.

2. Production of Responsive Documents and Information

In response to all seven Requests for Production in Plaintiff's First Set of Requests for Production, your Discovery Responses state that "Defendant will produce responsive, non-privileged documents." However, no documents were enclosed with the Discovery Responses. We respectfully request that you produce or make available for inspection all responsive, non-privileged documents within ten (10) days of the date of this letter. Please advise us immediately regarding when, where and in what format you will

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produce or make available for inspection all non-privileged documents that are responsive to Plaintiff's First Set of Requests for Production.

3. Request for Privilege Log

In many instances in the Discovery Responses, you have objected on the grounds that Plaintiff seeks documents or information protected by the attorney-client privilege. This objection is made in your responses to all of Plaintiff's First Set of Requests for Production, Standard Interrogatories No. 1, 2 and 3, and all of Plaintiff's General Interrogatories. You have further objected on the grounds that Plaintiff seeks documents or information protected by the work-product doctrine and/or privacy laws. This objection is made in your responses to all of Plaintiff's First Set of Requests for Production, Standard Interrogatories No. 1, 2 and 3, and all of Plaintiff's General Interrogatories. Finally, in many of your Discovery responses, you object on the grounds that Plaintiff seeks documents or information that "might disclose the thoughts, impressions, or legal strategies of Defendant's counsel." This objection, or a substantially similar objection, is made in your responses to Requests for Production No. 1, 2, 3, and 4, Standard Interrogatories No.3 and 5, and General Interrogatory No. 3.

Based on the above, it appears that you have withheld responsive information or documents on the basis of a privilege or protection. Under Rule 26(b)(5)(a), SCRCP, "[w]hen a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Your Discovery Responses do not include a privilege log describing the responsive documents that you suggest are either privileged and protected, as required under Rule 26(b)(5)(a). We respectfully request that you provide us with a privilege log that comports with Rule 26(b)(5)(a) within ten (10) days of the date of this letter.

4. General and Boilerplate Objections

Your responses to Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Requests for Production contain thirteen (13) nearly identical "General Objections." In addition, your Discovery Responses repeatedly assert several generic, boilerplate objections, including but not limited to the following:

1. Plaintiff's requests are overbroad, vague and/or ambiguous. This objection, or a substantially similar objection, is made in your responses to all of Plaintiff's Requests for Production, Plaintiff's Standard Interrogatories No. 1, 2, 3, and 4, and all of Plaintiff's General Interrogatories.

2. Plaintiff's requests are not relevant or not reasonably calculated to lead to the discovery of admissible evidence. This objection, or a substantially similar objection, is made in your responses to all of Plaintiff's Requests for Production, Plaintiff's Standard Interrogatories No. 1, 2, 3, and 4, and all of Plaintiff's General Interrogatories.

3. Plaintiff's requests seek information that is already in Plaintiff's possession or that is obtainable by Plaintiff at a lower cost. This objection, or a substantially similar objection, is made in your responses to all of Plaintiff's Requests for Production, Plaintiff's Standard Interrogatories No. 1, 2, 3, and 4, and all of Plaintiff's General Interrogatories.

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We respectfully disagree that any of Plaintiff's Interrogatories or Requests for Production are overbroad, vague, ambiguous, irrelevant, burdensome, costly or otherwise objectionable for any of the grounds stated in the General Objections and boilerplate objections described above (collectively, "Boilerplate Objections").

Moreover, the Boilerplate Objections are made in a general, repetitive manner, and they do not indicate how or why any particular Interrogatory or Request for Production is objectionable. In many instances, when responding to a particular Interrogatory or Request for Production, Defendant presents a long list of Boilerplate Objections and other objections but nonetheless produces certain responsive information "notwithstanding" the objections made. This practice makes it impossible for Plaintiff to determine what information has been withheld and the specific justification for withholding it. Our courts and commentators condemn the practice of using boilerplate objections in this manner and consider it to be an abuse of discovery. *See* Order on Motions To Compel, Hon. Joseph F. Anderson, Jr., *Keith Curtis et. al. v. Time Warner Entertainment-Advance/Newhouse Partnership*, 3:12-cv-2370-JFA (D.S.C. May 13, 2013) ("The parties shall not make nonspecific, boilerplate objections."); Hon. G. Ross Anderson Jr., *Discovery Abuse*, South Carolina Trial Lawyer Bulletin, Fall 1998, at 10.

For the above reasons, we respectfully request that you withdraw the Boilerplate Objections and produce all documents or information withheld on this basis. Alternatively, please provide a specific explanation as to why these objections apply to each of Plaintiff's particular Interrogatories or Requests for Production, within ten (10) days of the date of this letter.

5. Specific Objections

There are a number of additional objections in your Discovery Responses with which we respectfully disagree. Please allow this letter to address our concerns relating to each objection.

a. Relevant time period

Many of Plaintiff's Interrogatories and Requests for Production seek information or documents created or distributed during a period from January 1, 2012 until the present. In several instances, you object that this "relevant time period" (from January 1, 2012 to the present) is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This objection, or a substantially similar objection, is made in your responses to Plaintiff's Requests for Production No. 5, 6 and 7 (including subparts) and in Plaintiff's General Interrogatory No. 2. We respectfully disagree that the "relevant time period" is overbroad or burdensome. This time period corresponds with the exact time frame during which we allege that the Defendant's wrongdoing took place. Our purpose in limiting our requests to this time period was precisely to avoid imposing an undue burden on the Defendant. We respectfully request that you withdraw these objections and produce all documents or information withheld on this basis within ten (10) days of the date of this letter.

b. Entities not a party to the litigation

Many of Plaintiff's Interrogatories and Requests for Production seek documents or communications that relate to the entities Brand.com, Reputation Changer Inc., and Direct Outbound Services, LLC ("Direct Outbound"). In several instances, you object to the production of documents or information relating to these entities on the grounds that these entities are not parties to the litigation, suggesting that information relating to these entities is irrelevant and does not "pertain to" Plaintiff. It further appears to be your

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position that any request for information regarding Direct Outbound is intended only to harass, oppress or intimidate Defendant. This objection, or a substantially similar objection, is made in your responses to Plaintiff's Requests for Production No. 5, 6 and 7 (including subparts), in Plaintiff's General Interrogatories No. 1, 2 and 4, and in Request for Admission No. 1.

We respectfully disagree that the information sought regarding these entities is irrelevant or otherwise objectionable. "In South Carolina the scope of discovery is very broad and an objection on relevance grounds is likely to limit only the most excessive discovery request." *See Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (citations omitted). Plaintiff is the founder and owner of Brand.com and Reputation Changer, Inc., and we submit that the information and documentation requested by Plaintiff relating to these entities is directly related to Plaintiff and Plaintiff's interests. Moreover, upon information and belief, Direct Outbound is owned and managed by Defendant. Defendant and Direct Outbound are business competitors of Plaintiff, and Plaintiff believes this competitive relationship provided Defendant with both a motive for and a means to accomplish the alleged wrongful conduct described in the complaint in this matter. As such, we submit that the information and documentation sought by Plaintiff relating to Direct Outbound is directly relevant to this matter. We respectfully request that you withdraw these objections and produce all documents or information withheld on this basis within ten (10) days of the date of this letter.

c. Other categories of information purportedly not pertaining to Plaintiff

You have objected to Plaintiff's General Interrogatories 3 and 6 on the grounds that they seek information that is irrelevant and does not "pertain to" Plaintiff. We respectfully disagree. General Interrogatory 3 seeks information regarding lawsuits to which Plaintiff is a party, and therefore it necessarily "relates to" Plaintiff. General Interrogatory 6 seeks information relating to the nature of Defendant's relationship with Perform Outsider. This information is directly relevant to Plaintiff's causes of action, as Plaintiff has alleged that Defendant is responsible for content displayed on Perform Outsider's website. As indicated above, "[i]n South Carolina the scope of discovery is very broad and an objection on relevance grounds is likely to limit only the most excessive discovery request." *See Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (citations omitted). We respectfully request that you withdraw these objections and produce all documents or information withheld on this basis.

d. Premature interrogatories

In several instances, you object to Plaintiff's Interrogatories by stating that we are in the early stages of discovery, that such Interrogatories are "premature," and that you will produce responsive documents "in due course." This objection, or a substantially similar objection, is made in your responses to Plaintiff's Standard Interrogatories No. 1, 2, 3, and 5. We are not aware of any Rule or other authority which permits a party to respond to Interrogatories "in due course" rather than within the 30-day period prescribed by Rule 33, SCRCP. Moreover, each of these Interrogatories is one of the standard interrogatories expressly permitted under Rule 33, SCRCP, and we strongly disagree that such standard interrogatories are premature or otherwise objectionable. As such, we respectfully request that you withdraw these objections and produce all documents or information withheld on this basis.

e. Multiple interrogatories

You object to Plaintiff's Interrogatories 3 and 4 on the grounds that they contain more than one interrogatory. We respectfully disagree that these standard interrogatories, which are established under

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Rule 33, SCRCP, contain multiple questions, and we respectfully request that you withdraw these objections and produce all documents or information withheld on this basis.

f. Objections based on Defendant's lack of control over documents and information

A number of Plaintiff's Interrogatories and Requests for Production seek information about materials that have been disseminated online. You have objected to several of these requests on the grounds that they seek information regarding materials that you contend Defendant did not personally create or control. This objection, or a substantially similar objection, is made in your responses to Plaintiff's Requests for Production No. 5, 6 and 7 (including subparts) and General Interrogatories No. 5 and 10. We respectfully disagree with this objection. Defendant is capable of understanding or having knowledge about a document or statement that he did not personally create or control. If Defendant does not possess any knowledge or information responsive to Plaintiff's requests, we request that you amend your Discovery Responses to indicate such lack of knowledge or information. If Defendant does possess knowledge or information responsive to these requests, we respectfully request that you withdraw your objections and produce all responsive documents or information withheld on this basis.

g. Objections to Request to Admit No. 7

You object to Request to Admit No. 7 on two grounds, both of which we respectfully submit are improper. First, you object that this request assumes facts not in evidence. Plaintiff is unaware of any rule requiring that discovery requests be premised on facts that have been entered into evidence. Furthermore, no facts are "entered into evidence" at any point of a litigated case prior to a trial on the merits. Moreover, Request to Admit No. 7 is not based on any assumptions—it is a straightforward question. We therefore respectfully request that you withdraw this objection and provide a response.

You further indicate that Defendant "lacks sufficient personal knowledge to either admit or deny this Request" and, on this basis, fail to admit or deny the Request. Rule 36(a), SCRCP expressly states that "[a]n answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny." We respectfully submit that your response to Request to Admit No. 7 violates this provision, and we request that you admit or deny Request to Admit No. 7 within ten (10) days of the date of this letter.

Thank you for your attention to these matters. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Lana H. Sims IV

LHS/vhm
Enclosures
cc: Ryan Andrews (*via e-mail*)

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"Exhibit A" to Plaintiff's First Set of Continuing Interrogatories to Defendant

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Exhibit B

Defendant Monarch's
responses to requests to admit

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S REQUESTS TO ADMIT TO DEFENDANT**

Defendant John Monarch ("John"), by and through undersigned counsel, responds to Plaintiff Richard A. Gorman's Request to Admit to Defendant dated November 14, 2014, as follows:

REQUESTS TO ADMIT

1. Admit that you are the owner and chief executive officer of Direct Outbound Services, LLC ("Direct Outbound").

Objection. This Request is brought solely for the purpose of harassing, vexing and annoying the Defendant. Direct Outbound is not a party to this litigation and therefore the Defendant objects to the relevancy of this Request. Without waiving those objections, Defendant denies this Request.

2. Admit that @papajohn56 is your personal Twitter account.

Admit.

3. Admit that the Facebook account located at www.facebook.com/papajohn56, bearing the name "John Monarch" is your personal Facebook Account ("Monarch Facebook Account").

Admit.

Exhibit 2 to motion re: refusal to obey orders

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4. Admit that you published or caused to be published, the statements shown in Exhibit ___ made by the Monarch Facebook Account to an account bearing the name "Ilya Putin" or "Ilya Blt".

THIS CANNOT BE ADMITTED OR DENIED BECAUSE NO EXHIBIT WAS ATTACHED.

5. Admit that, for a period of time, the name and logo of Direct Outbound were displayed on the website known as "Perform Outsider," located at www.performoutsider.com ("PerformOutsider Website").

Objection, the term "period of time" is vague and ambiguous as to time-frame. Vague, ambiguous and assumes facts not in evidence. Without waiving those objections, Defendant admits this Request.

6. Admit that the PerformOutsider Website and Twitter account @performoutsider were, at one time, owned and maintained by an individual known as "Ilya Putin," "Ilya BLT," "Ilya Syanov," and/or "Ilya".

Objection. The term "owned" and "maintained" is vague and ambiguous, as Defendant does not know the identity of the individual known as "Ilya Putin," "Ilya BLT," "Ilya Syanov," and/or "Ilya". Objection to the extent the Request is argumentative and calls for Defendant to make a conclusion based on incomplete and insufficient facts. Without waiving those objections, Defendant admits this Request.

7. Admit that Richard A. Gorman has never been charged or convicted of any crime involving a minor.

Objection. The Request is vague, ambiguous and assumes facts not in evidence. In addition, the request is solely for the purpose of harassing, vexing and annoying Defendant. This responding party lacks sufficient personal knowledge to either admit or deny this Request. On the basis set forth above, Defendant neither admits nor denies this Request.

RESPECTFULLY submitted this 18th day of December, 2014.

COZEN O'CONNOR

By: _____

Svend H. Deal, Esq.
Cozen O'Connor
Suite 2100, 301 South College Street,
One Wells Fargo Center
Charlotte, NC 28202
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the same date set forth above, I served via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Sven H. Deal

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S REQUESTS TO ADMIT TO DEFENDANT**

VERIFICATION OF JOHN C. MONARCH

I, JOHN C. MONARCH, declare as follows:

1. I am a Defendant in the above-captioned matter and am authorized to make this declaration/verification.
2. I certify that I have read Defendant John C. Monarch's Responses to Plaintiff Richard A. Gorman's Requests to Admit and the responses are true and correct to the best of knowledge and belief.
3. have read and know the contents of, and the matters and things therein stated are true and correct to the best of my knowledge and belief; and
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:12/15/2014

JOHN C. MONARCH

Exhibit 2 to motion re: refusal to obey orders

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Exhibit C

Defendant Monarch's
responses to first set of interrogatories

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S FIRST SET OF CONTINUING INTERROGATORIES**

Defendant John Monarch ("John"), by and through undersigned counsel, responds to Plaintiff Richard A. Gorman's First Set of Continuing Interrogatories as follows:

GENERAL STATEMENT

Defendant's responses are based upon information presently available to it following a reasonable inquiry. Discovery is still ongoing, however, and Defendant reserves the right to amend, supplement or change its objections and responses if and when additional information becomes available.

GENERAL OBJECTIONS

1. Defendant objects to all discovery requests to the extent they are overbroad, vague, ambiguous, unduly burdensome, and irrelevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Plaintiffs Interrogatories to the extent they seek the disclosure of information protected by the attorney-client privilege, and such information will not be disclosed.

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3. Defendant objects to Plaintiffs' Interrogatories to the extent that they seek information prepared in anticipation of litigation or protected by the work-product doctrine, and such information will not be disclosed.

4. Defendant objects to all discovery requests to the extent they call for information which is part of the public record, or which is otherwise equally available to all parties, or to which the propounding party has greater access as unduly burdensome, oppressive, at less cost, and unreasonable.

5. Defendant objects to Plaintiff's Interrogatories to the extent they are served for harassment, oppression, or delay.

6. Defendant objects to all discovery requests to the extent that they purport to impose duties and obligations, which exceed or are different than those imposed by the South Carolina Rules of Civil Procedure or Court orders in this action.

7. Defendant objects to Plaintiff's Interrogatories to the extent that they exceed the permitted number.

8. Each of the foregoing objections is hereby incorporated in each and every one of the following responses, whether or not they are specifically identified.

9. None of the objections or response contained herein is an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials, or information, or the truth or accuracy of any statement or characterization contained in Plaintiff's First Set of Continuing Interrogatories. Defendants written responses are made without waiving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, or other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right to object on any

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and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right to revise, correct, add, or clarify any of the responses provided herein.

10. Defendant objects to any interrogatory that seeks information that is already in the Plaintiff's possession.

11. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require Defendant to provide contact information for individuals that are unknown to Defendant.

12. Defendant objects to Plaintiff's "relevant time period" dating back to January 1, 2012 on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Defendant objects to Plaintiff's Interrogatories to the extent they seek confidential information, trade secrets, or privileged information.

OBJECTIONS TO DEFINITIONS

1. Defendant objects to Definition G (1) "identify" on the grounds that the definition calls for information, in the form of residential addresses and telephone numbers, that would unreasonably invade the privacy of persons not a party to this litigation.

RESPONSE TO RULE 33(b) STANDARD INTERROGATORIES

INTERROGATORY NO 1.

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

RESPONSE TO INTERROGATORY NO. 1.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, or

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work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Furthermore, Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will designate his fact witnesses and the exhibits upon which they will rely in due course. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor is he obligated to determine, every piece of discoverable information possessed by the individuals. Defendant also objects to this interrogatory to the extent it seeks information about which Defendant has no personal knowledge. Discovery is continuing and Defendant reserves the right to supplement his responses herein.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

John C. Monarch
c/o Defendants Counsel

INTERROGATORY NO. 2

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE TO INTERROGATORY NO. 2.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, or

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work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Furthermore, Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will designate his fact witnesses and the exhibits upon which they will rely in due course. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor is he obligated to determine, every piece of discoverable information possessed by the individuals. Defendant objects to this interrogatory to the extent it seeks information about non-parties to this suit that Defendant has no personal knowledge of. Discovery is continuing and Defendant reserves the right to supplement his responses herein.

INTERROGATORY NO. 3.

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

RESPONSE TO INTERROGATORY NO. 3.

Defendant objects to this Interrogatory on the grounds that it contains more than one Interrogatory and thus is an attempt to circumvent the limit on the number of Interrogatories. Defendant further objects to this Interrogatory as overbroad, vague, excessively time consuming, and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, work product doctrine, or any other applicable privilege. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant,

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overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Furthermore, Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will provide photographs, plans, sketches, and other prepared documents that relate to the claim and defense when available. Discovery is continuing and Defendant reserves the right to supplement his responses herein.

INTERROGATORY NO. 4

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE TO INTERROGATORY NO. 4.

Defendant objects to this Interrogatory on the grounds that it contains more than one Interrogatory and thus is an attempt to circumvent the limit on the number of Interrogatories. Defendant further objects to this Interrogatory as overbroad, vague and ambiguous. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to the discovery of admissible evidence in that it seeks information without limitation.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

No claim has been filed with Defendant's insurance company.

INTERROGATORY NO. 5

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

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RESPONSE TO INTERROGATORY NO. 5.

Defendant objects to this interrogatory in that it calls for the designation of expert witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant objects to this Interrogatory as it is premature, but expressly reserves its right to supplement, clarify, revise, or correct, and to assert additional objections in accordance with the time period for exchanging expert reports set by the Court.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant has not retained any expert witnesses at this time, but specifically reserves the right to do so.

GENERAL INTERROGATORIES

INTERROGATORY NO. 1

Identify all members, managers, and officers of Direct Outbound Services, LLC ("Direct Outbound"), and indicate the percentage ownership of each person identified.

RESPONSE TO INTERROGATORY NO. 1.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy law, applicable privileges, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants business entities, which are not a party to this case, whether or not such business or company is relevant to this matter. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence

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in that it seeks information without identifying its relevancy. Defendant objects to this interrogatory to the extent it seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

INTERROGATORY NO. 2

Identify all persons with whom you have directly communicated regarding Richard A. Gorman, Brand.com, or Reputation Changer Inc., from January 1, 2012 to the present date, including those with whom you have communicated via email, text message, or using any website application, forum, blog, imageboard, social media service, or other medium on the World Wide Web.

RESPONSE TO INTERROGATORY NO. 2.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant objects to this Interrogatories "relevant time frame" as being overbroad, irrelevant, excessive, and unduly burdensome. Defendant interprets the Interrogatory to request information about Defendants communications to third parties in regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Karl Steinborn
"Ilya BLT"

INTERROGATORY NO. 3

Identify all persons with whom you have communicated regarding: (1) this lawsuit; (2) Civil Action No. 2:14-cv-00890-NS in the United States District Court for the Eastern District of Pennsylvania, (3) Case No. CV2014—001469 in the Superior Court for the State of Arizona, County of Maricopa, and (4) Civil Action No. 2:14-cv-05980-TON in the United States District Court for the Eastern District of Pennsylvania.

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RESPONSE TO INTERROGATORY NO. 8.

Defendant objects to this Interrogatory in that it is duplicative and is overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants communications to third parties in regards to any of the aforementioned lawsuits whether or not that communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation. Defendant objects to this Interrogatory because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Karl Steinborn
Ilya

INTERROGATORY NO. 4.

Identify all email addresses, Twitter accounts, Facebook accounts, social media accounts, forum accounts, blog accounts, and imageboard accounts which belong to you, personally or in capacity as a member, manager, or officer of Direct Outbound.

RESPONSE TO INTERROGATORY NO. 4.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy law, applicable privileges, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants business entities, which are not a party to this case, whether or not such business or company is relevant to this matter. Defendant objects to the

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Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence in that it seeks information without identifying its relevancy. Defendant objects to this interrogatory to the extent it seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Twitter: @papajohn56; Facebook: www.facebook.com/papajohn56; Wickedfire: papajohn56; Reddit: papajohn56..

INTERROGATORY NO. 5.

Identify all persons who own, manage, or control the content displayed on the website known as "Perform Outsider" located at www.performoutsider.com ("PerformOutsider Website") and/or the Twitter account @performoutsider.

RESPONSE TO INTERROGATORY NO. 5.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor is he obligated to determine, who owns the PerformOutsider Website and/or the Twitter Account @performoutsider. Defendant objects to

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this interrogatory to the extent it seeks information about non-parties to this suit that Defendant has no personal knowledge of.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant only knows the person believed to be the operator of the PerformOutsider Website and @performoutsider Twitter account as the screenname Ilya S, Ilya BLT, or Illya S.

INTERROGATORY NO. 6.

Describe your relationship with the Perform Outsider website (as it is described in Interrogatory 5 above) or its owner or manager, or with the Twitter account @performoutsider, including all agreements (whether express or implied), contracts, or understandings between their owner(s) or manager(s) and yourself or any business you own or in which you have an interest.

RESPONSE TO INTERROGATORY NO. 6.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants relationship with Perform Outsider Website or @performoutsider whether or not such communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant is a casual acquaintance with the person believed to be the owner of the Perform Outsider Website and @performoutsider, whom is known only as Illya or Ilya ("Ilya").

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Defendant has communicated with Ilya in the past regarding personal matters via Facebook Groups and Skype chat.

INTERROGATORY NO. 7.

Identify all persons who own, operate or control the email addresses jessica.springfield@aol.com and expectedusa@aol.com.

RESPONSE TO INTERROGATORY NO. 7.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and that it contains multiple layers of compound questions. Defendant further objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, or work product doctrine. Defendant objects to the Interrogatory as being argumentative in that interprets the Interrogatory to assume that Defendant knows who owns, operates or controls the email addresses. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation. Defendant objects to this interrogatory to the extent it seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant does not know who owns, controls, or operates the email addresses jessica.springfield@aol.com and expectedusa@aol.com.

INTERROGATORY NO. 8

Identify all persons who own, operate or control the Facebook account bearing the name "Ilya Putin" as shown in Exhibit __ attached hereto.

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RESPONSE TO INTERROGATORY NO. 8.

Defendant objects to this Interrogatory in that it is incomplete and/or unintelligible and/or does not provide sufficient information to provide a response. Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence in that it seeks information without identifying its relevancy. Defendant is unable to provide a responsive answer to this Interrogatory as no Exhibit has been identified or provided with the Interrogatories.

INTERROGATORY NO. 9.

For every person identified in your answer to Interrogatories # and #8, identify all known contact information, addresses, phone numbers, nicknames, aliases, email addresses, Twitter Accounts, Facebook accounts, social media accounts, forum accounts, blog accounts, and imageboard accounts which belong to the person identified.

RESPONSE TO INTERROGATORY NO. 9.

Defendant objects to this Interrogatory in that it is incomplete and/or unintelligible and/or does not provide sufficient information to provide a response. Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence in that it seeks information without identifying its relevancy. Defendant

Exhibit 2 to motion re: refusal to obey orders

is unable to provide a responsive answer to this Interrogatory as no Exhibit has been identified or provided with the Interrogatories in Interrogatory #9, and no Interrogatory # exists.

INTERROGATORY NO. 10.

Describe in detail the meaning of the statement on the PerformOutsider Website that it is "Powered by Wickedfire"

RESPONSE TO INTERROGATORY NO. 15

Defendant objects to this as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to this Interrogatory to the extent it requests him to determine the meaning of a statement that he did not create, control, author, or edit.

RESPECTFULLY submitted this 16th day of January, 2015.

COZEN O'CONNOR

By: _____

Svend H. Deal, Esq.
Cozen O'Connor
Suite 2100, 301 South College Street,
One Wells Fargo Center
Charlotte, NC 28202
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the same date set forth above, I served via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Sven H. Deal

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S FIRST SET OF CONTINUING INTERROGATORIES**

VERIFICATION OF JOHN C. MONARCH

I, JOHN C. MONARCH, declare as follows:

1. I am a Defendant in the above-captioned matter and am authorized to make this declaration/verification.
2. I certify that I have read Defendant John C. Monarch's Responses to Plaintiff Richard A. Gorman's First Set of Continuing Interrogatories and the responses are true and correct to the best of knowledge and belief.
3. I have read and know the contents of, and the matters and things therein stated are true and correct to the best of my knowledge and belief; and
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 13, 2015

JOHN C. MONARCH

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Exhibit D

Defendant Monarch's

responses to first set of requests for production

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S REQUESTS FOR PRODUCTION**

Defendant John Monarch ("John"), by and through undersigned counsel, responds to Plaintiff Richard A. Gorman's Requests for Production to Defendant as follows:

GENERAL STATEMENT

Defendant's responses are based upon information presently available to it following a reasonable inquiry. Discovery is still ongoing, however, and Defendant reserves the right to amend, supplement or change its objections and responses if and when additional information becomes available.

GENERAL OBJECTIONS

1. Defendant objects to all discovery requests to the extent they are overbroad, vague, ambiguous, unduly burdensome, and irrelevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Plaintiffs Requests for Production to the extent they seek the disclosure of information protected by the attorney-client privilege, and such information will not be disclosed.

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3. Defendant objects to Plaintiffs' Requests for Production to the extent that they seek information prepared in anticipation of litigation or protected by the work-product doctrine protections afford by Rule 26(b)(3) or any other applicable privilege or doctrine and such information will not be disclosed.

4. Defendant objects to all discovery requests to the extent they call for information which is part of the public record, or which is otherwise equally available to all parties, or to which the propounding party has greater access as unduly burdensome, oppressive, at less cost, and unreasonable.

5. Defendant objects to Plaintiff's Requests for Production to the extent they are served for harassment, oppression, or delay.

6. Defendant objects to all discovery requests to the extent that they purport to impose duties and obligations, which exceed or are different than those imposed by the South Carolina Rules of Civil Procedure or Court orders in this action.

7. Each of the foregoing objections is hereby incorporated in each and every one of the following responses, whether or not they are specifically identified.

8. None of the objections or response contained herein is an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials, or information, or the truth or accuracy of any statement or characterization contained in Plaintiff's Requests for Production. Defendants written responses and/or documents produced are made without waiving, but, on the contrary, expressly reserving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, or other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right to object on any and all grounds, at any time, to other discovery

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requests involving or relating to the subject matter of these requests; and (c) the right to revise, correct, add, or clarify any of the responses provided herein.

9. Defendant objects to any Request for Production that seeks information that is already in the Plaintiff's possession.

10. Defendant objects to Plaintiff's Request for Production to the extent that they purport to require Defendant to provide contact information for individuals that are unknown to Defendant.

11. Defendant objects to Plaintiff's "relevant time period" dating back to January 1, 2012 on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

12. Defendant objects to Plaintiff's Request for Production to the extent they seek confidential information, trade secrets, or privileged information.

13. Defendant objects to Plaintiff's Request for Production to the extent that the instructions or direction provided are in conflict with or are inconsistent with the South Carolina Rules of Civil Procedure.

RESPONSE TO REQUESTS FOR PRODUCTION

REQUEST NO 1.

All photographs, plats, sketches or other prepared documents in your possession that relate to the claims or defenses in this case.

RESPONSE TO REQUEST NO. 1

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, privacy laws, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information

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that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the extent the Request seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel.

Subject to and without waiving the forgoing objections, Defendant will produce responsive, non-privileged documents.

REQUEST NO. 2

All documents or ESI identified in your Answers to Plaintiff's First Set of Interrogatories that were served simultaneously with these Requests for Production.

RESPONSE TO REQUEST NO. 2

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, privacy laws, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the extent the Request for Production seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections, Defendant will produce non-privileged responsive documents.

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REQUEST NO. 3.

All documents or ESI you intend to introduce into evidence at trial.

RESPONSE TO REQUEST NO. 3

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, privacy laws, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the extent the Request for Production seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel.

Subject to and without waiving the forgoing objections, Defendant will produce responsive, non-privileged documents.

REQUEST NO. 4

All documents or ESI reviewed or relied upon in preparing your Motion to Dismiss filed in this case.

RESPONSE TO REQUEST NO. 4

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that

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Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the extent the Request for Production seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections, Defendant will produce responsive, non-privileged documents.

REQUEST NO. 5

All statements, documents, photographs or other ESI published by you or on your behalf on the website and application known as Twitter, from January 1, 2012 to the present date, including, but not limited to the content published using the Twitter account and handle "@papajohn56."

RESPONSE TO REQUEST NO. 5

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate.

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Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

REQUEST NO. 6

All statements, communications, documents, photographs or other ESI published by you or on your behalf using any website, application, forum, blog, imageboard, social media service, or other medium on the World Wide Web, from January 1, 2012 to the present dateS, which relate in any way to Richard A. Gorman, Brand.com, and/or Reputation Changer Inc.

RESPONSE TO REQUEST NO. 6

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to th extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

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Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

REQUEST NO. 7

All statements, communications, documents, photographs, or other ESI (including emails, text messages, Skype messages and other electronic messages) exchanged or communicated between you and any individual or entity, from January 1, 2012 to the present date, that relate in any way to Richard A. Gorman, Brand.com, and/or Reputation Changer Inc., including but not limited to those exchanged or communicated between you and:

a. the person(s) responsible for the content of the website known as "Perform Outsider," located at www.performoutsider.com ("PerformOutsider Site");

RESPONSE TO REQUEST NO. 7(a)

Defendant objects to this Request to the extent it is duplicative of other Requests, including Request #6. Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control

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over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

b. the person(s) responsible for the content of the Twitter account and handle "@performoutsider"

RESPONSE TO REQUEST NO. 7(b)

Defendant objects to this Request to the extent it is duplicative of other Requests, including Request #6. Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, duplicative, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request

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for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

c. the individual known as "Ilya Putin," "Ilya BLT" and "Ilya" ("Ilya") and/or the person who owns and/or maintains the PerformOutsider website and Twitter account and handle "@performoutsider"

RESPONSE TO REQUEST NO. 7(c)

Defendant objects to this Request to the extent it is duplicative of other Requests, including Request #6. Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, duplicative, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request

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for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

d. Karl F. Steinborn

RESPONSE TO REQUEST NO. 7(d)

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to th extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

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Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

e. Arika Green a/k/a Arika Greene

RESPONSE TO REQUEST NO. 7(e)

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

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f. Three Little Birds Interactive

RESPONSE TO REQUEST NO. 7(f)

Defendant objects on the grounds that this Request is duplicative of Request e. Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

g. Rocky Iorio

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RESPONSE TO REQUEST NO. 7(g)

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate. Defendant objects to the Request for Production to the extent it would require Defendant to reveal confidential information, trade secrets, or information protected by applicable privilege.

Subject to and without waiving the forgoing objections Defendant will produce non-privileged, responsive documents.

h. the person(s) responsible for the email address jessica.springfield@aol.com; and

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RESPONSE TO REQUEST NO. 7(h)

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate.

Subject to and without waiving the foregoing objections, Defendant answers as follows:

Defendant is unaware of the identity of the person(s) responsible for the email address jessica.springfield@aol.com, and is unaware of any responsive documents.

i. the person(s) responsible for the email address expectedusa@aol.com

RESPONSE TO REQUEST NO. 7(i)

Defendant objects on the grounds of the General Objections and further that it is overboard in scope, is vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, applicable privilege, or work product

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doctrine. Defendant objects to the Request for Production to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant objects to the Request for Production to the extent the relevant time is overbroad, unduly burdensome, and excessive. Defendant objects to the Request for Production to the extent that it requests information about Defendants communications with regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Request for Production to the extent it seeks the production of documents that Defendant does not have dominion or control over communications in which it did not participate.

Subject to and without waiving the foregoing objections, Defendant answers as follows:

Defendant does not know the identity of the person(s) responsible for the email address expectedusa@aol.com, and is unaware of any responsive documents.

RESPECTFULLY submitted this 16th day of January, 2015.

COZEN O'CONNOR

By: _____

Svend H. Deal, Esq.
Cozen O'Connor
Suite 2100, 301 South College Street,
One Wells Fargo Center
Charlotte, NC 28202
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the same date set forth above, I served via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Sven H. Deal

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Exhibit E

Defendant Monarch's supplemental responses to requests to admit

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S SUPPLEMENTAL RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S REQUESTS TO ADMIT TO DEFENDANT**

Defendant John C. Monarch ("John"), by and through undersigned counsel, supplements his responses to Plaintiff Richard A. Gorman's Request to Admit to Defendant dated November 14, 2014, as follows:

REQUESTS TO ADMIT

1. Admit that you are the owner and chief executive officer of Direct Outbound Services, LLC ("Direct Outbound").

Objection. This Request is brought solely for the purpose of harassing, vexing and annoying the Defendant. Direct Outbound is not a party to this litigation and therefore the Defendant objects to the relevancy of this Request. Without waiving those objections, Defendant denies this Request.

2. Admit that @papajohn56 is your personal Twitter account.

Admit.

3. Admit that the Facebook account located at www.facebook.com/papajohn56, bearing the name "John Monarch" is your personal Facebook Account ("Monarch Facebook Account").

Admit.

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4. Admit that you published or caused to be published, the statements shown in Exhibit ___ made by the Monarch Facebook Account to an account bearing the name "Ilya Putin" or "Ilya Blt".

Objection, the term "published" and/or "caused to be published" is vague and ambiguous as the statements shown in Exhibit A were private messages between Defendant and the account bearing the name "Ilya Putin" or "Ilya BLT". The private messages were never published outside of these legal proceedings. Without waiving these objections, Defendant admits this Request.

5. Admit that, for a period of time, the name and logo of Direct Outbound were displayed on the website known as "Perform Outsider," located at www.performoutsider.com ("PerformOutsider Website").

Objection, the term "period of time" is vague and ambiguous as to time-frame. Without waiving those objections, Defendant admits this Request.

6. Admit that the PerformOutsider Website and Twitter account @performoutsider were, at one time, owned and maintained by an individual known as "Ilya Putin," "Ilya BLT," "Ilya Syanov," and/or "Ilya".

Objection. The term "owned" and "maintained" is vague and ambiguous, as Defendant does not know the identity of the individual known as "Ilya Putin," "Ilya BLT," "Ilya Syanov," and/or "Ilya". Objection to the extent the Request is argumentative and calls for Defendant to make a conclusion based on incomplete and insufficient facts. Without waiving those objections, Defendant admits this Request.

7. Admit that Richard A. Gorman has never been charged or convicted of any crime involving a minor.

Objection. The Request is vague, ambiguous and assumes facts not in evidence. In addition, the request is solely for the purpose of harassing, vexing and annoying Defendant. This responding party lacks sufficient personal knowledge to either admit or deny this Request Without waiving the foregoing objections, Defendant admits this request.

Exhibit 2 to motion re: refusal to obey orders

RESPECTFULLY submitted this 13th day of March, 2015.

COZEN O'CONNOR

By: _____

Svend H. Deal, Esq.
Cozen O'Connor
Suite 2100, 301 South College Street,
One Wells Fargo Center
Charlotte, NC 28202
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the same date set forth above, I served via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Svend H. Deal

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S SUPPLEMENTAL RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S REQUESTS TO ADMIT TO DEFENDANT**

VERIFICATION OF JOHN C. MONARCH

I, JOHN C. MONARCH, declare as follows:

1. I am a Defendant in the above-captioned matter and am authorized to make this declaration/verification.
2. I certify that I have read Defendant John C. Monarch's Supplemental Responses to Plaintiff Richard A. Gorman's Requests to Admit dated November 14, 2014 and the responses are true and correct to the best of knowledge and belief.
3. have read and know the contents of, and the matters and things therein stated are true and correct to the best of my knowledge and belief; and
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 3/11/2015

JOHN C. MONARCH

Exhibit 2 to motion re: refusal to obey orders

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Exhibit F

Defendant Monarch's

responses to supplemental interrogatories

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

Defendant John C. Monarch ("Defendant"), by and through undersigned counsel, responds to Plaintiff's Supplemental Interrogatories dated August 26, 2016 to Defendant as follows:

GENERAL STATEMENT

Defendant's responses are based upon information presently available to it following a reasonable inquiry. However, Defendant reserves the right to amend, supplement or change these objections and responses if and when additional information becomes available.

GENERAL OBJECTIONS

1. Defendant objects to all discovery requests to the extent they are overbroad, vague, ambiguous, unduly burdensome, and irrelevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Plaintiffs Interrogatories to the extent they seek the disclosure of information protected by the attorney-client privilege; such information will not be disclosed.

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3. Defendant objects to Plaintiff's Interrogatories to the extent that they seek information prepared in anticipation of litigation or protected by the work-product doctrine; such information will not be disclosed.

4. Defendant objects to all discovery requests as unduly burdensome, oppressive, and unreasonable to the extent they call for information which is part of the public record, or which is otherwise equally available to all parties, or to which the propounding party has greater access.

5. Defendant objects to Plaintiff's Interrogatories to the extent they are served for harassment, oppression, or delay.

6. Defendant objects to all discovery requests to the extent that they purport to impose duties and obligations, which exceed or are different than those imposed by the South Carolina Rules of Civil Procedure or Court orders in this action.

7. Defendant objects to Plaintiff's Interrogatories to the extent that they exceed the permitted number.

8. Each of the foregoing objections is hereby incorporated in each and every one of the following responses, whether or not they are specifically identified.

9. None of the objections or responses contained herein is an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials, or information, or the truth or accuracy of any statement or characterization contained in Plaintiff's Supplemental Interrogatories. Defendant's written responses are made without waiving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, or other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right to object on any and all

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grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right to revise, correct, add, or clarify any of the responses provided herein.

10. Defendant objects to any interrogatory that seeks information that is already in the Plaintiff's possession.

11. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require Defendant to provide contact information for individuals that are unknown to Defendant.

12. Defendant objects to Plaintiff's Interrogatories to the extent they seek confidential information, trade secrets, or privileged information.

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RESPONSES TO INTERROGATORIES

NO. 11. Identify each Computing Device (defined above) you have owned, possessed, or employed for work and/or personal use from January 1, 2013 to present.

RESPONSE TO NO. 11. Defendant objects to this discovery request because it is overbroad and unduly burdensome. This request arguably encompasses every single computer or phone at Defendant's home and place of business without any limitations whatsoever. Defendant also objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant.

NO 12. Identify each Storage Device or Storage Devices (as defined above) that you have owned, used, possessed, licensed, or employed for work and/or personal use from January 2, 2013 to present.

RESPONSE TO NO. 12. Defendant objects to this discovery request because it is overbroad and unduly burdensome. This request arguably encompasses every single electronic storage item Defendant has used or uses for the last three years, without any limitation whatsoever. Defendant also objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant.

NO. 13. State whether the hard drive or data storage repository of any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so; and if so, state the date such action or activity occurred and identify the person(s) performing same.

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RESPONSE TO NO. 13. Defendant objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant.

NO. 14. List all e-mail addresses Defendant has utilized or employed for work or personal use from January 1, 2013 to present.

RESPONSE TO NO. 14. Defendant objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant. Subject to and without waiving the forgoing objections, Defendant answers as follows:

m@connexus.us; m@monarchllc.net; and jmonarc@clemson.edu.

NO. 15. List all telephone numbers Defendant has utilized or employed for work or personal use from January 1, 2013 to present, including land line and mobile numbers; include the name of each service provider; and state whether the service includes or included text messaging.

RESPONSE TO NO. 15. Defendant objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Cell phone number #: 864-554-0433; Verizon

Work #: 844-602-3987; Windstream.

Exhibit 2 to motion re: refusal to obey orders RCVA 00783

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NO. 16. List every social networking website accessed or utilized by Defendant from January 1, 2013 to present, and for each such networking site identified please provide the following:

(a) name, physical address and internet address of the social networking website;

(b) name, address, and date of birth of the account subscriber, and if different, the individual financially responsible for the account; and,

(c) each and every user name, screen name, email address and/or alias affiliated with the account, persons from whom written or recorded statements have been procured relating to any of the matters at issue in this lawsuit, and for each person identified please identify every document, writing, or recording that evidences those statements or reports.

/RESPONSE TO NO 16. Defendant objects to this discovery request because it is overbroad and unduly burdensome. This request encompasses every social networking website used by Defendant for the last three years, without any limitation whatsoever and regardless of relevance. Defendant also objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request because it is only being served to harass and oppress Defendant.

DATED this 21st day of September, 2016.

COZEN O'CONNOR

By: _____

Svend H. Deal
One Wells Fargo Center, Suite 2100
301 South College Street
Charlotte, NC 28202
Phone: (704) 376-3400
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 21st day of September, 2016, I served the foregoing via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
P.O. Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Svend H. Deal
Attorney for Defendant

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **JOHN MONARCH'S VERIFICATION TO RESPONSES TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

I, JOHN C. MONARCH, declare as follows:

1. I am the Defendant in the above-captioned matter and am authorized to make this declaration/verification.
2. I certify that I have read Defendant John C. Monarch's Responses to Plaintiff's Supplemental Interrogatories and the responses are true and correct to the best of my knowledge and belief.
3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 9/14/2016

JOHN C. MONARCH

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Exhibit G

Defendant Monarch's responses to supplemental requests for production

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

Defendant John C. Monarch ("Defendant"), by and through undersigned counsel, responds to Plaintiff's Supplemental Requests for Production dated August 26, 2016 to Defendant as follows:

GENERAL STATEMENT

Defendant's responses are based upon information presently available following a reasonable inquiry. However, Defendant reserves the right to amend, supplement or change these objections and responses if and when additional information becomes available.

GENERAL OBJECTIONS

1. Defendant objects to all discovery requests to the extent they are overbroad, vague, ambiguous, unduly burdensome, and irrelevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Plaintiff's Requests for Production to the extent they seek the disclosure of information protected by the attorney-client privilege; such information will not be disclosed.

3. Defendant objects to Plaintiff's Requests for Production to the extent that they seek information prepared in anticipation of litigation or protected by the work-product doctrine

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protections afford by Rule 26(b)(3) or any other applicable privilege or doctrine and such information will not be disclosed.

4. Defendant objects to all discovery requests as unduly burdensome, oppressive, and unreasonable to the extent they call for information which is part of the public record, or which is otherwise equally available to all parties, or to which the propounding party has greater access.

5. Defendant objects to Plaintiff's Requests for Production to the extent they are served for harassment, oppression, or delay.

6. Defendant objects to all discovery requests to the extent that they purport to impose duties and obligations, which exceed or are different than those imposed by the South Carolina Rules of Civil Procedure or Court orders in this action.

7. Each of the foregoing objections is hereby incorporated in each and every one of the following responses, whether or not they are specifically identified.

8. None of the objections or response contained herein is an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials, or information, or the truth or accuracy of any statement or characterization contained in Plaintiff's Requests for Production. Defendant's written responses and/or documents produced are made without waiving, and expressly reserving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, or other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right to revise, correct, add, or clarify any of the responses provided herein.

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9. Defendant objects to any Request for Production that seeks information that is already in the Plaintiff's possession.

10. Defendant objects to Plaintiff's Request for Production to the extent that they purport to require Defendant to provide contact information for individuals that are unknown to Defendant.

11. Defendant objects to Plaintiff's Request for Production to the extent they seek confidential information, trade secrets, or privileged information.

12. Defendant objects to Plaintiff's Request for Production to the extent that the instructions or direction provided are in conflict with or are inconsistent with the South Carolina Rules of Civil Procedure.

RESPONSE TO REQUESTS FOR PRODUCTION

NO 9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to Plaintiff's First Supplemental Interrogatories, served contemporaneously with these supplemental requests for production.

RESPONSE: Defendant objects to this request because it is overboard in scope and unduly burdensome. Defendant further objects to the request because it is requesting information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant will not be turning over any computers or any storage items relating to electronic information. This would cause Defendant's business to grind to a halt, in addition to being a huge and unjustifiable invasion of privacy. After over two and a half years of discovery, and three separate but related lawsuits, Plaintiff is still unable to provide anything more than a mere scintilla of evidence that Defendant published, or was involved in the publication of, any of the purported defamatory statements at issue. Throughout these three cases, Plaintiff has subpoenaed various websites, served hundreds of pages of written discovery

requests, and hired private investigators but still has no direct evidence or plausible theories to support his claims. This request is outrageous and is only being served to harass and oppress Defendant.

DATED this 21st day of September, 2016.

COZEN O'CONNOR

By: _____

Svend H. Deal
One Wells Fargo Center, Suite 2100
301 South College Street
Charlotte, NC 28202
Phone: (704) 376-3400
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 21st day of September, 2016, I served the foregoing via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
P.O. Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Svend H. Deal
Attorney for Defendant

LEGAL\28144650\1

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ROA 00792

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Exhibit H

Defendant Monarch's

Supplemental responses to first set of interrogatories

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S SUPPLEMENTAL RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S FIRST SET OF CONTINUING INTERROGATORIES**

Defendant John C. Monarch ("John"), by and through undersigned counsel, supplements his responses to Plaintiff Richard A. Gorman's First Set of Continuing Interrogatories dated November 14, 2014, as follows:

GENERAL STATEMENT

Defendant's responses are based upon information presently available to it following a reasonable inquiry. Discovery is still ongoing, however, and Defendant reserves the right to amend, supplement or change its objections and responses if and when additional information becomes available.

GENERAL OBJECTIONS

1. Defendant objects to all discovery requests to the extent they are overbroad, vague, ambiguous, unduly burdensome, and irrelevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Plaintiffs Interrogatories to the extent they seek the disclosure of information protected by the attorney-client privilege, and such information will not be disclosed.

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3. Defendant objects to Plaintiffs' Interrogatories to the extent that they seek information prepared in anticipation of litigation or protected by the work-product doctrine, and such information will not be disclosed.

4. Defendant objects to all discovery requests to the extent they call for information which is part of the public record, or which is otherwise equally available to all parties, or to which the propounding party has greater access as unduly burdensome, oppressive, at less cost, and unreasonable.

5. Defendant objects to Plaintiff's Interrogatories to the extent they are served for harassment, oppression, or delay.

6. Defendant objects to all discovery requests to the extent that they purport to impose duties and obligations, which exceed or are different than those imposed by the South Carolina Rules of Civil Procedure or Court orders in this action.

7. Defendant objects to Plaintiff's Interrogatories to the extent that they exceed the permitted number.

8. Each of the foregoing objections is hereby incorporated in each and every one of the following responses, whether or not they are specifically identified.

9. None of the objections or response contained herein is an admission concerning the existence of any documents or materials, the relevance or admissibility of any documents, materials, or information, or the truth or accuracy of any statement or characterization contained in Plaintiff's First Set of Continuing Interrogatories. Defendants written responses are made without waiving: (a) the right to object, on the grounds of competency, privilege, relevancy, materiality, or other proper grounds, to the use of the information provided herein, in whole or in part, in any subsequent proceeding in this action or any other action; (b) the right to object on any

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and all grounds, at any time, to other discovery requests involving or relating to the subject matter of these requests; and (c) the right to revise, correct, add, or clarify any of the responses provided herein.

10. Defendant objects to any interrogatory that seeks information that is already in the Plaintiff's possession.

11. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require Defendant to provide contact information for individuals that are unknown to Defendant.

12. Defendant objects to Plaintiff's "relevant time period" dating back to January 1, 2012 on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Defendant objects to Plaintiff's Interrogatories to the extent they seek confidential information, trade secrets, or privileged information.

OBJECTIONS TO DEFINITIONS

1. Defendant objects to Definition G (1) "identify" on the grounds that the definition calls for information, in the form of residential addresses and telephone numbers, that would unreasonably invade the privacy of persons not a party to this litigation.

RESPONSE TO RULE 33(b) STANDARD INTERROGATORIES

INTERROGATORY NO 1.

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

RESPONSE TO INTERROGATORY NO. 1.

Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production

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of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will designate his fact witnesses and the exhibits upon which they will rely in due course. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor is he obligated to determine, every piece of discoverable information possessed by any individuals. Defendant also objects to this interrogatory to the extent it seeks information about which Defendant has no personal knowledge. Discovery is continuing and Defendant reserves the right to supplement his responses herein.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

John C. Monarch
c/o Defendants Counsel

INTERROGATORY NO. 2

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE TO INTERROGATORY NO. 2.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, or work product doctrine. Furthermore, Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will designate his fact witnesses and the exhibits upon which they will rely in due course. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor

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is he obligated to determine, every piece of discoverable information possessed by the individuals. Defendant objects to this interrogatory to the extent it seeks information about non-parties to this suit that Defendant has no personal knowledge of. Discovery is continuing and Defendant reserves the right to supplement his responses herein.

INTERROGATORY NO. 3.

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

RESPONSE TO INTERROGATORY NO. 3.

Defendant objects to this Interrogatory as overbroad, vague, excessively time consuming, and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, work product doctrine, or any other applicable privilege. Furthermore, Defendant objects to this interrogatory in that it calls for the designation of fact witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant will provide photographs, plans, sketches, and other prepared documents that relate to the claim and defense when available. Discovery is continuing and Defendant reserves the right to supplement his responses herein. Subject to and without waiving the forgoing objections, Defendant has produced relevant documents in response to Plaintiffs request for production, as well as documents and pleadings from this matter, as well as Civil Action No. 2:14-cv-00890-NS in the United States District Court for the Eastern District of Pennsylvania, Case No. CV2014—001469 in the Superior Court for the State of Arizona, County of Maricopa, and Civil Action No. 2:14-cv-05980-TON in the United States District Court for the Eastern District of Pennsylvania. This includes, but is not limited to, responses to Plaintiffs Request for Production #1, 2, 5, 7, in this matter.

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INTERROGATORY NO. 4

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE TO INTERROGATORY NO. 4.

Defendant objects to this Interrogatory on the grounds that it contains more than one Interrogatory and thus is an attempt to circumvent the limit on the number of Interrogatories. Defendant further objects to this Interrogatory as overbroad, vague and ambiguous. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to the discovery of admissible evidence in that it seeks information without limitation.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

No claim has been filed with Defendant's insurance company.

INTERROGATORY NO. 5

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE TO INTERROGATORY NO. 5.

Defendant objects to this interrogatory in that it calls for the designation of expert witnesses when discovery in this matter has just begun, and is ongoing, and because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel. Defendant objects to this Interrogatory as it is premature, but expressly reserves its right to supplement, clarify, revise, or correct, and to assert additional objections in accordance with the time period for exchanging expert reports set by the Court.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

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Defendant has not retained any expert witnesses at this time, but specifically reserves the right to do so.

GENERAL INTERROGATORIES

INTERROGATORY NO. 1

Identify all members, managers, and officers of Direct Outbound Services, LLC ("Direct Outbound"), and indicate the percentage ownership of each person identified.

RESPONSE TO INTERROGATORY NO. 1.

Defendant objects to this Interrogatory on the grounds that it contains more than one Interrogatory and thus is an attempt to circumvent the limit on the number of Interrogatories. Defendant interprets the Interrogatory to request information about Defendants business entities, which are not a party to this case, whether or not such business or company is relevant to this matter. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence in that it seeks information without identifying its relevancy.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Connexus, Inc. 100% ownership

INTERROGATORY NO. 2

Identify all persons with whom you have directly communicated regarding Richard A. Gorman, Brand.com, or Reputation Changer Inc., from January 1, 2012 to the present date, including those with whom you have communicated via email, text message, or using any website application, forum, blog, imageboard, social media service, or other medium on the World Wide Web.

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RESPONSE TO INTERROGATORY NO. 2.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant objects to this Interrogatories "relevant time frame" as being overbroad, irrelevant, excessive, and unduly burdensome. Defendant interprets the Interrogatory to request information about Defendants communications to third parties in regards to Brand.com and Reputation Changer Inc. which are not parties to this case, whether or not such communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Karl Steinborn
"Ilya BLT"
Brian Mclevis
Steve Howe
Brandon Rosen

INTERROGATORY NO. 3

Identify all persons with whom you have communicated regarding: (1) this lawsuit; (2) Civil Action No. 2:14-cv-00890-NS in the United States District Court for the Eastern District of Pennsylvania, (3) Case No. CV2014—001469 in the Superior Court for the State of Arizona, County of Maricopa, and (4) Civil Action No. 2:14-cv-05980-TON in the United States District Court for the Eastern District of Pennsylvania.

RESPONSE TO INTERROGATORY NO. 8.

Defendant objects to this Interrogatory in that it is duplicative and is overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants communications to third parties in regards to any of the

aforementioned lawsuits whether or not that communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation. Defendant objects to this Interrogatory because it seeks the production of information that might disclose the thoughts, impressions, or legal strategies of Defendant's counsel.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Karl Steinborn
Ilya

INTERROGATORY NO. 4.

Identify all email addresses, Twitter accounts, Facebook accounts, social media accounts, forum accounts, blog accounts, and imageboard accounts which belong to you, personally or in capacity as a member, manager, or officer of Direct Outbound.

RESPONSE TO INTERROGATORY NO. 4.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy law, applicable privileges, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants business entities, which are not a party to this case, whether or not such business or company is relevant to this matter. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to the Interrogatory as it is not calculated to lead to the discovery of admissible evidence in that it seeks information without identifying its relevancy. Defendant objects to this interrogatory to the extent it seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

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Subject to and without waiving the forgoing objections, Defendant answers as follows:

Twitter: @papajohn56; Facebook: www.facebook.com/papajohn56; Wickedfire: papajohn56; Reddit: papajohn56..

INTERROGATORY NO. 5.

Identify all persons who own, manage, or control the content displayed on the website known as "Perform Outsider" located at www.performoutsider.com ("PerformOutsider Website") and/or the Twitter account @performoutsider.

RESPONSE TO INTERROGATORY NO. 5.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, privacy laws, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff. Defendant also objects to this interrogatory in that it is overbroad and unduly burdensome because Defendant cannot be expected to know, nor is he obligated to determine, who owns the PerformOutsider Website and/or the Twitter Account @performoutsider. Defendant objects to this interrogatory to the extent it seeks information about non-parties to this suit that Defendant has no personal knowledge of.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant only knows the person believed to be the operator of the PerformOutsider Website and @performoutsider Twitter account as the screenname Ilya S, Ilya BLT, or Illya S.

INTERROGATORY NO. 6.

Describe your relationship with the Perform Outsider website (as it is described in Interrogatory 5 above) or its owner or manager, or with the Twitter account @performoutsider,

Exhibit 2 to motion re: refusal to obey orders

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including all agreements (whether express or implied), contracts, or understandings between their owner(s) or manager(s) and yourself or any business you own or in which you have an interest.

RESPONSE TO INTERROGATORY NO. 6.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, or work product doctrine. Defendant interprets the Interrogatory to request information about Defendants relationship with Perform Outsider Website or @performoutsider whether or not such communication pertained to Plaintiff. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, and not calculated to lead to the discovery of admissible evidence in that it seeks information without limitation, and seeks information that Plaintiff already has in its possession or would be able to obtain at a lower cost than the Plaintiff.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant is a casual acquaintance with the person believed to be the owner of the Perform Outsider Website and @performoutsider, whom is known only as Illya, Ilya S, Illya S, Ilya Putin, Ilya BLT, or Ilya ("Ilya"). Defendant has communicated with Ilya in the past regarding personal matters via Facebook Groups and Skype chat. Furthermore, Defendant already provided this information in the Pennsylvania action that Plaintiff had previously filed.

INTERROGATORY NO. 7.

Identify all persons who own, operate or control the email addresses jessica.springfield@aol.com and expectedusa@aol.com.

RESPONSE TO INTERROGATORY NO. 7.

Subject to and without waiving the forgoing objections, Defendant answers as follows:

Defendant does not know who owns, controls, or operates the email addresses jessica.springfield@aol.com and expectedusa@aol.com.

INTERROGATORY NO. 8

Identify all persons who own, operate or control the Facebook account bearing the name "Ilya Putin" as shown in Exhibit __ attached hereto.

RESPONSE TO INTERROGATORY NO. 8.

Defendant objects to this Interrogatory as overbroad, duplicative, vague and ambiguous and to the extent that it requests information protected by the attorney-client privilege, applicable privilege, or work product doctrine. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Subject to and without waiving the forgoing objections, Defendant answers as follows: Defendant only knows the person described as Illya, Ilya S, Illya S, Ilya Putin, Ilya BLT, or Ilya ("Ilya").

INTERROGATORY NO. 9.

For every person identified in your answer to Interrogatories # and #8, identify all known contact information, addresses, phone numbers, nicknames, aliases, email addresses, Twitter Accounts, Facebook accounts, social media accounts, forum accounts, blog accounts, and imageboard accounts which belong to the person identified.

RESPONSE TO INTERROGATORY NO. 9.

Defendant objects to this Interrogatory as overbroad, vague and ambiguous and to the extent that it requests information protected by any applicable privilege. Defendant objects to the Interrogatory to the extent that it is requesting information that is overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant.

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Subject to and without waiving the forgoing objections, Defendant answers as follows: Defendant only knows the person described as Illya, Ilya S, Illya S, Ilya Putin, Ilya BLT, or Ilya ("Ilya"). The only contact information Defendant has is a skype name of : blt.123

INTERROGATORY NO. 10.

Describe in detail the meaning of the statement on the PerformOutsider Website that it is "Powered by Wickedfire"

RESPONSE TO INTERROGATORY NO. 15

Defendant objects to this as overbroad, vague and ambiguous. Defendant objects to the Interrogatory to the extent that it is requesting information that is not relevant, overbroad, unduly burdensome, and is designed to harass, oppress, and intimidate the Defendant. Defendant objects to this Interrogatory to the extent it requests him to determine the meaning of a statement that he did not create, control, author, or edit.

RESPECTFULLY submitted this 6th day of ~~March~~ May, 2015.

COZEN O'CONNOR

By: _____

Svend H. Deal, Esq.
Cozen O'Connor
Suite 2100, 301 South College Street,
One Wells Fargo Center
Charlotte, NC 28202
Attorneys for Defendant

Exhibit 2 to motion re: refusal to obey orders

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the same date set forth above, I served via regular U.S. mail and email this same day on the following:

Kirby D. Shealy III
ADAMS AND REESE LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202
kirby.shealy@arlaw.com
Attorneys for Plaintiff

Svend H. Deal

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
GREENVILLE COUNTY, SOUTH CAROLINA

RICHARD A. GORMAN, Plaintiff, vs. JOHN MONARCH, Defendant.	C.A. No.: 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S SUPPLEMENTAL RESPONSES TO PLAINTIFF RICHARD A. GORMAN'S FIRST SET OF CONTINUING INTERROGATORIES**

VERIFICATION OF JOHN C. MONARCH

I, JOHN C. MONARCH, declare as follows:

1. I am a Defendant in the above-captioned matter and am authorized to make this declaration/verification.
2. I certify that I have read Defendant John C. Monarch's Supplemental Responses to Plaintiff Richard A. Gorman's First Set of Continuing Interrogatories dated November 14, 2014 and the responses are true and correct to the best of knowledge and belief.
3. I have read and know the contents of, and the matters and things therein stated are true and correct to the best of my knowledge and belief; and
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 3/11/2015

JOHN C. MONARCH

Exhibit 2 to motion re: refusal to obey orders

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STATE OF SOUTH CAROLINA **COUNTY OF GREENVILLE**	**IN THE COURT OF COMMON PLEAS** **CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**MOTION TO COMPEL DISCOVERY AND/OR FOR OTHER APPROPRIATE RELIEF REGARDING DEFENDANT MONARCH**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 33, 34, 36, and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch to serve complete responses to discovery and/or provides other appropriate relief as a result of Defendant Monarch's failure to respond to discovery in this case. Defendant Monarch's refusal to provide discovery has occurred under circumstances that evince his unwillingness to provide any meaningful information in discovery in this case. In light of the posture of this case, more robust relief than a simple order to produce the discovery at issue is appropriate. The grounds for this motion are as follows:

1. As is shown by documents already of record in this case, Defendant Monarch has failed to correct a number of deficiencies in his discovery responses, which he agreed to correct by serving supplemental responses. He also agreed as part of those responses to provide a list of electronic devices he used during the period in question and, following that, to coordinate reasonable access to those devices with Plaintiff's counsel.
2. Defendant Monarch agreed to do so as part of the resolution of a previous motion to compel discovery.

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3. Defendant Monarch has failed to do any of that, repeatedly, following efforts by Plaintiff's counsel to secure his compliance.
4. Despite Defendant Monarch's noncompliance with his discovery agreement, the Plaintiff produced over 4,000 pages of documents in supplemental discovery to Defendant Monarch.
5. It appears that Defendant Monarch has no intention of providing the discovery he agreed to produce in resolution of the previous motion to compel.
6. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
7. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004).
8. The discovery sought is proper and is material to the issues in this case.
9. Without full, complete responses from Defendant Monarch to the discovery requests subject of this motion, trial would essentially be the guessing game or ambush that discovery is designed to prevent
10. The Plaintiff would like to take a meaningful deposition of Defendant Monarch in this case.
11. It is plain from the background context of this motion that Defendant Monarch seeks to deprive the Plaintiff of his ability to prepare for trial adequately.
12. Defendant Monarch's refusal to participate in discovery as he agreed has prejudiced the Plaintiff unfairly in this action.

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13. Per Rule 37, SCRCP, it is appropriate for the court to grant relief in the Plaintiff's favor against Defendant Monarch concerning the substance of the merits of this case. Rule 37, SCRCP, expressly provides for such relief.

14. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matters subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
June 18, 2020

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**CONSENT ORDER RESOLVING MOTIONS TO COMPEL BETWEEN PLAINTIFF AND DEFENDANTS MONARCH AND DIRECT OUTBOUND**

This matter comes before me on motions to compel discovery brought by the Plaintiff and by Defendants Monarch and Direct Outbound in the above-captioned action. Per the consent of the parties, the court essentially grants both motions, as outlined below.

1) As to the Plaintiff's motion to compel discovery, Defendant Monarch has served supplemental responses to the Plaintiff's first set of interrogatories and requests to produce but not to Interrogatories the Plaintiff's supplemental interrogatories and requests to produce. Defendant Monarch previously served only objections to many of Plaintiff's supplemental interrogatories and requests to produce. Defendant Monarch is hereby ordered as follows:

    a. With regard to Interrogatories 11, 12, and 13 of Plaintiff's supplemental interrogatories to Defendant Monarch and Request 9 of Plaintiff's supplemental requests to Defendant Monarch to produce, the Plaintiff may serve these interrogatories and requests in revised form, limiting them to specific date ranges and subject matter tailored more narrowly to time frames and matters at issue in this case, and Defendant Monarch shall serve responses to these revised discovery requests within 14 days of the revised requests' service.

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b. Defendant Monarch shall serve responses to the Plaintiff's other supplemental interrogatories and requests to produce, including production of documents and items within Defendant Monarch's custody or control.

c. While the responses may be made subject to objections, the responses shall substantively answer the Plaintiff's supplemental interrogatories and requests to produce.

d. With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

2) As to Defendant Monarch's motion to compel discovery, the Plaintiff shall serve supplemental responses to Defendant Monarch's interrogatories and requests to produce, which may not include any objection based on Defendant Monarch being or purportedly being in default in this action.

3) All discovery responses ordered to be served by this order shall be served electronically and expeditiously, but in no event later than September 10, 2020. After that date, the parties shall expeditiously supplement their existing responses with any information or documents they obtain following that date.

4) The parties shall cooperate with the scheduling and taking of depositions during the remaining pendency of this case.

5) In the event of any dispute concerning any party's compliance with this order or other future discovery dispute, the undersigned judge may rule on such dispute on written submissions by the parties and without a formal motion or a hearing.

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6) The court does not order any sanctions or attorneys' fees and costs in connection with these motions but may do so, if warranted, with regard to any future dispute concerning any party's compliance with this order or other future discovery dispute.

And IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Circuit Judge

WE SO CONSENT:

/s/ Andrew S. Radeker
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ATTORNEYS FOR DEFENDANTS MONARCH AND DIRECT OUTBOUND

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Greenville Common Pleas

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

Case Number: 2014CP2304432

Type: Order/Consent Order

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

Exhibit 5 to motion re: refusal to obey orders

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

Exhibit 5 to motion re: refusal to obey orders

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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chris@brumbacklangley.com
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and

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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

Exhibit 5 to motion re: refusal to obey orders

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

Exhibit 6 to motion re: refusal to obey orders

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
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Attorney for Richard A. Gorman

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Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
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Drew Radeker

From: Drew Radeker
Sent: Tuesday, November 24, 2020 8:37 AM
To: Doc Morgan; 'Moore Jr., David L'; Christopher Brumback (chris@brumbacklangley.com); 'Spencer Langley'; Robert L. Mebane, Jr.
Cc: Rhonda Schaub; Gail Inzero; Dorothy Huskey
Subject: RE: Gorman v. Monarch

Doc:

We have Chris Watkins at Certified Computer Forensics on standby to examine the MacBook. Here are the procedures he outlined for us.

CCF's procedures for processing digital evidence (ESI) are summarized as follows:

1. Procedures for collection of digital evidence:
   a. General:
      i. CCF member shall complete a chain of custody record prior to beginning forensic processing. The chain of custody record shall be updated at the completion of the work to document the return of the evidence to the law enforcement officer, evidence custodian, or device owner, where applicable. Forensic processing shall begin at the moment that the CCF member receives custody of the evidence and begins manual inspection.
      ii. CCF member shall document the evidence via photography, to include the make, model, serial number, product number, and other identifiers.
      iii. CCF member shall document the date and time that forensic processing begins and ends.
      iv. CCF member shall utilize certified, licensed forensic software for processing and examination efforts.
      v. CCF member shall take notes and document each step taken throughout the examination process.
      vi. CCF member shall adhere to all laws and policies regarding handling of evidence containing contraband materials (if applicable).

   b. Computers

In matters where third-party examiners are allowed to independently acquire data from a computer device in evidence, the following steps shall be taken by CCF members:

i. Devices should be received in a power-off state. If the device is received in a power-on state, the CCF member shall document this prior to powering off the device.

ii. If possible, CCF member shall power-on the device into BIOS for the sole purpose of documenting the system time. The device shall be powered off at the completion of this task. This task shall be completed after the data storage device has been removed, disconnected, or disabled.

iii. If the device is a laptop, the battery should be removed from the device prior to removing the data storage device.

iv. CCF member shall remove the data storage device (i.e. hard disk drive or solid-state drive). The data storage device shall be connected to the forensic duplicator and a pre-hash function shall be executed to determine the MD5 and SHA1 hash values of the data.

v. Upon completion of the pre-hash function, CCF member shall acquire an E01 formatted forensic image of the device onto a pre-wiped external hard disk drive. A post-hash function shall commence following the acquisition procedure.

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vi. In the event that the hash values are mismatched, the CCF member shall review the acquisition log to determine whether any bad sectors were reported. In the event that no bad sectors were reported, the CCF member shall attempt a second acquisition of the data.

vii. Upon completion of the acquisition process, the CCF member shall relinquish custody of the device back to the evidence custodian and the acquired evidence container files shall be taken to CCF lab for examination.

In this matter, CCF will be examining a MacBook, which will likely not require the data storage device to be removed in order to forensically acquire the data. CCF intends to photograph the data storage drive for verification purposes, but for MacBooks, CCF would utilize a forensic software called MacQuisition--a bootable forensic collection environment--to forensically acquire the data from the MacBook. MacQuisition will enable CCF to forensically acquire and execute pre-hash and post-hash functions securely.

As for the examination procedures that would follow the collection process, CCF intends to utilize a combination of forensic tools, including but not limited to Cellebrite BlackBag Blacklight, GetData Forensic Explorer, and Magnet Axiom.

Please let us know whether you have any problem with this process and when you could make the MacBook available to us.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Thursday, November 5, 2020 12:45 PM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>; Dorothy Huskey <dorothy.huskey@mgclaw.com>
Subject: RE: Gorman v. Monarch

Drew,

Hope all is well and sorry for any delay. I understand he has his old MacBook, but when migrating files from his old one to his new one, the hard drive on the old one was deleted in the normal course. On a related topic, we would need to address, as we go forward in this area, the issues raised in our discovery responses regarding procedures for forensic

examination, determining who would conduct any examinations, search limitations, etc. Feel free to let us know if you guys want to discuss further.

Doc

Doc Morgan, *Attorney*
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VCARD | BIO

COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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Sent: Thursday, November 05, 2020 9:53 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Doc, not having heard from you on this, I will assume that we read the discovery answers correctly to say that Mr. Monarch destroyed the MacBook too. If I'm wrong about that, please let me know.

Thank you.

Drew Radeker

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From: Doc Morgan <dmorgan@mgclaw.com>
Sent: Tuesday, October 27, 2020 9:55 AM
To: Drew Radeker <Drew@harrisonfirm.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch

Let us check Drew and we will get back to you.

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COVID-19 UPDATE: MGC is open and continues to provide the high-quality legal service and responsiveness our clients expect, without compromising the health and well-being of our team. With that in mind, all of MGC's offices throughout the Southeast will continue to operate uninterrupted, with some of our team working onsite while others work remotely through our secure MGC network.

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, October 27, 2020 9:49 AM
To: Doc Morgan <dmorgan@mgclaw.com>; 'Moore Jr., David L' <DMoore@TurnerPadget.com>; Christopher Brumback (chris@brumbacklangley.com) <chris@brumbacklangley.com>; 'Spencer Langley' <spencer@brumbacklangley.com>
Cc: Rhonda Schaub <Rhonda@harrisonfirm.com>
Subject: Gorman v. Monarch

Doc:

Did your client keep the MacBook Pro from which he migrated his data? If so, how soon may we have someone analyze it?

Thank you.

Drew Radeker

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES FOR EXAMINATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 34 and 37, SCRCP, and all other applicable law, for an order that compels Defendant John C. Monarch to provide his 2013 MacBook Pro and other electronic devices, identified in his discovery responses filed herewith, for examination by the Plaintiff. The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case's beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. After some wrangling about discovery and an agreed revision of Plaintiff's discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5, but his counsel advises that he kept the 2013 MacBook Pro.

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4. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data, but such evidence may still be on the 2013 MacBook Pro.
5. Plaintiff's counsel have attempted but have not yet been successful in arranging examination of the devices the Defendant has identified; hence, this motion, so that this matter be resolved by the court if it remains unresolved between counsel.
6. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
7. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004).
8. The discovery sought is proper and is material to the issues in this case.
9. The court should order production for examination accordingly.
10. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**AFFIDAVIT OF CHRISTOPHER J. WATKINS**

Personally appeared before me Christopher J. Watkins, who, first being duly sworn, deposes and says as follows:

1. My name is Christopher J. Watkins. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them.

2. I am a SLED Licensed Investigator, and I have an educational background in Computer Science, Information Technology, Computer Programming, and Systems Engineering for Hardware and Software. I am recognized as a Certified Forensic Computer Examiner (CFCE) by the International Association of Computer Investigative Specialists (IACIS), which is, in turn, accredited by the Forensic Specialties Accreditation Board (FSAB). The FSAB is an independent organization established to accredit professional bodies that certify forensic scientists. I am also an associate member of the IACIS and a member of the American Society of Digital Forensics & eDiscovery.

3. Since 2010, I have worked as a Licensed Private Investigator in South Carolina. From 2010 to 2016, I worked as a SLED Licensed Investigator for Stillinger Investigations. In 2016, I founded my own company, Watkins Digital Forensic &

Exhibit 9 to motion re: refusal to obey orders

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Investigations, and in 2019, I founded a second company, Certified Computer Forensics, LLC. In these positions, I have completed hundreds of digital forensic investigations involving computer systems, computer networks, servers, and various cellular and digital devices. These investigations involved the disciplined use of specialized methods and techniques, adhering to the scientifically accepted standards and practices for recovery, authentication and analysis of electronically stored information, reconstruction of computer usage, examination of residual data, authentication of data by technical analysis, and explanation of technical features of data and computer usage.

4. Since 2014, I have been qualified twenty-three times as an expert in matters of Digital Forensic Science in the South Carolina Family Court, General Sessions Court, and Court of Common Pleas, and in the United States District Court for the District of South Carolina.

5. I have had the opportunity to review discovery in this matter and discuss key details with the Attorneys for Plaintiff Richard A. Gorman. I am aware that on or about December 20, 2013, Defendant John C. Monarch received a spoliation letter, data preservation request, and request for production of discovery items related to his electronic devices. (See Exhibit A.)

    a. The five-page spoliation letter, addressed to Defendant, provides clear and concise information and instructions regarding how to immediately preserve his electronically stored information (ESI). The letter details specific examples of types of ESI and details examples of ways to adequately preserve such ESI.

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6. In Defendant's Responses to Plaintiff's Supplemental Requests for Production, dated September 28, 2020, Defendant indicates that he no longer has in his possession his iPhone 5, iPhone X, or 2013 MacBook Pro because those items were either sold, traded-in at the time of upgrade, or intentionally erased following an upgrade to a newer device. (See Exhibit B.)

    a. On page three (3) of Defendant's Responses to Plaintiff's Supplemental Requests for Production, Defendant indicates: 1) "Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded," and 2) "As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device."

7. In Defendant's Answers to Plaintiff's Supplemental Interrogatories, dated September 28, 2020, Defendant indicates that "as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro" and "upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively." (See Exhibit C.)

8. Based on the discovery responses provided by Defendant, it is evident that rather than adequately taking measures to preserve the ESI contained on his electronic devices,

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Defendant admittedly took steps contrary to and in defiance of the spoliation letter and data preservation request.

9. When Defendant took steps to upgrade his devices, he could have done so without erasing data or disposing of his previous devices.

10. For example, Defendant could have taken steps to preserve the ESI contained on this electronic devices by: 1) performing a good faith backup of each device in his possession and documenting the date and time of each backup, 2) contracting a third party expert to perform these actions on his behalf, or 3) retaining possession of his electronic devices.

11. Due to the actions of Defendant concerning erasing and/or disposing of the devices that he owned at the time that he received and was aware of the spoliation letter, Defendant has effectively made it impossible for Plaintiff's Expert and Attorneys to examine ESI believed to be pertinent to this matter.

12. Moreover, in view of Defendant's education and experience, it is reasonable to conclude Defendant knew that taking the actions he did would result in the destruction of evidence.

13. According to Defendant's LinkedIn profile, Defendant minored in Computer Science at Clemson University and completed courses that cover advanced concepts related to computer science and computer programming, including Theoretical Computer Science (Clemson University course CPSC 350), Programming in C (Clemson University course CPSC 105), and Advanced Data Structures and C Programming (Clemson University course CPSC 205).

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14. Based on my review of the facts in this matter, it is reasonable to believe and to suggest that Defendant has knowledge regarding: 1) how ESI is retained on electronic devices, 2) the fact that data migration during a device upgrade does not transfer deleted or unallocated data that would have been present and discoverable on his previous devices, and 3) the fact that he could have retained his previous devices, in good faith, in compliance to the spoliation letter.

15. While it is possible to examine ESI contained on Defendant's current devices, it is acknowledged and understood that any data that was not migrated from Defendant's previous devices (i.e. deleted, unallocated, or data that was selectively abnegated from the data migration process) will not be discoverable and present for examination pursuant to Plaintiff's legal request because the ESI on Defendant's previous devices has effectively been destroyed by Defendant.

FURTHER AFFIANT SAYETH NOT.

Christopher J. Watkins

SWORN to before me this

4th day of November, 2020.

Katie D. McC (L.S.)

Notary Public for South Carolina

My Commission Expires: 11/03/25

KATIE D MCCLARAN
Notary Public-State of South Carolina
My Commission Expires
November 03, 2025

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BLANK ROME LLP
COUNSELORS AT LAW

Phone: (215) 569-5352
Fax: (215) 832-5352
Email: Lee-M@BlankRome.com

December 20, 2013

John C. Monarch
404 Gatewood Drive
Greenwood, SC 29646-9260

Dear Mr. Monarch:

This law firm represents Rich Gorman and his related companies. Mr. Gorman has recently received a number of extremely disturbing email communications which threaten harm to Mr. Gorman, his businesses, and his customers, if he does not make a payment of several thousand hundred dollars worth of Bitcoins as directed in the emails. The threatening tone of the emails has been escalating in recent days. In addition, derogatory and/or defamatory information about Mr. Gorman has been recently posted on numerous websites.

Our preliminary investigation into this matter suggests to us that you have a connection with www.performoutsider.com, a web site which appears to be related to these threatening emails and defamatory postings. We therefore hereby demand that you immediately cease and desist from posting, or causing to be posted, any derogatory or defamatory information about Mr. Gorman, or any of his affiliates, employees, business associates, and/or customers.

Please be advised that Mr. Gorman is presently evaluating his legal options and intends to take appropriate action to protect his legal rights, including the possible referral of the matter to appropriate legal authorities.

Finally, please regard this letter as requesting that you preserve documents, tangible things, and electronically stored information potentially relevant to the issues referenced in this letter. You should anticipate that much of the information relevant to this matter is stored on your current and former computer systems and other media and devices (including personal digital assistants, voice-messaging systems, online repositories and cell phones). Electronically stored information (hereinafter "ESI") should be afforded the broadest possible meaning and includes, by way of example and not as an exclusive list, potentially relevant information electronically, magnetically, optically, or otherwise stored as:

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- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB)
- Word processed documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obliged to preserve potentially relevant evidence from both sources of ESI, even if you do not anticipate producing such ESI.

Preservation Requires Immediate Intervention

If you have not already done so, you should act immediately to preserve potentially relevant ESI concerning this matter. Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must intervene to prevent loss due to routine operations or malfeasance and employ proper techniques and protocols to preserve ESI. Booting a drive, examining its contents, or running any application may irretrievably alter the evidence it contains and constitute unlawful spoliation of evidence. As such, preservation of potentially relevant information requires your immediate attention and action. Federal and state laws require that you retain certain documents. This preservation letter includes those documents to be retained under state and federal law as well as documents and date described herein.

Nothing in this request for preservation of ESI should be understood to diminish your concurrent obligation to preserve documents, tangible things, and other potentially relevant evidence. Moreover, this request to preserve information for this litigation is both retroactive and prospective in application, which means that it extends to all documents, tangible things, and electronically stored information that currently exist relating to this lawsuit, as well as all

documents, tangible things, and electronically stored information that are created in the future during the course of this litigation.

Suspension of Routine Destruction
You are requested to immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further requested to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include:

- Purging the contents of e-mail repositories by age, capacity, or other criteria;
- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server, packet, or local instant messaging logging; and,
- Executing drive or file defragmentation or compression programs.

Guard Against Deletion and Act to Prevent Spoliation
You should take affirmative steps to prevent anyone with access to your data, systems, and archives from seeking to modify, destroy, or hide ESI on network or local hard drives and on other media or devices (such as by deleting or overwriting files; using data shredding and overwriting applications; defragmentation, re-imaging, damaging, or replacing media; encryption; or compression).

Preservation of Backup Tapes
You are requested to preserve complete backup tape sets (including differentials and incrementals) containing ESI related to this matter.

You should anticipate that ESI will be sought in the form or forms in which it is ordinarily maintained (i.e., native form). The forensically sound image described above will preserve ESI in such native form. You should not employ methods to preserve ESI that remove or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use the information. You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

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Metadata
You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields. Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of files.

Servers
With respect to servers used to manage e-mail (e.g., Microsoft Exchange, Lotus Domino) and network storage (often called a "network share"), the complete contents of each user's network share and e-mail account should be preserved if that user has potential relevance to this matter. There are several ways to preserve the contents of a server. If you are uncertain whether the preservation method you plan to employ is one that we will accept as sufficient, please immediately contact the undersigned.

Home Systems, Laptops, Online Accounts and Other ESI Venues
Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems or devices may contain potentially relevant data. To the extent that you have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, memory stick, CDR/DVD-R disks, and the user's PDA, smart phone, voice mailbox, or other forms of ESI storage.). Similarly, if you used online or browser-based e-mail accounts or services (such as Gmail, AOL, or Yahoo Mail) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted, and Archived Message folders) should be preserved.

Ancillary Preservation
You should preserve documents and other tangible items that may be required to access, interpret, or search potentially relevant ESI, including but not limited to logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction

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John C. Monarch
December 20, 2013
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sheets, data entry forms, abbreviation keys, and user ID and password rosters. You should preserve passwords, keys, and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals, and license keys for applications required to access the ESI. You should preserve cabling, drivers, and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives, and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate
As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, you should preserve both forms.

Agents, Attorneys, and Third Parties
Your preservation obligation extends beyond ESI in your care, possession, or custody and includes ESI in the custody of others that is subject to your direction or control. Accordingly, you should notify any current or former agent, attorney, employee, custodian, and contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you should take reasonable steps to secure their compliance.

Sincerely yours,

MATTHEW D. LEE

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

EXHIBIT B

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar No. 75410
Spencer D. Langley / S.C. Bar No. 77898
1 Augusta Street, Suite 301
Greenville, SC 29601
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ATTORNEYS FOR JOHN MONARCH AND DIRECT OUTBOUND SERVICES, INC.

September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Responses to Supplemental Requests for Production in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
Andrew S. Radeker, Esquire
Harrison & Radeker, PA
Post Office Box 50143
Columbia, South Carolina 29250
Attorney for Richard A. Gorman

Email: smatthews@hsblawfirm.com
Steve A. Matthews, Esquire
Haynsworth Sinkler Boyd, PA - Columbia
Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT B

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN C. MONARCH'S ANSWERS TO PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, Defendant does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Defendant does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence, for any purpose, of any of the documents referred to or answers given, or the subject thereof, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Interrogatories herein and responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth herein, or documents referred to herein.

D. Defendant objects to these Interrogatories to the extent that they ask for information protected by the attorney-client or the work product privileges or to the extent the interrogatories go beyond the scope of discovery allowed in the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Identify each Computing Device (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet postings that are exhibits to the second amended complaint in this case, you owned, possessed, or employed for work and/or personal use and on which is typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: Defendant objects to Plaintiff's Interrogatory Number 11 as the "date" of each of the emails and social media and Internet postings that are exhibits to the second amended complaint is not specified in this request and as such is vague and ambiguous. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Subject to these objections and without waiving the same, Defendant

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possessed a iPhone 5 and 2013 MacBook Pro in late 2013 and early 2014, and an iPhone X and a 2017 MacBook Pro in 2018.

12. Identify each Storage Device or Storage Devices (as defined above) that, for the periods of time that precede by two months and follow by two months the date of each of the emails and social media and Internet posting that are exhibits to the second amended complaint in this case, you owned, used, possessed, licensed, or employed for work and/or personal use and on which was typed and/or viewed the Plaintiff's name, any version of his name (for example, "Rich," "Richie," "Gorman"), the name(s) of any company with which the Plaintiff was involved, or anything else referencing the Plaintiff or the matters subject of the pleadings in this case.

ANSWER: See Defendant's response to Interrogatory Number 11.

13. State whether the hard drive or data storage repository or any Computing Device identified in response to Interrogatory No. 11 above has been replaced, altered, wiped or scrubbed to remove information or ESI or to make that information or ESI unreadable or inaccessible, or whether any effort has been made to do so, and if so, state the date such action or activity occurred and identify the person(s) performing same.

ANSWER: To the extent this Interrogatory is based on Interrogatory Number 11, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatory Number 11 as if fully stated herein. Defendant further objects to Plaintiff's Interrogatory Number 13 to the extent that is seeks to obtain a legal conclusion regarding the Plaintiff's claims against Defendant, which does not require a response from Defendant. Additionally, Defendant objects to Interrogatory Number 13 as it seeks information to be determined by the jury at trial. Subject to these objections and without waiving the same,

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Defendant states that as part of the routine, good-faith operation of his electronic information systems he upgraded his 2013 MacBook Pro in December 2017 to a 2017 MacBook Pro. Similarly and again as part of as part of the routine, good-faith operation of his electronic information systems, Defendant upgraded his iPhone 5 in or about the end of 2014 or beginning 2015 to an iPhone 6 Plus, which he subsequently upgraded to an iPhone X and then an iPhone 11 Pro in late 2017 and 2019, respectively. As part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his MacBook Pro and iPhone(s) Defendant migrated the data from the device being upgraded to the new device prior to erasing all content and settings from the old device(s), which in the case of the iPhones were then sold or traded-in. Additionally, Defendant has previously produced all relevant and responsive documents to this litigation, to Plaintiff and his counsel.

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback
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Spencer D. Langley / S.C. Bar No. 77898
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and

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September 28, 2020

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **CERTIFICATE OF SERVICE**

I certify that on this date, I have served a copy of Answers to Supplemental Interrogatories in this action on counsel of record by

Email addressed to:

Email: drew@harrisonfirm.com
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Post Office Box 11889
Columbia, South Carolina 29211
Attorney for ShipChain, Inc.

September 28, 2020
Date

Gail V. Inzero
Legal Assistant to Doc Morgan, Jr. and
Robert L. Mebane, Jr.

EXHIBIT C

Exhibit 9 to motion re: refusal to obey orders

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2303414

Richard A Gorman
PLAINTIFF(S)

John C Monarch
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

At the call of the case the Plaintiff was represented by Attorneys David L. Moore, Jr and Andrew Sims Radeker. The Defendant was represented by Attorneys Christopher Todd Brumback and Robert L. Mebane, Jr. The matter before the Court is Plaintiff's Motion for Sanctions. The Court is inclined to continue this matter with it to be rescheduled if need be upon the request of Counsel.

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 09/15/2021 .

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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Greenville Common Pleas

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

Case Number: 2021CP2303414

Type: Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2021-CP-23-03414**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch,** **Defendant.**	**ORDER GRANTING MOTION TO COMPEL PRODUCTION OF ELECTRONIC DEVICES**

This matter came before me at a hearing in the above-captioned action on September 15, 2021, set for the Plaintiff's motion to compel production of electronic devices for examination and the Plaintiff's motion for sanctions. As noted in previously filed Form 4 orders, the court grants the motion to compel production and continues the motion for sanctions to be heard at a later time.

This case (now restored after having been stricken pursuant to Rule 40(j), SCRCP) began over seven years ago under Case No. 2014-CP-23-04432. It concerns allegations that the Defendant participated in a blackmail scheme to extort money from the Plaintiff and that the Defendant, having failed to succeed at the blackmail, undertook efforts to defame the Plaintiff and ruin his reputation professionally and personally. Since near this case's beginning, Plaintiff has sought in discovery to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case. The Defendant has maintained that he had no involvement with these blackmail communications and internet postings.

Following years of disagreement about discovery and two previous motions to compel, the parties entered into a consent order filed on August 21, 2020, under which the Plaintiff agreed to serve supplemental interrogatories and requests to produce and the court ordered as follows:

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> With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

Following the Plaintiff's service of the supplemental interrogatories and requests to produce, the Defendant served discovery responses in late September of 2020 in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which, according to him, he had the data transferred or removed. The Defendant got rid of the iPhone 5, despite the pendency of discovery requests seeking it; his counsel advises that he kept the 2013 MacBook Pro but transferred data from it to a new MacBook Pro. However, Defendant's counsel later advised the Court and Plaintiff's counsel that Defendant found the 2013 MacBook Pro, and allegedly discovered that he did *not* have data transferred from the device.

Plaintiff's counsel attempted to arrange cooperative provision by the Defendant of the devices for examination, but Defendant's counsel objected to providing the devices, despite the agreed language in the consent order requiring it. Plaintiff's motion to compel production followed. At the hearing, Defendant's counsel argued that the Defendant was not required under the consent order to provide the devices for examination. Based on the plain language of the consent order, the court disagrees with the Defendant. As he previously agreed to do under the consent order, the Defendant shall provide the devices for examination. The Defendant raised concerns about the Plaintiff having access to privileged or irrelevant information through the examination of the devices, and the court agrees steps should be taken to prevent disclosure to the Plaintiff of privileged or truly irrelevant material through the examination.

Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id. As examination of the devices to be produced

Exhibit 11 to motion re: refusal to obey orders

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may shed further light on whether and to what extent sanctions are proper, the court finds it appropriate to continue the Plaintiff's motion for sanctions.

Accordingly, IT IS THEREFORE HEREBY ORDERED that:

1) Within twenty-one (21) days of the date of this Order, Defendant Monarch shall provide to a neutral third party forensic expert (hereinafter "independent expert") to be agreed upon by the parties and to be made an officer of the court, all electronic devices subject of a consent order filed on August 21, 2020, and subject of the Plaintiff's supplemental interrogatories and supplemental requests for production that are of record in this action (including the devices' the hard drives, internal flash memory, and/or solid-state drives, the Defendant's 2013 MacBook Pro and the MacBook to which Defendant transferred data from the 2013 MacBook Pro, all of which are hereinafter collectively referred to as "the drives" or "the hard drives"). Prior to turning over the hard drives, Defendant shall complete a log of what he believes to be privileged information. If Defendant cannot sufficiently produce or complete a privilege log, Defendant shall provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert. Inadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege.
2) Within the twenty-one (21) days, the neutral expert shall examine the drives and summarize their contents. The neutral expert shall make and preserve two (2) copies of each hard drive. One (1) copy shall be preserved by the neutral expert unmodified in the event *in camera* review of the hard drives by the Court were to become necessary. From the second copy, the neutral expert shall parse and index the forensic images using industry standard forensic tools, and then execute a search of any keywords and/or key phrases provided by Defendant. Any and all positive search results shall be flagged for exclusion from the copy.

Exhibit 11 to motion re: refusal to obey orders

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The neutral expert shall make note of and export any relevant information pertaining to the flagged data to be included in the privilege log and document the physical locations of the flagged data. The physical location/addresses shall include the beginning of the selection or file extent, to the end of the selection or file extent.

3) The neutral expert shall provide an updated privilege log containing any and all relevant information pertaining to the flagged data to Defendant. Defendant shall then have ten (10) days to verify whether this data flagged by the third-party forensic expert is, in fact, privileged. Defendant shall provide the verified privilege log to the neutral expert.

4) The neutral expert shall have twenty-one (21) days to refer to the verified privilege log and utilize appropriate forensic software to sanitize the data from the copy of the forensic images that were acquired from Defendant's devices and subject to processing. The process of sanitizing the forensic images shall include navigating to the physical address of each selection of data or file that has been verified as privileged data, and replacing the data contained at that address with zeros, from the beginning to the end of the selection or file extent. The neutral expert shall then re-execute a search for the data contained on the privilege log to ensure the image is sanitized. The neutral expert shall prepare and provide to the parties a detailed report indicating the steps taken to sanitize the forensic images.

5) The neutral expert shall create three (3) mirror image copies of the sanitized drive. One shall be preserved by the neutral expert, one shall be sent to Plaintiff's counsel, and one shall be sent to Defendant's counsel.

6) The hard drives provided to the neutral expert by Defendant shall be maintained by the neutral expert in a locked and secure room, cabinet, and/or safe when not in use by the neutral expert. The neutral expert shall have access to and may use information contained on Defendant's hard drives only for the purpose of this action. Plaintiff's counsel shall have

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access to and may use information contained on the sanitized hard drives only for the purpose of this action. Anyone employed in the office of Plaintiff's counsel and anyone assisting Plaintiff's counsel for purposes of this action is also bound by the terms of this Order.

7) Once participation in the litigation of this case by any person obtaining Defendant's hard drives pursuant to this Order has been terminated, all hard drives and electronic data obtained therefrom shall be returned to Defendant within twenty-one (21) days.

8) Certain material and information on the hard drives shall be treated as confidential, subject to the following terms:

    a) Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document, and which will permit complete removal of the designation. Documents shall be designated as confidential prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential.

    b) Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, or information that is not within the timeframe relevant to this case.

    c) Any confidential designation is subject to challenge in good faith. The burden of proving the necessity of a confidential designation remains with the party asserting

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confidentiality. A party who contends that documents designated as confidential are not entitled to confidential treatment shall give written notice to the party who affixed the designation. The parties shall confer in good faith prior to bringing all objections before the Court to request an *in camera* review for a determination of whether the challenged information is subject to confidentiality.

d) Documents designated as confidential under this Order shall not be used or disclosed by the parties, counsel for the parties, or any experts for the parties for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of the litigation).

e) The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated as confidential under the terms of this Order to any other person or entity except as to, or contemporaneously with, the production or disclosure of the documents to those persons. Persons to whom disclosure is to be made shall execute an acknowledgment (in the form set forth as Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. The following categories of persons may be allowed to review documents which have been designated as confidential pursuant to this Order:

    i) Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

    ii) Parties and certain members or employees of a party to this Order, but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed;

iii) Court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

iv) Witnesses during depositions, hearings, and trial;

v) Consultants, investigators, or experts employed by the parties or counsel for the parties to assist in the preparation of the lawsuit; and

vi) Other person only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

f) The parties and counsel for the parties shall not make any information designated as confidential public or use such information in any unlawful manner.

9) The provisions of this order may be modified upon good cause shown or by consent of the parties, and any dispute concerning the matters subject of this order, if the parties are unable to resolve it, may be determined by the court upon motion.

And IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Circuit Judge

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Greenville Common Pleas

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

Case Number: 2021CP2303414

Type: Order/Compel

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Richard A. Gorman, Plaintiffs, v. John C. Monarch, Defendant.	C.A. No. 2021-CP-23-03414 **Rule 59(e) Motion to Reconsider**

Defendants John C. Monarch (hereinafter "Monarch") respectfully move this court pursuant to Rule 59(e), SCRCP, to alter or amend the Order Granting Motion to Compel Production of Electronic Devices, which Order was entered by the Clerk of this Court on April 28, 2022 (hereinafter the "Order"). Monarch respectfully request that the Court reconsider the Order for the following reasons[1]:

1. **The Court's Order and the protocol contained therein ordering forensic imaging of Monarch's computers does not adequately protect privileged information, proprietary, personal, and confidential electronically stored information ("ESI"), appropriately limit the scope of discoverable materials, or appropriately minimize the burdensomeness of forensic imaging on Monarch.**

[1] In addition to the arguments highlighted herein, Monarch incorporates herein by reference the arguments he has previously presented to the Court in his Memorandum previously filed on September 13, 2021 and the email correspondence submitted to the Court by Monarch's counsel concerning the development of an appropriate protocol for imaging of Monarch's computer systems that were sent between October 1, 2021 and March 14, 2022 and which are attached hereto for ease of reference as Exhibit A.

Exhibit 12 to motion re: refusal to obey orders

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"Courts have repeatedly found that Rule 34 does not create a routine right of direct access to an opposing party's electronic information system. Inspection of an opposing party's computer system under Rule 34 [of the Federal Rules of Civil Procedure] and state equivalents is the exception and not the rule for discovery of ESI." The Sedona Conference, The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1, Commt. 6.d., p. 128 (2018) [hereinafter Sedona Principles][2]. When requested to allow forensic imaging of a party's computer system the "Court must be mindful of the potential intrusiveness of ordering forensic imaging." Crosmun v. Trs. of Fayetteville Technical Cmty. Coll., 832 S.E.2d 223, 233(N.C. App. 2019) (quoting Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687 (S.D. Fla. 2012)); see In re Ford Motor Co., 345 F.3d 1315, 1317 (11th Cir. 2003) (vacating the district court's order to provide the requesting party unlimited, direct access to the responding party's databases without any protocol for the search, including no search terms, and finding that direct access is not permissible without a factual finding of non- compliance with discovery rules); Exec. Air Taxi Corp. v. City of Bismarck, 518 F.3d 562, 569 (8th Cir. 2008) (holding that the district court did not abuse its discretion in declining to order a forensic analysis of a computer because the responding party had provided all relevant documents in hard copy and forensic discovery could

[2] As recently noted by the North Carolina Court of Appeals, "The Sedona Principles, first published in 2004, seek to 'serve as best practice recommendations and principles for addressing ESI issues in disputes —whether in federal or state court, and whether during or before the commencement of litigation.' Sedona Principles at 29. They were drafted and published by The Sedona Conference, 'a 501(c)(3) research and educational institute that exists to allow leading jurists, lawyers, experts, academics, and others at the cutting edge of issues in the areas of antitrust law, complex litigation, and intellectual property rights, to come together in conferences and mini-think tanks ... to engage in true dialogue—not debate—in an effort to move the law forward in a reasoned and just way.' Id. at 8. The Sedona Principles and other publications of The Sedona Conference have been relied upon by federal and state courts nationwide…" Crosmun v. Trs. of Fayetteville Technical Cmty. Coll., 832 S.E.2d 223, 227 n.3 (N.C. App. 2019).

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disclose privileged documents). “ESI productions in civil litigations can be ripe targets for corporate espionage and data breach as they may contain trade secrets and other proprietary business information; highly sensitive and private medical, health, financial, religious, sexual preference, and other personal information; or information about third parties subject to contractual confidentiality agreements.” Sedona Principles, Comment 12.b.ii n.147, p. 179 Accordingly, “[p]ursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.” Rule 34, SCRCP, Note to 2011 Amendment. Further, “[u]nless the requesting party can prove that the actual operation of a particular system is at issue in the litigation, if the responding party provides the informational content of the data, there is no need or justification for direct inspection of the responding party’s computer systems.” Sedona Principles, Commt 6.d., p. 128.

Even assuming arguendo that Monarch had engaged in misconduct during discovery making forensic imaging appropriate “a court must protect the defendant's confidential information as well as preserve any private and privileged information. A party's purported failure to produce discovery as requested or ordered will rarely warrant unfettered access to a party's computer system. A trial court abuses its discretion when its judgment entry permits unfettered forensic imaging of a party's electronic devices and contains none of the Bennett protections required to conduct such forensic analysis.” Allied Debt Collection of Va., L.L.C. v. Nautica Entm't, L.L.C., 146 N.E.3d 1222, 1234 (Ohio App. 2019) (citing Bennett v. Martin, 928 N.E.2d 763 (10th District, 2009)). As discussed at length by the Sedona Conference in the third edition of The Sedona Principals:

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> Special issues may arise with any request for direct access to ESI or to computer devices or systems on which it resides. Protective orders should be in place to guard against any release of proprietary, confidential, or personally identifiable ESI accessible to the adversary or its expert. Indeed, the widespread adoption of state and federal privacy laws (as well as the application of foreign data protection laws) demands protective orders and procedures that provide adequate personal privacy safeguards and meet applicable statutory and common law legal standards. Similar concerns exist regarding the potential disclosure of attorney client privileged or work product information that may occur during such an inspection, notwithstanding Rule 502[, FRCP]. See Comments 6.d. and 10.b. Thus, even with a protective order in place, court-ordered inspections of computer systems should be used sparingly. Such orders should be narrowly tailored to the circumstances, accompanied by a sufficient protective order, and usually should provide that either a special master or a neutral forensic examiner undertake the inspection.

Sedona Principles, Commt. 10.e., pp. 152-53. Accordingly a protocol ordering a forensic imaging must be narrowly restricted to protect confidential and personally identifiable information and system integrity as well as to avoid giving the discovering party access to information unrelated to the litigation. Sedona Principles, Commt. 6.d., p. 129; see also id., Commt. 8.c., pp. 140-41 ("When ordered, it should be accompanied by an appropriate protocol or other protective measures that take into account any applicable privacy rights and privileges, as well as the need to avoid copying ESI that is not relevant."); see also Balboa Threadworks, Inc. v. Stucky, D.Kan. No. 05-1157-JTM-DWB, 2006 WL 763668, 3 (Mar. 24, 2006) ("Courts have been cautious in requiring the mirror imaging of computers where the request is extremely broad in nature and the connection between the computers and the claims in the lawsuit are unduly vague or unsubstantiated in nature.").

Despite the broad consensus amongst courts around the nation and legal scholars alike that a protocol allowing for a forensic imaging must protect a responding party's right to privacy with regard to privileged and other confidential information that is not relevant or otherwise

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within the scope of discovery, the Order entered by the Court, "[a]lthough [it] provided a protocol in which the parties could arguably prevent the disclosure of attorney-client privilege (i.e. the creation of a privilege log), there is nothing in the order — through search terms or other instructions — that expressly required the third-party vendor or expert to limit its search to information relevant to [Plaintiff's] claims against [Monarch] or to exclude personal or confidential information, such as [Monarch's] personal or financial information or [Monarch's] proprietary information." Allied Debt Collection, 146 N.E.3d at 1237. Rather, the Court's Order "broadly" allows Plaintiff access to every byte of information on Monarch's computers that is not privileged, regardless of how unrelated to Plaintiff's claims it might be or how highly sensitive, private, and personal the information might be. Id. "Without relevant search terms, or other limiting instructions, the court is essentially permitting unfettered access to irrelevant and confidential information contained in [Monarch's] computers." Id. Moreover, the Court's failure to include limiting instructions and thereby granting Plaintiff access to volumes of private and personal information about Monarch despite it being completely unrelated and irrelevant to the claims and defenses in this case puts the Court's Order in direct conflict with the requirement that "electronic discovery must relate to the claims and defenses asserted in the pleadings." Rule 34, SCRCP, Note to 2011 Amendment.[3]

[3] The Court's Order is also deficient in that it is unclear whether the privilege log contemplated by Paragraph 1 is to include only documents and information subject to attorney client privilege and the work product doctrine or whether the privilege log is permitted to include "documents [that] contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, [and] information that is not within the timeframe relevant to this case." See Order at Paragraph 8(b).

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In addition to allowing unfettered access to all personal and private information on Monarch's laptop regardless of how unrelated it might be to this litigation, the Court's Order fails to provide Monarch sufficient time in which to review responsive documents for privileged. The court's order provides that "[p]rior to turning over the hard drives [which shall occur '[w]ithin twenty-one (21) days of the date of this Order'], Defendant shall complete a log of what he believes to be privileged information." Due to the Court's failure to narrowly tailor the protocol to ensure that only information and data that is related to the claims and defenses asserted in the pleadings is subject to production, the Court is requiring the production of all non-privileged data on not one, but two MacBook Pro computers, over one terabyte of data. "Considering that one terabyte is generally estimated to contain 75 million pages, a one-terabyte case could amount to 18,750,000 documents, assuming an average of 4 pages per document. Further assuming that a lawyer or paralegal can review 50 documents per hour (a very fast review rate), it would take 375,000 hours to complete the review. In other words, it would take more than 185 reviewers working 2,000 hours each per year to complete the review within a year." See Anne Kershaw, Automated Document Review Proves Its Reliability, 5 Digital Discovery and e-Evidence 11, p. 10-12 (2005); see also, The Sedona Conference, The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery, 15 Sedona Conf. J. 217, 220 n.2 (2014) ("One gigabyte of electronic information can generate approximately 70,000 to 80,000 pages of text, or 35 to 40 banker's boxes of documents (at 2,000 pages per box). Thus, a 250 gigabyte storage device (e.g., a laptop or hard drive), theoretically, could hold as much as the equivalent of 8,750 to 10,000 banker's boxes of documents…Even if only 10% of a computer's available capacity today contains user-created information (as

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distinguished from application programs, operating systems, utilities, etc.), attorneys still would need to consider and potentially review 1,750,000 to 2,000,000 pages per device."). Given this large amount of data, the court's allowance of only twenty-one days to review the records for privilege and create a privilege log that expressly describes the nature of the documents or communications that are protected is unreasonable and would in effect compel Monarch to disclose privileged information.

Although the protocol contained in the Order seemingly acknowledges the infeasibility of such an enormously burdensome review by providing that "[i]f Defendant cannot sufficiently produce or complete a privilege log," the Court's solution thereto, which directs Defendant to "provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert" as a substitute for an actual privilege review of all electronic information that would be produced, effectively compels Monarch's waiver of privilege, if not in this case, then "in proceedings in another state or in a federal proceeding in which the privileged information may be relevant."[4] Sedona Principles, Commt. 10.f., pp. 154-55 n.124 ("If the action is pending in a state jurisdiction without a Rule 502(d)[, FRCP,] equivalent, the party must be aware that another jurisdiction might determine that the disclosure of privileged information was voluntary and the privilege waived. Moreover, subject matter waiver might be found if another court finds that fairness requires the disclosure of other privileged or work product protected documents pertaining to the same subject matter."); see also Crosmun, 832 S.E.2d at 238 ("While the use of

[4]The possibility that privilege could be deemed waived in a proceeding in another jurisdiction is further heightened by the fact that Plaintiff has recently instituted another action concerning the defamation alleged in this case against another defendant in the United States District Court of the Eastern District of Pennsylvania. See Richard A. Gorman v. Ilya Shpetrik, C.A. No. 2:20-cv-04759-JCJ (E.D. Pa. Filed Sep. 28, 2020).

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search terms assists in preventing disclosure of privileged materials, it is far from a panacea. '[A]ll keyword searches are not created equal; and there is a growing body of literature that highlights the risks associated with conducting an unreliable or inadequate keyword search or relying exclusively on such searches for privilege review.') (quoting Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251, 256-57 (D. Md. May 29, 2008)). Moreover, the Court's statement that "[i]nadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege" does not cure its compelled violation of Monarch's sacrosanct right to maintain and protect privilege. Order at p. 3; see In re Dow Corning Corp., 261 F.3d 280, 284 (2d Cir. 2001) ("[C]ompelled disclosure of privileged attorney-client communications absent waiver or an applicable exception, is contrary to well-established precedent" and "we have found no authority…that holds that imposition of a protective order…permits a court to order disclosure of privileged attorney-client communications."); Murphy Oil USA, Inc. v. Fluor Daniel, Inc., No. Civ. A. 99-3564, 2002 WL 246439, at *7 (E.D. La. Feb. 19, 2002) (noting that the court cannot compel the disclosure of privileged communications in clawback arrangements); see also Sedona Principles, Commt. 10.f., p. 154 ("[T]he disclosure of privileged and work product protected information is contrary to fundamental tenets of the privilege pertaining to the scrupulous protection of the confidentiality of the information.").

Furthermore, the clawback language in the first paragraph of the Court's protocol applies only to privileged documents produced through "[i]nadvertent production" and it is not immediately clear whether production of any privileged information not captured in the keyword/phrase search and delivered to Plaintiffs would fall within that language. Crosmun, 832

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S.E.2d at 238-39 (“[T]he clawback here applies only to privileged documents produced 'through inadvertence, error or oversight,’ and it is not immediately clear whether production of any privileged information not captured in the Privilege Search Hits and delivered to Plaintiffs… would fall within that language. Assuming arguendo that such a production would be inadvertent and subject to the clawback provision's language, the Protocol Order nevertheless compels Defendants to violate their privilege as to any documents given to [forensic expert] and Plaintiffs that are not contained within the Privilege Search Hits, leaving Defendants with, at best, an imperfect clawback remedy to rectify the compulsory violation.”); see also Blythe v. Bell, 2012 WL 3061862, at *10 (N.C. Super. Ct. July 26, 2012) ("Protections to guard against privilege cannot be deferred by first addressing the risk of waiver only after a production has been made.”).

2. **Pursuant to Rule 26(b)(6)(B)(i)-(iii), SCRCP, the Court should have denied or otherwise limited Plaintiff’s demand for forensic imaging of Monarch’s electronic devices because Plaintiff’s demand for forensic imaging 1) is unreasonably cumulative and duplicative of the “full discovery” conducted on the “same claims” in the PA case; 2) because Plaintiff had ample opportunity to obtain the information sought through discovery in this action and “full discovery” of the “same claims” in the previously resolved Pennsylvania federal court action between the parties; and 3) because the forensic imaging is unduly burdensome and expensive and is unlikely to produce any additional discoverable material.**

With specific regard to the burdensomeness and expense raised Rule 26(b)(6)(B), SCRCP, “costs cannot be calculated solely in terms of the expense of computer technicians to

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retrieve the ESI, but must factor in other litigation costs, including the accessibility of the ESI, the interruption and disruption of routine business processes and [] practices, and the costs of reviewing the ESI. These burdens on information technology personnel and the resources required to review ESI for relevance, privilege, confidentiality, and privacy should be considered in any calculus of whether to allow discovery, and, if so, under what terms. In addition, the non-monetary costs (such as the invasion of privacy rights, risks to business and legal confidences, and risks to privileges) should be considered." Sedona Principles, Commt. 2.d., pp. 68-69.

3. Plaintiff failed to present any credible evidence that Defendant was or is unwilling to produce computer-generated documents or that Defendant has withheld discoverable information to justify the forensic imaging of Monarch's electronic devices.

To determine whether forensic imaging is warranted, as opposed to standard discovery procedures, the trial court must (1) weigh the parties' interest in obtaining discovery against privacy concerns; and (2) institute a protective protocol to ensure that forensic imaging is not unduly intrusive. Allied Debt Collection of Va., L.L.C. v. Nautica Entm't, L.L.C., 146 N.E.3d 1222, 1232 (Ohio App. 2019). Forensic examinations of ESI may be warranted when there exists some factual basis to conclude that the responding party has not met its duties in the production of discoverable information. Crosmun, 832 S.E.2d at 234. However, a Court must be mindful of the potential intrusiveness of ordering forensic imaging. Bennett v. Martin, 186 Ohio App.3d 412, 425, 928 N.E.2d 763 (10th District, 2009). Before compelling such imaging the court must weigh 'the significant privacy and confidentiality concerns' inherent in imaging against the utility or necessity of the imaging." Id., (citing, John B. v. Goetz, 531 F.3d 448, 460 (6th Cir.2008)). The Court should consider "whether the responding party has withheld requested

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information, whether the responding party is unable or unwilling to search for the requested information, and the extent to which the responding party has complied with discovery requests." Id. (citing, Henderson v. U.S. Bank, N.A., 2009 WL 1152019, *2 (E.D.Wis., Apr. 29, 2009); Bianco v. GMAC Mtg. Corp., 2008 WL 4661241, *2 (E.D.Pa., Oct. 22, 2008); Williams v. Massachusetts Mut. Life Ins. Co., 226 F.R.D. 144, 146 (D.Mass.2005); see also CFRE, LLC v. Greenville County Assesor, 395 S.C. 67, 83-84, 716 S.E.2d 877, 886 (2011) (denying sanctions despite non-moving party's failure to answer standard interrogatories or production requests because moving party provided "no evidence of what material facts were not produced" by the non-moving party) (emphasis added). "When a requesting party demonstrates…the responding party's failure to produce requested information, the scales tip in favor of compelling forensic imaging." Bennett, 186 Ohio App.3d at 426, 928 N.E.2d 763 citing, White v. Graceland College Center for Professional Development & Lifelong Learning, Inc., 2009 WL 722056, *7 (D.Kan., Mar. 18, 2009). "'[M]ere skepticism that an opposing party has not produced all relevant information is not sufficient to warrant drastic electronic discovery measures.'" IHS Glob. Ltd. v. Trade Data Monitor LLC, No. 2:18-cv-01025-DCN (D.S.C. Dec. 23, 2019)(quoting John B. v. Goetz, 531 F.3d 448, 460 (6th Cir. 2008)).

Given the fact that Monarch has willingly and fully participated in the discovery process both in this case and the prior PA case between these parties and that Plaintiff has provided nothing but naked suspicion that Monarch has withheld discoverable material, it is inappropriate for the Court to allow forensic imaging of Monarch's computer systems in this case.

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4. The Court abused its discretion in concluding that the August 21, 2020 Consent Order agreed to by the Parties required Monarch to permit forensic imaging of all of Monarch's electronic devices without objection or appropriate protection of privileged and other personal, private, proprietary, or otherwise confidential information that is not properly subject to discovery in this case.

Plaintiff's claim, and the Court's apparent agreement, that Monarch agreed to allow unfettered access to all of his computing devices by Plaintiff is directly contrary to the language of the August 21, 2021 Consent Order that expressly provided that Monarch's responses to Plaintiff's revised interrogatories and request for production "may be made subject to objections." Accordingly, when Monarch responded to Plaintiff's revised request for production, he provided a list of the devices in question subject to objections to Plaintiff's entitlement to obtain a forensic imaging of those devices.[5] Further evidence of the fact that the Consent Order did not contemplate Monarch consenting to unfettered access to all of his computing devices is the fact that the Consent Order provided for Plaintiff to revise his interrogatories and requests for

[5]Monarch expressly objected to Plaintiff's request for production of his computing devices stating that "[t]o the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question." Monarch hereby incorporates herein his responses and objections to Plaintiff's interrogatories and requests for production.

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production to "limit[] them to specific date ranges and subject matter tailored more narrowly to time frames and matters at issue in this case." If, as Plaintiff argues and the Court seemingly agrees, Monarch consented to simply handing over all of his information on all of his computing devices, no matter how private, confidential, and/or unrelated to this case, there would have been no reason for Plaintiff to revise his interrogatories and request for production to limit them to "specific date ranges and subject matter tailored more narrowly to…matters at issue in this case." Consequently, it was an abuse of discretion for the Court to order a forensic imaging of Monarch's computing devices without consideration of Monarch's objections thereto and an analysis of whether Plaintiff was in fact entitled to forensic imaging in this case.

Defendant John C. Monarch respectfully moves the Court to reconsider its March 28, 2022 Order and deny the forensic imaging of Monarch's computing devices or, in the alternative, revise the protocol for the forensic imaging of Monarch's computing devices to provide appropriate protection against unfettered access to Monarch's computing devices that would jeopardize privilege and cause the production of vast amounts of irrelevant, private information.

[SIGNATURE ON FOLLOWING PAGE]

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BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback

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ATTORNEYS FOR JOHN MONARCH

April 7, 2022
Greenville, South Carolina

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: March 14, 2022 at 11:10 AM
To: Kinlaw, Alex akinlawj@sccourts.org, Kinlaw, Alex Law Clerk (Arielle Jeter) akinlawlc@sccourts.org
Cc: Kinlaw, Alex Secretary (Shannon N. Thurman) akinlawsc@sccourts.org, David Moore DMoore@turnerpadget.com, Rhonda Schaub Rhonda@harrisonfirm.com, Drew Radeker Drew@harrisonfirm.com, Robert L. Mebane, Jr. robert.mebane@mgclaw.com, Sarah Larabee sarah@harrisonfirm.com

Dear Judge Kinlaw:

After having reviewed the latest revision to Plaintiff's proposed protocol, I still have obvious objections to the proposal, the lack of appropriate balancing between Plaintiff's right to access discoverable information and Defendant's right to privilege and the privacy of non-discoverable information, and the undue burden and cost created by Plaintiff's proposed protocol. Contrary to Plaintiff's suggestions during the Friday conference call that Defendant use keyword searches to conduct our privilege review, Plaintiff's proposed protocol expressly requires that "Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, privileged information, irrelevant information, or information that is not within the timeframe relevant to this case." See Plaintiff's proposed protocol, Paragraph 6.b. (Emphasis added). Given that Plaintiff is demanding all data on not one, but two MacBook Pro computers, Plaintiff's proposed protocol is functionally requiring Defense counsel to review more than a terabyte of data in 21 days. See id. at Paragraph 1 (requiring Defendant to create a privilege log "[p]rior to turning over the hards drives," which is required to happen [w]ithin twenty-one (21) days of the date of th[e] Order"). "Considering that one terabyte is generally estimated to contain 75 million pages, a one-terabyte case could amount to 18,750,000 documents, assuming an average of 4 pages per document. Further assuming that a lawyer or paralegal can review 50 documents per hour (a very fast review rate), it would take 375,000 hours to complete the review. In other words, it would take more than 185 reviewers working 2,000 hours each per year to complete the review within a year. Assuming each reviewer is paid $50 per hour (a bargain), the cost could be more than $18,750,000." See Anne Kershaw, Automated Document Review Proves Its Reliability, 5 Digital Discovery and e-Evidence 11, p. 10-12 (2005); see also, The Sedona Conference, The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery, 15 SEDONA CONF. J. 217, 220 n.2 (2014), https://thesedonaconference.org/publication/ Commentary_on_Search_and_Retrieval_Methods ("One gigabyte of electronic information can generate approximately 70,000 to 80,000 pages of text, or 35 to 40 banker's boxes of documents (at 2,000 pages per box). Thus, a 250 gigabyte storage device (e.g., a laptop or hard drive), theoretically, could hold as much as the equivalent of 8,750 to 10,000 banker's boxes of documents. In contrast, in 1990, a typical personal computer held just 200 megabytes of data – less than 1/1000 the capacity of a typical hard drive today. Even if only 10% of a computer's available capacity today contains user-created information (as distinguished from application programs, operating systems, utilities, etc.), attorneys still would need to consider and potentially review 1,750,000 to 2,000,000 pages per device."). Given the volume of information that Plaintiff is demanding, and which Defense Counsel would necessarily be required to review under the language of the proposed protocol, it is physically impossible to meet a 21 day deadline for the production of a privilege log. Moreover, the short 21 day deadline is a bit disingenuous given that Plaintiff's Counsel waited over three months from the October 6, 2021 conference call with your Honor and my email providing a proposed protocol used by various federal courts to even contact Defense Counsel by email on January 11, 2022 to discuss the protocol to be utilized in this case.

Additionally, and despite the representation of Plaintiff's Counsel during the conference call with your Honor last Friday, Plaintiff's proposed protocol does not contain a clawback agreement/stipulation that would protect the inadvertent disclosure of privileged information and explicitly confirm that inadvertent disclosure would not constitute a waiver of any applicable privilege. Rather Plaintiff's proposed protocol merely provides that "[i]nadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential." See Plaintiff' proposed protocol, Paragraph 6.a. (emphasis added). Accordingly, the proposed protocol is also deficient for its lack of appropriate language to define the scope, nature, and procedure of the clawback stipulation/agreement to protect all confidential and privileged information.

Kindest Regards,

Chris Brumback
Brumback & Langley, LLC
Attorneys and Counselors at Law
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531 South Main Street, Suite 307
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On Mar 3, 2022, at 11:37 AM, Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org> wrote:

Mr. Brumback,

Judge Kinlaw has received your email dated March 2nd, 2022 and is agreeable with your request for a conference call. Please send available dates to me and I will coordinate the conference call.

Sincerely,

Arielle E. Jeter

Law Clerk to the Honorable Alex Kinlaw, Jr.

305 East North Street

Greenville, South Carolina 29601

Office: (864) 467-8046

Fax: (864) 467-8035

akinlawlc@sccourts.org

From: Chris Brumback <chris@brumbacklangley.com>
Sent: Wednesday, March 2, 2022 4:51:50 PM
To: Kinlaw, Alex; Kinlaw, Alex Law Clerk (Arielle Jeter)
Cc: Kinlaw, Alex Secretary (Shannon N. Thurman); David Moore; Rhonda Schaub; Drew Radeker; Robert L. Mebane, Jr.; Sarah Larabee
Subject: Re: Gorman v. Monarch, 2021CP2303414

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Kinlaw,

I hope you are doing well today. Although Defense Counsel agrees with the proposal to request a conference call with you to help resolve issues upon which the parties cannot agree with regard to the proposed protocol for the electronic forensic examination, I

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disagree with Plaintiff's attempt to imply that Defense Counsel has been anything less than fully engaged in a good faith effort to agree upon a protocol, consistent with the parties' conference call with you on October 6, 2021, that provides Plaintiff with access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive. To ensure that the Court has an accurate picture of the "back-and-forth" and the issues in question, I have attached the email chain between myself and Ms. Larabee for your consideration. Also attached hereto for your Honor's ease of reference is my October 6, 2021 email, sent to your Honor as well as all counsel, that includes the protocol that Defense Counsel proposed following the parties' October 6, 2021 conference call with you.

For your Honor's information, please also be aware that Defense Counsel has reached out to Opposing Counsel to explore potential settlement options for the resolution of this case.

Kindest Regards,

Chris

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On Mar 2, 2022, at 3:20 PM, Sarah Larabee <sarah@harrisonfirm.com<mailto:sarah@harrisonfirm.com>> wrote:

Good afternoon, Judge Kinlaw,

After some back-and-forth with Defendant, the parties have yet to agree on the appropriate protocol for Defendant's production of his electronic devices, which he agreed to provide. Plaintiff has tried to address as many of Defendant's concerns as we can while also remaining within the ambit of the consent order and Your Honor's order granting Plaintiff's motion to compel. However, there are still some points that Defendant disagrees with. We would respectfully ask for a telephone conference with Your Honor to hopefully resolve those issues.

I've attached Plaintiff's draft of the proposed protocols. If you have any questions or concerns, kindly let me know.

Best,

Sarah Larabee

<image001.png>
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<Plaintiff's Proposed Protocol.docx>

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: March 2, 2022 at 4:51 PM
To: akinlawj@sccourts.org, akinlawlc@sccourts.org
Cc: akinlawsc@sccourts.org, David Moore DMoore@turnerpadget.com, Rhonda Schaub Rhonda@harrisonfirm.com, Drew Radeker Drew@harrisonfirm.com, Robert L. Mebane, Jr. robert.mebane@mgclaw.com, Sarah Larabee sarah@harrisonfirm.com

Judge Kinlaw,

I hope you are doing well today. Although Defense Counsel agrees with the proposal to request a conference call with you to help resolve issues upon which the parties cannot agree with regard to the proposed protocol for the electronic forensic examination, I disagree with Plaintiff's attempt to imply that Defense Counsel has been anything less than fully engaged in a good faith effort to agree upon a protocol, consistent with the parties' conference call with you on October 6, 2021, that provides Plaintiff with access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive. To ensure that the Court has an accurate picture of the "back-and-forth" and the issues in question, I have attached the email chain between myself and Ms. Larabee for your consideration. Also attached hereto for your Honor's ease of reference is my October 6, 2021 email, sent to your Honor as well as all counsel, that includes the protocol that Defense Counsel proposed following the parties' October 6, 2021 conference call with you.

For your Honor's information, please also be aware that Defense Counsel has reached out to Opposing Counsel to explore potential settlement options for the resolution of this case.

Kindest Regards,

Chris

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Brumback & Langley, LLC
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> On Mar 2, 2022, at 3:20 PM, Sarah Larabee <sarah@harrisonfirm.com> wrote:
>
> Good afternoon, Judge Kinlaw,
>
> After some back-and-forth with Defendant, the parties have yet to agree on the appropriate protocol for Defendant's production of his electronic devices, which he agreed to provide. Plaintiff has tried to address as many of Defendant's concerns as we can while also remaining within the ambit of the consent order and Your Honor's order granting Plaintiff's motion to compel. However, there are still some points that Defendant disagrees with. We would respectfully ask for a telephone conference with Your Honor to hopefully resolve those issues.
>
> I've attached Plaintiff's draft of the proposed protocols. If you have any questions or concerns, kindly let me know.
>
> Best,
>
> **Sarah Larabee**
>
> <image001.png>
> *This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) Thank you.*
>
> <Plaintiff's Proposed Protocol.docx>

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From: **Chris Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch Independent Expert
Date: March 2, 2022 at 1:59 PM
To: Sarah Larabee sarah@harrisonfirm.com
Cc: robert.mebane@mgclaw.com, Drew Radeker Drew@harrisonfirm.com, Moore Jr., David L DMoore@TurnerPadget.com

Sarah,

Although I appreciate your email and agree that any electronic forensic expert involved in this process needs to be an officer of the court and that the forensic expert may be able to be of assistance in establishing appropriate timeframes in which to accomplish various steps of the process, it appears that we still have a difference of opinion with regard to other portions of the proposed protocol. Although I have already engaged in extensive discussion of Defense Counsel's position in my prior emails, I do want to take this opportunity to specifically address one point from your February 16, 2022 email. Contrary to your email, I never said that waiver of privilege through failure to preform an actual privilege review of all electronic information is "not South Carolina law." What I did say, and my concern remains valid, is that South Carolina courts have not yet had an opportunity to address that question. The fact that the South Carolina appellate courts have not had the opportunity to illuminate this emerging area of law does not mean that they would not conclude that a substituted privilege "review" did not result in a waiver of privilege, particularly in light of the numerous other jurisdictions, treatises, and commentators that have cautioned that use of search terms in lieu of an actual privilege review would constitute a privilege waiver for any documents that were inadvertently produced. Although I believe the other protocols and safeguards that I have previously discussed are also important and appropriate for inclusion in the final protocol, the issue of privilege waiver, due to its potential ramifications moving forward, is, itself, sufficient justification for another telephone conference with Judge Kinlaw. I am glad we are able to gain some consensus on the forensic expert being an officer of the court and on deciding upon reasonable timeframes. Hopefully, additional discussion with Judge Kinlaw will allow us to come together on the other issues that remain in dispute regarding the protocol. Depending on Judge Kinlaw's schedule, I am flexible the remainder of this week and most of next week.

Thanks,

Chris

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On Feb 28, 2022, at 9:49 AM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

Good morning,

Just following up on this. If I don't hear from you by tomorrow, I'll send the draft over to Judge Kinlaw.

Thanks,

Sarah Larabee

<image001.png>

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From: Sarah Larabee
Sent: Wednesday, February 16, 2022 1:58 PM
To: Christopher Brumback <chris@brumbacklangley.com>
Cc: robert.mebane@mgclaw.com; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@TurnerPadget.com>
Subject: RE: Gorman v. Monarch Independent Expert

Good afternoon, Chris,

I think I've boiled down your concerns to a few points, and I hope that this new draft addresses most of them.
This draft makes the independent expert an officer of the court (see para. 1).
While we certainly appreciate your concern regarding waiver of privilege through the use of key words/phrases, you said it yourself—that's not South Carolina law. Nonetheless, we are more than happy to specifically agree that use of or information yielded from the search terms won't constitute a privilege waiver. I added language at the end of Paragraph 1 agreeing that "[i]nadvertent production of information yielded from the keywords and/or key phrases shall not constitute waiver of privilege." Inadvertent disclosure is also addressed generally in Paragraph 8(a). Moreover, this draft (and the draft prior to this one) contemplates Defendant getting *two* opportunities to ensure privileged information is not turned over to the Plaintiff: once prior to the initial turnover of the hard drives (para. 1), and again after the neutral expert flags and logs the data, and provides the log to Defendant for him to verify that the information is privileged (para. 2-3).
To your concern about the timeframe, I've changed the time in Paragraph 1 to 21 days. A forensic expert would likely be the better person to ask to get a more accurate idea on whether 21 days will be sufficient, and, if not, what a better timeframe should be. My thinking is that once we agree on an expert, we run this

timeframe should be. My thinking is that once we agree on an expert, we run this draft by them and they can make suggestions on the timeline.
You're right that the draft protocol contemplates Plaintiff receiving access to all of John's files and data, with exception to privileged material. That's because the consent order called for the production of the devices—not information yielded by keywords or key phrases, or "sufficient access" to the devices.
If you are agreeable to these terms, you're welcome to submit the order. If not, we think another teleconference with Judge Kinlaw would be the most efficient way to come to a resolution.
I look forward to hearing from you.
Best,
Sarah Larabee

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From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Tuesday, January 25, 2022 4:10 PM
To: Sarah Larabee <sarah@harrisonfirm.com>
Cc: robert.mebane@mgclaw.com; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@TurnerPadget.com>
Subject: Re: Gorman v. Monarch Independent Expert

Sarah,

After reviewing and comparing Plaintiff's September 30, 2021 proposed protocol with your January 12, 2022 proposed protocol it appears that the only substantive change to the Plaintiff's proposed protocol is that the expert is now "independent." However, even as to the independence of the expert, Plaintiff's proposed protocol fails to make the expert an officer of the court so as to avoid issues of privilege waiver. Although Defense Counsel certainly is in agreement with an independent expert, who is made an officer of the court, performing the forensic examination, Plaintiff's January 12, 2022 proposed protocol still fails to address the fact that pursuant to Plaintiff's proposed protocol Defense Counsel would be required to review EVERY file and byte of data on Defendant's 2013 MacBook Pro for purposes of making a privilege determination. Although Plaintiff's January 12, 2022 proposed protocol seemingly acknowledges the infeasibility of such an enormously burdensome review by contemplating "[i]f Defendant cannot sufficiently produce or complete a privilege log," Plaintiff's proposal for Defendant to "provide the neutral expert with a list of keywords and/or key phrases to be searched by the expert" as a substitute for an actual privilege review of all electronic information that would be produced would constitute a Court ordered violation of Defendant's privilege rights. South Carolina courts have not addressed privilege waiver in such a context, but numerous other jurisdictions, treatises, and commentators have cautioned that use of search terms in lieu of an actual privilege review would constitute a privilege waiver for any documents that were inadvertently produced. In addition to

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the Plaintiff's January 12, 2022 proposed protocol not providing adequate protection to privileged materials, a ten day timeframe in which to complete even the proposed search term privilege review is infeasible given the unlimited scope of Plaintiff's protocol that contemplates production of every byte of information on the 2013 MacBook Pro.

Beyond the privilege issues, Plaintiff's proposed January 12, 2022 protocol still contemplates Plaintiff receiving access to all of John's files and data regardless of how wildly irrelevant and private such information might be. The lack of Plaintiff generated search terms and search protocol has resulted in an overbroad protocol that risks including information irrelevant to the underlying claims and information that may be personal, private, proprietary, or otherwise confidential. Without relevant search terms generated by Plaintiff, or other limiting instructions, Plaintiff's January 12, 2022 proposed protocol is essentially permitting unfettered access to irrelevant and confidential information contained in Defendant's computer. The proposal to mark certain irrelevant and undiscoverable information as "confidential" does not address the underlying fact that the information is not subject to discovery in the first place. There are certainly situations in which "confidential" information is relevant and discoverable and should be produced subject to the protections of a confidentiality order or agreement, but producing an entire hard drive that largely contains private and confidential information that is completely unrelated to the litigation at hand both in time and nature is not that case. Furthermore, any protection Plaintiff's proposed protocol attempts to provide to private and unrelated information of Defendant by having the independent expert maintain the hard drives in a locked and secure room, such protection is obliterated by the fact that the proposed protocol directs the independent expert, after removal of privileged information, to send a mirror image of Defendant's hard drive to Plaintiff. In contrast to Plaintiff's January 12, 2022 proposed protocol, a protocol that outlines a process by which the Plaintiff could submit search terms to identify responsive documents, Defendant could object to proposed search terms, and, after decision by the court, such search terms could be provided to the independent third-party computer expert would give Plaintiff appropriate and sufficient access to Defendant's hard drive to recover any and all useful, relevant information, while also providing adequate procedural safeguards to protect any privileged, proprietary, personal, and confidential electronically stored information. In addition to balancing the interests of access for Plaintiff and protection for Defendant from undue intrusion, Plaintiff generated search terms and a search protocol also avoid the undue burden created by Paragraph 8 of Plaintiff's January 12, 2022 proposed protocol that requires Defense Counsel, for purposes of designating information as confidential, to review Defendant's hard drive in its entirety within ten days of the Judge's execution of the protocol. See Plaintiff's January 12, 2022 proposed protocol, Paragraph 8(a)-(b) ("Documents shall be designated as confidential prior to, or contemporaneously with, the production or disclosure of the documents…Any party may designate documents as confidential and develop a privilege log, but only after review of the documents by an attorney….").

All this said, let me reiterate that Defense Counsel is agreeable to a protocol that provides Plaintiff with sufficient access to Defendant's hard drive to recover any and all useful, relevant, discoverable information while protecting against unfettered access that would jeopardize privilege, cause the production of vast amounts of irrelevant, private information, and create an infeasible and undue burden for Defense Counsel to review for privilege and confidentiality the entirety of Defendant's hard drive within a ten day period. If the goal of Plaintiff is to obtain only that information that would be

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day period. If the goal of Plaintiff is to obtain only that information that would be reasonable calculated to lead to the discovery of admissible evidence and not to gain access to the private and irrelevant intimate details of Defendant's life, then I do not understand Plaintiff's objection to the use of Plaintiff generated search terms, subject to objection by Defendant and approval by Judge Kinlaw, and a search protocol. Frankly, my goal is to arrive at a reasonable protocol that can be effectuated in a timely and cost effective manner that utilizes the independent expert's skills to avoid either party having to review the entirety of Defendant's hard drive, whether that be to conduct a privilege/confidentiality review, or to find useful, relevant information. Again, I am open to a telephone call amongst all counsel to achieve this goal and would be happy to find a time in my schedule this week to conduct such a call.

Kindest Regards,

Chris
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On Jan 12, 2022, at 11:58 AM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

Chis,

No, we are not in agreement with the Defense's proposed protocol. We drafted the attached, which comports with the agreement that we came to in our meeting with Judge Kinlaw. We just need to come to an agreement on an independent expert. Once we agree on an expert, we may want to run the deadlines by them to ensure that they have sufficient time to comply with the order.

Kindly let me know if you have any questions or concerns.

Best,

Sarah M. Larabee

<image.png>

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From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Tuesday, January 11, 2022 4:29 PM
To: Sarah Larabee <sarah@harrisonfirm.com>
Cc: robert.mebane@mgclaw.com<robert.mebane@mgclaw.com>; Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>
Subject: Re: Gorman v. Monarch Independent Expert

Sarah,

Thank you for your email. I will look into Mr. Johnson and discuss his involvement as a possible independent expert with my Client and Co-Counsel. Although Defense Counsel is certainly willing to meet and confer regarding the designation of an independent computer expert, we have not received any comment or counter proposal to the protocol for the computer forensic examination that Defense Counsel proposed via email following the telephone conference with Judge Kinlaw on October 6, 2021. Consequently, the protocol for the forensic examination has not yet been established. In Drew's October 27, 2021 email concerning sealing/removal of one of Plaintiff's Exhibits from the record of this case, Drew mentioned that he thought he had a "process outlined that will be coming in a proposed order," but that was the last Defense Counsel heard regarding efforts to agree on a protocol for submission to and approval by Judge Kinlaw. If Plaintiff's Counsel is in agreement with the protocol proposed in my October 6, 2021 email, we will still need to 1) agree on a due date by

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which the parties must confer and agree upon the independent expert so we can include that in Paragraph 2 of the proposed protocol, and 2) present the proposed protocol to Judge Kinlaw for his consideration and approval prior to deciding on/retaining the independent computer expert. In the event Plaintiff's Counsel is not in agreement with the protocol proposed in my October 6, 2021 email, please provide Defense Counsel with any comments and proposed revisions to the proposed protocol so that we can discuss and hopefully resolve any issues prior to submission to Judge Kinlaw. Once the protocol is established, Defense Counsel will be happy to confer regarding the designation of an independent computer expert.

Kindest Regards,

Chris

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On Jan 11, 2022, at 12:25 PM, Sarah Larabee <sarah@harrisonfirm.com> wrote:

wrote:

Good afternoon, Chris and Robert:

Apologies for the delay on getting a name to you for the neutral expert on this, but we suggest Chip Johnson. Mr. Johnson used to run the SLED Computer Crimes Lab some years ago and indicated that he would be interested in assisting in this matter as an independent expert. After providing him with the case name and attorneys involved, he indicated that he did not have any conflicts. His direct number is (803) 331-9036 and his email is cjohnson@thejg.net, should you have any questions for him.

Kindly let us know whether you are agreeable to Mr. Johnson serving as the expert.

Best,

Sarah M. Larabee

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<draft of proposed protocol.docx>

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From: **Christopher Brumback** chris@brumbacklangley.com
Subject: Re: Gorman v. Monarch, 2021CP2303414
Date: October 6, 2021 at 4:14 PM
To: Moore Jr., David L DMoore@turnerpadget.com, Drew Radeker Drew@harrisonfirm.com
Cc: Robert L. Mebane, Jr. Robert.Mebane@mgclaw.com, Kinlaw, Alex Law Clerk (Arielle Jeter) akinlawlc@sccourts.org, Kinlaw, Alex akinlawj@sccourts.org

Gentlemen (and your Honor),

It was nice speaking with everyone this afternoon and I am glad we were able to find some middle ground to work towards for purposes of establishing a protocol for the computer forensic examination in this case. As indicated during our conference call, the following is the forensic examination protocol, termed "collection and review," utilized by the United States District Court for the Southern District of Florida in Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687-688 (S.D.Fla.2012):

1. An independent computer expert shall be appointed by the Court and shall mirror image [producing party's] computer system. (To the extent it is possible, the independent expert shall conduct his examination in a manner that minimizes the disruption to the operation of [producing party's]' business.)

2. The parties have up through and including [date], to meet and confer regarding their designation of an independent computer expert. If the parties cannot agree, on or before [date], each party shall submit its recommendation to the Court, and the Court will select the expert.

3. The appointed expert shall serve as an Officer of the Court. Thus, to the extent that this computer expert has direct or indirect access to information protected by attorney-client privilege, such disclosure will not result in any waiver of the [producing party's] privilege.

4. The independent expert shall sign a confidentiality order. Additionally, the expert shall be allowed to hire other outside support if necessary in order to mirror image the [producing party's] computer system. Any outside support shall be required to sign the same confidentiality order.

5. The expert shall mirror image the [producing party's] computer system.

6. The [requesting party] shall provide a list of search terms to the Court to identify responsive documents to [requesting party's] document requests on or before [date]. After [requesting party] has submitted the search terms to the Court, [producing party] shall have 5 days to submit [his] objections to the Court regarding any of the search terms, which the court will rule upon. The Court will provide the search terms to the independent expert.

7. Once the expert has mirror imaged the [producing party's] computer system, the expert shall search the mirror image results using the search terms. The results of the search terms and an electronic copy of all responsive documents shall be provided to the [producing party] and to the Court.

8. The [producing party] shall review the search term results provided by the independent expert and identify all responsive documents. The [producing party] shall either produce all responsive documents to the [requesting party] or identify those responsive documents not produced on a privilege log to the [requesting party] within 20 days of the date that the [producing party] receive[s] the search term results from the independent expert. Any privilege log produced shall comply strictly with the [Rules of Civil Procedure].

9. [Requesting party] shall pay for all fees and costs of hiring the independent expert at this time. However, if at a later time there is evidence of the [producing party's] improper deletion of electronic documents or any other associated improper conduct, the Court will revisit this issue and consider charging the [producing party] for the fees and costs of the independent expert or imposing the fees and costs on the parties in a duly appropriate apportioned manner.

10. The independent expert shall provide a signed affidavit detailing the steps he or she took in mirror imaging the [producing party's]' computer system and searching the mirror image for the search terms within 5 days of providing the [producing party] and the Court with the results of the search for search terms in the mirror image.

This seems to be an efficient protocol for the utilization of an independent expert that "should ensure that all responsive electronic documents will be identified, while minimizing the intrusion into [a producing party's] records." Bank of Mong. v. M&P Glob. Fin. Servs., Inc., 258 F.R.D. 514, 521 (S.D. Fla. 2009). That said, and as I indicated during our call, if there are certain elements of the above-protocol that the parties feel need revision, defense counsel is open to making such revisions or, in the alternative, taking such parts of this protocol that everyone agrees are useful and crafting other necessary elements on our own. Should a variation on the above protocol or more signification changes thereto be desired, I have attached, in addition to the Wynmoor case, several other cases that have extensive discussions of forensic imaging protocols involving independent experts and provide numerous citations to courts in various jurisdictions that have crafted their own forensic imaging protocols that may prove useful as source material.

I look forward to hearing everyone's thoughts so we can work towards an agreement on this issue.

Best Regards,

Chris

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Crosmun v Trs of Faye...19.pdf

Allied Debt Collect...19.pdf

Brumback & Langley, LLC
Attorneys and Counselors at Law
Christopher T. Brumback
531 South Main Street, Suite 207

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On Oct 4, 2021, at 3:13 PM, Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org> wrote:

Ok thank you.

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 2:54 PM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Thank you. Here is the conference call information: Dial 1-206-388-4501 and enter PIN 6290964.

I look forward to talking with everyone at 2:00 on Wednesday.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Sent: Monday, October 4, 2021 2:49 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Judge Kinlaw said Wednesday at 2pm works better for him

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 12:10 PM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Subject: RE: Gorman v. Monarch, 2021CP2303414

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Thank you. Either Wednesday or Thursday at 2:00 should be fine.

Chris, congratulations on your child's upcoming birth.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Sent: Monday, October 4, 2021 11:15 AM
To: Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Good Morning,

Judge Kinlaw is in Columbia on Judicial business until Tuesday evening. He will be in Chambers Wednesday and Thursday. Please let me know if one of those days at 2p.m. will work for everyone.

Mr. Radeker thank you for offering the conference call line. Once I hear from all parties then we can move forward with relaying info to call in.

Thank you in advance,

Shannon N. Thurman
Administrative Assistant to
The Honorable Alex Kinlaw, Jr.
Circuit Court Judge
305 East North Street Suite 213
Greenville SC 29601
864-467-8043
864-467-8035 – fax
akinlawsc@sccourts.org

From: Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Sent: Monday, October 4, 2021 10:42 AM
To: 'Christopher Brumback' <chris@brumbacklangley.com>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Moore Jr., David L <DMoore@turnerpadget.com>; Gail Inzero <gail.inzero@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Ms. Thurman,

I am co-counsel for the Defendant John Monarch along with Mr. Brumback. I am working at home this week with my two young children due to COVID quarantine protocol. As a result, I will be letting Mr. Brumback handle the call for the defense.

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In the event that Mr. Brumback cannot be available tomorrow afternoon due to his wife's pregnancy, I would respectfully request that we re-schedule the call for next week. I plan to call in tomorrow in the event that the call goes forward, but will be muted to avoid any interruptions.

Thank You,

Robert Mebane

<image002.png>

Robert L. Mebane, Jr., *Attorney*
robert.mebane@mgclaw.com
55 E. Camperdown Way Suite 300
Greenville, SC 29601
Main:864-239-4000 | **Direct**:864-239-4023 | **Fax**:864-242-3199
VCARD

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<image003.png>

From: Christopher Brumback <chris@brumbacklangley.com>
Sent: Monday, October 4, 2021 10:25 AM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; Moore Jr., David L <DMoore@turnerpadget.com>
Subject: Re: Gorman v. Monarch, 2021CP2303414

Miss Thurman,

Subject to my wife going into labor (our expected due date is October 7) and having to run to the hospital, I am available tomorrow afternoon as well.

Thanks,

Chris

Brumback & Langley, LLC
Attorneys and Counselors at Law
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On Oct 4, 2021, at 10:19 AM, Moore Jr., David L <DMoore@turnerpadget.com> wrote:

I am available tomorrow afternoon.

David L. Moore Jr.
Shareholder
PO Box 1509 | Greenville, SC 29602
200 East Broad Street, Suite 250 | Greenville, SC 29601
864-552-4625 | Fax 864-282-5966
dmoore@turnerpadget.com
Bio | vCard | Location

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 4, 2021 9:53 AM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>; Christopher Brumback <chris@brumbacklangley.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Ms. Thurman:

I hope this finds you doing well. Judge Kinlaw wants to set up a conference about this matter. I can provide a conference line for a call. Tomorrow afternoon would work for me, but I do not yet know about other counsel's schedules.

Thank you. Please let us know what you need from us next.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Sunday, October 3, 2021 8:18 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@turnerpadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

I think a conference call would be helpful. Please contact my Administrative Assistant Shannon Thurman to arrange. Please give her the contact information for all who would be participating. Thanks akjr

---

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Friday, October 1, 2021 2:42 PM
To: Christopher Brumback <chris@brumbacklangley.com>
Cc: Kinlaw, Alex <akinlawj@sccourts.org>; Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Moore Jr., David L <DMoore@turnerpadget.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: Re: Gorman v. Monarch, 2021CP2303414

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Judge Kinlaw:

The defendant's counsel were given our proposed protocols. They insisted on a process that would have violated the existing consent order. Any further review would have been futile, in my opinion.

Thank you.

Drew Radeker

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Sent from my iPhone - please excuse any typos

> On Oct 1, 2021, at 2:33 PM, Christopher Brumback <chris@brumbacklangley.com> wrote:
>
> Judge Kinlaw,
>
> I hope you are doing well this Friday. I am writing to respond to Drew's email yesterday afternoon concerning the proposed Order, which included a protocol for the examination of Defendant's computer hard drives. First and foremost I need to inform the court that, despite your direction at the end of the motion hearing that Drew would prepare the proposed Order and circulate it to defense counsel for review and comment prior to submitting it to your chambers, neither Robert Mebane, my co-counsel, nor I were provided a draft of the proposed Order until after it was e-filed with the Court. In fact, the first time defense counsel received a copy of the proposed Order was the email to your chambers yesterday afternoon with the proposed Order attached. While waiting to receive Drew's draft of the proposed Order, Robert and I worked to create a reasonable protocol that would produce to Plaintiff the mirror images of the requested hard drives while balancing concerns regarding, and restricting Plaintiff's access to, privileged information, private and/or confidential information regarding Defendant's personal life and finances and Defendant's business trade-secrets and other proprietary information that is wholly irrelevant to this case the non-privileged and discoverable parts, and minimizing the burdensomeness of producing the mirror image hard drives by minimizing cost that will be incurred by Defendant and the disruption of Defendant's business, which he conducts from his current MacBook. Having researched extensively how various federal courts have balanced production of a mirror image of a party's hard drive with protecting confidential and personal information and system integrity and avoiding giving the discovering party access to information unrelated to the litigation (see e.g., Wynmoor Community Council, Inc. v. QBE Ins. Corp., 280 F.R.D. 681, 687-688 (S.D.Fla.2012) (providing a "collection and review protocol" to address "potential intrusiveness" when compelling forensic computer examination); Ferron v. Search Cactus, L.L.C., No. 2:06-CV-327, 2008 WL 1902499 (S.D.Ohio Apr. 28, 2008) (ordering protective protocol for forensic mirror imaging of plaintiff's hard drives) , I sent Drew the following proposed protocol last Thursday morning:
>
> 1. Within ten days of the date of this Order, Defendant Monarch shall create two mirror image copies of both of Monarch's laptop computer systems' hard drives.
> 2. Defendant shall preserve one copy of each laptop computer systems' hard drive unmodified in the event in camera review of the hard drives by the Court were to become necessary. Defendant shall then remove Defendant's confidential personal information, any privileged information, any information that is irrelevant to this case, and any information that is not within the timeframe relevant to this case from the other mirror image copies of Defendant's laptop computer systems' hard drives within 60 days from the date of imaging of the hard drives. Defendant shall provide Plaintiff with the protocol he utilized to remove the confidential, privileged, irrelevant, or untimely information along with a privilege log of any discoverable information for which Defendant claims privilege, and a verification thereof. Communications involving Defendant's counsel that post-date the filing of the Complaint need not be placed on a privilege log. Communications and information may be identified on a privilege log or in the protocols Defendant utilized to remove information from the redacted hard drives by category, rather than individually, if appropriate.
> 3. Defendant shall then provide Plaintiff's computer forensic expert access to the redacted mirror image copies of Defendant's laptop computer systems' hard drives.
> 4. Plaintiff's' expert shall provide a copy of his findings to Defendant's counsel prior to making any findings and information available to Plaintiff.
> 5. Following Plaintiff's expert's review, Defendant shall identify for deletion any additional information that is irrelevant, privileged, or otherwise not subject to discovery and supplement Defendant's privilege log as necessary, within 60 days upon receipt from Plaintiff's expert. Upon the completion of Defendant's counsel's review, Plaintiff's computer forensic expert shall remove the information claimed as irrelevant, privileged, or otherwise not subject to discovery and provide all other information to Plaintiff.
> 6. Plaintiff's expert shall provide Defendant with the protocol he utilized to remove any additional information that is irrelevant, privileged, or otherwise not subject to discovery that was not previously removed by Defendant.
> 7. In the event material not relevant to this litigation is nonetheless received by Plaintiff, the Defendant shall have the right to demand the return of any irrelevant material produced by Defendant, and the Parties agree to meet and confer in good faith to resolve any disputes that arise regarding irrelevant materials. Once Plaintiff receives notice or reasonably determines that a document constitutes irrelevant material, Plaintiff shall refrain from any further examination or disclosure of such irrelevant material, other than as agreed to by Defendant or to review to the

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disclosure of such irrelevant material, other than as agreed to by Defendant or to review to the limited extent necessary to engage in the meet and confer process with the Defendant.
8. The production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.
9. In the event there is a dispute over information that is not made available to Plaintiff, the Parties shall confer in good faith after Plaintiff is provided the information by his expert and prior to bringing all objections before the Court to request an in camera review by the Court to make a final determination as the whether particular information on Defendant's hard drives is subject to discovery.
10.Because copies of the Defendant's hard drives will contain electronically stored information that is private, confidential, and/or privileged, the Parties agree that this Order will prevent any private, confidential, and/or privileged material from being made public or used in any unlawful manner. The hard drives provided to Plaintiff by Defendant shall be maintained in a locked and secure room, cabinet, and/or safe and shall only be accessible to Plaintiff's counsel and Plaintiff's computer forensic expert. Plaintiff's counsel shall have access to and may use information contained on Defendant's hard drives only for the purpose of this action. Anyone employed in the office of Plaintiff's counsel assisting Plaintiff's counsel for purposes of this action is also bound by the terms of this Order. The hard drives given to Plaintiff's counsel and any computer from which the hard drives may be accessed shall not be connected the internet or to any other computer network while the hard drives produced pursuant to this Order is attached thereto. Once participation in the prosecution of this case by any person obtaining Defendant's hard drives pursuant to this Order has been terminated, all hard drives and information obtained therefrom shall be returned to Defendant within twenty (20) days. The physical computers, data drives, and components used to examine Defendant's hard drives will be scrubbed to remove any and all information obtained from Defendant's hard drives, except that data which is developed by Plaintiff's counsel may be retained by counsel consistent with attorney work product.

Defense counsel believes that the proposed protocol satisfies the Court's obligation to protect Defendant's privileged information as well as Defendant's sensitive confidential and private and personal information, including personal financial information and communications with family and friends, that have no bearing on the claims in this case. See Sedona Principles, Commt. 6d, pp. 127-30 (3d ed. 2018) (discussing concerns over allowing "direct access to an opposing party's computer systems"; courtesy copy is attached hereto for the Court's consideration). Although defense counsel is aware there are variations on Defendant's proposed protocol that still provide appropriate protections to a party producing a mirror image of his hard drives, when Plaintiff's counsel responded to defense counsel with Plaintiff's own proposed protocol on Wednesday, Sep. 29, at 3:03 p.m., it was immediately clear that Plaintiff's proposal completely disregarded the protections the Court is required to afford Defendant's privileged, confidential, and private information. Specifically, Plaintiff's proposed protocol has Plaintiff's expert creating the mirror images of the hard drives and then "examin[ing] the drives and summariz[ing] their contents", in their entirety, before counsel for Defendant is ever given a copy of the mirror image or permitted to conduct a privilege review to ensure that privileged information is protected and ensure that privilege is not waived or otherwise lost. See Proposed Order, Page 4, Paragraph No. 4. Not only does Plaintiff' proposed protocol not provide appropriate protection to privileged material, it also contemplates Plaintiff receiving all of Defendant's private and confidential information, subject only to 1) the material being marked as "confidential," which would not prevent Plaintiff from reviewing ALL of Defendant's private and confidential information, and 2) an ambiguous right for Defendant to later "demand the return of any irrelevant material produced by Defendant." See Proposed Order, Page 4, Paragraph Nos. 5 and 6. Unfortunately, once the Plaintiff has been given unfettered access to all of Defendant's non-privileged, but nonetheless private and confidential information, the toothpaste cannot be put back in the tube simply by Plaintiff returning the information to Defendant.

Despite receiving the language of Plaintiff's proposed protocol at 3:03 p.m. on Wednesday and being given a scant two hours before Plaintiff's counsel indicated that he would be submitting it as part of the proposed Order, which Plaintiff's counsel had not circulated per your Honor's ruling from the bench, defense counsel quickly reviewed and responded to Plaintiff's counsel by 4:26 p.m. that afternoon raising issues via email with the Plaintiff's proposed protocol and specifically noting that Plaintiff's failure to rest of the proposed Order for review and comment. Despite requesting in three separate emails to have a conference call with Plaintiff's counsel to discuss and confer in good faith, Plaintiff's counsel, ignoring defense counsel's requests to discuss, providing no explanation, and still having not circulated the rest of the proposed Order, indicated that there could be no agreement, but that Plaintiff's counsel would "add some language stating that expert's examination doesn't waive privilege." In short, the "add[ition] [of] some language stating that

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expert's examination doesn't waive privilege," is wholly inadequate to protect the sacrosanct right to attorney-client privilege or other privileges that may apply.

In addition to disregarding the Court's obligation to protect privilege and private and confidential information of the producing party, Plaintiff's proposed protocol and insistence on Plaintiff's expert creating the mirror images ignores the fact that the issues in this litigation relate to the informational content of the data stored on computer systems, not the actual operations of the systems. Given that it is the obligation of the producing party to produce relevant content, it is reasonable for Defendant to produce the mirror images, which minimizes expense associated with the production, avoids
unreasonably disrupting the Defendant's ongoing business, and protects Defendant's privileged, private, and confidential information as well as Defendant's system security and stability. Furthermore, allowing Defendant to produce the mirror images also "allows the party with the greatest knowledge of the computer systems to search and utilize the systems to produce responsive information," which will avoid imposing an unreasonable burden on defense counsel to attempt to review over a terabyte of information in 21 days. See Sedona Principles, Commt. 6d, pp. 129 (3d ed. 2018); Proposed Order, Page 4, Paragraph No. 5. Review of over a terabyte of information in 21 days in unreasonable under the best of circumstances, however, for the Court's information, my wife is expected to give birth to our first child in the next week or so, and, as such, review of over a terabyte in 21 days, even with co-counsel, would not just be unreasonable, but frankly impossible.

As previously stated, there are many proposed protocols that have been utilized for the production of a forensic computer examination that still provide appropriate protections to Defendant's privileged, private, and confidential information and minimize the burdensomeness of such an endeavor. To that point, defense counsel is open to conferring in good faith to arrive at an appropriate protocol that is acceptable to the Court and to both parties, however, at this point it appears that your Honor participating in a conference call with counsel for both parties to reach an agreed upon protocol will be necessary.

Kindest Regards,

Chris

Brumback & Langley, LLC
Attorneys and Counselors at Law
Christopher T. Brumback
531 South Main Street, Suite 307
Greenville, SC 29601
Phone: 864-414-9097
Fax: 866-728-1205
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On Sep 30, 2021, at 3:39 PM, Drew Radeker <Drew@harrisonfirm.com> wrote:

Judge Kinlaw:

Attached is the proposed order we are submitting through e-filing. We've been unable to come to agreement with the Defendant on some points of the particulars of the examination process. Perhaps the one that makes agreement most unlikely is the defendant's desire, despite the terms of the existing consent order, to turn over not the devices themselves but only copies of drives to our expert. In other words, the Defendant wants to make drive copies himself and turn over only the copies he has made. We do not agree to that, and the consent order already provides for him to provide his devices, not a copy of drives on them.

Thank you. Of course, please do not hesitate to contact me should you or you staff have any questions or concerns.

Drew Radeker

<image001.png>
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From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Thursday, September 30, 2021 1:09 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

That will be fine. Thanks akjr

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Wednesday, September 29, 2021 4:30 PM
To: Kinlaw, Alex <akinlawj@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******
Judge Kinlaw:

While we're fairly close to agreement on language of the examination protocols, Defense counsel has asked for some time to review with their client some proposed language they got from me today. Accordingly, if we could have through tomorrow to submit the proposed order, we would be most appreciative. I have an order drafted now, but I would rather submit one with agreed examination protocol language if possible.

Thank you. I hate to keep bothering you about this.

Drew Radeker

<image001.png>
This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803) 779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding

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tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.) Thank you.

From: Kinlaw, Alex <akinlawj@sccourts.org>
Sent: Monday, September 27, 2021 12:37 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

Wednesday will be fine. Thanks akjr

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, September 27, 2021 11:17 AM
To: Kinlaw, Alex <akinlawj@sccourts.org>
Cc: Kinlaw, Alex Law Clerk (Arielle Jeter) <akinlawlc@sccourts.org>; Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: RE: Gorman v. Monarch, 2021CP2303414

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Judge Kinlaw:

I write to let Your Honor know that we're hashing out the details of proposed device examination protocols now. I was out of town for depositions when defense counsel sent me his proposed parameters on Thursday and had missed his email until now. If it's all right with you, we plan to submit a proposed order by Wednesday (rather than today, as you had previously directed).

Thank you. If you are not all right with us taking a couple more days to work on this, please let me know so that we can get something in today.

Drew Radeker

<image001.png>

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From: Drew Radeker
Sent: Tuesday, September 14, 2021 11:54 AM
To: akinlawj@sccourts.org
Cc: akinlawlc@sccourts.org; akinlawsc@sccourts.org; Moore Jr., David L <DMoore@TurnerPadget.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Christopher Brumback <chris@brumbacklangley.com>; Robert L. Mebane, Jr. <Robert.Mebane@mgclaw.com>
Subject: Gorman v. Monarch, 2021CP2303414

Judge Kinlaw:

In addition to the materials already filed under this case number concerning the motions to compel and for sanctions set to be heard by Your Honor tomorrow, I provide the attached consent order and memorandum, which were filed under the old case number in this restored case.

Thank you. If you have any questions or concerns or would like me to send copies of the documents filed under the 2021 case number, please let me know.

Drew Radeker

<image001.png>

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~~~ 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.

<Order granting motion to compel production of electronic devices.docx>

<The Sedona Principles Third Edition.19TSCJ1.pdf>
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2021-CP-23-03414

Richard A. Gorman . . . . . Respondent,

v.

John C. Monarch . . . . . Appellant.

NOTICE OF APPEAL

John C. Monarch hereby appeals the following Orders of the Honorable Alex Kinlaw, Jr.: (1) an Order dated March 28, 2022, which is attached hereto as **Attachment A**; and (2) an Order dated April 27, 2022, which is attached hereto as **Attachment B**. Appellant received written notice of the entry of each Order on the date stamped on each respective Order's margins.

Respectfully submitted,

s/ Steven Edward Buckingham

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Exhibit 13 to motion re: refusal to obey orders

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Attorneys for Appellant

Filed this 17th Day of May, 2022.
Greenville, South Carolina

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Attorneys for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2021-CP-23-03414

Richard A. Gorman . . . . . Respondent,

v.

John C. Monarch . . . . . Appellant.

PROOF OF SERVICE

The undersigned counsel for Appellant hereby certifies, subject to penalty of perjury, that the following document(s) was/were served upon the following counsel of record by the following means as of the date identified below.

Please be advised that Appellant's filing fee in connection with this appeal is being sent by U.S. Mail to the Office of the Clerk of the Court of Appeals, consistent with Supreme Court Order 2020-05-29-02.

Document(s): Notice of Appeal *w/ Attachments*

Counsel Served: For Respondent Richard A. Gorman
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Exhibit 13 to motion re: refusal to obey orders

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Means of Delivery: *Via Email Only*

Courts Served: Office of the Clerk of the Court of Appeals
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Columbia, SC 29211

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With respect to the associated filing fee, via U.S. Mail

Date: May 17, 2022

Respectfully submitted,

s/ Steven Edward Buckingham

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Exhibit 13 to motion re: refusal to obey orders

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The South Carolina Court of Appeals

Richard A. Gorman, Respondent,

v.

John C. Monarch, Appellant.

Appellate Case No. 2022-000673

ORDER

This appeal arises out of an order of the circuit court granting Respondent's motion to compel the production of electronic devices. Because the underlying order is not immediately appealable, this appeal is dismissed. *See Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

C.J.

FOR THE COURT

Columbia, South Carolina

FILED
May 24 2022

cc:
Steven Edward Buckingham, Esquire
Christopher Todd Brumback, Esquire
Robert L. Mebane, Jr., Esquire
Andrew Sims Radeker, Esquire
David L. Moore, Jr., Esquire

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Jun 07 2022
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2022-000673
Case No. 2021-CP-23-03414

Richard A. Gorman . . . . . Respondent,

v.

John C. Monarch . . . . . Appellant.

APPELLANT'S PETITION FOR REHEARING, MEMORANDUM IN SUPPORT THEREOF & SUGGESTION FOR REHEARING EN BANC

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Attorney for Appellant

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Pursuant to Rule 221, SCACR, Appellant John C. Monarch, by and through his undersigned counsel, respectfully petitions the Court of Appeals for rehearing the matter decided by the Court's Order filed May 24, 2022, by which the Court dismissed these appellate proceedings sua sponte. The entirety of the Court's Order provides as follows:

> This appeal arises out of an order of the circuit court granting Respondent's motion to compel the production of electronic devices. Because the underlying order is not immediately appealable, this appeal is dismissed. See Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (holding discovery orders are interlocutory and not immediately appealable). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

(Ct. App. Or. Dismissing Appeal, May 24, 2022.)

At the outset of this Petition, the undersigned wishes to emphasize to the Court that he is well-acquainted with the precedents regarding the immediate appealability of discovery orders, and is mindful that—ordinarily—discovery orders do not impair a "substantial right" within the meaning of S.C. Code § 14-3-330(2). Accordingly, in these ordinary circumstances, the discovery order from which an appeal is taken is deemed interlocutory, and therefore, not immediately appealable.

But this is not an ordinary case. In that connection, Appellant will endeavor to demonstrate through this Petition that what appear to be ordinary discovery orders are actually extraordinary impairments to Appellant's rights, imposing substantial burdens on Appellant that—quite frankly—Appellant cannot possibly observe. This is not lawyer hyperbole; as explained in this Petition, the trial court has imposed a discovery obligation on Appellant that is not possible for him to perform. These exceedingly unusual circumstances, Appellant contends, elevate an ordinary, interlocutory discovery order to a

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more significant issue, one that directly and adversely affects Appellant's "substantial rights," and therefore subject to immediate appeal.

I. THE LITIGATION FROM WHICH THIS APPEAL ARISES

It would be an understatement to characterize this litigation as contentious. In essence, it is a mutual claim between the parties for defamation. Respondent (who is the plaintiff below) has alleged that Appellant participated in an internet-based blackmail scheme against him; at this point, though, Respondent has only two extant causes of action: (1) for defamation; and (2) for intentional infliction of emotional distress. (See Or. of Dec. 7, 2018, attached hereto as **Attachment A**.) Appellant has denied these assertions and—by way of counterclaim—has alleged that Respondent has used, and continues to use, a certain website to publish false and defamatory "news" reports about Appellant. The "news" that Respondent publicizes about Appellant is atrocious.

Rather than describe the tortured procedural history of this case, which is lengthy, Appellant has included as an attachment hereto the docket reports from the underlying proceedings.[1] These reports are—combined—21 pages long; they reveal a litigation that has been fraught with multiple pleadings and amendments, multiple dispositive motions, multiple motions to compel and for sanctions, multiple hearings and orders, and even a prior appeal.

[1] There are two docket reports attached. This case was commenced eight years ago under Civil Action No. 2014-CP-23-04432. (See **Attachment B**.) In October 2020, the case was stricken from the docket pursuant to Rule 40(j), SCRCP; it was restored to the docket in July 2021 under Civil Action No. 2021-CP-23-03414. The docket report for the resurrected action is attached hereto as **Attachment C**.

Exhibit 13 to motion re: refusal to obey orders

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Incredibly, this has not been the only lawsuit between these same parties, involving the same issues, during the same time-frame of the instant suit. In addition to the present lawsuit, the parties have also been involved in the following:

1. Gorman v. Monarch *et al.*, Pennsylvania Court of Common Pleas, Philadelphia County, Case No. 14-0102501, filed Jan. 24, 2014; removed to the United States District Court for the Eastern District of Pennsylvania on Feb. 11, 2014, as C.A. No. 2:14-cv-00890; dismissed as to Appellant for lack of personal jurisdiction;

2. Monarch *et al.* v. John Does I-X *et al.*, Arizona Superior Court, Maricopa County, Case No. CV2014-001469, filed Apr. 2, 2014; removed to the United States District Court for the District of Arizona on July 22, 2014, as C.A. No. 2:14-cv-01655; dismissed as to Respondent for lack of personal jurisdiction; and,

3. Monarch *et al.* v. Gorman *et al.*, United States District Court for the Eastern District of Pennsylvania, C.A. No. 2:14-cv-05980; settled on December 7, 2016.

To be clear, this list contemplates only the cases in which Appellant and Respondent have been directly adverse to each other. There is still other pending litigation not expressly enumerated which also involves the same parties and issues, though not in a procedural posture where the parties to this appeal are directly adverse.

In any event, it is not an exaggeration to say that, within the context of these myriad disputes, whatever issue can be litigated has been. And that trend does not show any sign of slowing.

Exhibit 13 to motion re: refusal to obey orders

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II. HOW DO THE DISCOVERY ORDERS AT ISSUE AFFECT A SUBSTANTIAL RIGHT OF APPELLANT'S?

During 2020, Respondent sought to undertake a forensic examination of certain of Appellant's electronic devices. Respondent filed a motion to compel production of the electronic devices at issue. However, prior to a contested hearing on the matter, the parties agreed to a consent order which partially resolved the issue. The consent order was entered by the trial court on August 21, 2020, and is attached hereto as **Attachment D**. In relevant part, the consent order provides that:

> With regard to requests to produce seeking the production of electronic devices, [Appellant] may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as [Respondent] may select for examination by [Respondent] or such persons as he may choose.

(Consent Or., Att. D, ¶ 1(d).)

Appellant provided a supplemental response to Respondent's request for production on September 28, 2020, identifying specifically the electronic devices that remained in Appellant's possession, custody, and control, and thereby satisfying the initial part of the trial court's discovery order. (See Appellant's Supp. Resp. to Respondent's RFPs, Sept. 28, 2020, attached hereto as **Attachment E**.)

However, Appellant was careful to note his continuing objections about letting Respondent have unfettered access to these electronic devices. Specifically, Appellant lodged continuing objections to relevance, proportionality, privacy, privilege, and confidentiality. Appellant sought to address these objections through the creation of a mutually agreeable forensic protocol, which would be reasonably calculated to ensure that the information ultimately produced to Respondent was sufficient, but not greater than necessary, to facilitate Respondent's legitimate discovery objectives.

Exhibit 13 to motion re: refusal to obey orders

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The idea of this protocol became the next battleground, and has led directly to this appeal.

Appellant proposed a protocol that—in general—established the following regime: (1) Appellant would engage a forensic expert to create a mirror image of the storage of the electronic devices at issue; (2) Appellant would then work with this expert to remove all the information from Appellant's electronic devices that (i) was subject to evidentiary privilege, (ii) sensitive or confidential, to the extent unrelated to the specific allegations of Respondent's claim, and/or (iii) otherwise wholly unrelated to the specific allegations of Respondent's claim. (See Appellant's Mot. Pursuant to Rule 59, SCRCP, attached hereto as **Attachment F**, specifically at an email from Mr. Brumback to Judge Kinlaw dated October 1, 2021.)

Respondent was not agreeable to this type of protocol, and instead insisted on a protocol that required Appellant to immediately turn over his electronic devices to a neutral, mutually agreed upon forensic expert. Appellant was not agreeable to this arrangement. Consequently, in August 2021, Respondent filed a motion to compel.

A hearing on the motion to compel was held on September 13, 2021 before Judge Kinlaw. At the conclusion of the hearing, Judge Kinlaw took the matter under further advisement, but issued a Form 4 on September 15 indicating that he was inclined to grant Respondent's motion and asking Respondent's counsel to submit a proposed order within 10 days. During this time, counsel for the parties continued to negotiate the terms of a potential protocol to include in the proposed order, but were unable to reach an agreement. Consequently, on September 30, Respondent's counsel submitted a proposed order to the trial court, which Appellant's counsel continued to object to on the bases outlined above.

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On March 28, 2022, the trial court entered an order granting Respondent's motion to compel, adopting Respondent's protocol in whole. A copy of this order (which is appealed from) is attached hereto as **Attachment G**. On April 7, Appellant timely filed his Rule 59 motion. (Att. F.) However, by order dated April 27, which is also appealed from, the trial court denied Appellant's motion (strangely, by appearing to re-enter the March 28 order with only slight modification). For convenience, a copy of the April 27 order is attached hereto as **Attachment H**.

Appellant will now organize the remainder of this Section around three topics: (i) what the discovery orders appealed from require him to do; (ii) what these orders fail to address; and (iii) what the prejudicial effect of these orders is.

A. What the Discovery Orders Require of Appellant

The forensic protocol established by the trial court is set out on pages 3 through 7 of each order from which appeal is taken. (Atts. G & H.) The orders speak for themselves, but in general, the process is as follows:

1. Within 21 days after the entry of the order, Appellant is required to tender each electronic device to a mutually agreed upon forensic expert. Prior to turning such devices over, Appellant is to "complete a log of what he believes to be privileged information," or otherwise supply the expert with a list of keywords or phrases to be searched by the expert for privilege;
2. Within 21 days after tender, the expert is to mirror the devices and then perform the search for privileged information based on terms that Appellant will provide;

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3. On or before the expiration of the expert's 21 days, Appellant has 10 days to verify that the information flagged by the expert is, in fact, privileged;
4. Upon Appellant's verification, the expert will then have 21 days to sanitize the information from privilege, at which point the sanitized data will be turned over to Respondent; and,
5. Whatever is turned over to Respondent may subsequently be marked as "Confidential," but only after legal counsel has reviewed each item to be marked "Confidential" and verified that the designation is appropriate.

B. What the Discovery Orders Fail to Do

The Courts of this State have now been forced to live with e-Discovery for 25 years. It has become a plague on the practice of law. And, despite the fact that our appellate courts have established some parameters for how e-Discovery ought to be limited—on occasion giving trial courts specific instructions on how to do so—there is no comprehensive framework that is regularly observed and applied by the jurists and practitioners of our Bar. This free-for-all environment led the Supreme Court to observe the following nearly 12 years ago: "While discovery serves an important tool in the truth-seeking function of our legal system, we are concerned that 'discovery practice' has become a cottage industry and the merits of a claim are being relegated to a secondary status." Oncology & Hematology Assocs. of S.C. v. S.C. Dep't of Health, 387 S.C. 380, 388, 692 S.E.2d 920, 925 (2010). That is truer now than it was then.

This dispute provides an appropriate case in point. The Supreme Court has consistently instructed trial courts to hold fast against the relentless encroachment of excessive discovery by, first, simply applying the standard established by Rule 26(b)(1),

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SCRCP: paraphrased, discovery may be had as to any matter, not privileged, which is relevant to the subject matter of the pending suit, or, though not relevant, is reasonably calculated to lead to the discovery of admissible evidence. Therefore, at a minimum, the trial court is required to make a party seeking discovery demonstrate that the information sought is relevant or is reasonably likely to lead to the discovery of admissible evidence. In this case, the trial court undertook no such exercise, merely concluding that all of the information on Appellant's electronic devices may satisfy this standard—every single scrap of data.

The Supreme Court has further held that information, even if discoverable, may nonetheless be subject to protection if the party whose compliance is sought articulates a basis for enhanced protection. This has been explicitly applied to trade secrets, Laffitte v. Bridgestone Corp., 381 S.C. 460, 674 S.E.2d 154 (2009), confidential business information generally, Oncology, 387 S.C. 380, 692 S.E.2d 925, and health information, Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009). In these circumstances, the Supreme Court has expressly directed trial courts to employ the following analysis:

1. Assuming that the party seeking compulsory production of information has demonstrated baseline relevance, and the party resisting production has articulated a basis for why enhanced protection from disclosure is warranted, the trial court is required to engage in a balancing analysis;
2. Under the balancing analysis, the burden shifts back to the party seeking production to demonstrate that the information sought is "relevant and necessary." Laffitte, 381 S.C. 460, 674 S.E.2d 154;

Exhibit 13 to motion re: refusal to obey orders

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3. To establish "relevance," the party seeking production must demonstrate that the information sought is "relevant not only to the general subject matter of the litigation, but also relevant specifically to the issues involved in the litigation." Id.;
4. To establish "necessity," the party seeking production "must demonstrate with specificity exactly how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat." Id.; and,
5. In weighing "necessity," "[t]he trial court must determine whether there are reasonable alternatives available to discover the information." Hollman, 384 S.C. 571, 683 S.E.2d 495.

In the instant case, the trial court undertook none of these analyses. Appellant asserted that a great deal of the information sought would not be generally relevant to the lawsuit; yet the trial court ordered the complete production of the data stored on the electronic devices. Appellant asserted that there is likely to be information on these devices that is of a confidential and sensitive nature; but, according to the orders, this information could only be withheld after all devices were turned over to a third party, and Appellant's legal counsel had personally reviewed each item to be claimed as "Confidential." The trial court did not engage in any balancing analysis with respect to "relevance and necessity," nor give any consideration to reasonable, less invasive alternatives.

The concern as to specific relevance and necessity is particularly acute in this case. At the moment, Respondent—in his capacity as plaintiff in the underlying proceedings—only has two extant causes of action: (1) for defamation; and (2) for intentional infliction

Exhibit 13 to motion re: refusal to obey orders

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of emotional distress. With respect to the defamation action, it is not obvious at all how the contents of Appellant's electronic devices would have any bearing on the merits of Respondent's case; presumably, if Respondent contends that Appellant has published a false statement of fact about Respondent to a third party, Respondent is already in possession of information capable of evidencing that allegation. The circumstance with the intentional infliction of emotional distress is even less clear. It is baffling how the contents of Appellant's electronic devices would have any evidentiary value to the basis for Respondent's action.

In any event, regarding the concerns Appellant raised about the inadvertent production of information privileged from disclosure—attorney/client communications or otherwise—the trial court's solution was for Appellant to identify all such privileged information that might exist in the 21 days prior to turning over the devices to a third-party, or otherwise clawing the information back from opposing counsel once disclosed. This is firmly inconsistent with the protocol previously established by the Supreme Court in Tucker v. Honda of S.C. Mfg., Inc., 354 S.C. 574, 582 S.E.2d 405 (2003), regarding the potential disclosure of privileged information in the course of discovery.

C. The Prejudice to the Substantial Rights of Appellant

Appellant prays that the Court quite clearly perceives the harm he faces. The orders from which appeal is taken turn the discovery paradigm on its head. Rather than requiring Respondent to demonstrate the general relevance of the entirety of the contents of Appellant's electronic devices—let alone the specific relevance and necessity of producing confidential and sensitive information to support actions for defamation and intentional infliction of emotional distress—the trial court has effectively held that Respondent is

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entitled to everything, and it is Appellant's burden to prove that any such items of information not be produced. That is plainly inconsistent with the Rules of Civil Procedure and the decisions of the Supreme Court.

But here's the real harm: Appellant can't comply with the discovery orders as entered. It is just not possible. As described above, Appellant was given a mere 21 days from the date that the orders were entered to either: (i) identify and remove all of his privileged information from his devices; or (ii) turn over the devices to a third party with keywords or phrases to facilitate the third party's removal of the privileged information. This would have been onerous enough, but it gets worse.

There was no opportunity afforded for Appellant to remove any information that he deems confidential or sensitive, or utterly irrelevant, from his devices before sending it to the third-party forensic expert. In fact, under the order, the only time that Appellant can claim protection for confidential, sensitive, or utterly irrelevant information is after the third-party has already produced the information to Respondent, at which time Appellant and his counsel may scour the entire contents of the devices produced to apply a "Confidential" designation to specific documents. By that time, of course, the proverbial toothpaste is out of the tube. It is bewildering to think that the law would approve of the circumstance where a party, like Appellant, is forced to suffer extreme expense to protect information from disclosure that ought never have been produced in the first place under the clear, unambiguous guidance previously established by the Supreme Court.

And, perhaps most importantly, the scope of work that the discovery orders require from Appellant and his counsel just to protect information that should not have been subject to disclosure in the first place is truly staggering. On Page 6 of Appellant's Rule 59 motion,

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(Att. F), the trial court was explicitly advised of the impossible mandate being imposed on Appellant. The electronic devices at issue in this case constitute a combined one terabyte of information. To put this in perspective, those who study e-Discovery estimate that one terabyte of data is the equivalent of 75 million pages of documents. If this amount of data were converted into individual documents and placed into banker's boxes, approximately 37,500 banker's boxes would be needed. If this amount of paper were stacked, it would become the highest point in North America, eclipsing Denali by 5000 feet.

These same e-Discovery experts have also considered the time it would take to appropriately review a document production of this size. Assuming that 50 documents could be reviewed every hour, it would take 375,000 hours to complete the review. It would take one person, working a full-time 2000-hour year, more than 187 years to fully review the production; in similar fashion, it would take more than 187 people, working a full-time 2000-hour year, to complete the review in 1 year.

Yet, somehow, Appellant and his counsel are expected to do the impossible, which is conduct a comprehensive search for privileged information within 21 days, and then later, search the entirety of the production for confidential information, find all of it, mark it as confidential, and claw it back from Respondent.

It cannot be done.

The undersigned is keenly aware of the ordinary options available when an adverse discovery order is entered: (i) the party can elect to comply, in which case the issues in dispute are rendered moot; (ii) the party can elect not to comply, in which case he risks subjecting himself to the contempt powers of the trial court; or (iii) the party can petition

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the Supreme Court for an extraordinary remedial writ, which, to quote the Court, is an opportunity as "rare as a hen's tooth."

But this is an extraordinary case. Appellant is not in the ordinary posture of having a decision to make—whether to comply or not with the trial court's discovery orders. He is in the unique and unenviable position of not being capable of complying with the trial court's order, at all, because compliance is impossible. The "protections" made available to Appellant to limit intrusions into his personal and legal affairs, beyond what is reasonable and necessary for Respondent's legitimate discovery interests, are fictitious.

Therefore, by this unusual, extraordinary circumstance, Appellant has substantial rights that are being prejudiced by the discovery orders at issue. These orders far exceed the scope of permissible discovery; they give no regard to the clearly established decisions of the Supreme Court regarding limitations on discovery; they compel Appellant to abandon any meaningful opportunity he may have to protect the privacy of his affairs, matters which have nothing whatsoever to do with this litigation. If Appellant produces the electronic devices at issue in the orders to a third-party forensic examiner, he will effectively be waiving his ability to protect information in which he has an indisputable right of security; if he fails to produce the devices, then he faces contempt. These orders have forced Appellant into a position of incalculable loss, and for no good reason. In the context of civil litigation, it is hard to conceive of a circumstance that would be more fundamentally unfair.

In that connection, Appellant respectfully suggests that he is now being impaired from effectively participating in the defense and prosecution of his claims. It is an incontrovertible proposition that a litigant must be provided a fair opportunity to comply

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with the orders of the court. This is a right that inures to all litigants, and it is substantial. Appellant, however, is being forced into a circumstance that will expose him to contempt, and it is literally impossible for him to choose otherwise. Appellant urges the Court to consider these circumstances in the same vein as those cases "where a substantial right could not be vindicated on appeal [until] after the end of a case." Toal et al., Appellate Practice in South Carolina (3d Ed.) at 144.

III. RELIEF SOUGHT & PRAYER FOR RELIEF

Perhaps the greatest frustration for Appellant in this matter is how easy and available an alternative is. The trial court could have avoided the entirety of this complication, while giving due regard to both the interests of the parties, as well as the decisions of the Supreme Court, by simply creating a protocol that would have allowed for the production of the electronic devices at issue to a neutral third-party forensic examiner, required Respondent to provide a list of search words and phrases that are specifically relevant and necessary to the causes of action alleged, and allowed for Appellant to conduct a privilege/confidentiality review of the hits returned from those searches before a production is made to Respondent. Sometimes, though, for whatever reason, the easiest answer can be the most elusive.

Regardless, for the foregoing reasons, Appellant respectfully requests the Court to take immediate jurisdiction of these appellate proceedings, due to the impairment Appellant is now facing to his substantial rights under the discovery orders at issue, to ultimately vacate the trial court's discovery orders, and to provide such other and further relief as the Court deems just and proper.

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SUGGESTION FOR REHEARING EN BANC

Pursuant to Rule 219(b), SCACR, Appellant respectfully suggests that the rehearing be entertained en banc.

Respectfully submitted,

s/ Steven Edward Buckingham

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ATTACHMENT A

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STATE OF SOUTH CAROLINA **COUNTY OF GREENVILLE**	)	**COURT OF COMMON PLEAS** **C.A. NO.: 2014-CP-23-04432**
RICHARD A. GORMAN **PLAINTIFF,** **V.** **JOHN C. MONARCH; DIRECT OUTBOUND SERVICES, LLC; AND SHIPCHAIN, INC.** **DEFENDANTS.**	)	**ORDER**

MOTIONS BEFORE THE COURT

In its current posture, this case involves a complaint (the Second Amended Complaint, or "S.A.C."), in which plaintiff Richard A. Gorman ("Mr. Gorman") alleges four causes of action against three defendants. The defendants are John C. Monarch ("Mr. Monarch"); Direct Outbound Services, LLC ("Direct Outbound"); and ShipChain, Inc. ("ShipChain").[1] The causes of action alleged are for (i) defamation, (ii) civil conspiracy, (iii) violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.* ("SCUTPA"), and (iv) intentional infliction of emotional distress. The latter two causes were added for the first time by the S.A.C., which also added for the first time defendant ShipChain.

Mr. Monarch and Direct Outbound have moved under Rule 12(b)(6)[2], to dismiss the civil conspiracy claim (for failure to plead additional facts in furtherance of the conspiracy and failure to identify additional special damages) and the SCUTPA claim (for failure to allege any acts within

[1] By separate Order, this Court has recently dismissed three other defendants from this case without prejudice, for want of personal jurisdiction.

[2] Except as otherwise noted, references to numbered Rules in this Order are to SCRCivP.

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"trade" or "commerce" and failure to allege acts that have an impact on the public interest), and under Rule 12(f), to strike Paragraphs 41 through 45 and 51(m) of the S.A.C. (as the statement alleged there by Mr. Monarch is not defamatory as a matter of law).

ShipChain has requested in its Answer to the S.A.C. ("Answer") and by its Motion that each cause of action be dismissed against it under Rule 12(b)(6), or in the alternative that judgment be awarded in its favor either on the pleadings under Rule 12(c) or as summary judgment under Rule 56. Regarding the claims for civil conspiracy and unfair trade practices, ShipChain raised the same issues as Mr. Monarch and Direct Outbound. Regarding the claim for civil conspiracy, ShipChain also argued that the alleged conspiracy was with its owners, officers, and directors, and that a corporation by law cannot conspire with such persons. With regard to intentional infliction of emotional distress, ShipChain argued that the S.A.C. was generalized and conclusory, merely repeating the elements of the tort as set forth in case law and Restatement (Second) of Torts without including the required allegations of specific facts constituting those elements. With regard to all claims, to the extent that they related to acts taken before November 28, 2017, ShipChain noted that it was not formed until that date, and so could not be held accountable for any acts before that date under any theory. With regard to defamation, ShipChain noted that only one act of defamation occurred after November 28, 2017, that that allegedly defamatory statement was true, and that its truth was evident from Mr. Gorman's own statements in the pleadings in this case and from matters of which the Court could take judicial notice.

Having received and reviewed the foregoing motions and related memoranda, affidavits, and exhibits, the Court heard argument on these motions from counsel for all parties on October 31, 2018.

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HISTORY

The allegations of the S.A.C. make quite clear that this is a very personal dispute that has arisen, in essential character, between two individuals. The present lawsuit is, in fact, but one of at least four lawsuits filed between Mr. Gorman and Mr. Monarch and various associated individuals and businesses of each of them.[3] Those suits have been filed in state and federal courts in Pennsylvania, in state and federal courts in Arizona, and here in Greenville County Circuit Court. Mr. Gorman has been plaintiff in two such lawsuits, and Mr. Monarch has been plaintiff in the other two. Each lawsuit alleged that the plaintiff in that lawsuit was defamed and interfered with by, and suffered reputational and business harm caused by, the defendant in that lawsuit. Each of the four lawsuits was initiated in 2014. Two of the three lawsuits other than this present one ended in voluntary or court-ordered dismissal of either Mr. Gorman or Mr. Monarch (whichever was the defendant) for lack of personal jurisdiction. The third of the other three ended in a settlement by which, in the words of the U.S. Magistrate Judge, "[Mr. Monarch] recovered a substantial amount of money" from Mr. Gorman. See p. 6 of Dkt. No. 180, in E.D.Pa. Case 2:14-cv-05980-GAM.

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[3] In addition to the present lawsuit, those cases are:

Filed January 24, 2014: *Gorman v. Monarch, et al.* (Pennsylvania Court of Common Pleas, Philadelphia County, Case No. 14-0102501); removed on February 11, 2014, to U.S. District Court for Eastern District of Pennsylvania, 2:14-cv-00890-GAM; voluntarily dismissed as to Mr. Monarch June 2, 2014 for want of personal jurisdiction;

Filed April 2, 2014: *Monarch et al. v. John Does, I-X et al.* (Arizona Superior Court, Maricopa County, CV2014-001469), removed on July 22, 2014, to U.S. District Court for Arizona as *Monarch et al. v. Richard A. Gorman et al.*, 2:14-cv-01655-SRB, dismissed October 14, 2014 for want of personal jurisdiction; and

Filed October 21, 2014: *Monarch et al. v. Gorman, et al.* (U.S. District Court for Eastern District of Pennsylvania, 2:14-cv-05980-GAM); settled December 7, 2016.

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This case was filed on August 8, 2014. The intervening four years have been taken up with procedural wranglings of various sorts, during which Mr. Gorman and Mr. Monarch have both changed counsel. Initially, the case involved two parties, Mr. Gorman as plaintiff and Mr. Monarch as defendant, and two causes of action, defamation and civil conspiracy. On October 5, 2016, the undersigned granted Mr. Gorman's motion to add Direct Outbound as an additional defendant, which was done through the First Amended Complaint ("F.A.C."), filed on October 10, 2016. The F.A.C. was followed by at least four unsuccessful mediations on May 24, 2017; June 6, 2017; July 17, 2017; and November 7, 2017. See ADR Reports filed July 31, 2017, and December 31, 2017. On July 3, 2018, this Court, by the Honorable Letitia Verdin, granted Mr. Gorman's motion to add ShipChain and three other now-dismissed individual defendants, and to add the additional causes of action for unfair trade practices and intentional infliction of emotional distress. Mr. Gorman filed the S.A.C. to that end on August 28, 2018.

APPLICABLE RULES AND STANDARDS

SCRCIVP RULE 12(b)(6)

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state facts sufficient to constitute a cause of action . . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . . .

In considering this defense, a court must consider whether the facts alleged in the complaint, and inferences drawn from those alleged facts, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). See also *Paradis v. Charleston County School District*, Op. No. 5583 (S.C. Ct. App., filed August 1, 2018) (Shearouse Adv. Sh. No. 31, at 43) (2018 WL 3636581). The allegations to be

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considered must be allegations of specific facts, not mere conclusory or generalized allegations. *Id.* A court may, however, take judicial notice of matters pursuant to SCRE Rule 201 without thereby converting its consideration into one for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 135 at fn. 2, 754 S.E.2d 494, 498 at fn. 2 (2014).

SCRCIVP RULE 12(c)

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Judgment under SCRCivP Rule 12(c) is appropriate "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013), citing *Sapp v. Ford Motor Co.,* 386 S.C. 143, 687 S.E.2d 47 (2009) and *Russell v. City of Columbia,* 305 S.C. 86, 406 S.E.2d 338 (1991). The rule of *Doe v. Bishop of Charleston*, *supra*, applies in this context as well.

SCRCIVP RULE 12(f)

> Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

"Bare legal conclusions" are insufficient and are therefore properly susceptible to a motion to strike. *Monster Daddy LLC v. Monster Cable Prod., Inc.*, No. CA 6:10-1170-HMH, 2010 WL 4853661, at *8 (D.S.C. Nov. 23, 2010) (applying the analogous federal rule). However, that determination is "discretionary with the trial judge." *Briggs v. Richardson*, 273 S.C. 376, 380, 256 S.E.2d 544, 546 (1979). Moreover, as with a Rule 12(b)(6) motion, "[w]hen presented with a

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motion to strike, 'the court must view the pleading under attack in a light most favorable to the pleader.'" *Monster Daddy*, *supra*, at *6.

SCRCIVP RULE 56

> (b) A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof. (c) . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .

"'The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.'. . . . [T]he evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438–39 (2003) [*internal citations omitted*].

RESOLUTIONS OF ISSUES RAISED

SHIPCHAIN AND PRE-NOVEMBER 28, 2017 ACTS AND EVENTS

ShipChain was not in existence prior to November 28, 2017. The S.A.C. does not allege that ShipChain was in existence prior to that date. The date of ShipChain's formation is established by ShipChain's Answer, ¶ 2 and Ex. A to that Answer[4], and the Verification attached to ShipChain's Motion, ¶¶ 4 and 5(a)). That date is additionally confirmed by the Exhibit recorded by Mr. Gorman with this Court on October 29, 2018, that being ShipChain's corporate filing with

[4] Exhibit A is a printout from the readily and publicly ascertainable website of the Delaware Secretary of State. That government website is self-authenticating, and a court may take judicial notice of its contents. See Rules 201 and 902(5), SCRE; and Rule 803(8), SCRE. See also *Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534, 551; 2007 U.S. Dist. LEXIS 33020, **64; 73 Fed. R. Evid. Serv. (Callaghan) 446 (D.Md. 2007) and *Paralyzed Veterans of America v. McPherson*, 2008 U.S. Dist. LEXIS 69542, *21-23 (N.D.Cal., September 8, 2008) (government website documents are self-authenticating under Rule 902(5), FRE, which is identical to Rule 902(5), SCRE). As noted above, this Court may rely on judicially-noticeable facts without converting the motion to dismiss into a motion for summary judgment. *Doe v. Bishop of Charleston*, *supra*.

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the South Carolina Secretary of State. Moreover, counsel for Mr. Gorman admitted this fact at argument on October 31, 2018. See Transcript of hearing, p. 37, lines 22-23.

All acts complained of in the S.A.C. that were in the original Complaint (dated August 8, 2014) or in the F.A.C. (dated October 10, 2016) pre-date the formation of ShipChain. Prior to its creation, ShipChain could have had no agents, could not itself have been an agent, could not have acted, and could not have conspired. Moreover, for the reasons set forth below in the discussion of THE CIVIL CONSPIRACY CHARGE, ShipChain cannot have become a part of any pre-existing conspiracy here. Thus, ShipChain can have no responsibility, vicarious or otherwise, for those acts on any theory or cause of action; and this portion of ShipChain's motion is therefore granted.

Therefore, pursuant to each of Rule 12(b)(6), Rule 12(c), and Rule 56, all causes of action set forth in the S.A.C. are hereby dismissed as against ShipChain to the extent that they are premised on any pre-November 28, 2017, acts and events.[5] The only factual allegation that the S.A.C. makes against ShipChain is that ShipChain, on or about March 19, 2018, included an allegedly defamatory statement by Mr. Monarch in a company email update. S.A.C., ¶¶ 41 - 45 and Ex. J to the S.A.C. Consequently, to the extent that any claim may be proven against ShipChain, Mr. Gorman must rely upon that allegation solely.

[5] ShipChain also argued that all factual allegations in the original Complaint and the F.A.C. pre-dated the original Complaint; that all S.A.C. causes of action are premised on defamation for which the statute of limitations is two (2) years (S.C. Code §15-3-550(1)); and that therefore all acts and events encompassed within the original Complaint and the F.A.C. would be time-barred as against ShipChain because ShipChain did not become a party until more than two years after the date of the original Complaint. In light of the foregoing decision that there is no corporate liability for acts and events that pre-date the creation of the corporation, it is not necessary to address this additional argument.

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THE DEFAMATION CHARGE

With regard to ShipChain, the defamation charge hinges on the March 19, 2018 email referred to above. ShipChain argues that the statement contained therein is incontrovertibly true, and is demonstrably so based on the record in this case and matters of which this Court may take judicial notice.[6] I find, however, that viewing all allegations in the light most favorable to the non-moving party, sufficient facts are alleged to constitute a cause of action as to which there remain at this time and on this record one or more genuine issues of material fact. That portion of ShipChain's motion is therefore denied.

With regard to Mr. Monarch and Direct Outbound, insofar as the S.A.C. alleges defamation based on matters other than the March 19, 2018 email, no motion was made. Consequently, those allegations remain for trial.

With regard to Mr. Monarch and Direct Outbound and the March 19, 2018 email, those defendants requested that the allegations be stricken under Rule 12(f) as irrelevant and immaterial, because, they argue, Mr. Monarch's statement was a contradiction of an unidentified person within a large group of people and was fair criticism or comment on a public matter. I find, however, that viewing all allegations in the light most favorable to the non-moving party, sufficient facts are alleged to constitute a cause of action as to which there remain at this time and on this record one or more genuine issues of material fact. Consequently, the allegations set forth in S.A.C., paragraphs 41 – 45 and 51(m) are not irrelevant or immaterial; and striking them under Rule 12(f)

[6] ShipChain also incorporated Mr. Monarch's and Direct Outbound's argument that Mr. Monarch's statement in the email was not defamatory as against the plaintiff Mr. Gorman. This issue is discussed below regarding the defamation charge against Mr. Monarch and Direct Outbound.

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is not appropriate at this time. That portion of Mr. Monarch's and Direct Outbound's motion is therefore denied.

THE EMOTIONAL DISTRESS CHARGE

Mr. Monarch and Direct Outbound have not moved with respect to the cause of action for intentional infliction of emotional distress. As to them, therefore, this cause remains undisturbed.

ShipChain contends that this cause of action must be dismissed as it alleges no facts but merely recites the elements of the tort. As noted above, to the extent that this cause of action is stated against ShipChain based on acts other than the March 19, 2018, email, it has been dismissed. To the extent, however, that it is based on the March 19, 2018 email, I find that the allegations regarding intentional infliction of emotional distress have sufficient factual specificity to meet the requirements of *Paradis*, *supra*, at 43, and therefore state facts sufficient to state a cause of action as to which there remain at this time and on this record one or more genuine issues of material fact. ShipChain's motion to dismiss this cause of action to the extent that it arises from the March 19, 2018 email is therefore denied.

THE CIVIL CONSPIRACY CHARGE

The Motion by ShipChain and the Motion by Mr. Monarch and Direct Outbound offer different rationales for dismissing the civil conspiracy charge; and I address those separately.

ShipChain

ShipChain posits two facts in this regard, which I find to be uncontroverted, as they are alleged by Mr. Gorman in the S.A.C. First, ShipChain is a corporation organized under the laws of Delaware. S.A.C., ¶ 5; Answer, ¶ 2. Second, the alleged co-conspirators with ShipChain (Mr. Monarch and now-dismissed defendants Messrs. Evans, Kelly, and Rusani) are officers and

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directors of ShipChain. S.A.C., ¶ 10; Answer, ¶ 5.The remaining defendant/co-conspirator, Direct Outbound, is conceded by Mr. Gorman to be owned and operated by Mr. Monarch. S.A.C. ¶ 15.

A corporation and its agents, including its officers and employees, are considered to be juridically one entity; and that entity cannot conspire with itself. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 887 (2006); *Pridgen v. Ward*, 391 S.C. 238, 244, 705 S.E.2d 58, 62 (Ct. App. 2010). Consequently, the purported cause of action against ShipChain for civil conspiracy must be dismissed. ShipChain's motion with respect to the civil conspiracy cause of action is therefore granted.

Mr. Monarch and Direct Outbound

Mr. Monarch and Direct Outbound argue that the civil conspiracy charge does not meet the requirements for pleading such a cause, in that it does not include any allegations of fact or damages in support of the civil conspiracy cause of action that are different from the elements alleged for the other causes of action.[7] I agree.

"In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009). "[B]ecause the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.*, 385 S.C. at 115, 682 S.E.2d at 874.

[7] ShipChain also made arguments regarding the civil conspiracy charge similar to those made by Mr. Monarch and Direct Outbound. Were it necessary to address those issues in relation to ShipChain, the same analysis set out below with regard to Mr. Monarch and Direct Outbound would obtain.

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Regarding the additional acts, there are simply none alleged that are not part of the defamation cause of action.

Regarding special damages, Rule 9(g) states that "[w]hen items of special damage are claimed, they shall be specifically stated." This requirement is "to avoid surprise to the other party," as special damages are "not the necessary or usual, consequence of the defendant's conduct." *Benedict Coll. v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 548, 735 S.E.2d 518, 523 (Ct. App. 2012) [*internal quotations and citations omitted*].

Alleging the same damages under a conspiracy claim as under other causes of action does not satisfy Rule 9(g)'s requirement. *Paradis*, *supra*, at 50 ("[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed," quoting *Hackworth*, *supra*); see also *Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831-32 (Ct. App. 2012) ("They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages.").

The alleged civil conspiracy "special damages to Gorman's business interests and reputation, . . . including . . . investigatory expenses and legal fees, loss of revenue to Gorman's business, mental anguish, and emotional suffering" (S.A.C. ¶ 62) restate the defamation damages to "Gorman's reputation among the public . . . and . . . business interests," which are alleged to include "lost business opportunities, stress, and anxiety" (S.A.C. ¶¶ 52 and 55). These "are precisely the damages one would expect from defamatory statements;" and therefore Mr. Gorman has "failed to plead any damages other than the general damages which arise from alleged defamatory acts." *Paradis*, Op. No. 5583 (Shearouse Adv. Sh. No. 31 at 50-51).

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Mr. Gorman's claim for "investigatory expenses and legal fees" does not satisfy the requirement to plead specifically special damages. In *Paradis*, "[t]he only mention of special damages in Plaintiff's complaint, beyond the conclusory statement that she sustained them generally, is that she has been ostracized or blacklisted from the profession of education and that she incurred legal fees to pursue the claims set forth in her [c]omplaint." *Paradis*, *supra*, at 50 [change in original]. See *AJH Holdings LLC v. Dunn*, 392 S.C. 160, 168, 708 S.E.2d 218, 223 (Ct. App. 2011) ("Every litigant represented by a lawyer incurs attorney's fees and costs.").

Accordingly, the claim for civil conspiracy against Mr. Monarch and Direct Outbound is dismissed for failure to state facts sufficient to constitute a cause of action. At trial, however, Mr. Gorman may at the close of his case move to amend the S.A.C. to request relief for civil conspiracy should evidence support additional acts and special damages as required by law.

THE UNFAIR TRADE PRACTICES CHARGE

All defendants have moved for dismissal of this cause of action.

Under SCUTPA, "unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful." S.C. Code Ann. § 39-5-20(a). "Trade" and "commerce" "include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b).

The intent of the legislature in enacting SCUTPA was not to provide treble damages for private disputes. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (2013). Rather, it was to "control and eliminate the large scale use of unfair and deceptive trade practices within the state of South Carolina." *Noack Enters., Inc. v. County*

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Corner Interiors of Hilton Head Is., Inc., 290 S.C. 475, 478, 351 S.E.2d 347, 349 (Ct. App. 1986) [*internal quotations and citations omitted*]; *Woodson v. DLI Props., LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014) ("SCUTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA").

> The legislature's intent to limit the application of the UTPA to only those unfair or deceptive acts or practices in the conduct of trade or commerce that affect the public interest is made even more clear when one considers the language used by Section 39-5-10 in defining the terms "trade" and "commerce," particularly, the language "and shall include any trade or commerce directly or indirectly affecting the people of this State."

Noack Enters., Inc., 290 S.C. at 478, 351 S.E.2d at 349. Therefore, the alleged act must be both conducted as part of a "trade" or "commerce" and must "injuriously affect 'the people of this State,' *i.e.*, the public interest . . . ." *Id.* (quoting S.C. Code Ann. § 39-5-10(b)).

As noted in HISTORY above, however, the allegations of the S.A.C. make quite clear that this is a very personal dispute that has arisen, in essential character, between two individuals. The alleged conduct is not the type that is contemplated by SCUTPA or the case law bearing upon it. Mr. Gorman's SCUTPA claim incorporates the S.A.C.'s prior allegations and rests solely on the claim that defendants tried to ruin his reputation and business interests by making defamatory statements about him. It does not allege any act of advertising, offering for sale, the sale or distribution of any services or property, or any other act that constitutes a business or consumer transaction. An "act, which is alleged to have been unfair, does not fall within the definition of 'trade or commerce' as it did not involve advertisement, sale, or distribution of services or property within a business context." *Health Promotion Specialists, LLC*, 403 S.C. at 639, 743 S.E.2d at 817.

Sunshine Sportswear & Electronics., Inc., et al. v. WSOC Television, Inc., et al., 738 F. Supp. 1499, 1503-05 (D.S.C. 1989), is very similar to the present case. There, the District Court

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dismissed the plaintiffs' SCUTPA claim against a business competitor pursuant to Rule 12(b)(6), FRCivP, because "the [statutory] definitions of the terms 'trade' or 'commerce' . . . do not include" the plaintiffs' allegations that "defendants damaged the reputation and business interests of the plaintiffs by making defamatory statements which were broadcast...into a 'market area' serviced by plaintiffs." In *Sunshine*, the plaintiffs were an owner and his business; and the defendants included not only the television station that broadcast the alleged defamatory statements, but also the plaintiffs' business competitor, Camera World, Inc., and its owner, Jack King, who gave the station the allegedly defamatory statements that plaintiff was "running a scam on consumers" and was engaging in a "rip-off of some kind." *Id.* at 1503. The fact that Jack King was in competition with the plaintiffs did not convert a private tort against a business owner and his business into the conduct of "trade" or "commerce."

SCUTPA is further circumscribed by the requirement that allegedly unfair or deceptive acts or practices must "affect the public interest." *Noack Enters., Inc.*, 290 S.C. at 478, 351 S.E.2d at 349. The actual phrasing of the statute is not "the public interest," but is instead "the people of this State." S.C. Code § 39-5-10(b). Mr. Gorman, a citizen and resident of Delaware County, Pennsylvania, is not included within that category. S.A.C. ¶ 1.

"SCUTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA." *Woodson v. DLI Props., LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014).

> An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.

Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004).

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In an attempt to satisfy the "public interest" requirement, Mr. Gorman alleges only that "[t]hese actions are capable of repetition. Defendants in this case have engaged in similar blackmail schemes and attacks in the past." S.A.C. ¶ 67. That non-specific allegation is unsupported "by any particularized allegations of fact." *Skywaves I Corp. v. Branch Banking & Tr. Co.*, Op. No. 5557 (S.C. Ct. App. filed May 2, 2018 at 17 n.9) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986), for the proposition that "even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient."). "In the course of human endeavor, every action has some potential for repetition. The mere proof that the actor is still alive and engaged in the same business is not sufficient to establish [the potential for repetition]." *Jefferies v. Phillips*, 316 S.C. 523, 529, 451 S.E.2d 21, 24 (Ct. App. 1994). In the absence of a showing that any member of the public was adversely affected, "conduct cannot be said to affect anyone other than the parties to this controversy, in which case the conduct falls outside the scope of the UTPA." *Id.*, 316 S.C. at 528, 451 S.E.2d at 23.[8]

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[8] With particular regard to ShipChain, Mr. Gorman does not allege that ShipChain is involved in any business dealings with him; nor does he allege that ShipChain is in competition with him. The only action that he alleges against ShipChain is that it published an allegedly defamatory statement made by the original defendant, Mr. Monarch. That one act was, as alleged in the S.A.C., taken in response to a statement by Mr. Gorman's media outlet that was directed at ShipChain and its personnel. Such an act is inherently not capable of repetition, as ShipChain cannot control what statements might be made about it, by whom, and in what circumstances.

The S.A.C. attempts to meet the public interest requirement only by stating that "[d]efendants in this case have engaged in similar blackmail schemes and attacks in the past." S.A.C. ¶ 67. That allegation, however, refers to conduct alleged in the S.A.C. that pre-dates the formation of ShipChain

The Unfair Trade Practices Act charge against ShipChain therefore fails to meet the requirement that the act be repetitious or capable of being repeated. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004); *Daisy Outdoor Adv. Co., Inc. v. Abbott*, 322 S.C. 489, 473 S.E. 47 (1996).

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Accordingly, the claim under SCUTPA against all defendants is dismissed for failure to state facts sufficient to constitute a cause of action. At trial, however, Mr. Gorman may at the close of his case move to amend the S.A.C. to request relief under SCUTPA should evidence support a finding of unfair or deceptive acts in trade or commerce affecting the people of this State, as required by law.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motions of Mr. Monarch, Direct Outbound, and ShipChain are granted in part and denied in part, to the extent and for the reasons stated above**.**

SO ORDERED THIS ___ DAY OF _____, 2018.

_____

JUDGE ROBIN B. STILWELL
THIRTEENTH CIRCUIT

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Greenville Common Pleas

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

Case Number: 2014CP2304432

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

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ATTACHMENT B

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Greenville County
13th Judicial Circuit
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Case Type:	Common Pleas	**Case Sub Type:**	Slander/Libel 380	**File Type:**	Jury
Status:	Dismissed	**Assigned Judge:**			
Disposition:	Dismissed per Rule 40J	**Disposition Date:**	10/26/2020	**Disposition Judge:**	Kinlaw, Alex Jr.
Original Source Doc:		**Original Case #:**		**Restore Reason:**	Reopened Case
Judgment Number:		**Court Roster:**			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
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Monarch, John C	Memo/Memo in Opposition	Filing		09/13/2021-13:57		
Gorman, Richard A	NEF(07-15-2021 12:21:55 PM) Order/Restore Case To Active...	Filing		07/15/2021-12:22		
Gorman, Richard A	Order/Restore Case To Active Docket	Order		07/15/2021-12:21		
Gorman, Richard A	NEF(07-15-2021 10:09:05 AM) Order/Order to Restore Rule ...	Filing		07/15/2021-10:41		
Gorman, Richard A	Order/Order to Restore Rule 40J Coversheet	Filing		07/15/2021-10:09		
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Gorman, Richard A	Plt/Richard A Gorman Motion/Compel	Motion		06/18/2020-12:30	08/21/2020-12:30	
Langley, Spencer Davis	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Brumback, Christopher Todd	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Morgan, Grenville D. Jr.	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Radeker, Andrew Sims	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Scully, John Hampton	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Matthews, Steve A.	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Bakker, Elizabeth LaMance	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Moore, David L. Jr.	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
Rawl, Andrew Marshall	6/8/2020_JT_Roster/Notice of Case Roster Publication Sent	Action		04/28/2020-10:35	10/26/2020-10:35	
ShipChain Inc	NEF(04-28-2020 10:25:29 AM) Notice/Notice of Appearance	Filing		04/28/2020-10:25	10/26/2020-10:25	
ShipChain Inc	Notice/Notice of Appearance	Filing		04/28/2020-10:25	10/26/2020-10:25	
Monarch, John C	NEF(03-03-2020 11:32:22 AM) Answer/Amended Answer	Filing		03/03/2020-12:41	10/26/2020-12:41	
Monarch, John C	Answer/Amended Answer	Filing		03/03/2020-11:32	10/26/2020-11:32	
ShipChain Inc	NEF(02-05-2020 02:00:42 PM) Answer/Amended Answer	Filing		02/05/2020-14:30	10/26/2020-14:30	
ShipChain Inc	Answer/Amended Answer	Filing		02/05/2020-14:00	10/26/2020-14:00	
Gorman, Richard A	NEF(01-28-2020 09:36:01 AM) Answer/Amended Answer	Filing		01/28/2020-10:51	10/26/2020-10:51	
Gorman, Richard A	Answer/Amended Answer To Answer & Counterclaims Of Defs	Filing		01/28/2020-09:36	10/26/2020-09:36	
Gorman, Richard A	Notice/Notice of Appearance	Filing		01/28/2020-09:36	10/26/2020-09:36	
Langley,	10/25/2019_JT_Roster/Notice of	Action		09/27/2019	10/26/2020-	

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Spencer Davis	Case Roster Publication Sent			16:22	16:22	
Brumback, Christopher Todd	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Morgan, Grenville D. Jr.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Radeker, Andrew Sims	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Scully, John Hampton	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Matthews, Steve A.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Rozelsky, Kurt Matthew	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Traxler, Thomas W.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Bakker, Elizabeth LaMance	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Moore, David L. Jr.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-16:22	10/26/2020-16:22	
Langley, Spencer Davis	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Brumback, Christopher Todd	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Morgan, Grenville D. Jr.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Radeker, Andrew Sims	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Scully, John Hampton	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Matthews, Steve A.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Rozelsky, Kurt Matthew	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Traxler, Thomas W.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Bakker, Elizabeth LaMance	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Moore, David L. Jr.	10/25/2019_JT_Roster/Notice of Case Roster Publication Sent	Action		09/27/2019-15:49	10/26/2020-15:49	
Monarch, John C	NEF(09-23-2019 10:17:33 AM) Order/Other	Filing		09/23/2019-10:17	10/26/2020-10:17	
Monarch, John C	Order/Other	Order		09/23/2019-10:17	10/26/2020-10:17	
Gorman, Richard A	NEF(08-27-2019 10:23:49 AM) Notice/Notice of Appearance	Filing		08/27/2019-12:16	10/26/2020-12:16	
Gorman, Richard A	Notice/Notice of Appearance	Filing		08/27/2019-10:23	10/26/2020-10:23	
Gorman, Richard A	Reply/Reply To Answer & Counterclaims	Filing		08/27/2019-10:23	10/26/2020-10:23	
Gorman, Richard A	NEF(08-23-2019 01:37:38 PM) Memo/Memo	Filing		08/23/2019-14:54	10/26/2020-14:54	
Gorman, Richard A	Plt's Memo Concerning Default of Defs Monarch & Direct Outbo	Filing		08/23/2019-13:37	10/26/2020-13:37	
Gorman, Richard A	NEF(08-22-2019 03:10:05 PM) Affidavit/Affidavit of	Filing		08/22/2019-15:14	10/26/2020-15:14	
Gorman, Richard A	Affidavit of Andrew S. Radeker	Filing		08/22/2019-15:10	10/26/2020-15:10	
Gorman, Richard A	NEF(08-21-2019 05:40:28 PM) Affidavit/Affidavit of	Filing		08/22/2019-07:53	10/26/2020-07:53	
Gorman, Richard A	Affidavit of Richard A. Gorman Concerning Default of Defs Mo	Filing		08/21/2019-17:40	10/26/2020-17:40	
Langley,	8/26/2019_MOTION_Roster/Notice	Action		08/13/2019	10/26/2020	

Spencer Davis	of Motions Roster Publication			09:50	09:50	
Brumback, Christopher Todd	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Morgan, Grenville D. Jr.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Radeker, Andrew Sims	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Scully, John Hampton	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Matthews, Steve A.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Rozelsky, Kurt Matthew	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Traxler, Thomas W.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Bakker, Elizabeth LaMance	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		08/13/2019-09:50	10/26/2020-09:50	
Gorman, Richard A	NEF(08-12-2019 05:06:05 PM) Motion/Strike	Filing		08/13/2019-08:41	10/26/2020-08:41	
Gorman, Richard A	Plt/Richard A Gorman Motion/Strike	Motion		08/12/2019-17:06	08/26/2019-17:06	
Gorman, Richard A	Remittitur From Court Of Appeals	Filing		08/09/2019-14:51	10/26/2020-14:51	
Monarch, John C	NEF(07-22-2019 03:59:24 PM) Answer/Answer & Counterclaim	Filing		07/22/2019-16:59	10/26/2020-16:59	
Monarch, John C	Answer/Answer & Counterclaim To Second Amended Complaint	Filing		07/22/2019-15:59	10/26/2020-15:59	
Langley, Spencer Davis	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Brumback, Christopher Todd	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Morgan, Grenville D. Jr.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Radeker, Andrew Sims	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Scully, John Hampton	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Matthews, Steve A.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Rozelsky, Kurt Matthew	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Traxler, Thomas W.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Bakker, Elizabeth LaMance	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/17/2019-15:53	10/26/2020-15:53	
Gorman, Richard A	NEF(07-17-2019 11:06:55 AM) Motion/Refer to Master or Sp...	Filing		07/17/2019-11:40	10/26/2020-11:40	
Gorman, Richard A	Motion/Refer to Master or Special Referee	Motion		07/17/2019-11:06	08/26/2019-11:06	
Langley, Spencer Davis	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Brumback, Christopher Todd	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Morgan, Grenville D. Jr.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Radeker, Andrew Sims	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Scully, John Hampton	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Matthews,	8/26/2019_MOTION_Roster/Notice	Action		07/15/2019-	10/26/2020-	

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Steve A.	of Motions Roster Publication			10:05	10:05	
Rozelsky, Kurt Matthew	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Traxler, Thomas W.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Bakker, Elizabeth LaMance	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/15/2019-10:05	10/26/2020-10:05	
Monarch, John C	NEF(07-12-2019 04:32:48 PM) Motion/Other	Filing		07/15/2019-08:24	10/26/2020-08:24	
Monarch, John C	Defs' Direct Outbound & Monarch Motion/Set Aside & Strike	Motion		07/12/2019-16:32	08/26/2019-16:32	
Langley, Spencer Davis	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Brumback, Christopher Todd	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Morgan, Grenville D. Jr.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Radeker, Andrew Sims	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Scully, John Hampton	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Matthews, Steve A.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Rozelsky, Kurt Matthew	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Traxler, Thomas W.	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Bakker, Elizabeth LaMance	8/26/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/08/2019-15:38	10/26/2020-15:38	
Gorman, Richard A	NEF(07-07-2019 04:11:43 PM) Motion/Damages	Filing		07/08/2019-08:43	10/26/2020-08:43	
Gorman, Richard A	Plt/Richard A Gorman Motion/Damages	Motion		07/07/2019-16:11	08/26/2019-16:11	
Gorman, Richard A	NEF(07-05-2019 10:05:21 AM) Notice/Notice of Appearance	Filing		07/05/2019-10:38	10/26/2020-10:38	
Gorman, Richard A	Notice/Notice of Appearance	Filing		07/05/2019-10:05	10/26/2020-10:05	
Gorman, Richard A	Affidavit/Default	Filing		07/05/2019-10:05	10/26/2020-10:05	
Gorman, Richard A	Verification/Verified	Filing		01/17/2019-10:15	10/26/2020-10:15	
Gorman, Richard A	Appeal/Notice of Appeal to Court of Appeals	Action		01/15/2019-18:39	08/09/2019-18:39	
Gorman, Richard A	NEF(01-14-2019 06:39:52 PM) Appeal/Notice of Appeal to C...	Filing		01/15/2019-09:34	10/26/2020-09:34	
ShipChain Inc	NEF(01-14-2019 04:50:24 PM) Order/Other	Filing		01/14/2019-16:50	10/26/2020-16:50	
ShipChain Inc	Order/Other	Order		01/14/2019-16:50	10/26/2020-16:50	
Gorman, Richard A	NEF(12-17-2018 03:57:12 PM) Motion/Reconsider	Filing		12/17/2018-16:17	10/26/2020-16:17	
Gorman, Richard A	Plt/Richard A Gorman Motion/Reconsider	Motion		12/17/2018-15:57	10/26/2020-15:57	
Gorman, Richard A	NEF(12-13-2018 10:08:24 AM) Order/Other	Filing		12/13/2018-10:08	10/26/2020-10:08	
Gorman, Richard A	Order/Other-Motion to Reconsider Denied	Order		12/13/2018-10:08	10/26/2020-10:08	
Gorman, Richard A	NEF(12-07-2018 03:16:48 PM) Order/Other	Filing		12/07/2018-15:17	10/26/2020-15:17	
Gorman, Richard A	Order/Other	Order		12/07/2018-15:16	10/26/2020-15:16	
Gorman, Richard A	NEF(12-06-2018 05:21:22 PM) Motion/Reconsider	Filing		12/07/2018-09:53	10/26/2020-09:53	
Gorman,	Plt/Richard A Gorman	Motion		12/06/2018-	10/26/2020-	

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Richard A	Motion/Reconsider Dismissal			17:21	17:21	
Monarch, John C	NEF(12-06-2018 04:40:43 PM) Order/Other	Filing		12/06/2018-16:41	10/26/2020-16:41	
Monarch, John C	Order/Other	Order		12/06/2018-16:40	10/26/2020-16:40	
ShipChain Inc	NEF(12-03-2018 12:17:38 PM) Record of Hearing	Filing		12/03/2018-13:40	10/26/2020-13:40	
ShipChain Inc	Record of Hearing	Filing		12/03/2018-12:17	10/26/2020-12:17	
ShipChain Inc	NEF(11-26-2018 11:20:52 AM) Order/Dismissal	Filing		11/26/2018-11:21	10/26/2020-11:21	
ShipChain Inc	Order/Dismissal-As To Certain Defendants	Order		11/26/2018-11:20	10/26/2020-11:20	
Gorman, Richard A	NEF(11-01-2018 01:12:19 PM) Filing/Other	Filing		11/02/2018-15:28	10/26/2020-15:28	
Gorman, Richard A	Filing/Other	Filing		11/01/2018-13:12	10/26/2020-13:12	
Kelly, Aaron	NEF(10-30-2018 03:56:22 PM) Memo/Memo in Support	Filing		10/30/2018-16:27	10/26/2020-16:27	
Kelly, Aaron	Memo/Def Aaron Kellys Memo in Support	Filing		10/30/2018-15:56	10/26/2020-15:56	
ShipChain Inc	NEF(10-30-2018 11:01:17 AM) Memo/Memo in Support	Filing		10/30/2018-11:07	10/26/2020-11:07	
ShipChain Inc	Memo/Memo in Support	Filing		10/30/2018-11:01	10/26/2020-11:01	
Rusani, Sami	NEF(10-30-2018 09:59:20 AM) Memo/Memo in Support	Filing		10/30/2018-10:06	10/26/2020-10:06	
Rusani, Sami	Def Sami Rusani's Memo in Support of Motion to Dismiss	Filing		10/30/2018-09:59	10/26/2020-09:59	
ShipChain Inc	NEF(10-30-2018 09:27:02 AM) Notice/Notice of Appearance	Filing		10/30/2018-09:27	10/26/2020-09:27	
ShipChain Inc	Notice/Notice of Appearance	Filing		10/30/2018-09:27	10/26/2020-09:27	
ShipChain Inc	Memo/Memo in Support	Filing		10/30/2018-09:11	10/26/2020-09:11	
Monarch, John C	NEF(10-29-2018 04:31:24 PM) Memo/Memo in Support	Filing		10/29/2018-16:59	10/26/2020-16:59	
Monarch, John C	Memo/Memo in Support	Filing		10/29/2018-16:31	10/26/2020-16:31	
Gorman, Richard A	NEF(10-29-2018 02:13:39 PM) Filing/Other	Filing		10/29/2018-15:33	10/26/2020-15:33	
Gorman, Richard A	Filing/Other/Corporate Filing	Filing		10/29/2018-14:13	10/26/2020-14:13	
Evans, Brian	NEF(10-25-2018 04:33:38 PM) Memo/Memo in Support	Filing		10/26/2018-08:36	10/26/2020-08:36	
Evans, Brian	NEF(10-25-2018 04:37:11 PM) Order/Pro Hac Vice	Filing		10/25/2018-16:37	10/26/2020-16:37	
Evans, Brian	Order/Pro Hac Vice On Attorney Charles Jeremiah	Order		10/25/2018-16:37	10/26/2020-16:37	
Evans, Brian	NEF(10-25-2018 04:34:19 PM) Order/Pro Hac Vice	Filing		10/25/2018-16:34	10/26/2020-16:34	
Evans, Brian	Order/Pro Hac Vice On Attorney David E. Taylor	Order		10/25/2018-16:34	10/26/2020-16:34	
Evans, Brian	Memo/Memo in Support of Motion to Dismiss	Filing		10/25/2018-16:33	10/26/2020-16:33	
Evans, Brian	NEF(10-25-2018 04:30:54 PM) Order/Pro Hac Vice	Filing		10/25/2018-16:31	10/26/2020-16:31	
Evans, Brian	Order/Pro Hac Vice On Attorney Jason Huebinger	Order		10/25/2018-16:30	10/26/2020-16:30	
Langley, Spencer Davis	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Brumback, Christopher Todd	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Morgan, Grenville D. Jr.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	

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Radeker, Andrew Sims	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Scully, John Hampton	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Matthews, Steve A.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Robertson, George Gostin	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Rozelsky, Kurt Matthew	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
Traxler, Thomas W.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		10/22/2018-10:34	10/26/2020-10:34	
ShipChain Inc	NEF(10-19-2018 04:00:01 PM) Motion/Dismiss & Summary Jud...	Filing		10/19/2018-16:51	10/26/2020-16:51	
ShipChain Inc	Motion/Dismiss & Summary Judgment	Motion		10/19/2018-16:00	10/31/2018-16:00	
Evans, Brian	NEF(10-03-2018 07:20:19 PM) Motion/Admission Pro Hac Vic...	Filing		10/19/2018-10:39	10/26/2020-10:39	
Evans, Brian	NEF(10-03-2018 07:12:39 PM) Motion/Admission Pro Hac Vic...	Filing		10/19/2018-10:36	10/26/2020-10:36	
Evans, Brian	NEF(10-03-2018 07:02:11 PM) Motion/Admission Pro Hac Vic...	Filing		10/19/2018-10:33	10/26/2020-10:33	
Evans, Brian	Letter/Letter From Supreme Court Office Of Bar Admissions	Filing		10/19/2018-10:07	10/26/2020-10:07	
Evans, Brian	NEF(10-18-2018 12:47:03 PM) Affidavit/Attorney	Filing		10/18/2018-12:54	10/26/2020-12:54	
Evans, Brian	Affidavit/Attorney Jason Huebinger	Filing		10/18/2018-12:47	10/26/2020-12:47	
Evans, Brian	Affidavit/Attorney Charles Jeremiah	Filing		10/18/2018-12:47	10/26/2020-12:47	
Evans, Brian	Affidavit/Attorney David E. Taylor	Filing		10/18/2018-12:47	10/26/2020-12:47	
ShipChain Inc	NEF(10-12-2018 04:47:52 PM) Answer/Answer To Amended Com...	Filing		10/12/2018-17:04	10/26/2020-17:04	
ShipChain Inc	Answer/Answer To Second Amended Complaint	Filing		10/12/2018-16:47	10/26/2020-16:47	
Evans, Brian	Def/Brian Evans Motion/Admission Pro Hac Vice - J Huebinger	Motion		10/03/2018-19:20	10/26/2020-19:20	
Evans, Brian	Def/Brian Evans Motion/Admission Pro Hac Vice - D E Taylor	Motion		10/03/2018-19:12	10/26/2020-19:12	
Evans, Brian	Def/Brian Evans Motion/Admission Pro Hac Vice - C Jeremiah	Motion		10/03/2018-19:02	10/26/2020-19:02	
Langley, Spencer Davis	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Brumback, Christopher Todd	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Morgan, Grenville D. Jr.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Radeker, Andrew Sims	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Scully, John Hampton	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Matthews, Steve A.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Robertson, George Gostin	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Rozelsky, Kurt Matthew	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Traxler, Thomas W.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/28/2018-13:49	10/26/2020-13:49	
Kelly, Aaron	NEF(09-26-2018 11:43:07 AM) Motion/Dismiss	Filing		09/26/2018-16:47	10/26/2020-16:47	
Kelly, Aaron	Def/Aaron Kelly Motion/Dismiss	Motion		09/26/2018-11:43	10/31/2018-11:43	
Kelly, Aaron	NEF(09-26-2018 11:29:12 AM) Notice/Notice of Appearance	Filing		09/26/2018-11:29	10/26/2020-11:29	

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Kelly, Aaron	Notice / Notice of Appearance	Filing		09/26/2018-11:29	10/26/2020-11:29	
Langley, Spencer Davis	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Brumback, Christopher Todd	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Morgan, Grenville D. Jr.	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Radeker, Andrew Sims	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Scully, John Hampton	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Matthews, Steve A.	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Robertson, George Gostin	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Rozelsky, Kurt Matthew	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/26/2018-09:47	10/26/2020-09:47	
Gorman, Richard A	NEF(09-25-2018 02:51:46 PM) Service / Acceptance Of Servic...	Filing		09/25/2018-16:29	10/26/2020-16:29	
Gorman, Richard A	Service / Acceptance Of Service on Aaron Kelly	Filing		09/25/2018-14:51	10/26/2020-14:51	
Langley, Spencer Davis	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Brumback, Christopher Todd	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Morgan, Grenville D. Jr.	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Radeker, Andrew Sims	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Scully, John Hampton	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Matthews, Steve A.	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Robertson, George Gostin	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Rozelsky, Kurt Matthew	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/21/2018-11:06	10/26/2020-11:06	
Rusani, Sami	NEF(09-18-2018 04:11:15 PM) Motion / Dismiss	Filing		09/19/2018-09:10	10/26/2020-09:10	
Rusani, Sami	Def / Sami Rusani Motion / Dismiss	Motion		09/18/2018-16:11	10/31/2018-16:11	
Rusani, Sami	NEF(09-18-2018 04:07:28 PM) Notice / Notice of Appearance	Filing		09/18/2018-16:08	10/26/2020-16:08	
Rusani, Sami	Notice / Notice of Appearance	Filing		09/18/2018-16:07	10/26/2020-16:07	
Gorman, Richard A	NEF(09-18-2018 02:42:56 PM) Service / Acceptance Of Servic...	Filing		09/18/2018-14:51	10/26/2020-14:51	
Gorman, Richard A	Service / Acceptance Of Service on Sami Rusani	Filing		09/18/2018-14:42	10/26/2020-14:42	
Evans, Brian	NEF(09-14-2018 10:46:56 AM) Motion / Dismiss	Filing		09/14/2018-11:23	10/26/2020-11:23	
Evans, Brian	Def / Brian Evans Motion / Dismiss & CoS	Motion		09/14/2018-10:46	10/31/2018-10:46	
Evans, Brian	NEF(09-13-2018 05:04:35 PM) Notice / Notice of Appearance	Filing		09/13/2018-17:04	10/26/2020-17:04	
Evans, Brian	Notice / Notice of Appearance	Filing		09/13/2018-17:04	10/26/2020-17:04	
ShipChain Inc	NEF(09-13-2018 03:19:41 PM) Notice / Notice of Appearance	Filing		09/13/2018-15:20	10/26/2020-15:20	
ShipChain Inc	Notice / Notice of Appearance	Filing		09/13/2018-15:19	10/26/2020-15:19	
Langley, Spencer Davis	10/29/2018_MOTION_Roster / Notice of Motions Roster Publicatio	Action		09/13/2018-08:27	10/26/2020-08:27	

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Brumback, Christopher Todd	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/13/2018-08:27	10/26/2020-08:27	
Morgan, Grenville D. Jr.	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/13/2018-08:27	10/26/2020-08:27	
Radeker, Andrew Sims	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/13/2018-08:27	10/26/2020-08:27	
Scully, John Hampton	10/29/2018_MOTION_Roster/Notice of Motions Roster Publicatio	Action		09/13/2018-08:27	10/26/2020-08:27	
Monarch, John C	NEF(09-12-2018 02:25:13 PM) Motion/12 (B) (6)	Filing		09/12/2018-16:30	10/26/2020-16:30	
Monarch, John C	Defs/John C Monarch Motion/12 (B) (6)	Motion		09/12/2018-14:25	10/31/2018-14:25	
Gorman, Richard A	NEF(08-28-2018 10:30:45 AM) Amended/Amended Summons And ...	Filing		08/28/2018-11:32	10/26/2020-11:32	
Gorman, Richard A	Amended/Summons And Second Amended Complaint	Filing		08/28/2018-10:30	10/26/2020-10:30	
Gorman, Richard A	NEF(08-28-2018 09:46:55 AM) Order/Other	Filing		08/28/2018-09:47	10/26/2020-09:47	
Gorman, Richard A	Order/Other	Order		08/28/2018-09:46	10/26/2020-09:46	
Gorman, Richard A	NEF(08-27-2018 09:13:08 AM) Order/Order Cover Sheet $25....	Filing		08/27/2018-11:12	10/26/2020-11:12	
Gorman, Richard A	Order/Order Cover Sheet $25.00	Filing		08/27/2018-09:13	10/26/2020-09:13	
Gorman, Richard A	NEF(08-01-2018 09:01:50 AM) Order/Electronic Form 4	Filing		08/01/2018-09:02	10/26/2020-09:02	
Gorman, Richard A	Order/Electronic Form 4-Motion to Reconsider Denied	Order		08/01/2018-09:01	10/26/2020-09:01	
Gorman, Richard A	NEF(07-31-2018 01:05:54 PM) Affidavit/Default	Filing		07/31/2018-14:41	10/26/2020-14:41	
Gorman, Richard A	Affidavit/Default	Filing		07/31/2018-13:05	10/26/2020-13:05	
Gorman, Richard A	Motion/Damages	Motion		07/31/2018-13:05	10/26/2020-13:05	
Gorman, Richard A	Motion/Quash	Motion		07/31/2018-13:05	10/26/2020-13:05	
Direct Outbound Services LLC	NEF(07-13-2018 03:30:51 PM) Motion/Reconsider	Filing		07/13/2018-15:43	10/26/2020-15:43	
Direct Outbound Services LLC	Defs/Direct Outbound Services Motion/Reconsider	Motion		07/13/2018-15:30	10/26/2020-15:30	
Gorman, Richard A	NEF(07-03-2018 04:43:00 PM) Order/Electronic Form 4	Filing		07/03/2018-16:43	10/26/2020-16:43	
Gorman, Richard A	Order/Electronic Form 4-Motion to Amd Complaint Granted	Order		07/03/2018-16:43	10/26/2020-16:43	
Langley, Spencer Davis	6/25/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/18/2018-10:50	10/26/2020-10:50	
Brumback, Christopher Todd	6/25/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/18/2018-10:50	10/26/2020-10:50	
Morgan, Grenville D. Jr.	6/25/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/18/2018-10:50	10/26/2020-10:50	
Radeker, Andrew Sims	6/25/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/18/2018-10:50	10/26/2020-10:50	
Scully, John Hampton	6/25/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		05/18/2018-10:50	10/26/2020-10:50	
Gorman, Richard A	NEF(05-18-2018 09:05:46 AM) Motion/Alter and/or Amend	Filing		05/18/2018-10:14	10/26/2020-10:14	
Gorman, Richard A	Plt/Richard A Gorman Motion/Alter and/or Amend	Motion		05/18/2018-09:05	06/28/2018-09:05	
Langley, Spencer Davis	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		05/08/2018-09:07	10/26/2020-09:07	
Brumback, Christopher	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		05/08/2018-09:07	10/26/2020-09:07	

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Todd						
Morgan, Grenville D. Jr.	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		05/08/2018-09:07	10/26/2020-09:07	
Radeker, Andrew Sims	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		05/08/2018-09:07	10/26/2020-09:07	
Scully, John Hampton	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		05/08/2018-09:07	10/26/2020-09:07	
Gorman, Richard A	NEF(04-10-2018 01:40:16 PM) Memo/Memo	Filing		04/10/2018-14:09	10/26/2020-14:09	
Gorman, Richard A	Memo Concerning Motions to Compel	Filing		04/10/2018-13:40	10/26/2020-13:40	
Langley, Spencer Davis	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		04/03/2018-14:00	10/26/2020-14:00	
Brumback, Christopher Todd	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		04/03/2018-14:00	10/26/2020-14:00	
Morgan, Grenville D. Jr.	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		04/03/2018-14:00	10/26/2020-14:00	
Radeker, Andrew Sims	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		04/03/2018-14:00	10/26/2020-14:00	
Scully, John Hampton	5/17/2018_JT_Roster/Notice of Case Roster Publication Sent	Action		04/03/2018-14:00	10/26/2020-14:00	
Gorman, Richard A	NEF(03-28-2018 03:38:22 PM) Order/Electronic Form 4	Filing		03/28/2018-15:38	10/26/2020-15:38	
Gorman, Richard A	Order/Form 4 Denying Defendant's Motion for Temporary Injunc	Order		03/28/2018-15:38	10/26/2020-15:38	
Gorman, Richard A	NEF(03-28-2018 11:30:48 AM) Affidavit/Affidavit of	Filing		03/28/2018-11:52	10/26/2020-11:52	
Gorman, Richard A	Affidavit of Richard Gorman	Filing		03/28/2018-11:30	10/26/2020-11:30	
Monarch, John C	NEF(03-26-2018 05:29:38 PM) Memo/Memo in Support	Filing		03/27/2018-09:28	10/26/2020-09:28	
Monarch, John C	Memo/Memo in Support	Filing		03/26/2018-17:29	10/26/2020-17:29	
Gorman, Richard A	NEF(03-26-2018 03:44:42 PM) Memo/Memo in Opposition	Filing		03/26/2018-16:36	10/26/2020-16:36	
Gorman, Richard A	Memo/Plaintiffs Memo in Opposition	Filing		03/26/2018-15:44	10/26/2020-15:44	
Gorman, Richard A	Verification/Verified Substitution of Counsel	Filing		03/19/2018-11:06	10/26/2020-11:06	
Langley, Spencer Davis	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Brumback, Christopher Todd	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Morgan, Grenville D. Jr.	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Gooding, Jessica Lee	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Radeker, Andrew Sims	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Scully, John Hampton	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/19/2018-08:42	10/26/2020-08:42	
Monarch, John C	NEF(03-16-2018 06:47:45 PM) Motion/Compel	Filing		03/19/2018-08:35	10/26/2020-08:35	
Monarch, John C	Defs/Motion/Compel	Motion		03/16/2018-18:47	04/11/2018-18:47	
Langley, Spencer Davis	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	
Brumback, Christopher Todd	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	
Morgan, Grenville D. Jr.	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	

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Gooding, Jessica Lee	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	
Radeker, Andrew Sims	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	
Scully, John Hampton	4/9/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/15/2018-16:13	10/26/2020-16:13	
Gorman, Richard A	NEF(03-15-2018 02:01:02 PM) Motion/Compel	Filing		03/15/2018-15:54	10/26/2020-15:54	
Monarch, John C	NEF(03-15-2018 02:33:03 PM) Notice/Notice of Appearance	Filing		03/15/2018-14:33	10/26/2020-14:33	
Monarch, John C	Notice/Notice of Appearance	Filing		03/15/2018-14:33	10/26/2020-14:33	
Gorman, Richard A	Plaintiff's Motion/Compel	Motion		03/15/2018-14:01	04/11/2018-14:01	
Gorman, Richard A	NEF(03-09-2018 08:44:18 AM) Order/Substitution Of Counse...	Filing		03/09/2018-08:44	10/26/2020-08:44	
Gorman, Richard A	Order/Substitution Of Counsel	Order		03/09/2018-08:44	10/26/2020-08:44	
Gorman, Richard A	NEF(03-06-2018 04:51:35 PM) Proposed Order/Substitution ...	Filing		03/07/2018-08:31	10/26/2020-08:31	
Gorman, Richard A	Order/Order Cover Sheet $25.00	Filing		03/06/2018-16:51	10/26/2020-16:51	
Shealy, Kirby Darr III	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Andrews, Ryan J	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Langley, Spencer Davis	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Brumback, Christopher Todd	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Morgan, Grenville D. Jr.	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Gooding, Jessica Lee	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Goings, Robert Fredrick	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Radeker, Andrew Sims	3/26/2018_MOTION_Roster/Notice of Motions Roster Publication	Action		03/06/2018-10:54	10/26/2020-10:54	
Monarch, John C	NEF(03-05-2018 09:48:29 AM) Motion/Temporary Injunction	Filing		03/05/2018-10:17	10/26/2020-10:17	
Monarch, John C	Defs/John C Monarch Motion/Temporary Injunction	Motion		03/05/2018-09:48	03/28/2018-09:48	
Gorman, Richard A	NEF(02-27-2018 01:33:44 PM) Notice/Notice of Appearance	Filing		02/27/2018-13:34	10/26/2020-13:34	
Gorman, Richard A	Notice/Notice of Appearance	Filing		02/27/2018-13:33	10/26/2020-13:33	
Monarch, John C	NEF(02-01-2018 05:34:01 PM) Answer/Answer To Amended Com...	Filing		02/02/2018-08:55	10/26/2020-08:55	
Monarch, John C	Answer/Answer To Amended Complaint	Filing		02/01/2018-17:34	10/26/2020-17:34	
Monarch, John C	NEF(01-22-2018 04:45:27 PM) Order/Other	Filing		01/22/2018-16:45	10/26/2020-16:45	
Monarch, John C	Order/Other-Setting Aside Entry of Default	Order		01/22/2018-16:45	10/26/2020-16:45	
Gorman, Richard A	Amended ADR/Mediation Results Report	Action		12/21/2017-15:54	11/07/2017-15:54	
Gorman, Richard A	Amended ADR/Mediation Results Report/Filing	Filing		12/21/2017-15:54	10/26/2020-15:54	
Direct Outbound Services LLC	Memo/Memo in Support	Filing		09/05/2017-17:00	10/26/2020-17:00	
Gorman, Richard A	Memo/Memo in Opposition	Filing		09/01/2017-17:52	10/26/2020-17:52	

Gorman, Richard A	Notice / Notice of Appearance	Filing		08/22/2017-09:15	10/26/2020-09:15	
Shealy, Kirby Darr III	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/16/2017-13:40	10/26/2020-13:40	
Andrews, Ryan J	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/16/2017-13:40	10/26/2020-13:40	
Langley, Spencer Davis	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/16/2017-13:40	10/26/2020-13:40	
Brumback, Christopher Todd	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/16/2017-13:40	10/26/2020-13:40	
Morgan, Grenville D. Jr.	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/16/2017-13:40	10/26/2020-13:40	
Shealy, Kirby Darr III	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/10/2017-15:19	10/26/2020-15:19	
Andrews, Ryan J	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/10/2017-15:19	10/26/2020-15:19	
Langley, Spencer Davis	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/10/2017-15:19	10/26/2020-15:19	
Brumback, Christopher Todd	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/10/2017-15:19	10/26/2020-15:19	
Morgan, Grenville D. Jr.	9/5/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		08/10/2017-15:19	10/26/2020-15:19	
Direct Outbound Services LLC	Def / Direct Outbound Services Motion / Set Aside Default	Motion		08/10/2017-11:31	09/07/2017-11:31	
Gorman, Richard A	ADR / Amended Mediation Results Report	Action		07/31/2017-09:49	12/21/2017-09:49	
Gorman, Richard A	ADR / Amended Mediation Results Report / Filing	Filing		07/31/2017-09:49	07/17/2017-09:49	
Monarch, John C	Notice / Notice of Appearance	Filing		07/14/2017-10:07	10/26/2020-10:07	
Monarch, John C	Order / Consent Order-Substitute Counsel	Order		07/12/2017-14:36	10/26/2020-14:36	
Monarch, John C	Notice / Notice of Appearance	Filing		07/11/2017-14:33	10/26/2020-14:33	
Monarch, John C	Order / Order Cover Sheet $25.00	Filing		07/11/2017-14:33	10/26/2020-14:33	
Gorman, Richard A	ADR / Mediation Results Report	Action		06/30/2017-16:30	06/06/2017-16:30	
Gorman, Richard A	ADR / Mediation Results Report / Filing	Filing		06/30/2017-16:30	10/26/2020-16:30	
Shealy, Kirby Darr III	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Deal, Svend Hewitt	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Andrews, Ryan J	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Shealy, Kirby Darr III	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Deal, Svend Hewitt	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Andrews, Ryan J	5/8/2017_MOTION_Roster / Notice of Motions Roster Publication	Action		04/25/2017-08:04	10/26/2020-08:04	
Monarch, John C	Defs / John C Monarch Motion / Withdraw / CoS Plts Atty Shealy III	Motion		04/21/2017-18:04	05/08/2017-18:04	
Monarch, John C	Response to Motion for Judgment By Default	Filing		04/21/2017-17:31	10/26/2020-17:31	
Monarch, John C	Response to Motion For Judgment By Default	Filing		04/21/2017-16:12	10/26/2020-16:12	
Monarch, John C	Defs / John C Monarch Motion / Reconsider / CoS Plts Atty Shealy	Motion		04/21/2017-16:09	05/08/2017-16:09	
Monarch,	Response to Motion for Judgment By	Filing		04/21/2017-	10/26/2020-	

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John C	Default			16:03	16:03	
Gorman, Richard A	Order/Form 4-Defs Motion for Continuance Denied	Order		04/20/2017-09:04	10/26/2020-09:04	
Shealy, Kirby Darr III	4/25/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		04/19/2017-09:14	10/26/2020-09:14	
Deal, Svend Hewitt	4/25/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		04/19/2017-09:14	10/26/2020-09:14	
Andrews, Ryan J	4/25/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		04/19/2017-09:14	10/26/2020-09:14	
Direct Outbound Services LLC	Answer/Answer To Amended Complaint	Filing		04/18/2017-13:16	10/26/2020-13:16	
Monarch, John C	Order/Order Cover Sheet $25.00	Filing		04/18/2017-13:07	10/26/2020-13:07	
Monarch, John C	Def/John C Monarch Motion/Compel Discovery/CoS	Motion		04/18/2017-12:42	04/19/2017-12:42	
Monarch, John C	Def/John Monarch Motion/Continuance/CoS of Kirby Shealy III	Motion		04/18/2017-11:56	04/19/2017-11:56	
Gorman, Richard A	Order/Form 4/Denying Def's Motion to Set Aside Default Judgm	Order		04/12/2017-13:45	10/26/2020-13:45	
Gorman, Richard A	Memo/Memo in Opposition	Filing		04/06/2017-13:55	10/26/2020-13:55	
Shealy, Kirby Darr III	4/10/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/24/2017-11:17	10/26/2020-11:17	
Deal, Svend Hewitt	4/10/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/24/2017-11:17	10/26/2020-11:17	
Andrews, Ryan J	4/10/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/24/2017-11:17	10/26/2020-11:17	
Monarch, John C	Def/John C Monarch Motion/Set Aside Default	Motion		03/23/2017-11:18	09/07/2017-11:18	
Monarch, John C	Notice/Notice of Appearance	Filing		03/23/2017-10:56	10/26/2020-10:56	
Andrews, Ryan J	4/24/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/14/2017-15:17	10/26/2020-15:17	
Shealy, Kirby Darr III	4/24/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/14/2017-15:16	10/26/2020-15:16	
Deal, Svend Hewitt	4/24/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		03/14/2017-15:16	10/26/2020-15:16	
Gorman, Richard A	Plt/Richard A Gorman Motion/Judgment	Motion		03/03/2017-16:28	10/26/2020-16:28	
Gorman, Richard A	Affidavit/Default	Filing		03/03/2017-16:17	10/26/2020-16:17	
Shealy, Kirby Darr III	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		03/01/2017-08:52	10/26/2020-08:52	
Deal, Svend Hewitt	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		03/01/2017-08:52	10/26/2020-08:52	
Andrews, Ryan J	3/9/2017_JT_Roster/Notice of Case Roster Publication Sent	Action		03/01/2017-08:52	10/26/2020-08:52	
Gorman, Richard A	Order/Other-Def DOS's Motion to Dismiss Denied	Order		02/14/2017-14:18	10/26/2020-14:18	
Gorman, Richard A	Order/Pro Hac Vice On Attorney Ryan J. Andrews	Order		02/07/2017-16:47	10/26/2020-16:47	
Shealy, Kirby Darr III	March 9, 2017 Status Conf. Roster 9:00 am. Courtroom 8	Action		01/18/2017-09:40	10/26/2020-09:40	
Deal, Svend Hewitt	March 9, 2017 Status Conf. Roster 9:00 am. Courtroom 8	Action		01/18/2017-09:40	10/26/2020-09:40	
Gorman, Richard A	Plt's/Memo in Opposition	Filing		01/04/2017-18:46	10/26/2020-18:46	
Shealy, Kirby Darr III	1/4/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		12/13/2016-13:48	10/26/2020-13:48	
Deal, Svend Hewitt	1/4/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		12/13/2016-13:48	10/26/2020-13:48	
Shealy, Kirby Darr III	1/4/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		11/23/2016-15:31	10/26/2020-15:31	
Deal, Svend Hewitt	1/4/2017_MOTION_Roster/Notice of Motions Roster Publication	Action		11/23/2016-15:31	10/26/2020-15:31	

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Monarch, John C	Answer / Answer To Amended Complaint	Filing		11/23/2016-10:53	10/26/2020-10:53	
Monarch, John C	Def / John C Monarch Motion / Dismiss / CoS of Kirby D Shealy III	Motion		11/22/2016-17:02	01/06/2017-17:02	
Gorman, Richard A	Affidavit / Default	Filing		11/22/2016-16:21	10/26/2020-16:21	
Gorman, Richard A	Affidavit / Affidavit of Ryan J Andrews	Filing		10/27/2016-14:56	10/26/2020-14:56	
Gorman, Richard A	Plt / Richard A Gorman Motion / Pro Hac Vice / CoS	Motion		10/27/2016-14:55	01/06/2017-14:55	
Gorman, Richard A	Letter / Letter From Supreme Court Office Of Bar Admissions	Filing		10/27/2016-14:45	10/26/2020-14:45	
Gorman, Richard A	Notice of Filing	Filing		10/24/2016-12:18	10/26/2020-12:18	
Gorman, Richard A	Summons To Answer Amended Complaint	Filing		10/14/2016-13:19	10/26/2020-13:19	
Gorman, Richard A	Amended / Amended Complaint	Filing		10/10/2016-15:06	10/26/2020-15:06	
Monarch, John C	Order / Other-Allow To Amend Complaint	Order		10/05/2016-09:13	10/26/2020-09:13	
Monarch, John C	Response in Opp to Plaintiff's Motion to Amend Complaint	Filing		09/30/2016-15:05	10/26/2020-15:05	
Shealy, Kirby Darr III	10/3/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		09/30/2016-11:26	10/26/2020-11:26	
Deal, Svend Hewitt	10/3/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		09/30/2016-11:26	10/26/2020-11:26	
Shealy, Kirby Darr III	10/3/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		08/31/2016-12:08	10/26/2020-12:08	
Deal, Svend Hewitt	10/3/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		08/31/2016-12:08	10/26/2020-12:08	
Gorman, Richard A	Plt / Richard A Gorman Motion / Alter and / or Amend Complaint	Motion		08/26/2016-12:08	10/04/2016-12:08	
Gorman, Richard A	Filing of Exhibits A / Motion To Amend Complaint To Add	Filing		08/26/2016-12:08	10/26/2020-12:08	
Gorman, Richard A	Order / Form 4 / Lifting Stay	Order		08/16/2016-11:26	10/26/2020-11:26	
Shealy, Kirby Darr III	8/8/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		07/06/2016-14:44	10/26/2020-14:44	
Deal, Svend Hewitt	8/8/2016_MOTION_Roster / Notice of Motions Roster Publication	Action		07/06/2016-14:44	10/26/2020-14:44	
Gorman, Richard A	Plt / Richard A Gorman Motion Lift Automatic Stay	Motion		07/06/2016-10:00	08/12/2016-10:00	
Gorman, Richard A	Order / Strike Case From Active Roster	Order		12/01/2015-15:11	10/26/2020-15:11	
Shealy, Kirby Darr III	Roster / Notice of Case Roster Publication Sent	Action		09/14/2015-11:56	12/01/2015-11:56	
Deal, Svend Hewitt	Roster / Notice of Case Roster Publication Sent	Action		09/14/2015-11:56	12/01/2015-11:56	
Shealy, Kirby Darr III	Roster / Notice of Motions Roster Publication Sent	Action		07/27/2015-09:59	12/01/2015-09:59	
Deal, Svend Hewitt	Roster / Notice of Motions Roster Publication Sent	Action		07/27/2015-09:59	12/01/2015-09:59	
Gorman, Richard A	Richard A Gorman's Motion / Stay / Cert of Service	Motion		07/24/2015-10:46	10/15/2015-10:46	
Shealy, Kirby Darr III	Roster / Notice of Case Roster Publication Sent	Action		07/07/2015-12:33	12/01/2015-12:33	
Deal, Svend Hewitt	Roster / Notice of Case Roster Publication Sent	Action		07/07/2015-12:33	12/01/2015-12:33	
Gorman, Richard A	ADR / Notice of ADR	Action		06/23/2015-09:42	12/01/2015-09:42	
Gorman, Richard A	Archived Document	Filing		03/25/2015-00:00	12/01/2015-00:00	
Gorman, Richard A	ADR / Alternative Dispute Resolution (Workflow)	Action		03/06/2015-16:44	06/23/2015-16:44	
Monarch, John C	Answer / Answer of Defendant John Monarch / Service	Filing		01/27/2015-10:58	12/01/2015-10:58	

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Gorman, Richard A	Order Denying Def Motion For Summary Judgment	Order		01/26/2015-15:58	12/01/2015-15:58	
Gorman, Richard A	Order/Form 4-Defendant's Motion for Summary Judgment Denied	Order		12/10/2014-10:06	12/01/2015-10:06	
Gorman, Richard A	Affidavit of Richard A Goirman - filed at 12/3/14 Hearing	Filing		12/03/2014-11:37	12/01/2015-11:37	
Gorman, Richard A	Memo in Opposition to Defendant's Motion to Dismiss	Filing		12/03/2014-11:37	12/01/2015-11:37	
Shealy, Kirby Darr III	Roster/Notice of Motions Roster Publication Sent	Action		10/10/2014-08:13	12/01/2015-08:13	
Deal, Svend Hewitt	Roster/Notice of Motions Roster Publication Sent	Action		10/10/2014-08:13	12/01/2015-08:13	
Monarch, John C	Motion/Dismiss/Cert of Service	Motion		10/09/2014-15:59	12/03/2014-15:59	
Gorman, Richard A	Service/Affidavit Of Service on John C Monarch	Filing		08/21/2014-15:57	12/01/2015-15:57	
Gorman, Richard A	Verification/Verified	Filing		08/12/2014-11:39	12/01/2015-11:39	
Gorman, Richard A	Summons & Complaint	Filing		08/08/2014-16:42	12/01/2015-16:42	

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ATTACHMENT C

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Greenville County
13th Judicial Circuit
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Richard A Gorman vs. John C Monarch , defendant, et al

Case Number:	2021CP2303414	Court Agency:	Greenville County Common Pleas	Filed Date:	07/20/2021
Case Type:	Common Pleas	Case Sub Type:	Slander/Libel 380	File Type:	Jury
Status:	Appeal	Assigned Judge:			
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:		Restore Reason:	Reopen Case for Rule 40J
Judgment Number:		Court Roster:			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Monarch, John C	NEF(06-01-2022 08:59:19 AM) Order/Substitution Of Counse...	Filing		06/01/2022-08:59		
Monarch, John C	Order/Substitution Of Counsel	Order		06/01/2022-08:59		
Monarch, John C	NEF(05-31-2022 09:25:10 AM) Proposed Order/Substitution ...	Filing		05/31/2022-09:28		
Monarch, John C	Order/Order Cover Sheet $25.00	Filing		05/31/2022-09:25		
Monarch, John C	Appeal/Notice of Appeal to Court of Appeals	Action		05/18/2022-11:23		
Monarch, John C	NEF(05-17-2022 11:23:04 AM) Appeal/Notice of Appeal to C...	Filing		05/17/2022-12:53		
Monarch, John C	NEF(05-17-2022 11:08:11 AM) Notice/Notice of Appearance	Filing		05/17/2022-11:20		
Monarch, John C	Notice/Notice of Appearance	Filing		05/17/2022-11:08		
Gorman, Richard A	NEF(04-27-2022 12:15:36 PM) Order/Compel	Filing		04/27/2022-12:15		
Gorman, Richard A	Order/Compel	Order		04/27/2022-12:15		
Monarch, John C	NEF(04-07-2022 04:49:41 PM) Motion/Reconsider	Filing		04/08/2022-08:18		
Monarch, John C	Def/John C Monarch Motion/Reconsider Rule 59e	Motion		04/07/2022-16:49		
Gorman, Richard A	NEF(03-28-2022 02:53:14 PM) Order/Compel	Filing		03/28/2022-14:53		
Gorman, Richard A	Order/Compel	Order		03/28/2022-14:53		
Gorman, Richard A	NEF(03-16-2022 01:46:21 PM) Order/Order Cover Sheet $25....	Filing		03/16/2022-14:46		
Gorman, Richard A	Order/Order Cover Sheet $25.00	Filing		03/16/2022-13:46		
Gorman, Richard A	NEF(03-14-2022 04:33:04 PM) Order/Sealed	Filing		03/14/2022-16:33		
Gorman, Richard A	Order/Sealed-Exhibit to Motion	Order		03/14/2022-16:33		
Gorman,	NEF(03-11-2022 01:05:47 PM)	Filing		03/11/2022		

Richard A	Proposed Order/Compel			13:31		
Gorman, Richard A	Order/Order Cover Sheet $25.00	Filing		03/11/2022-13:05		
Langley, Spencer Davis	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Brumback, Christopher Todd	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Morgan, Grenville D. Jr.	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Radeker, Andrew Sims	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Scully, John Hampton	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Moore, David L. Jr.	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Mebane, Robert L. Jr.	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Cheves, Langdon III	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Larabee, Sarah Megan	3/9/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		02/07/2022-16:09		
Langley, Spencer Davis	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Brumback, Christopher Todd	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Morgan, Grenville D. Jr.	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Radeker, Andrew Sims	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Scully, John Hampton	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Moore, David L. Jr.	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Mebane, Robert L. Jr.	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Cheves, Langdon III	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Larabee, Sarah Megan	2/7/2022_MOTION_Roster/Notice of Motions Roster Publication	Action		12/14/2021-13:07		
Gorman, Richard A	NEF(11-05-2021 10:34:34 AM) Notice/Notice of Appearance	Filing		11/05/2021-10:35		
Gorman, Richard A	Notice/Notice of Appearance	Filing		11/05/2021-10:34		
Langley, Spencer Davis	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Brumback, Christopher Todd	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Morgan, Grenville D. Jr.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Radeker, Andrew Sims	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Scully, John Hampton	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Moore, David L. Jr.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Mebane, Robert L. Jr.	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Cheves, Langdon III	12/13/2021_MOTION_Roster/Notice of Motions Roster Publicatio	Action		11/04/2021-10:07		
Gorman, Richard A	NEF(11-04-2021 08:33:13 AM) Motion/Seal	Filing		11/04/2021-09:07		
Gorman,	Plt/Richard A Gorman Motion/Seal	Motion		11/04/2021-	03/11/2022-	

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Richard A				08:33	08:33	
Gorman, Richard A	NEF(09-30-2021 03:37:47 PM) Proposed Order/Compel	Filing		09/30/2021-16:07		
Gorman, Richard A	Order/Order Cover Sheet $25.00	Filing		09/30/2021-15:37		
Gorman, Richard A	NEF(09-15-2021 02:41:57 PM) Order/Electronic Form 4	Filing		09/15/2021-14:42		
Gorman, Richard A	NEF(09-15-2021 02:41:28 PM) Order/Electronic Form 4	Filing		09/15/2021-14:42		
Gorman, Richard A	Order/Electronic Form 4	Order		09/15/2021-14:41		
Gorman, Richard A	Order/Electronic Form 4	Order		09/15/2021-14:41		
Gorman, Richard A	NEF(09-13-2021 02:46:39 PM) Filing/Other	Filing		09/13/2021-15:06		
Gorman, Richard A	Filings Under Old Case Number Relevant to Motions/Comp & San	Filing		09/13/2021-14:46		
Langley, Spencer Davis	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Langley, Spencer Davis	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Brumback, Christopher Todd	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Brumback, Christopher Todd	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Morgan, Grenville D. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Morgan, Grenville D. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Radeker, Andrew Sims	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Radeker, Andrew Sims	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Scully, John Hampton	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Scully, John Hampton	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Moore, David L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Moore, David L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Mebane, Robert L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Mebane, Robert L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Cheves, Langdon III	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Cheves, Langdon III	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		09/01/2021-16:42		
Langley, Spencer Davis	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Brumback, Christopher Todd	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Morgan, Grenville D. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Radeker, Andrew Sims	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Scully, John Hampton	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Moore, David L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Mebane,	9/13/2021_MOTION_Roster/Notice	Action		08/17/2021		

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Robert L. Jr.	of Motions Roster Publication			16:12		
Cheves, Langdon III	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:12		
Langley, Spencer Davis	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Brumback, Christopher Todd	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Morgan, Grenville D. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Radeker, Andrew Sims	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Scully, John Hampton	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Moore, David L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Mebane, Robert L. Jr.	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Cheves, Langdon III	9/13/2021_MOTION_Roster/Notice of Motions Roster Publication	Action		08/17/2021-16:10		
Gorman, Richard A	NEF(08-17-2021 12:52:59 PM) Motion/Sanctions	Filing		08/17/2021-14:13		
Gorman, Richard A	Plt/Richard A Gorman Motion/Sanctions	Motion		08/17/2021-12:52		
Gorman, Richard A	Plt/Richard A Gorman Motion/Compel	Motion		08/17/2021-12:52	09/15/2021-12:52	
Gorman, Richard A	Order/Restore Case To Active Docket per rule 40(J)	Order		07/21/2021-15:01		

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ATTACHMENT D

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**CASE NO. 2014-CP-23-04432**
Richard A. Gorman, **Plaintiff,** **vs.** **John C. Monarch; Direct Outbound Services, LLC; and ShipChain, Inc.,** **Defendants.**	**CONSENT ORDER RESOLVING MOTIONS TO COMPEL BETWEEN PLAINTIFF AND DEFENDANTS MONARCH AND DIRECT OUTBOUND**

This matter comes before me on motions to compel discovery brought by the Plaintiff and by Defendants Monarch and Direct Outbound in the above-captioned action. Per the consent of the parties, the court essentially grants both motions, as outlined below.

1) As to the Plaintiff's motion to compel discovery, Defendant Monarch has served supplemental responses to the Plaintiff's first set of interrogatories and requests to produce but not to Interrogatories the Plaintiff's supplemental interrogatories and requests to produce. Defendant Monarch previously served only objections to many of Plaintiff's supplemental interrogatories and requests to produce. Defendant Monarch is hereby ordered as follows:

    a. With regard to Interrogatories 11, 12, and 13 of Plaintiff's supplemental interrogatories to Defendant Monarch and Request 9 of Plaintiff's supplemental requests to Defendant Monarch to produce, the Plaintiff may serve these interrogatories and requests in revised form, limiting them to specific date ranges and subject matter tailored more narrowly to time frames and matters at issue in this case, and Defendant Monarch shall serve responses to these revised discovery requests within 14 days of the revised requests' service.

Exhibit 13 to motion re: refusal to obey orders
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b. Defendant Monarch shall serve responses to the Plaintiff's other supplemental interrogatories and requests to produce, including production of documents and items within Defendant Monarch's custody or control.

c. While the responses may be made subject to objections, the responses shall substantively answer the Plaintiff's supplemental interrogatories and requests to produce.

d. With regard to requests to produce seeking the production of electronic devices, Defendant Monarch may initially comply with the requests by providing a list of such devices. The parties are ordered to cooperate concerning the expeditious provision of such devices from the list as the Plaintiff may select for examination by the Plaintiff or such persons as he may choose.

2) As to Defendant Monarch's motion to compel discovery, the Plaintiff shall serve supplemental responses to Defendant Monarch's interrogatories and requests to produce, which may not include any objection based on Defendant Monarch being or purportedly being in default in this action.

3) All discovery responses ordered to be served by this order shall be served electronically and expeditiously, but in no event later than September 10, 2020. After that date, the parties shall expeditiously supplement their existing responses with any information or documents they obtain following that date.

4) The parties shall cooperate with the scheduling and taking of depositions during the remaining pendency of this case.

5) In the event of any dispute concerning any party's compliance with this order or other future discovery dispute, the undersigned judge may rule on such dispute on written submissions by the parties and without a formal motion or a hearing.

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6) The court does not order any sanctions or attorneys' fees and costs in connection with these motions but may do so, if warranted, with regard to any future dispute concerning any party's compliance with this order or other future discovery dispute.

And IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr.
Circuit Judge

WE SO CONSENT:

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Exhibit 13 to motion re: refusal to obey orders

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Greenville Common Pleas

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

Case Number: 2014CP2304432

Type: Order/Consent Order

So Ordered

s/Alex Kinlaw, Jr., #2763

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ATTACHMENT E

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
RICHARD A. GORMAN, Plaintiff, vs. JOHN C. MONARCH, DIRECT OUTBOUND SERVICES, LLC, SHIPCHAIN, INC., AARON KELLY, SAMI RUSANO AND BRIAN EVANS, Defendants.	)	Civil Action No. 2014-CP-23-04432 **DEFENDANT JOHN MONARCH'S RESPONSES TO PLAINTIFF'S SUPPLEMENTAL REQUESTS FOR PRODUCTION**

TO: ANDREW S. RADEKER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant John C. Monarch ("Defendant") responds to Plaintiff's Request for Production of Documents pursuant to Rule 34 of the South Carolina Rules of Civil Procedure as follows:

In setting forth these answers, the Defendant does not waive the attorney-client, work product, or other privilege or immunity from disclosure which may attach to information responsive to the Requests. The Defendant does not concede the relevance or materiality of the Requests, or the subject matter to which the Requests refer.

These responses are submitted by the Defendant subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of the documents referred to or answers given, or the subject of them, in any subsequent proceeding or in the trial of this action or any other action or proceeding;

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B. The right to object to other discovery procedures involving or relating to the subject matter of the Request for Production responded to here; and

C. The right at any time to revise, correct, add to, or clarify any of the answers set forth here, or documents referred to here.

D. Defendant objects to these requests to the extent that they ask for information protected by the attorney-client or work product privileges.

E. In responding to Plaintiff's requests, this Defendant has conducted a thorough and reasonable search of those sections of its corporate records where documents and other things responsive to these requests are most apt to be kept in an ordinary course of business. In addition, this Defendant's representatives have spoken to those employees who are most apt to have knowledge as to the location or existence of information that may be responsive. To the extent the subject requests asks Defendant to take actions other than these, Defendant objects because that discovery is overly broad, unduly burdensome, and asks for information not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

9. All Computing Devices, Storage Devices, and/or Storage Services identified in response to the supplemental interrogatories above.

RESPONSE: To the extent this Request for Production is based on Plaintiff's Supplemental Interrogatories, Defendant hereby reiterates and incorporates his objections to Plaintiff's Interrogatories Numbers 11, 12, and 13 as if fully stated herein. Additionally, this request is overly broad and unduly burdensome, and seeks information irrelevant to the Plaintiff's claims in this case and is unlikely to lead to the discovery of admissible evidence. Furthermore, the electronic discovery sought is unreasonably cumulative and

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duplicative, and is obtainable from some other source that is more convenient, less burdensome. More concerningly, Defendant objects to this Request for Production due to the significant privacy and confidentiality concerns created by the fact that Plaintiff's inspection of Defendant's iPhone or MacBook Pro will improperly expose privileged and confidential material that is completely unrelated and irrelevant to any of the claims or defenses in this case and that are unlikely to lead to the discovery of admissible evidence. Plaintiff's inspection of Defendant's MackBook Pro and iPhone inappropriate in this case given that Defendant has not withheld any requested information, has searched for and previously produced all discoverable information and documentation consistent with Defendant's discovery obligations. Defendant also objects to this Request for Production because it fails to establish a protocol governing the forensic examination of the hard drives in question. Subject to these objections and without waiving the same, Defendant, as stated in response to Interrogatory Number 13, Defendant, as a result of the routine, good-faith operation and upgrading of his electronic information systems no longer has in his possession his iPhone 5 or iPhone X, which were sold or traded-in at the time those devices were upgraded. Similarly, as part of the routine, good-faith operation and upgrading of his electronic information systems, and as recommended by Apple, Inc., when upgrading his 2013 MacBook Pro Defendant migrated the data from the device being upgraded to his new MacBook Pro prior to erasing all content and settings from the old device.

[SIGNATURE ON FOLLOWING PAGE]

Exhibit 13 to motion re: refusal to obey orders

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September 28, 2020

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ATTACHMENT F