

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ABBEVILLE AND GREENWOOD COUNTIES
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002729

Vince Coates, Respondent,

v.

Dorothy Renee Simchon, Appellant.

AND

Bay Island Sportswear, Inc., Sam Simchon, Individually,
Appellants,

v.

Vince Coates, Individually, Xcentric Ventures, LLC, Edward Magedson and John or
Jane Doe 1-7 and XYZ Company X-Z, Defendants,

Of whom Vince Coates, Individually, is the Respondent.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS
Vince Coates

JUDGMENT IN A CIVIL CASE
CASE NO. 2011 CP 24-01340
Dorothy Renee Simchon

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Plaintiff

Attorney for : Plaintiff Defendant
or
☐ Self-Represented Litigant

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
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2154

Judge Code

11/24/14

Date

FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2014 NOV 26 PM 4:12

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of Nov, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of Nov, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Henry

Edward McCallum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Angela Woodhurst

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

COURT OF COMMON PLEAS

VINCE COATES,
Plaintiff,

Case No. 2011-CP-24-1340

v.

ORDER

DOROTHY RENEE SIMCHON,
Defendant.

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2014 NOV 26 PM 4:12

THIS MATTER is before the Court as a motion by the defendant to alter or amend the Court's order and judgment filed on September 18, 2014. The order being challenged granted the plaintiff's motion to enforce the parties' civil case settlement.

IN HER AMENDED MOTION to alter or amend the judgment the defendant sets forth several grounds as follows: 1) the order is unclear as to whether the cases are to be dismissed with or without prejudice; 2) what form any mutual releases would take; 3) whether the order directing the internet service entity to remove harmful comments should be included in this order or in the Abbeville County order; 4) that the order should include supplemental relief with respect to the internet entity; and 5) alternatively that the settlement agreement announced on the record should be set aside since the true intent of the parties cannot be ascertained.

FOR THE REASONS set forth herein, the defendant's amended motion to alter or amend the final order in this case is denied. I will address each of the defendant's arguments in sequence.

I FIND THAT the parties' clear intent was for this case and the related Abbeville County case to be dismissed with prejudice and so order.

WITH RESPECT to the mutual release, I find that a standard mutual release will be submitted by plaintiff's counsel to opposing counsel for each respective case. There will be no admission of liability by any party and each party will be required to comply with the settlement terms announced by defendant's attorney Mr. McCallum in open court on February 3, 2014. The

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terms of the settlement need not be repeated in this order or in the mutual release itself since those terms have previously been announced in open court and presented to the Court and to the parties in transcript form.

WITH RESPECT TO THE INTERNET publication I find that the Abbeville County order is the appropriate place for this matter to be addressed.

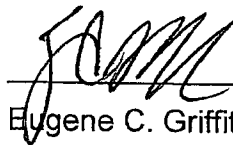
THE SUPPLEMENTAL RELIEF sought by the defendant in her motion is denied. The parties' agreement did not include a requirement that the internet statement be removed only that the plaintiff "request" the removal of the offending language by the internet provider. The plaintiff stands ready and willing to make this request consistent with the parties' agreement as his counsel has informed the Court. However, in a subsequent hearing and upon the Court's suggestion the plaintiff agreed that an order be issued by the Court requiring the internet provider to remove the offending language. In the event that the internet provider does not comply with the Court's order to remove the offending language, further proceedings may be justified against that provider. However, no further actions will be required of the plaintiff on this issue.

THE DEFENDANT announced the settlement agreement prior to the trial of this case on February 3, 2014. The agreement was "made in open court and noted upon the record" as required by Rule 43 (k) of the South Carolina Rules of Civil Procedure and was proper in all respects. The agreement was also clear and unambiguous. In as much as the agreement was placed upon the record by defendant's counsel it would be difficult for her to challenge its clarity at this or any stage of the proceedings. All parties and lawyers in both the Greenwood County and Abbeville County cases were present when the settlement agreement was announced and approved by the Court without objection.

FOR THE REASONS set forth herein and those which will be provided in the Abbeville County order in Civil Action No. 2012-CP-1-227, the defendant's amended motion to alter or amend the final judgment in this case is denied in all respects.

IT IS SO ORDERED.

Sen



Eugene C. Griffith, Jr.

Circuit Court Judge

Newberry, South Carolina

Date: Nov. 24, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP 24-01340

Vince Coates

Dorothy Renee Simchon

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : Plaintiff Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

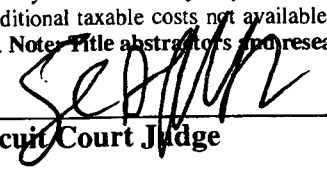
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Circuit Court Judge

2154
Judge Code

9/8/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Henry

Edward McCallum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Angela Woodhurst

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-24-1340

Vince Coates,

Plaintiff,

v.

Dorothy Renee Simchon

Defendant.

Order

This matter was before the court on June 4, 2014 in Laurens County Courthouse upon the plaintiff's motion to enforce the terms of the parties' settlement placed on the record in open court on February 3, 2014. Present for the were the plaintiff, the plaintiff's lawyer Stephen J. Henry from the Greenville County Bar, the defendant's husband, and the defendant's lawyer Edward McCallum from the Greenwood County Bar. Counsel for the defendant informed the court that the defendant was unable to attend due to an emergency and her presence was waived.

For the reasons set forth herein I grant the plaintiff's motion.

The Plaintiff's motion is based upon the transcript of proceedings held before me on February 3, 2014. The transcript was attached to the Plaintiff's motion. On that date this civil case was scheduled for trial and jury qualification had been completed. Prior to selecting a jury, the parties informed the court that they had reached a settlement agreement. The Court suggested and the parties agreed that the settlement terms would be placed on the record. It is noted that the jurors to be selected for civil trials were seated in the court room.

SCB

Defendant's counsel announced the settlement terms on the record consistent with Rule 43 of the South Carolina Rules of Civil Procedure. Upon announcing the settlement the parties and counsel left the court room, thus some pertinent details were omitted by the attorney in order to protect the clients, the details were to be incorporated in the order.

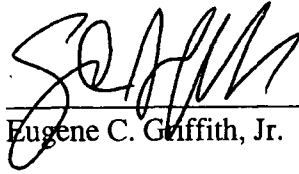
Since that date, the parties attempted to reduce to writing the substance of the agreement. It appears to the Court that the parties disagree as the definition of the settlement term of "assisting" or "consenting to" the removal of disparaging comments placed and published on the internet. The Court is aware that the service providers will not remove published comments absent a court order. Since it is impossible for the court to determine what the parties intended of the other party in providing "consent" or "assistance" to the other, this Court will grant leave for either party to prepare a supplemental order directing any "internet service" entity maintaining the comments, to remove the publications which either party deems harmful or disparaging to him or her. The supplemental order shall contain specific and sufficient factual details of the published comments which are sought to be removed and shall be consistent with the South Carolina Rules of Civil Procedure. The order may allow service of the order upon the service provider with a provision that a hearing be held in Greenwood County. The order may further provide reasonable sanctions against the provider for failure to comply. Neither party shall be compelled to admit any liability, wrongdoing, or negligence in the supplemental order. The terms of that settlement need not be republished in this order or in any supplemental order issued by this court consistent with this order.

As all other issues not addressed herein, the settlement reached between the parties resolved all issues between the parties herein and each party shall be compelled to comply with the settlement.



The Plaintiff's motion to compel compliance with the settlement is granted.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.

This 8th day of September 2014
Newberry, South Carolina



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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 01-00227

Bay Island Sportswear

Vince Coates, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Defendant

Attorney for: Plaintiff Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

ORDER INFORMATION

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Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

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Circuit Court Judge

2154

Judge Code

2/6/15

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Henry

Edward McCallum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Emily McMahan

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

Bay Island Sportswear, Inc., Sam)
Simchon, Individually,)

Case No.: 2012-CP-01-227

Plaintiffs.)

v.)

AMENDED ORDER

Vince Coates, Individually,)
Xcentric Ventures, LLC, Edward)
Magedson and John or Jane Doe 1-7)
and XYZ Company X-Z,)
Defendants.)

On December 9, 2014, the Plaintiffs moved to alter or amend my order of November 24, 2014, which was filed on November 26, 2014 ("Original Order"). I hereby grant parts one and two of the Plaintiffs' motion, which object to the Original Order because it provides relief as to RipoffReport.com instead of internet service entities generally. I deny the remainder of the Plaintiffs' motion. The Original Order is hereby amended to provide as follows:

THIS MATTER is before the Court to address certain issues that relate to this litigation and should be read in conjunction with the order issued in the case of Vince Coates v. Dorothy Renee Simchon, Civil Action No. 2011-CP-24-1340 (Greenwood County case) denying the motion by the defendant in that case to amend or alter the judgment.

ON FEBRUARY 3, 2014 the parties in the Greenwood County case settled that litigation and, as part of that settlement agreement ended the present case by agreement. By way of brief background the plaintiff in this case Bay Island Sportswear is owned by

sch 1/3

Sam Simchon, the husband of the defendant in the Greenwood County case, Dorothy Simchon. The defendant in this case (Mr. Coates) is also the plaintiff in the Greenwood County case. The lawyer who represents the plaintiff in the present case, Edward McCallum, III, is also the lawyer who represents the defendant in the Greenwood case. Mr. Coates's lawyer in the present case is C. Rauch Wise. His lawyer in the Greenwood case is Stephen J. Henry.

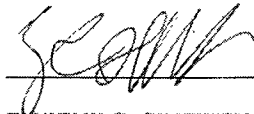
AT ISSUE IN the present case was an internet publication alleged by the plaintiff to have been defamatory. The defendant denied these allegations. Since the issue of the internet publication was raised in this lawsuit, the Court deems it appropriate to deal with those questions herein.

IT IS THE ORDER of the Court based upon the settlement terms of the Greenwood case and with the consent of the defendant Mr. Coates, that any and all internet service entities immediately remove all references to statements on the website "Ripoffreport.com" posted on or about March 29, 2011, and on or about April 16, 2011, under the screen name, "tshirt man" and appearing on the following uniform resource locator (the "URL"): <http://www.ripoffreport.com/r/bay-island-sportswear/greenwood-south-carolina-/bay-island-sportswear-sam-simchon-this-guy-will-inflate-the-price-he-originally-quoted-yo-711721>. Internet services entities shall ensure that the URL is not listed in response to searches on the names of the Plaintiffs in this case. The URL is to be re-indexed and deleted from all caches so that no information relating to the URL can be accessed via the internet. "Internet service entities" shall mean any internet search engine provider, including, but not limited to, Google, Bing and Yahoo.

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FAILURE TO REMOVE the above content will be considered a violation of this order and subject that entity to sanctions through the Court's contempt powers. This Order may be served on any internet service provider. If any such internet service provider should fail to comply after being duly served, the Court may, after a hearing to take place in this County, impose reasonable sanctions against such internet service provider. Notwithstanding the dismissal of this case, the Court shall retain jurisdiction to conduct such a hearing.

IT IS SO ORDERED.



EUGENE C. GRIFFITH, JR.
EIGHTH CIRCUIT COURT JUDGE

Greenwood, SC, 7-4, 2015

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 01-00227

Bay Island Sportswear

Vince Coates, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Plaintiff

Attorney for : Plaintiff Defendant
or
☐ Self-Represented Litigant

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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 26 AM 10:54
EMILY Y. MCILAHAN
CLERK OF COURT

INFORMATION FOR THE PUBLIC INDEX

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[Signature]
Circuit Court Judge

2154
Judge Code

11/24/14
Date

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Edward McCallum

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ATTORNEY(S) FOR THE DEFENDANT(S)

Emily McMahan

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

BAY ISLAND SPORTSWEAR,)
Plaintiff,)

v.)

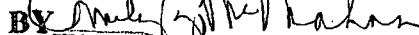
VINCE COATES, ET AL.,)
Defendant.)

COURT OF COMMON PLEAS

Case No. 2012-CP-1-

ORDER

TRUE COPY

BY 
ABBEVILLE COUNTY CLERK OF COURT

EMILY Y. MCMANAN
CLERK OF COURT

2014 NOV 26 AM 10:54

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

THIS MATTER is before the Court to address certain issues that relate to this litigation and should be read in conjunction with the order issued in the case of Vince Coates v. Dorothy Renee Simchon, Civil Action No. 2011-CP-24-1340 (Greenwood County case) denying the motion by the defendant in that case to amend or alter the judgment.

ON FEBRUARY 3, 2014 the parties in the Greenwood County case settled that litigation and, as part of that settlement agreement ended the present case by agreement. By way of brief background the plaintiff in this case Bay Island Sportswear is owned by Sam Simchon, the husband of the defendant in the Greenwood County case, Dorothy Simchon. The defendant in this case (Mr. Coates) is also the plaintiff in the Greenwood County case. The lawyer who represents the plaintiff in the present case, Edward McCallum, III, is also the lawyer who represents the defendant in the Greenwood case. Mr. Coates's lawyer in the present case is C. Rauch Wise. His lawyer in the Greenwood case is Stephen J. Henry.

AT ISSUE IN the present case was an internet publication alleged by the plaintiff to have been defamatory. The defendant denied these allegations. Since the issue of the internet publication was raised in this lawsuit, the Court deems it appropriate to deal with those questions herein.

IT IS THE ORDER of the Court based upon the settlement terms of the Greenwood case and with the consent of the defendant Mr. Coates, that the internet entity Ripoff Report shall remove from its website the following language concerning Bay Island Sportswear and Sam Simchon: "This manufacturer is a



crook he quotes you prices on tshirts and go back and change the prices. Once u get the goods he expects you to pay the price of the invoice which is greater then he quoted he will inflate the freight cost and want you to pay for it he will tell you he will ship shirts by boat but then say he had to ship by air with out discussing the possible price increase with the customer please stay away from this crook. When you refuse to pay for extra fees he will try to find your spouses name and falsify the invoice with you and her name on it to try to put a lean against your property."

FAILURE TO REMOVE the above language by Ripoff Report will be considered a violation of this order and subject that entity to sanctions through the Court's contempt powers.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Circuit Court Judge

Newberry, South Carolina

Date: Nov. 24th 2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE) EIGHTH JUDICIAL CIRCUIT

Bay Island Sportswear, Inc., Sam) Civil Action No. 2012-CP-01-227
Simchon, Individually,)

Plaintiffs,)

vs.)

Vince Coates, Individually, Xcentric)
Ventures, LLC, Edward Magedson and)
John or Jane Doe 1-7, and XYZ)
company X-Z,)

Defendants)

ORDER

EMILY Y MCMAHAN
CLERK OF COURT

2013 APR -3 AM 8:57

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

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ABBIEVILLE COUNTY CLERK OF COURT

This matter is before the Court on Defendants Xcentric Ventures, LLC ("Xcentric") and Edward Magedson's ("Magedson") (collectively, "Defendants") motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure. For the reasons that follow, the Court grants Defendants' motion.

BACKGROUND

Plaintiffs commenced this civil action alleging claims against Defendants for defamation arising out of comments posted on an internet message board maintained by Xcentric. Plaintiff Bay Island Sportswear, Inc. ("Bay Island") is a South Carolina textile company that sells tee-shirts and is owned by Plaintiff Sam Simchon. Xcentric is an Arizona-based limited liability company that operates a website known as the "Ripoff Report," which is located on the internet at RipoffReport.com. Xcentric does not own any assets in South Carolina, does not have any offices or agents in South Carolina, and does not conduct any business in South Carolina. Xcentric does business in Arizona, and its agents and assets are all located in Arizona. Magedson is the Manager of Xcentric and is responsible for supervising employees and



managing legal issues. He is a resident of Arizona and has no apparent connection to South Carolina. Magedson does not personally solicit or do business in South Carolina and maintains no contacts in South Carolina.

The Ripoff Report is a message board that allows users to post complaints about negative business practices they have experienced. Users may read reports posted by others and post responses called "rebuttals." The website charges nothing for users to read reports or for users to post reports or rebuttals. The postings on Ripoff Report are screened by a team of content monitors, who monitor and remove from the site any profanity, personally identifying information such as bank account numbers, physical threats, and obscenity. Ripoff Report has almost 700,000 reports and millions of additional comments pertaining to businesses in a multitude of different jurisdictions. Of those reports, only approximately 0.5 percent relate to South Carolina residents.

Defendant Vince Coates ("Coates") is a South Carolina resident who transacted business with Bay Island. The Complaint alleges that Coates posted false and defamatory statements about Bay Island on the Ripoff Report website. Plaintiffs also seek to hold Xcentric and Magedson liable based on allegations that they contributed to the false and misleading statements by providing the forum and helping to disseminate the allegedly defamatory statements. Bay Island further alleges that as a result of this report, it suffered financial loss, a loss of clients, and reputational damage.

On August 28, 2012, Defendants Xcentric and Magedson filed a motion to dismiss pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, contending they lack the sufficient contacts with the forum to subject them to personal jurisdiction in South Carolina.

The Court held a hearing on Defendants' motion, and for the reasons that follow, the Motion to Dismiss is granted.

DISCUSSION

At the pretrial stage, the party seeking to invoke personal jurisdiction over a nonresident defendant bears the burden of establishing a prima facie showing of jurisdiction. *Power Prods & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall v. Repod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

"To assert personal jurisdiction over a non-resident defendant, the exercise of jurisdiction must be authorized by South Carolina's long-arm statute and must comport with the Due Process Clause of the Fourteenth Amendment." *Colson v. Samson Hair Restoration, LLC*, 837 F. Supp. 2d 564, 567 (D.S.C. 2011). The Supreme Court of South Carolina has interpreted the long-arm statute to extend to the limits of the Due Process Clause, and thus the "sole question is whether the exercise of jurisdiction would violate due process." *Cribb v. Spatholt*, 382 S.C. 475, 487, 676 S.E.2d 706, 712 (Ct. App. 2009).

Due process requires that a nonresident defendant must have "minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* Courts apply a two-pronged test for due process. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). "The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action and (2) find the exercise of

jurisdiction is reasonable or fair.” *Leggett v. Smith*, 386 S.C. 63, 73, 686 S.E.2d 699, 705 (Ct. App. 2009). “If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.” *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 130-31 (1992).

Further, “[p]ersonal jurisdiction is exercised as ‘general jurisdiction’ or ‘specific jurisdiction,’” depending upon the nature and degree of contacts the nonresident defendant maintains with the forum. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. “General jurisdiction attaches even when the nonresident defendant’s contacts with the forum state are not directly related to the cause of action, if the defendant’s contacts are both ‘continuous and systematic.’” *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 508 (2005). “Specific jurisdiction is the State’s right to exercise personal jurisdiction because the cause of action arises specifically from a defendant’s contacts with the forum.” *Id.*

Plaintiffs contend that Defendants’ contacts with South Carolina suffice to establish both specific and general jurisdiction. The Court addresses each argument in turn.

I. Plaintiffs Have Failed to Show That Defendants Are Subject to Specific Jurisdiction.

A. Minimum Contacts Prong

To exercise specific jurisdiction over a nonresident defendant, due process analysis requires the Court to find that “the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities.” *Moosally v. W.W. Norton & Co., Inc.*, 358 S.C. 320, 331-32, 594 S.E.2d 878, 884 (Ct. App. 2004). The defendant must “personally avail itself of the privileges of conducting activities in the forum state, thus invoking the benefits and protections of our laws.” *S. Plastics Co. v. S. Comm. Bank*, 310 S.C. 256, 261, 423 S.E.2d 128, 132 (1992). This requirement “ensures that a defendant will not be hauled into a

jurisdiction solely as a result of random, fortuitous, or attenuated contacts.” *Id.* at 262, 423 S.E.2d at 132.

Plaintiffs argue that Defendants have sufficient minimum contacts with the forum because Defendants (1) published a website that was accessible in South Carolina; (2) caused a tortious injury in South Carolina; (3) committed a tortious act in South Carolina; and (4) distributed a “Do-It-Yourself Guide” in South Carolina.

1. Defendants’ Website

Plaintiffs first maintain that Defendants possess the minimum contacts with South Carolina necessary to satisfy due process because they operate and publish a website that is accessible to residents of South Carolina. The Court disagrees. The maintenance of a website does not constitute purposeful availment toward the forum absent some showing that the website was directed at the forum state more than any other place. *See Kozma*, 379 S.C. at 435-35; 665 S.E.2d at 666. Indeed, courts consistently have held that the mere operation of a website in a foreign jurisdiction does not confer jurisdiction upon the forum state simply because the website is accessible there. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997) (“[A]s far as we are aware, no court has ever held that an Internet advertisement alone is sufficient to subject the advertiser to jurisdiction in the plaintiff’s home state.”). Thus, “the mere fact that the website contained defamatory information concerning the plaintiff does not, absent some supporting evidence, mean that the defendant possessed the intent to target residents of the forum state.” *Bailey v. Turbine Design, Inc.*, 86 F. Supp. 2d 790 (W.D. Tenn. 2000). To hold otherwise would subject operators of websites to nationwide jurisdiction based upon fortuitous contacts with the forum, which is inconsistent with traditional concepts of personal jurisdiction. *Carson v. Vance*, 326 S.C. 543, 549, 485 S.E.2d 126, 129 (Ct. App. 1997) (“The ‘purposeful

availment' requirement endures that a defendant will not be brought into a jurisdiction solely as a result of random, fortuitous or attenuated contacts.").

Applying these principles to the case at bar, the Court concludes that Plaintiffs have failed to make a prima facie showing of specific jurisdiction. The Ripoff Report is a passive, online message board maintained and operated by Defendants in Arizona. Although the website is accessible through the internet in any jurisdiction, there is no evidence that the Ripoff Report is directed at South Carolina more than any other jurisdiction. To the contrary, record evidence shows that only 0.5 percent of the reports posted on the website pertain to South Carolina residents. Plaintiffs have offered no evidence that Defendants directly targeted South Carolina through their website, and therefore, they have failed to show that Defendants possess the minimum contacts with the forum based upon their operation of Ripoff Report.

2. Causing Tortious Injury In South Carolina

Plaintiffs alternatively contend that Defendants are subject to personal jurisdiction because they caused tortious injury in South Carolina by acts or omissions outside of the state. The Supreme Court of the United States has held that due process permits the exercise of personal jurisdiction over a nonresident defendant who commits a tort outside the forum when the plaintiff demonstrates (1) the defendant committed an intentional tort; (2) the brunt of the harm was felt by plaintiff in the forum such that the forum can be said to be the focal point of the harm; and (3) the defendant expressly aimed his tortious conduct at the forum, such that the forum can be said to be the focal point of the tortious activity. *Calder v. Jones*, 465 U.S. 783, 789-90 (1984); *see also Pitts v. Fink*, 389 S.C. 156, 167-68 & n.3; 698 S.E.2d 626, 632 (Ct. App. 2010). As explained above, however, Plaintiffs have failed to demonstrate that either Xcentric or Magedson directed any activity toward South Carolina other than the maintenance of the website

in Arizona. Magedson stated in his affidavit, moreover, that he never heard of Plaintiffs prior to the commencement of this lawsuit, never posted or edited any content about Plaintiffs on Rip-Off Report, and never read anything about Plaintiffs before this lawsuit was filed. Although Plaintiffs are residents of the forum and any harm caused by the allegedly defamatory posting may be felt in South Carolina, "mere allegations that the plaintiff feels the effect of the Defendant's tortious conduct in the forum because the Plaintiff is located there is insufficient to satisfy *Calder*." *Barrett v. Catacombs Press*, 44 F. Supp. 2d 717, 731 (E.D. Pa. 1999). Because Plaintiffs have failed to show that Defendants directed any meaningful activity toward South Carolina, the Court declines to exercise jurisdiction over Defendants based upon the fact Plaintiffs may have suffered a tortious injury in South Carolina.

3. Committing Tortious Conduct in South Carolina

Plaintiffs next argue that that personal jurisdiction in South Carolina is proper because Defendants committed a tort here. In support of this contention, Plaintiffs rely upon *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201 (Fla. 2010), where the Supreme Court of Florida determined that a nonresident defendant committed the tortious act of defamation in Florida by making allegedly defamatory comments on a website that were accessed in Florida by the plaintiff.¹ *Id.* at 1216. The court reasoned that:

by posting allegedly defamatory material on the Web about a Florida resident, the poster has directed the communication about a Florida resident to readers worldwide, including potential readers in Florida. When the posting is then accessed by a third party in Florida, the material has been "published" in Florida and the poster has communicated the material "into" Florida.

Id. at 1215.

¹ The court notes that Florida's holding in *Marshall* is in the minority of jurisdictions which have considered this question.

Plaintiffs' reliance upon *Marshall* is misplaced. First, the court's inquiry in *Marshall* was confined to the issue of whether the defendant's conduct satisfied Florida's long-arm statute, and the court expressly declined to address whether due process would permit the exercise of personal jurisdiction over the defendant. Because South Carolina's long-arm statute extends to the limits of federal due process making the sole inquiry whether Defendants' contacts with the forum are consistent with due process, *Marshall* is inapposite. Second, in *Marshall*, the nonresident defendant was the author of the allegedly defamatory post, and therefore, she directed her activity at Florida by writing and posting content about the Florida plaintiff. Unlike the defendant in *Marshall*, neither Xcentric nor Magedson authored or posted the allegedly defamatory content of which Plaintiff complains.² Plaintiffs' own affidavit demonstrates that Coates authored the allegedly defamatory post. Coates' conduct, moreover, is not attributable to Xcentric or Magedson for purposes of personal jurisdiction because it is well-settled that the "[u]nilateral activity of others within the forum state will not suffice to exercise jurisdiction over a nonresident defendant." *PYA/Monarch, Inc. v. Sowell's Meats & Servs., Inc.*, 327 S.C. 469, 474, 486 S.E.2d 766, 769 (Ct. App. 1997); *Carson v. Vance*, 326 S.C. 543, 549, 485 S.E.2d 126, 130 (Ct. App. 1997) ("Neither should a defendant be haled into a forum solely as a result of the unilateral activity of another party."). Based on the foregoing, Plaintiffs have failed to show that Defendants committed tortious conduct in South Carolina sufficient to subject them to personal jurisdiction.

² The Court's finding that neither Magedson nor Xcentric authored the alleged defamatory post is not only consistent with the evidence presented but also controlling federal law. Specifically, the Communications Decency Act, 47 U.S.C.(c)(1), which provides that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." See also *Green v. America Online*, 318 F.3d 470 (3d Cir. 2003).

4. Other Acts

Plaintiffs finally attempt to base personal jurisdiction upon various other facts unrelated to the claims at issue, including that Xcentric (1) sells advertising space and solicits advertisers, including in South Carolina; (2) distributes a "Do-It-Yourself Guide" in South Carolina; (3) enabled users of the website to search for reports by selecting "South Carolina"; and (4) routinely collected fees to arbitrate matters.³ Defendants dispute the veracity of many of these allegations. The Court, however, need not resolve any factual dispute at this stage of the litigation because none of these allegations give rise to Plaintiffs' claim. Plaintiffs contend that Coates posted defamatory comments on Defendants' website and suffered damages as a result of the allegedly defamatory post. Because Plaintiffs' claims arise solely out of the allegedly defamatory post, the fact that other aspects of Defendants' website may be more interactive and bear a stronger relationship to South Carolina is irrelevant to the specific causation analysis.

Based on the foregoing, Plaintiffs have failed to demonstrate a basis for the exercise of specific personal jurisdiction.

B. Fairness Prong

Even if Plaintiffs could demonstrate that Defendants possessed sufficient minimum contacts with South Carolina to satisfy due process, the Court concludes that the exercise of jurisdiction would not be reasonable or fair. Under the fairness prong, courts consider "(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in

³ The court does consider the fees charged by Defendant to review and arbitrate a posting on Ripoff Report to be excessive and highly improper. However, Plaintiffs are not without remedy in that they can easily bring this action in the proper forum state.

exercising jurisdiction.” *Kozma*, 379 S.C. at 432, 665 S.E.2d at 665. It is undisputed that neither Xcentric nor Magedson resides in South Carolina, has any agents or employees in South Carolina, or any other physical connections with the state. Defendants’ only apparent contact with the forum is that they operated a website that was accessible to residents of South Carolina.

Thus, although the Court’s ruling may pose an inconvenience to Plaintiffs, such an inconvenience is plainly outweighed by the fact that subjecting Defendants to jurisdiction in South Carolina would offend traditional notions of fair play and substantial justice. Finally, any interest the state may have in exercising jurisdiction over Xcentric and Magedson is diminished, as none of their conduct that relates to this action has taken place in South Carolina. *See Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 509, 402 S.E.2d 177, 181 (1991). Accordingly, the Court concludes that exercising jurisdiction over these foreign Defendants would be neither fair nor reasonable.

II. Plaintiffs Have Failed to Demonstrate That Defendants Are Subject to General Jurisdiction in South Carolina.

Plaintiffs also contend that Defendants’ contacts with the forum are sufficient to subject them to general jurisdiction. General jurisdiction attaches, however, only where an individual has an “enduring relationship” such that the defendant’s contacts are substantial, continuous, and systematic. *Cribb*, 382 S.C. at 482; 676 S.E.2d at 710. Plaintiffs have failed to make the requisite showing. It is undisputed that neither Xcentric nor Magedson resides in South Carolina, owns any property in South Carolina, maintains any employees or agents in South Carolina, or has a bank account in South Carolina. Although Xcentric’s website may be viewed in South Carolina, courts consistently have held that a state does not possess “general jurisdiction over out-of-state persons who regularly and systematically transmit electronic signals into the State via the Internet based solely on those transmissions.” *ALS Scan, Inc. v. Digital Serv.*

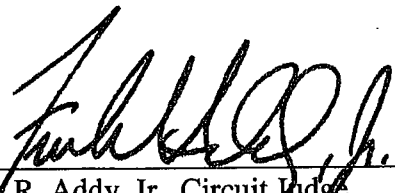
Consultants, Inc., 293 F.3d 707, 715 (4th Cir. 2002). *see also GTE New Media Servs., Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1349 (D.C. Cir. 2000) (holding that “personal jurisdiction surely cannot be based solely on the ability of District [of Columbia] residents to access the defendants’ websites, for this does not by itself show any persistent course of conduct by the defendants in this District”). None of the purported activities Plaintiffs rely upon in an effort to show general jurisdiction rises to the level of “continuous and systematic” contacts that could support a finding of general jurisdiction. Based on the foregoing, Plaintiffs have failed to make a prima facie showing of general jurisdiction.

III. Plaintiffs Are Not Entitled To Jurisdictional Discovery

During the hearing on this matter, Plaintiffs requested that the Court postpone its ruling on Defendants’ Motion to Dismiss so that they could conduct jurisdictional discovery. Plaintiffs, however, had nearly half a year to produce evidence to establish personal jurisdiction and to counter Defendants’ motion. Absent their allegations, Plaintiffs have failed to come forward with any probative evidence sufficient to establish a prima facie showing of jurisdiction. Thus, the Court denies Plaintiff’s request to conduct additional jurisdictional discovery. *See Sullivan*, 397 S.C. at 151-52, 723 S.E.2d at 840-41 (“When a plaintiff offers only speculation or conclusory assertions about contacts with the forum state, a court is within its discretion in denying jurisdictional discovery.”).

THEREFORE, IT IS ORDERED THAT Defendants Xcentric and Magedson’s motion to dismiss is granted.

IT IS SO ORDERED.



Frank R. Addy, Jr., Circuit Judge

March 28, 2013
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

VINCE COATES,
Plaintiff,

v.

DOROTHY RENEE SIMCHON,
Defendant.

CLOCK
COURT OF COMMON PLEAS
2011 00 18 KHL 21
Case No. 2011-CP-24

COMPLAINT
(Jury trial requested)

The plaintiff, complaining of the defendants' actions, alleges and will prove the following.

1ST CAUSE OF ACTION (Malicious prosecution)

1. The plaintiff is a citizen and resident of South Carolina and Abbeville County.
2. The defendant, upon information and belief, is a citizen and resident of South Carolina and Greenwood County.
3. The actions complained of occurred primarily in Greenwood County, South Carolina.
4. The plaintiff complains in this cause of action that the defendant caused him to be prosecuted without probable cause.
5. Until shortly before the incident which led to this lawsuit, the plaintiff worked for a real estate agency owned and operated by the defendant.
6. The agency's name is Greenwood Realty and is located on highway 72 in Greenwood County.
7. While working for Greenwood Realty the plaintiff had an office in the Greenwood Realty building.
8. After the plaintiff's employment with Greenwood Realty ended he returned to the office where he worked to pick up some personal items and files that belonged to him.
9. The plaintiff picked up his personal items including some documents on or about December 23, 2008 and took them to his vehicle.

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8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

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10. This occurred during daytime hours and there were employees of Greenwood Realty in the building at the time.
11. There was no objection made by any employee to the plaintiff's appearance at the office or to his removal of his things.
12. The plaintiff's removal of his personal items was recorded on a video tape which ran at the Greenwood Realty office and whose existence was known to the plaintiff and other employees of the company.
13. The plaintiff took only items that belonged to him from the office where he had worked.
14. As of December 23, 2008 the plaintiff was entitled to pick up his personal items.
15. On December 23, 2008 the Greenwood Realty office was open to the public, including for walk in customers.
16. Based upon false and misleading information provided to him by the defendant, Deputy Chris Haden with the Greenwood County Sheriff's Office sought and obtained two arrest warrants from Magistrate C. Ryan Johnson charging the plaintiff with two crimes to wit: burglary third degree and petit larceny.
17. Although the alleged crimes supposedly occurred on December 23, 2008 the arrest warrants were not signed until January 15, 2009.
18. On or about February 3, 2009 the plaintiff was arrested on the two warrants.
19. Shortly after his arrest the plaintiff retained a lawyer to help him defend the false charges.
20. As part of the normal criminal procedure, the plaintiff asked for a preliminary hearing.
21. A preliminary hearing was held on or about March 4, 2009 before Magistrate Walter Martin.
22. Magistrate Martin found that there was no probable cause to justify sending the charges to the grand jury for indictment or for trial and dismissed the charges.

23. Upon information and belief and at the insistence of the defendant, the Solicitor submitted the burglary and larceny charges to the grand jury and indictments were returned on or about April 3, 2009.
24. At all phases of the criminal process the defendant continued to provide false information to the sheriff's deputy and to the Solicitor and insisted that the plaintiff be prosecuted in an attempt to have the plaintiff convicted of crimes the plaintiff did not commit.
25. Relying upon the defendant's false statements Deputy Haden signed an affidavit which led to the plaintiff's arrest and upon information and belief testified to the same false information provided to him by the defendant before the grand jury.
26. Upon information and belief the defendant did not provide an affidavit to the magistrate who signed the arrest warrant or testify before the grand jury.
27. Instead, the defendant provided false information to the authorities with the intent that those authorities would rely on the information to cause the plaintiff's arrest and prosecution.
28. On or about May 18, 2011 the plaintiff's charges came to trial before the Honorable Eugene Griffith, circuit court judge and a jury.
29. During the trial the defendant testified and again gave false information with the intention of convincing a jury that the plaintiff had committed burglary and larceny in December 2008, crimes that the plaintiff did not commit and crimes the defendant knew the plaintiff had not committed.
30. Judge Griffith directed a verdict in favor of the plaintiff at the conclusion of the prosecution's case finding that, looking at the evidence in a light most favorable to the prosecution, there was insufficient evidence for a jury to convict the plaintiff.
31. At the point when Judge Griffith entered a directed verdict of acquittal in the plaintiff's trial, the cases ended in the plaintiff's favor.
32. The defendant instituted and continued the criminal prosecution against the plaintiff, to the point of pursuing the false charges even after they had been dismissed at a preliminary hearing due to the lack of probable cause.
33. There was an absence of probable cause to believe that the plaintiff had committed the crimes charged.

34. The only way that the charges against the plaintiff continued past the preliminary hearing stage was at the insistence of the defendant and the presentation by the defendant to authorities of false information to convince the authorities that the plaintiff had committed crimes which the defendant knew the plaintiff had not committed.
35. The defendant acted with malice in her institution and continuation of the criminal prosecution of the plaintiff for crimes the plaintiff had not committed and which the defendant knew the plaintiff had not committed.
36. The defendant directly and proximately caused damage to the plaintiff as a result of her actions, including, but not limited to the following: the cost of his criminal defense, loss of liberty, emotional harm, damage to his reputation, loss of employment opportunities, and other damages.
37. Additionally, the plaintiff seeks an award of punitive damages against the defendant for her willful, wanton, knowing, intentional and malicious actions against the plaintiff.
38. The plaintiff seeks a jury trial on this cause of action.

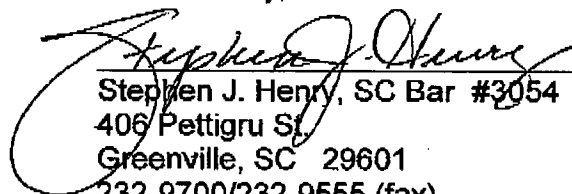
2ND CAUSE OF ACTION (Abuse of process)

39. The plaintiff restates the allegations of paragraphs 1 through 38.
40. The defendant had an ulterior purpose in causing the plaintiff to be prosecuted for crimes the plaintiff had not committed.
41. In addition to working for Greenwood Realty as a real estate agent, the plaintiff sold t-shirts.
42. The defendant was aware of the plaintiff's t-shirt business and, in fact, the plaintiff ordered and purchased some t-shirts for sale from the defendant's husband.
43. The defendant's husband ran his business from the same building that housed Greenwood Realty and where the plaintiff has his office as a real estate agent.
44. On more than one occasion the plaintiff purchased t-shirts from the defendant's husband.
45. One transaction between the plaintiff and the defendant's husband led to a dispute between them over how much the t-shirts the plaintiff purchased cost.

46. The defendant's husband in the name of his company sued the plaintiff and the plaintiff's wife in magistrate court claiming that the plaintiff owed the defendant's husband money as a result of the t-shirt transaction.
47. The plaintiff was upset with the defendant's husband over the lawsuit in part because the lawsuit named the plaintiff's wife as a party although his wife was not involved in the t-shirt business or in the transaction in dispute.
48. In addition the plaintiff believed that he had paid a fair price for the t-shirts he purchased from defendant's husband and that he (plaintiff) did not owe the defendant's husband any more money for the t-shirts he had purchased.
49. The dispute between the plaintiff and the defendant's husband over the t-shirts was ongoing at the time the defendant initiated and at the time she continued the criminal prosecution against the plaintiff on the false charges of burglary and larceny.
50. The plaintiff is informed and believes that the defendant willfully used the criminal process in an improper way which was not in the regular conduct of the proceeding and that she did so for an ulterior purpose, including, but not limited to the ulterior purpose of gaining advantage for her husband in the civil lawsuit over the t-shirt transaction.
51. The plaintiff seeks an award of damages for this cause of action, including punitive damages in the same manner as alleged in his first cause of action.

WHEREFORE the plaintiff seeks a jury trial on both claims as well as awards of actual and punitive damages and the costs of this action.

Submitted by,


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Attorney for the plaintiff

November 17 2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

FILED
8TH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
GREENWOOD COUNTY
EIGHTH JUDICIAL CIRCUIT

2012 APR 3 PM 3:46
Case No.: 2011 CB-2461340

VINCE COATES,

Plaintiff,

v.

DOROTHY RENEE SIMCHON,

Defendant.

DEFENDANT'S ANSWER
AND COUNTERCLAIM

COMES NOW, Defendant Dorothy Renee Simchon by and through her undersigned attorney answering the Plaintiff's Complaint and Counterclaiming thereto, would show the court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation contained in the Plaintiff's Complaint not herein specifically admitted, modified, or explained is deemed denied and strict proof is required thereof.

FOR A SECOND DEFENSE
(Specific Denial)

2. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

3. Defendant admits the allegations contained in paragraphs 1, 2 and 3 of the Plaintiff's Complaint.

4. Defendant in response to paragraph 4 of the Plaintiff's Complaint, denies the allegations contained therein and demands strict and exacting proof thereof.

5. In response to paragraph 5 of the Plaintiff's Complaint, Defendant denies the allegation "until shortly before the incident which led to this lawsuit" and would admit that Plaintiff previously worked for the real estate agency owned and operated by the Defendant. Defendant would show that the Plaintiff was an independent contractor who was no longer associated with the company for roughly a year prior to the incident giving rise to the charges brought by the State of South Carolina.

6. In response to paragraphs 6 and 7 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and demands strict and exacting proof thereon. Defendant would show that the agency's name is Greenwood Realty, Inc. which is located on highway 72 in Greenwood, South Carolina and the Plaintiff was an independent contractor who utilized a single office owned by Greenwood Realty, Inc.

7. In response to paragraphs 8 and 9 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and demands strict and exacting proof thereon. Defendant would show Plaintiff was an independent contractor who was placed on trespass notice, had many altercations with Bay Island Sportswear and Greenwood Realty, Inc.'s other independent contractors, employees and the family of Defendant. Defendant would further show that there was compelling evidence that he stole items which were not his personal property and perjured himself in the statements made to the police officers investigating the burglary incident by saying he removed a photograph.

8. In response to paragraph 10 of the Plaintiff's Complaint, Defendant denies the allegation as referred to as "this occurred" and craves referenced to the preceding paragraph 7, and admits the remaining allegations contained therein.

9. In response to paragraph 11 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and would show that the persons present telephoned the police department.

10. In response to paragraph 12 of the Plaintiff's Complaint, Defendant denies the allegations contained therein insofar as the items removed were not of a personal nature and demands strict and exacting proof thereof. Defendant in further response, admits that a video tape known to the three persons in the Greenwood Realty office captured the Plaintiff removing items other than those he alleges were removed. Defendant is without knowledge if Plaintiff was aware of the video recording so can neither admit nor deny that allegation.

11. In response to paragraphs 13, 14, and 15 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereon.

12. In response to paragraph 16 of the Plaintiff's Complaint, Defendant denies the allegation insofar as the allegation implies Defendant provided "false and misleading information" and demands strict and exacting proof thereon. The remaining allegations that arrest warrants were obtained by officer Haden are admitted upon information and belief.

13. In response to paragraphs 17, 18, 19, 20, 21 and 22 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

14. In response to paragraph 23 of the Plaintiff's Complaint, Defendant denies the allegations which imply in any way the charges were submitted at her insistence and/or that she in any way provided false or misleading information to the Solicitor or any member of his office or any law enforcement agency. The remaining allegations are admitted.

15. In response to paragraph 24 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

16. In response to paragraph 25 of the Plaintiff's Complaint, Defendant denies the allegations which in any way infer Defendant provided false or misleading information to the Solicitor or any member of his office or any law enforcement agency or that the Solicitor's office or law enforcement relied on any false information provided by her. The remaining allegations are admitted.

17. In response to paragraph 26 of the Plaintiff's Complaint, Defendant admits the allegations contained therein as she did not provide an affidavit to the magistrate nor did she testify at a grand jury.

18. In response to paragraph 27 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

19. In response to paragraph 28 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

20. In response to paragraph 29 of the Plaintiff's Complaint, Defendant admits the allegation she testified at the jury trial and vehemently denies the

remaining allegations contained therein and demands strict and exacting proof thereof.

21. In response to paragraphs 30 and 31 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

22. In response to paragraphs 32, 33, 34, 35, 36 and 37 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

23. Defendant believes that no response is needed to Plaintiff's paragraphs 38 and 39 of the Plaintiff's Complaint but to the extent a response is required, any allegations contained therein are denied *in toto*.

24. In response to paragraph 40 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

25. In response to paragraphs 41 and 42 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

26. In response to paragraph 43 of the Plaintiff's Complaint, Defendant admits Bay Island Sportswear has its offices in the same building as Greenwood Realty, Inc., and vehemently denies the allegations "where the plaintiff has his office as a real estate agent" and demands strict and exacting proof thereof. Defendant would show Plaintiff no longer was associated with Greenwood Realty and had ceased his association roughly a year prior to his entry into the building at issue.

27. In response to paragraphs 44, 45 and 46 of the Plaintiff's Complaint, Defendant admits the allegations contained therein and denies the allegation the

dispute was "over how much the t-shirts the plaintiff purchased cost" and demands strict and exacting proof thereof.

28. In response to paragraphs 47 and 48 of the Plaintiff's Complaint, Defendant is unaware as to why the Plaintiff was "upset" and what he "believed" and therefore denies all the allegations contained therein and demand strict and exacting proof thereon.

29. In response to paragraph 49 of the Plaintiff's Complaint, Defendant admits that the dispute was ongoing and vehemently denies any reference to Defendant initiating and/or continued the criminal prosecution and any reference to false charges contained in the allegations and demands strict and exacting proof thereof.

30. In response to paragraphs 50, 51 and what is construed as a prayer for relief in the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

FOR A THIRD DEFENSE
(Failure to State A Claim)

31. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

32. The Plaintiffs' allegations against Defendant fail to state a claim upon which relief may be granted and therefore must be dismissed.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(Frivolous Lawsuit)

33. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

34. The present matter was filed by the Plaintiff and is vexatious, frivolous, and has been filed by the Plaintiff in an attempt to further harass and/or intimidate the Defendant.

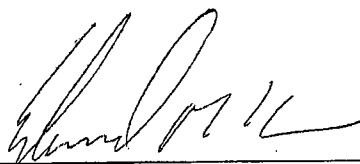
35. Defendant would show Plaintiff has harassed, intimidated and threatened the Defendant, her family and persons which are independent contractors associated with Greenwood Realty, Inc. and Bay Island Sportswear in an attempt to harm the Defendant.

36. Defendant would show that the Plaintiff's allegations are baseless, full of conjecture and should therefore be dismissed with costs and fees awarded to Defendant.

37. Defendant would further show the Plaintiff is judgment proof and if the Defendant is granted the relief contained in her Counterclaim, Defendant would request judgment against the Defendant and the Defendant's attorney for filing an action which is frivolous and filed in bad faith without reasonable investigation despite the Defendant's attempts to resolve the matter prior to expenses being incurred by the Defendant.

WHEREFORE, Defendant prays:

1. The Plaintiff be denied the relief sought in his Complaint;
2. Defendant be granted the relief sought in her Counterclaim;
3. The Defendant be awarded all costs and reasonable attorneys fees incurred during the pendency and at the conclusion of this action;
4. For such other and further relief that the Court deems just, equitable and proper.



Edward S. McCallum, III
Attorney for the Defendant
340A Main Street
P.O. Box 148
Greenwood, SC 29646
Phone: (864) 223-8546
Fax: (864) 223-8015

Greenwood, South Carolina
April 2, 2012

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
VINCE COATES,	)	Case No. 2011-CP-24- 1340
Plaintiff,	)	
	)	
v.	)	<u>REPLY TO DEFENDANT'S</u>
	)	<u>COUNTERCLAIMS</u>
DOROTHY RENEE SIMCHON,	)	
Defendant.	)	

THE PLAINTIFF reserves the right to move or otherwise plead in response to the defendant's counterclaims. Subject to that reservation the plaintiff submits the following reply.

DEFENSE NO. 1 AS TO BOTH COUNTERCLAIMS

1. Each allegation not specifically admitted herein is denied.
2. The plaintiff denies the allegations and conclusions of both counterclaims and demands strict proof of each.

DEFENSE NO. 2 AS TO THE "FAILURE TO STATE A CLAIM" COUNTERCLAIM

3. The allegations and conclusions of paragraphs 31 and 32 are denied.

DEFENSE NO. 3 AS TO THE "FAILURE TO STATE A CLAIM" COUNTERCLAIM

4. The plaintiff asserts the defenses of *res judicata* and issue preclusion as to this counterclaim.
5. The defendant previously moved to dismiss the plaintiff's lawsuit on this ground and the Court ruled against the defendant.

DEFENSE NO. 2 AS TO THE "FRIVOLOUS LAWSUIT" COUNTERCLAIM

6. The plaintiff denies the allegations and conclusions of paragraphs 33, 34, 35 and 36.
7. With regard to the allegations of paragraph 37 the plaintiff is without sufficient information to know if the defendant is judgment proof but is informed and believes that she has income and/or property.

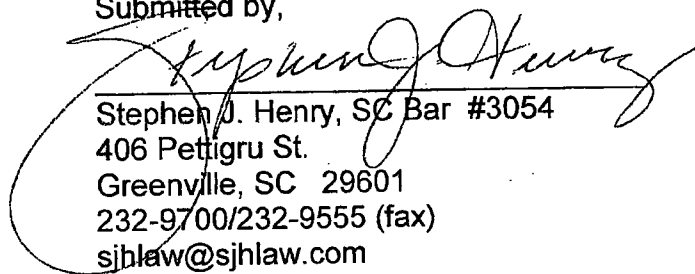
8. The remaining allegations and conclusions of paragraph 37 are denied.

DEFENSE NO. 3 AS TO THE "FRIVOLOUS LAWSUIT" COUNTERCLAIM

9. The defendant has failed to state a claim for which relief may be granted.

HAVING FULLY REPLIED to the defendant's counterclaims, the plaintiff asks that they be dismissed with costs.

Submitted by,



Stephen J. Henry, SC Bar #3054
406 Pettigru St.
Greenville, SC 29601
232-9700/232-9555 (fax)
sjhlaw@sjhlaw.com
Attorney for the plaintiff

April 11, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

VINCE COATES,

Plaintiff,

v.

DOROTHY RENEE SIMCHON,

Defendant.

Case No.: 2011-CP-24-1340

DEFENDANT'S AMENDED
ANSWER AND COUNTERCLAIM

CLOCK IN/OUT
FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
JAN 12 2012

COMES NOW, Defendant Dorothy Renee Simchon by and through her undersigned attorney answering the Plaintiff's Complaint and Counterclaiming thereto, would show the court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation contained in the Plaintiff's Complaint not herein specifically admitted, modified, or explained is deemed denied and strict proof is required thereof.

FOR A SECOND DEFENSE
(Specific Denial)

2. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

3. Defendant admits the allegations contained in paragraphs 1, 2 and 3 of the Plaintiff's Complaint.

4. Defendant in response to paragraph 4 of the Plaintiff's Complaint, denies the allegations contained therein and demands strict and exacting proof thereof.

FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
JAN 12 2012

5. In response to paragraph 5 of the Plaintiff's Complaint, Defendant denies the allegation "until shortly before the incident which led to this lawsuit" and would admit that Plaintiff previously worked for the real estate agency owned and operated by the Defendant. Defendant would show that the Plaintiff was an independent contractor who was no longer associated with the company for roughly a year prior to the incident giving rise to the charges brought by the State of South Carolina.

6. In response to paragraphs 6 and 7 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and demands strict and exacting proof thereon. Defendant would show that the agency's name is Greenwood Realty, Inc. which is located on highway 72 in Greenwood, South Carolina and the Plaintiff was an independent contractor who utilized a single office owned by Greenwood Realty, Inc.

7. In response to paragraphs 8 and 9 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and demands strict and exacting proof thereon. Defendant would show Plaintiff was an independent contractor who was placed on trespass notice, had many altercations with Bay Island Sportswear and Greenwood Realty, Inc.'s other independent contractors, employees and the family of Defendant. Defendant would further show that there was compelling evidence that he stole items which were not his personal property and perjured himself in the statements made to the police officers investigating the burglary incident by saying he removed a photograph.

8. In response to paragraph 10 of the Plaintiff's Complaint, Defendant denies the allegation as referred to as "this occurred" and craves referenced to the preceding paragraph 7, and admits the remaining allegations contained therein.

9. In response to paragraph 11 of the Plaintiff's Complaint, Defendant denies the allegations contained therein and would show that the persons present telephoned the police department.

10. In response to paragraph 12 of the Plaintiff's Complaint, Defendant denies the allegations contained therein insofar as the items removed were not of a personal nature and demands strict and exacting proof thereof. Defendant in further response, admits that a video tape known to the three persons in the Greenwood Realty office captured the Plaintiff removing items other than those he alleges were removed. Defendant is without knowledge if Plaintiff was aware of the video recording so can neither admit nor deny that allegation.

11. In response to paragraphs 13, 14, and 15 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereon.

12. In response to paragraph 16 of the Plaintiff's Complaint, Defendant denies the allegation insofar as the allegation implies Defendant provided "false and misleading information" and demands strict and exacting proof thereon. The remaining allegations that arrest warrants were obtained by officer Haden are admitted upon information and belief.

13. In response to paragraphs 17, 18, 19, 20, 21 and 22 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

14. In response to paragraph 23 of the Plaintiff's Complaint, Defendant denies the allegations which imply in any way the charges were submitted at her insistence and/or that she in any way provided false or misleading information to the Solicitor or any member of his office or any law enforcement agency. The remaining allegations are admitted.

15. In response to paragraph 24 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

16. In response to paragraph 25 of the Plaintiff's Complaint, Defendant denies the allegations which in any way infer Defendant provided false or misleading information to the Solicitor or any member of his office or any law enforcement agency or that the Solicitor's office or law enforcement relied on any false information provided by her. The remaining allegations are admitted.

17. In response to paragraph 26 of the Plaintiff's Complaint, Defendant admits the allegations contained therein as she did not provide an affidavit to the magistrate nor did she testify at a grand jury.

18. In response to paragraph 27 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

19. In response to paragraph 28 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

20. In response to paragraph 29 of the Plaintiff's Complaint, Defendant admits the allegation she testified at the jury trial and vehemently denies the

remaining allegations contained therein and demands strict and exacting proof thereof.

21. In response to paragraphs 30 and 31 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

22. In response to paragraphs 32, 33, 34, 35, 36 and 37 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

23. Defendant believes that no response is needed to Plaintiff's paragraphs 38 and 39 of the Plaintiff's Complaint but to the extent a response is required, any allegations contained therein are denied *in toto*.

24. In response to paragraph 40 of the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

25. In response to paragraphs 41 and 42 of the Plaintiff's Complaint, Defendant admits the allegations contained therein.

26. In response to paragraph 43 of the Plaintiff's Complaint, Defendant admits Bay Island Sportswear has its offices in the same building as Greenwood Realty, Inc., and vehemently denies the allegations "where the plaintiff has his office as a real estate agent" and demands strict and exacting proof thereof. Defendant would show Plaintiff no longer was associated with Greenwood Realty and had ceased his association roughly a year prior to his entry into the building at issue.

27. In response to paragraphs 44, 45 and 46 of the Plaintiff's Complaint, Defendant admits the allegations contained therein and denies the allegation the

dispute was "over how much the t-shirts the plaintiff purchased cost" and demands strict and exacting proof thereof.

28. In response to paragraphs 47 and 48 of the Plaintiff's Complaint, Defendant is unaware as to why the Plaintiff was "upset" and what he "believed" and therefore denies all the allegations contained therein and demand strict and exacting proof thereon.

29. In response to paragraph 49 of the Plaintiff's Complaint, Defendant admits that the dispute was ongoing and vehemently denies any reference to Defendant initiating and/or continued the criminal prosecution and any reference to false charges contained in the allegations and demands strict and exacting proof thereof.

30. In response to paragraphs 50, 51 and what is construed as a prayer for relief in the Plaintiff's Complaint, Defendant vehemently denies the allegations contained therein and demands strict and exacting proof thereof.

FOR A THIRD AFFIRMATIVE DEFENSE
(Failure to State A Claim)

31. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

32. The Plaintiffs' allegations against Defendant fail to state a claim upon which relief may be granted and therefore must be dismissed.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Probable Cause)

33. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

34. There was probable cause to believe Vince Coates committed a violation of the law upon entering the premises and exiting with property owned by Greenwood Realty, Inc. and/or Bay Island Sportswear, Inc.

**FOR A FIFTH AFFIRMATIVE DEFENSE
(Good Faith Reliance on Attorney Advice)**

35. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

36. Defendant in good faith consulted with corporate counsel, stated all the facts to him and was advised by the attorney who directly contacted law enforcement.

**FOR A SIXTH AFFIRMATIVE DEFENSE
(Intentional Acts)**

37. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

38. To the extent that the Plaintiff's allegations are true, which is vehemently denied, any damages would be a result of Plaintiff's own intentional acts and any recovery should be barred.

**FOR A SEVENTH DEFENSE BY WAY OF COUNTERCLAIM
(Frivolous Lawsuit)**

39. To the extent not inconsistent herewith, Defendant incorporates by reference all previous defenses as set forth *in toto* as if restated herein verbatim.

40. The present matter was filed by the Plaintiff and is vexatious, frivolous, and has been filed by the Plaintiff in an attempt to further harass and/or intimidate the Defendant.

41. Defendant would show Plaintiff has harassed, intimidated and threatened the Defendant, her family and persons which are independent contractors associated with Greenwood Realty, Inc. and Bay Island Sportswear in an attempt to harm the Defendant.

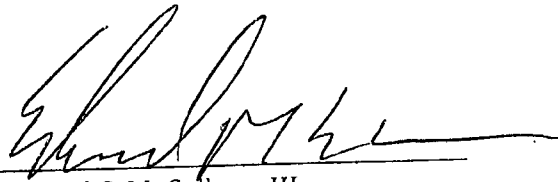
42. Defendant would show that the Plaintiff's allegations are baseless, full of conjecture and should therefore be dismissed with costs and fees awarded to Defendant.

43. Defendant would further show the Plaintiff is judgment proof and if the Defendant is granted the relief contained in her Counterclaim, Defendant would request judgment against the Defendant and the Defendant's attorney for filing an action which is frivolous and filed in bad faith without reasonable investigation despite the Defendant's attempts to resolve the matter prior to expenses being incurred by the Defendant.

WHEREFORE, Defendant prays:

1. The Plaintiff be denied the relief sought in his Complaint;
2. Defendant be granted the relief sought in her Counterclaim;
3. The Defendant be awarded all costs and reasonable attorneys fees incurred during the pendency and at the conclusion of this action;
4. For such other and further relief that the Court deems just, equitable and proper.

(REMAINING PAGE INTENTIONALLY LEFT BLANK, SIGNATURE TO FOLLOW)



Edward S. McCallum, III
Attorney for the Defendant
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P.O. Box 148
Greenwood, SC 29646
Phone: (864) 223-8546
Fax: (864) 223-8015

Greenwood, South Carolina
August 2, 2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
VINCE COATES,	)	Case No. 2011-CP-24- 1340
Plaintiff,	)	
	)	
v.	)	<u>REPLY TO DEFENDANT'S</u>
	)	<u>COUNTERCLAIM - AMENDED</u>
DOROTHY RENEE SIMCHON,	)	
Defendant.	)	

THE PLAINTIFF reserves the right to move or otherwise plead in response to the defendant's counterclaim. Subject to that reservation the Plaintiff submits the following reply.

DEFENSE AS TO DEFENDANT'S COUNTERCLAIM – DENIAL OF ALLEGATIONS

1. Each allegation not specifically admitted herein is denied.
2. The Plaintiff denies the allegations and conclusions of the counterclaim and demands strict proof thereof.
3. The allegations and conclusions of paragraphs 39 through 43 are denied.

DEFENSE NO. 2 – FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

4. The Defendant has failed to state a claim for which relief may be granted.

DEFENSE NO. 3 – IMPROPER PARTY

5. The Defendant has filed a counterclaim against Plaintiff's attorney who is not a party to this lawsuit.
6. No counterclaim against a non-party can be considered by the Court and must be dismissed.

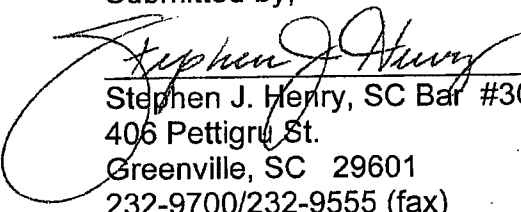
DEFENSE NO. 4 – THE PLAINTIFF'S CASE IS NOT FRIVOLOUS AS A MATTER OF LAW

7. The Defendant has filed a motion to dismiss which he converted to a summary judgment motion as well as a separate motion for summary judgment in this case alleging that there was insufficient prove for the Plaintiff to pursue his causes of actions.

8. At every juncture in this case the Defendant has claimed and argued that the Plaintiff's lawsuit was frivolous.
9. Those motions have been denied by the Court after full hearings, the Court having found that sufficient evidence existed for the Plaintiff to go forward to trial.
10. As a matter of law this lawsuit is not frivolous and Defendant's counterclaim on this theory should be dismissed.

HAVING FULLY REPLIED to the Defendant's counterclaim, the Plaintiff asks that the counterclaim be dismissed with costs.

Submitted by,



Stephen J. Henry, SC Bar #3054
406 Pettigrew St.
Greenville, SC 29601
232-9700/232-9555 (fax)
sjhlaw@sjhlaw.com
Attorney for the plaintiff

December 22, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

VINCE COATES,
Plaintiff,)

v.)

DOROTHY RENEE SIMCHON,
Defendant.)

COURT OF COMMON PLEAS
Case No. 2011-CP-24- 1340

**MOTION TO ENFORCE TERMS
OF SETTLEMENT**

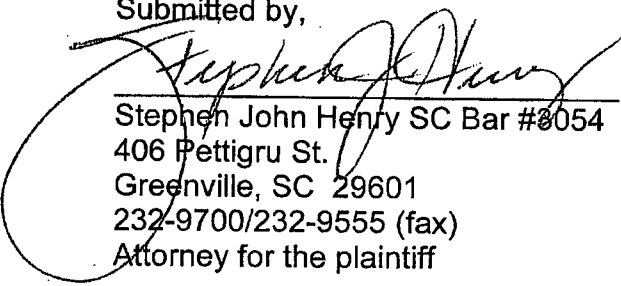
THE PLAINTIFF Vince Coates (hereinafter Coates) moves for an order requiring the Defendant, Dorothy Renee Simchon (hereinafter Simchon) to comply with the settlement reached in open court on February 3, 2014.

IN SUPPORT of this motion Coates submits the following:

1. A copy of the Transcript of Record from the February 3, 2014 court appearance where the parties, through their respective lawyers placed the settlement agreement on the record.
2. An affidavit of counsel

COATES ASKS the Court for a hearing on this matter, an order requiring enforcement of the settlement agreement and an award of fees and costs to him from Simchon.

Submitted by,


Stephen John Henry SC Bar #2054
406 Pettigru St.
Greenville, SC 29601
232-9700/232-9555 (fax)
Attorney for the plaintiff

March 24, 2014

State of South Carolina)
) Court of Common Pleas
County of Greenwood) 2011-CP-24-1340

Vince Coates)
vs.) Transcript of Record
Dorothy Renee Simchon)
DEFENDANT)

February 3, 2014
Greenwood, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Stephen J. Henry, Esq.
Attorney for the Plaintiff

Edward S. McCallum, III, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: Good morning, ladies and gentlemen, if
2 you will bear with me I have got some questions I need to
3 ask you but I have been speaking with some lawyers this
4 morning about a matter they had before me. And I would
5 like to go ahead and put the resolution on the record.
6 Mr. Henry, would you like to put it on there or Mr.
7 McCallum, would you like to put it on there?

8 MR. MCCALLUM: I can certainly do it, Your Honor.
9 Your Honor, it is my understanding that the parties have
10 agreed to the resolution not only in this case but also in
11 the pending case in Abbeville County. And I can
12 supplement the record with the caption of that Abbeville
13 case at a later time, I don't have that with me. Your
14 Honor, it is my understanding that the plaintiff has
15 agreed to voluntarily dismiss this case, that there will
16 be a payment made of \$4,500.00 dollars to the plaintiff's
17 attorney in exchange for that voluntary dismissal. In
18 addition, Your Honor, the plaintiff has agreed to enter
19 into a consent dismissal of the Abbeville case which will
20 also request that any search engine carrier would block or
21 remove from their data base a certain comment that was
22 posted on ripoffreports.com. This is my understanding of
23 the agreement.

24 THE COURT: Mr. Henry, anything further?

25 MR. HENRY: No, sir. Just to make it clear that the

1 Abbeville case is the case that--

2 THE COURT: The plaintiff is here, the defendant is
3 there.

4 MR. HENRY: Yes.

5 MR. MCCALLUM: That is correct, Your Honor.

6 THE COURT: So there is mutual releases of each of
7 them provided that these terms are met.

8 MR. MCCALLUM: That's correct, Your Honor.

9 MR. HENRY: Provided the terms are met.

10 THE COURT: All right.

11 MR. MCCALLUM: And those settlement documents will be
12 confidential.

13 THE COURT: Very good.

14 MR. HENRY: That's fine.

15 THE COURT: All right. Anything else I need to hear
16 on the record before y'all get out of here?

17 MR. HENRY: No, sir. There will be a written
18 document after this to memorialize.

19 THE COURT: Okay. Good enough.

20 MR. HENRY: That's it.

21 THE COURT: Thank you very much for your hard work.

22 MR. HENRY: Thank you, Judge, for your help.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24

25

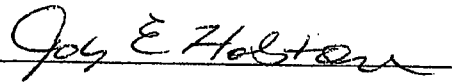
1 CERTIFICATE OF REPORTER
2
3

4 State of South Carolina)
5 County of Newberry)
6
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 3rd day of February, 2014.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 March 13, 2014
19
20

21 

22 Joy E. Holston, Court Reporter

23 My Commission expires: March 13, 2016
24
25



STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

COURT OF COMMON PLEAS
Case No. 2011-CP-24- 1340

VINCE COATES,
Plaintiff,)

v.)

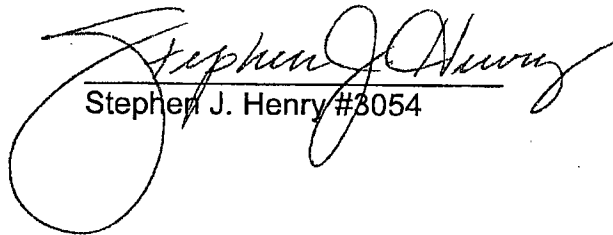
DOROTHY RENEE SIMCHON,
Defendant.)

AFFIDAVIT OF COUNSEL

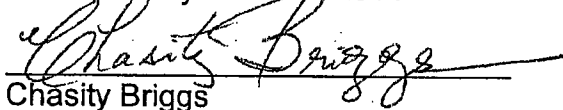
PERSONALLY APPEARS before me, Stephen J. Henry, who after having been sworn, states as follows:

1. I am the attorney for the plaintiff Vince Coates (Coates).
2. The defendant in this case is Dorothy Renee Simchon (Simchon).
3. This case was set for jury selection and trial on February 3, 2014.
4. The parties settled the case after the jury was qualified but before it was selected.
5. The settlement agreement was placed on the record before Judge Griffith with the consent of both sides.
6. The terms of the settlement agreement are set forth in the attached transcript of record.
7. After the settlement was reached the attorney for Simchon sent me a release document that included several substantive items not agreed to in the settlement.
8. I refused to agree to the new items.
9. I made changes to the wording that I felt were both consistent with the settlement and which would be part of any standard mutual release agreement and sent those changes to Simchon's lawyer for review.
10. I did not receive a modified agreement back from Simchon's attorney.
11. Upon information and belief Simchon has refused to complete the settlement and sign a standard mutual release agreement.

12. Coates is ready to complete the settlement process consistent with the agreement placed on the record before Judge Griffith on February 3, 2014.
13. Given Simchon's apparent refusal to cooperate with the settlement, Coates requests a court order requiring Simchon to comply with the agreement she entered into on the record.
14. Coates asks for a hearing, if necessary, to complete the settlement, although with the attached transcript a hearing may not be needed. We leave that to the Court's discretion.


Stephen J. Henry #3054

Sworn to and subscribed before me
This 24th day of March 2014


Chasity Briggs

Notary public for South Carolina
My commission expires: October 14, 2023

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

VINCE COATES,

Plaintiff,

v.

DOROTHY RENEE SIMCHON,

Defendant.

Case No.: 2011-CP-24-1340

RETURN TO PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2011 JUN 2 PM 3:14

COMES NOW, Defendant Dorothy Renee Simchon, by and through her undersigned attorney, responding to Plaintiff's Motion to Enforce Settlement and would respectfully show:

1. Defendant submitted a proposed order to Plaintiff memorializing the settlement between the parties. One of the settlement terms was that the Plaintiff would assist Defendant in the removal of a certain comment he posted on Ripoffreport.com from certain search engine sites.

2. The undersigned and his staff did extensive research on the requirements to have the ripoffreport.com report removed from the major search engine sites. After hours on the phone with Google, Bing, AOL and other sites, it was evident that the order had to be drafted to incorporate the multiple requirements of the sites for the removal.

3. Plaintiff refused to approve the proposed order and submitted his revisions indicating he would not admit slander or make any other admission, that the confidentiality clause should not be in the order because the agreement was

presented in open court in front of the potential jurors.

4. After the hearing before Judge Addy wherein he deferred the matter to your Honor to preside over, Defendant attempted to resolve the issue by asking the Plaintiff contacting the search engine sites, getting the comment removed and Defendant would tender the money to the Court for distribution when the comment was removed. (Since the Plaintiff is judgment proof, the Defendant verily believes if the money is tendered it would be virtually impossible to be repaid the settlement funds.) *See*, Exhibit A.

5. Responsive to our Exhibit A correspondence, counsel for the Plaintiff states *inter alia*, “[a]t no time did Vince or I agree that he would admit that he defamed anyone. That notion is preposterous and a product of your imagination.” *See* Exhibit B.

6. Defendant’s response to Exhibit B reiterates that, as the transcript states by your Honor, “So there is mutual releases of each of them provided that these terms are met”, such terms included “any search engine carrier would block or remove from their data base a certain comment that was posted on ripoffreport.com.” *See* Exhibit C.

7. The guidelines for removal of content for Google and Bing are attached as Exhibit D. As it states in the Bing printoff, “we might remove a displayed search result if we receive a **valid and narrow** court order indicating that a particular link has been found to be defamatory.” (*emphasis added*)

8. The Defendant’s proposed Consent Order is attached hereto as Exhibit E.

9. Further, Defendant would show that Rule 43 requires that to be enforceable a settlement must be: stated in open court and noted in the record. A review of the record reveals the Court issued no order and that to properly note the settlement in the record, a Form 4 Order indicating either compliance with Rule 43 or that a formal order is to follow. Therefore, Plaintiff's Motion under Rule 43 should be denied *in toto*.

DEFENDANT prays for an Order denying Plaintiff's Motion to Enforce Settlement and ordering:

1. The Plaintiff execute the Consent Order for removal of the defamatory comment;
2. The Defendant tender the settlement funds to the Court for distribution when the defamatory comment is removed.



Edward S. McCallum, III
340 Main St., Suite A
PO Box 148
Greenwood, SC 29648

Greenwood, SC

June 3, 2014

LAW OFFICES OF
EDWARD S. McCALLUM, III

THE PROFESSIONAL BUILDING
340A MAIN STREET
GREENWOOD, SC 29646

MAILING ADDRESS:
P.O. BOX 148
GREENWOOD, SC 29648

TELEPHONE: (864) 223-8546
FAX: (864) 223-8015

May 22, 2014

Via Facsimile Only # 864-232-9555

Stephen John Henry
406 Pettigru St.
Greenville, SC 29601

Re: Coates v. Simchon

Dear Mr. Henry:

Pursuant to your comments during the hearing on your Motion to Enforce wherein we presented for before Judge Addy, you indicated you would "assist" us in removal of the defamatory statement your client posted regarding Bay Island Sportswear, Inc. and Sam Simchon. We contacted Google as well as other search engine carriers to ascertain what would be needed to remove the comment. We placed those guidelines in our proposed Order. Pursuant to the agreement on the record, the Court reiterated "... the mutual release of each of them provided that these terms are met." We both agreed. The terms have yet to be met.

After the removal of the defamatory statement from the search engine carriers, we will be happy to provide the \$4,500.00 to you to satisfy our portion of the agreement. The terms were that the comment would be blocked or removed from search engines. We have had the monies in our trust account since the presentment of the proposed order to you, however, we would be happy to tender the money to the Court until the comment is removed as the agreement states.

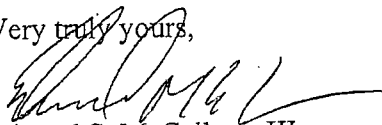
We have attempted to comply with the requirements of Google and other search engines, and you have not agreed to the language. We therefore are asking that you contact the search engines for the removal of the comment and prepare an appropriate order for our review. We too are anxious to bring this matter to a close; however, we cannot comply with the agreement when your client refuses to comply with the search engine's requirements. If the comment cannot be removed and we had already tendered the money, we verily believe it would be virtually impossible to be repaid the funds from your judgment proof client.

We are placing the ball in your Court, Mr. Henry. If you believe you can draft a basic order for the removal of the comment and have Google and other search engines honor it, please do so. We are prepared to tender the funds when the comment is removed or tender them to the Court for distribution when your client satisfies his portion of the agreement.

EXHIBIT "A"

We look forward to your response and to bringing this matter to a close.

Very truly yours,



Edward S. McCallum, III

/cw

STEPHEN JOHN HENRY
Attorney at law
406 Pettigru Street
Greenville, SC 29601
(864) 232-9700, 232-9555 (fax)
sjhlaw@sjhlaw.com
www.sjhlaw.com

May 22, 2014

Edward S. McCallum, III, Attorney
PO Box 148
Greenwood, SC 29648
Fax: (864) 223-8015

Re: Coates v. SImchon
Case # 2011-CP-24-1340

Ed,

I received your May 22nd fax.

Once again I do not agree with your attempt to change the agreement that was placed, in full, on the record.

Vince will do exactly what the agreement states and no more than that.

Your client was originally upset with the fact that the agreement was made in open court. That is not our problem. You, as her representative made the decision to put it "on the record". It was not my idea and I did not recite the terms of the agreement to the court. At any time you could have told the judge you did not want the agreement stated in open court and in front of the entire jury pool. You chose for whatever reason to put the settlement on the record in front of all of those people.

There was no settlement agreement other than the one in the transcript. There are no additional terms to the agreement except for what is in the transcript.

I attempted to work with you on the release language but nothing was ever concluded and nothing was signed because of the ridiculous additional terms you and your client tried to add after the fact.

In contrast to your approach to the settlement you and your client made in open court I did not try to add terms more favorable to my client after the fact.

At no time did Vince or I agree that he would admit that he defamed anyone. That notion is preposterous and a product of your imagination. He did agree, as the record reflects that he would request that a Rip off Report reference be removed. He did not agree to do any more than that.

Vince will do what he promised to do on the record. I expect your client and her husband to do the same.

The record speaks for itself. You were the one who made the record. It is disingenuous for you now to claim anything else.

Sincerely,

Stephen J. Henry

Sjh/tbff

LAW OFFICES OF
EDWARD S. McCALLUM, III

THE PROFESSIONAL BUILDING
340A MAIN STREET
GREENWOOD, SC 29646

MAILING ADDRESS:
P.O. BOX 148
GREENWOOD, SC 29648

TELEPHONE: (864) 223-8546
FAX: (864) 223-8015

May 22, 2014

Via Facsimile Only # 864-232-9555

Stephen John Henry
406 Pettigru St.
Greenville, SC 29601

Re: Coates v. Simchon

Dear Mr. Henry:

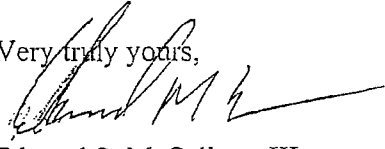
The point of my previous correspondence was that your client, as you indicated in front of Judge Addy, would "assist" us in the removal of the comment he posted on ripoffreports.com from other search engines.

We contacted the search engines, they require certain language that we submitted in the proposed order. Since your client has refused to cooperate in approving the language in our proposed order, we believe you should attempt to contact the search engines yourself and see if your language would suffice. We submit to you it will not. The consideration for the agreement was that the comment be removed from search engines in exchange for the voluntary dismissal of the Abbeville case, the Greenwood case and the payment of \$4,500.00.

We are requesting the transcript of the hearing before Judge Addy to submit to Judge Griffith for his review. Let me reiterate the Court stated, "So there is mutual releases of each of them provide that these terms are met." The terms your client must meet is "any search engine carrier would block or remove from their data base a certain comment that was posted on ripoffreport.com." Your client has not "assisted" us, "requested" or attempted to get the comment removed. Therefore, your client is not entitled to any relief until he meets those terms.

In our previous correspondence we placed the ball in your court – since you have issues with our proposed order, you contact the search engines to see what they require for the removal of the comment. Through our inquiries, the information they require was in the order we submitted to you. Please research the requirements of the major search engines, we believe you will see that the language we submitted is necessary for the removal.

Very truly yours,



Edward S. McCallum, III

/cw

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Search Bing Help

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How Bing delivers search results

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Bing automatically scans (or "crawls") the internet to develop and maintain an index to generate and display a set of search results (the "displayed search results"). The index is really a catalog of available online resources, including websites, images, videos, documents, and other items. Particular displayed search results are created by using a computer algorithm to match the search terms you enter with results in our index. In general, we try to provide as comprehensive and as useful a collection of displayed search results as we can. We design algorithms to provide the most relevant and useful results and determine which displayed search results appear for any given search.

Bing doesn't control the operation or design of the websites we index. We also don't control what these websites publish. As long as the website continues to make the information available on the web, the information will be generally available to others through Bing or other search services.

In limited cases, where relevant laws and/or public policy concerns address issues such as privacy, intellectual property protection, and the protection of children, we might remove a displayed search result of a particular resource. In each case, we try to limit our removal of displayed search results to a narrow set of circumstances so that we don't overly restrict access of Bing users to relevant information.

Here are the ways that Bing does this and when.

How we help stop the distribution of child abuse content

Sadly, the abuse of children is not new, but the internet affords a number of new opportunities to those who would commit crimes against children, including trafficking in images of sexual abuse. Bing works with law enforcement and other authorities to help stop the flow of this content online. One of the ways that we do this is by removing displayed search results that have been reviewed by credible agencies and found to contain or relate to the abuse of children.

In particular, we remove from our displayed search results links that have been identified by either the Internet Watch Foundation (UK), NCMEC (USA), FSM (Germany) as, in their good faith judgment, hosting or providing access to child abuse content that is illegal under the laws of their jurisdiction. Removing these links from displayed search results doesn't block them from being accessed on the internet or discovered through means other than Bing, but it does reduce the ability of those who would seek out child abuse content to find it and reduces the extent to which sellers of such content can profit from it.

We remove these types of displayed search results only when we're confident that the government or quasi-governmental agency providing the links:

- Is a credible and accountable organization.
- Limits the scope of its work to illegal child abuse content.

Provides some measure of recourse (like the ability to appeal) if content or sites hosting such content are blocked incorrectly.

How we protect intellectual property

In many countries, including the United States, search providers are obligated to respond to claims from rights holders about unauthorized posting, distribution, or other publication of protected content. The international community recognizes that such unauthorized publication can infringe on the rights of content owners and has fashioned both international treaties and local laws to address the matter. Pursuant to these laws, and in support of our own policies encouraging respect for intellectual property, we might remove certain displayed search results from our index upon notice

from rights holders.

Bing recognizes that the rights of content owners exist alongside the rights of users and that creativity and innovation online should be encouraged. To this end, Bing has helped develop a set of principles with respect to user-generated content applications (some of which generate links that we catalog in our search service). Learn more about those principles at <http://www.ugcprinciples.com>. We also review counter-notices that comply with the Digital Millennium Copyright Act sent from parties who wish to object to the removal of their content.

How we address allegations of libel or defamation

Similarly, countries around the world have adopted laws and procedures to address defamation, libel, slander, and other harms related to false statements that are made or implied to be fact and which might yield a negative perception about an individual, business, or other organization. We may remove displayed search results containing allegedly defamatory content. For example, we might remove a displayed search result if we receive a valid and narrow court order indicating that a particular link has been found to be defamatory.

How we work to prevent the invasion of privacy

From time to time, webpages that are publicly available will intentionally or inadvertently contain private information that is posted without the consent of the individual identified or in circumstances that create security or privacy risks. Examples include inadvertent posting of public records, private phone numbers, identification numbers and the like, or intentional posting of email passwords, login credentials, credit card numbers, or other data that is intended to be used for fraud or hacking.

Bing doesn't control the sites that publish this information or what they publish. Most of the time the website is in the best position to address any privacy concerns about the information it publishes. As long as the website continues to make the information available on the web, the information will be available to others. Once the website has removed the information and we have crawled the site again, it will no longer appear in our results.

If the information has already been removed from that website but is still showing up in Bing displayed search results, you can use the Content Removal Tool to submit a page removal or outdated cache removal request. To learn more about the Content Removal Tool, go to Bing Webmaster Help & How-To.

How we address web spam

Some pages captured in our index turn out to be pages of little or no value to users and may also have characteristics that artificially manipulate the way search and advertising systems work in order to distort their relevance relative to pages that offer more relevant information. Some of these pages include only advertisements and/or links to other websites that contain mostly ads, and no or only superficial content relevant to the subject of the search. To improve the search experience for consumers and deliver more relevant content, we might remove such displayed search results, or adjust our algorithms to prioritize more useful and relevant pages in displayed search result sets.

How we address laws specific to individual countries

Some countries maintain laws or regulations that apply to search service providers that require that we remove access to certain information that Bing has indexed, primarily for geopolitical purposes or local cultural norms and sensibilities. We must integrate our support for freedom of access to information by people of all countries with required compliance that allows us to offer the search services in a specific jurisdiction. When approached with a request for removal of displayed search results by a governmental entity, we require proof of the applicable law and authority of the government agency, and an official request to require removal. If such proof is provided and we can verify it, then we may comply with the removal request. If we are required to implement the request, we will do so narrowly. If the removal request is inconsistent with international standards, we might choose to seek clarification to further narrow our obligation to comply.

How we address issues related to access to adult content

Bing offers SafeSearch settings, which allow most users to set the type of filtering of adult content that they would like applied to their search results. By default, in most markets all searches are set to moderate, which restricts visually explicit search results but does not restrict explicit text.

Because of local customs or cultural norms, certain countries may impose legal restrictions on the display of adult content. As a result, what constitutes adult content might vary depending on the market.

Bing categorizes certain countries as strict markets. In these strict markets, we might restrict the display of adult content (as locally defined), and because of the local customs, norms, and laws, we might limit SafeSearch settings only to "strict." Set to "strict," SafeSearch filters the display of explicit search results in images, videos, and text. Markets that are limited to "strict" include:

- China
- India
- Indonesia
- Korea
- Malaysia
- Middle East
- Singapore
- Thailand
- Turkey

RELATED TOPICS

[Block explicit websites](#)

[Remove cached pages from Bing](#)

[Submit a request to remove content from Bing](#)

[Report adult or offensive content](#)

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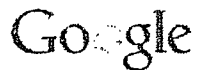
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[Legal](#)

[Advertise](#)

[About our ads](#)

[English \(Canada\)](#)



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Legal

Help

Removing Content From Google

This page will help you get to the right place to report content that you would like removed from Google's services under applicable laws. Providing us with complete information will help us investigate your inquiry.

If you have non-legal issues that concern Google's Terms of Service or Product Policies, please visit <http://support.google.com>

We ask that you submit a separate notice for each Google service where the content appears.

What Google product does your request relate to?

☐ Blogger/Blogspot

☐ Google+

☐ Web Search

☐ A Google Ad

☐ Drive and Docs

☐ Google Play - Music

☐ Google Play - Apps

☐ Google Shopping

☐ Image Search

☐ Orkut

☐ Picasa

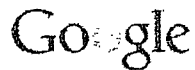
☐ YouTube

☐ See more products

8+1 3.3k

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English ↕

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Removing Content From Google

This page will help you get to the right place to report content that you would like removed from Google's services under applicable laws. Providing us with complete information will help us investigate your inquiry.

If you have non-legal issues that concern Google's Terms of Service or Product Policies, please visit <http://support.google.com>

We ask that you submit a separate notice for each Google service where the content appears.

What Google product does your request relate to? ☐ Web Search

What can we help you with?

☐ I would like to report malware, phishing or similar issues

☐ A piece of content I am concerned about has already been removed by the webmaster but still appears among the search results

☐ I have found a site that is engaging in suspicious behavior

☐ A page appearing in Google's search results is violating my company's trademark rights

☐ One or more pages on my site have been removed due to a legal complaint, and I would like them restored.

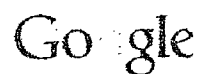
☐ I would like to remove my personal information from Google's search results

☐ I have a legal issue that is not mentioned above

8+1 3.3k

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English



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Legal

Help

Removing Content From Google

This page will help you get to the right place to report content that you would like removed from Google's services under applicable laws. Providing us with complete information will help us investigate your inquiry.

If you have non-legal issues that concern Google's Terms of Service or Product Policies, please visit <http://support.google.com>

We ask that you submit a separate notice for each Google service where the content appears.

What Google product does your request relate to? Web Search

What can we help you with? I have a legal issue that is not mentioned above

Please note that a copy of each legal notice we receive may be sent to the Chilling Effects project (<http://www.chillingeffects.org>) for publication and annotation. **Chilling Effects will redact the submitter's personal contact information (i.e. phone number, e-mail and address).**

You can see an example of such a publication at <http://www.chillingeffects.org/international/notice.cgi?NoticeID=1860>

We may also send the original notice to the alleged infringer or, if we have reason to suspect the validity of your complaint, to the rights holder.

We may also publish similar information from your notice to our Transparency Report. You may find out more information about the Report [here](#).

Choose from the following options

I have found content that may violate my copyright

I have a court order declaring certain content unlawful (e.g. pursuant to a copyright or trademark infringement suit)

I have located defamatory content in Google's search results

I would like to report a product or service that circumvents copyright protection mechanisms

I would like to report child sexual abuse images

3+1 3.3k

2014 Google - Privacy Policy - Terms of Service

English ↕

Go gle



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Legal

Help

Removing Content From Google

This page will help you get to the right place to report content that you would like removed from Google's services under applicable laws. Providing us with complete information will help us investigate your inquiry.

If you have non-legal issues that concern Google's Terms of Service or Product Policies, please visit <http://support.google.com>

We ask that you submit a separate notice for each Google service where the content appears.

What Google product does your request relate to? Web Search

What can we help you with? I have a legal issue that is not mentioned above

Please note that a copy of each legal notice we receive may be sent to the Chilling Effects project (<http://www.chillingeffects.org>) for publication and annotation. **Chilling Effects will redact the submitter's personal contact information (i.e. phone number, e-mail and address).**

You can see an example of such a publication at <http://www.chillingeffects.org/international/notice.cgi?NoticeID=1860>

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We may also publish similar information from your notice to our Transparency Report. You may find out more information about the Report [here](#).

Choose from the following options I have located defamatory content in Google's search results

Showing information for the following country: United States

Google.com is a US site regulated by US law. Google provides access to publicly available webpages, but does not

<https://support.google.com/legal/troubleshooter/11149057product=websearch&rd=2#ts=1115655,1282900,1115974>

Google.com is a US site regulated by US law. Google provides access to publicly available webpages, but does not control the content of any of the billions of pages currently in the index. Given this fact, and pursuant to Section 230(c) of the Communications Decency Act, Google does not remove allegedly defamatory material from our search results.

You will need to work directly with the webmaster of the page in question to have this information removed or

changed. If you haven't yet worked with the webmaster, please visit

<http://support.google.com/websearch/answer/9109> for more information. Once the material has been modified on the site in question, Google's search results will automatically reflect this change after we next crawl the site.

If you have obtained a court order which declares that the content of a web page indexed by Google is unlawful, please click [here](#) and follow the instructions on the form.

3+1 3.3k

[Google](#) [Privacy Policy](#) [Terms of Service](#)

English ↕

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Legal

Help

Submit a Court Order to Google

We use this form to review court orders against **third parties** who have posted allegedly unlawful content. If your court order is directed to **Google**, don't use this form - we don't accept service of process here.

If your court order does not identify content specifically by URL, please provide the exact URLs of the content you're concerned about, and identify what section of the order applies to each URL.

Completing and submitting this form does not guarantee that any action will be taken on your request.

Name *

Enter your first and last names

Company name

Contact email address *

(where confirmation email will be sent)

Country of residence *

Please select one ▾

Location of the allegedly infringing material *

Please enter one item per line

Explanation- What section of the attached court order mandates the removal of the content detailed above? *

Please attach a .PDF or .DOC version of the court order in question. *

Choose File no file selected

Please note that we will not process your complaint if it isn't properly filled out or if the complaint is incomplete. If multiple Google products are affected, please submit a notice for each affected product.



* Required field

3+1 3.3k

English ↕

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

Bay Island Sportswear, Inc., Sam)
Simchon, Individually,)

Case No.: 2012-CP-01-227

Plaintiffs,)

CONSENT ORDER

v.)

Vince Coates, Individually,)
Xcentric Ventures, LLC, Edward)
Magedson and John or Jane Doe 1-7)
and XYZ Company X-Z,)

Defendants.)

1. That the Defendant herein, Vince Coates, acknowledges that he is the author of the statements on the website "Ripoffreport.com" posted on or about March 29, 2011, under the screen name, "tshirt man" and appearing on URL : <http://www.ripoffreport.com/r/bay-island-sportswear/greenwood-south-carolina-/bay-island-sportswear-sam-simchon-this-guy-will-inflate-the-price-he-originally-quoted-yo-711721>. The Defendant further acknowledges that such statements are unlawful, defamatory, slanderous and untrue. Defendant further acknowledges that these statements were made willfully, wrongfully and with the intent to damage the Plaintiffs both individually and their business reputations. The Defendant, together with the Plaintiff herein, request that any and all webmasters, search engine providers and internet service providers including, but not limited to google.com; bing.com; yahoo.com; aol.com; ask.com; wow.com; webcrawler.com; mysearchengine.com; msn.com;

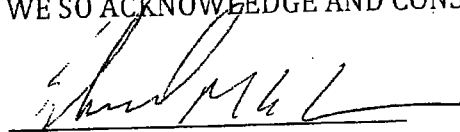
and, info.com, wherever located, remove this post, delete all caches and reindex the page so no information can be ascertained from any website, any search engine index or any and all other public access on the internet through this URL or any other URL where these statements are now published or may be posted or reposted in the future.

2. This Court requests that any and all webmasters, search engine providers and internet service providers including but not limited to those specially referenced above, lend to this Court such assistance as they may be able to provide to comply with the requests of these parties as set forth in paragraph 1 herein above.
3. This Court further is of the opinion that the website ripoffreports.com can not be ordered to remove such post pursuant to the Communications Decency Act, 47 USC C(1), however, this Court and these parties request that such removal occur and that a copy of this Order be posted together with the defamatory comments identified above if such comments are not removed by the webmaster.
4. This Court shall retain jurisdiction to modify or supplement the terms of this Order to the extent necessary, with the consent of the counsel for the parties, which shall not be unreasonably withheld, to give effect to paragraphs 1, 2 and 3 herein above.
5. That by consent of the parties, as evidenced by their signatures below, this case is dismissed with prejudice and forever ended.

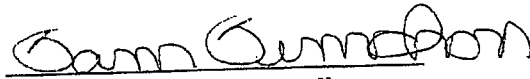
EIGHTH CIRCUIT COURT JUDGE

Greenwood, SC, February __, 2014

WE SO ACKNOWLEDGE AND CONSENT:



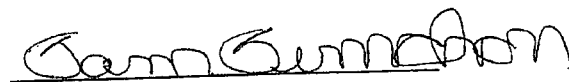
Edward S. McCallum, III
PO Box 148
Greenwood, SC 29648
Attorney for Plaintiff



Sam Simchon, Individually

BAY ISLAND SPORTSWEAR, INC.

Stephen John Henry
406 Pettigru St.
Greenville, SC 29601
Attorney for Defendant



By: Sam Simchon
Its: President

Rauch Wise
305 Main St.
Greenwood, SC 29646
Attorney for Defendant

Vince T. Coates, Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Vince Coates,)
)
Plaintiff,)

Case No.: 2011-CP-24-1340

v.)
)
Dorothy Renee Simchon)
)
Defendant.)

AMENDED MOTION TO
ALTER OR AMEND

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2011 SEP 17 21 10 00

Defendant Dorothy Renee Simchon ("Simchon") hereby moves, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter or amend the Court's order dated September 8, 2014 in the above entitled civil action ("Order"), on the following grounds:

1. Although the Order directs each party to this case to comply with the settlement agreement announced on February 3, 2014, it does not provide those parties, or the parties to the case pending in Abbeville County (2012-CP-01-0227), with any guidance as to how that agreement is to be implemented. In particular, the Order does not specify whether the dismissals of the within case and the Abbeville County case are to be with or without prejudice. At their appearance on February 3rd, counsel merely stated that plaintiff Vince Coates had "agreed to voluntarily dismiss this case" and would also enter into a "consent dismissal of the Abbeville case." Neither party stated whether these dismissals would be with or without prejudice. Rule 41(a)(1), SCRCP states that a voluntary dismissal is without prejudice unless it is otherwise stated in the notice or stipulation of dismissal. It is therefore Simchon's position, and that of the Plaintiffs in the Abbeville County case, that the aforementioned dismissals are to be without prejudice. This position, however, may be contested, and Simchon does not wish a

refusal of the Plaintiffs in the Abbeville County case to consent to a dismissal of their case with prejudice to be offered as grounds for contempt of the Order.

2. Similarly, the Order does not provide any guidance as to the form of the confidential mutual releases to be executed provided the terms of the settlement were met. As previously stated, the Plaintiff has to date refused to entertain any discussion of the form these mutual releases should take. Simchon therefore submits that the Order should be amended to allow the parties to this case, and the parties to the Abbeville County case, to submit proposed mutual release documents *in camera* for the Court's consideration.

3. The Order refers to a supplemental order directing internet service entities to remove harmful or disparaging comments. The Order should be amended to clarify whether the supplemental order will be entered in this case or in the Abbeville County case. Since Simchon is not a party to the Abbeville County case and has not requested any relief from defamatory or harmful statements, she submits that the aforementioned supplemental order should be entered in the Abbeville County case rather than in this case.

4. The Order should be amended to provide for additional relief in the event the supplemental order directing internet service entities to remove disparaging or harmful comments is later vacated, reversed or otherwise voided. Since no such entities are presently parties to this or the Abbeville County action, it is likely that any such supplemental order will be the subject of jurisdictional challenges. If such challenges succeed, the Plaintiffs in the Abbeville County action will be deprived of any relief from the Plaintiff's disparaging online statements. The Order should be amended to provide

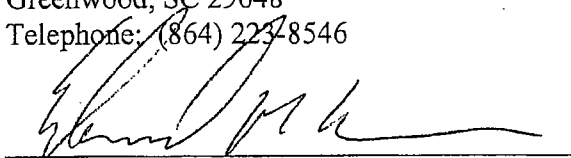
that, in the event a supplemental order is declared void or unenforceable, the Plaintiffs in the Abbeville County case shall become entitled to pursue additional relief from the Plaintiff's disparaging statements, to include a renewal of the claims asserted in the Abbeville County case.

5. In the alternative, the Court should reconsider its Order. The Court has expressly acknowledged, first, that the parties disagree as to certain material settlement terms, and, second, that it is impossible for the Court to determine what the parties (including the parties to the Abbeville County case) intended. Where, as here, there has been a fundamental misunderstanding as to the parties' obligations under a purported agreement, and it is impossible to ascertain their true intent, the parties should simply be relieved of their duty to comply with the agreement.

K&L GATES LLP

J. Walker Coleman, IV
Julius H. Hines
134 Meeting Street, Suite 200
Charleston, SC 29401
Telephone: (843) 579-5660
Facsimile: (843) 579-5600
julius.hines@klgates.com

Law offices of Edward S. McCallum, III
Post Office Box 148
Greenwood, SC 29648
Telephone: (864) 223-8546


Edward S. McCallum, III

Charleston, South Carolina
September 17, 2014

Attorneys for Defendant Dorothy Renee Simchon

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

Bay Island Sportswear, Inc., Sam)
Simchon, Individually,)
)
Plaintiff,)

v.)

Vince Coates, Individually,)
Xcentric Ventures, LLC, Edward)
Magedson and John or Jane Doe,)
and XYZ Company X-Z,)

Defendants.)

PLAINTIFF'S COMPLAINT
AND JURY DEMAND

Case No. 2012-CP-01-227

(Jury Trial Demanded)

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
JUN 23 2012

Plaintiff Bay Island Sportswear and Sam Simchon, through their undersigned counsel, files this Complaint and Jury Demand against Defendants on personal knowledge as to all facts regarding and upon information and belief as to all other matters as follows:

I. PARTIES

1. Plaintiff Bay Island Sportswear, Inc. (hereinafter "Bay Island") is a South Carolina professional corporation with its principal place of business in Greenwood, South Carolina. Bay Island is a textile company which sales tee-shirts and is owned and operated by Sam Simchon.
2. Sam Simchon is a citizen and resident of the County of Greenwood, State of South Carolina.
3. Defendant Vince Coates is a citizen and resident of the County of Abbeville, State of South Carolina.

4. Defendant Xcentric Ventures, LLC is an Arizona limited liability company with its principal place of business in Arizona. Xcentric Ventures runs and operates the website which is located at <http://www.ripoffreports.com> and <http://badbusinessbureau.com>. Xcentric Ventures may be served through its registered agent Aria Crimi Speth, Esq. at 3200 North Central Ave., Suite 2000, Phoenix Arizona 85012.

5. Defendant Edward Magedson is an individual who, upon information and belief, is and at all relevant times was the owner and/or operator of the above referenced websites. Magedson is also a manager of Xcentric Ventures. Upon information and belief, Mr. Magedson may be served at 1138 S. Rose, Mesa, Maricopa County, Arizona, 85204 and/or PO Box 310, Tempe, Arizona 85280.

6. Defendants John and Jane Doe 1-7 and XYZ Company X-Z are individuals and/or companies affiliated with the Defendant company and this Complaint shall be amended to substitute the names of the individuals and/or businesses entity in due course upon identification.

II. JURISDICTION AND VENUE

7. This Court has personal jurisdiction over the Vince and Cynthia Coates as they reside in Abbeville County, State of South Carolina.

8. This Court has personal jurisdiction over Xcentric Ventures, LLC because it solicits and does business, has substantial contacts in South Carolina and has committed torts in South Carolina.

9. This Court has personal jurisdiction over Magedson as he solicits and does business in South Carolina, has substantial contact with South Carolina.

10. This Court has personal jurisdiction over John and Jane Doe and XYZ Company because he/she/it has committed torts in part within the state of South Carolina and has committed torts within South Carolina.

III. FACTUAL BACKGROUND

11. The Ripoff Report Website is an Internet forum that claims to be a place for consumers to post and review complaints about the businesses and individuals who allegedly "rip them off." Upon information and belief, any internet user can log on to the website and create a report about any business or individual.

12. Magedson and Xcentric encourage and solicit third parties, such as the Coates to submit reports on the website and have created and/or contributed to the false and misleading defamatory statements.

13. The Coates posted a false and defamatory report on the website pertaining to Bay Island Sportswear and Sam Simchon.

14. Magedson and Xcentric publish the reports on the website without evaluating the validity of any of the information contained therein.

15. Magedson and Xcentric have a policy in which they fail and refuse to remove any report on the basis that it is false and defamatory.

16. Magedson and Xcentric profit from the website by selling advertisements, key word advertisements, books written by Magedson, the corporate advocacy program and by extorting monies from the victims of the false and defamatory reports by requiring payment of a fee to "investigate" false statements.

17. Magedson and Xcentric send emails to the persons and/or entities in which the false and defamatory reports are posted and will not remove the reports unless a substantial amount of money is paid by the person and/or entities.

18. Magedson and Xcentric's advertising profits are substantial in that the website receives millions of viewers each week.

19. In the corporate advocacy program (hereinafter "CAP"), businesses or individuals that have been victims of a defamatory report can hire Magedson and/or Xcentric to "investigate" the reports and take steps to attempt to have additional posts added to the defamatory post evidencing positive comments and statements. Magedson and Xcentric refuse to remove the report regardless of the circumstances. Further, Magedson and Xcentric offer a paid mediation program to attempt to resolve the issues.

20. Businesses and individuals which subscribe to the advocacy program must pay Magedson and Xcentric and up-front fee as well as monthly fees to maintain the advocacy's "protection."

21. The website operates by an internet user logging and to the website to make a report. If a user wants to submit a report on the Ripoff Report website, they must first create a free user account. The user is required to provide their name, address, phone number, and other information, all of which may be falsified. The user is then required to provide an email address, which the server automatically confirms by sending an email to that address prior to allowing the user to post anything, which can also be created through false means. To draft a report, users are a process established by Magedeson and Xcentric. First, the user must input certain information about the company they are reporting, including the name, address, and phone number. The second prompt, the user

is asked to create a "report title" by filling out a series of four blank boxes into which the user can enter (a) the company name; (b) words explaining what the report is about; (c) the city where the company is located, and (d) the state where the company is located. The website then prompts the user to categorize the report out of several different categories like "corrupt companies," "con-artists," and "judges," etc. Once the user submits the information Magedson and Xcentric formulate the content and publish the content to their website. Lastly, the user is prompted to attach photographs if they wish.

22. The false, misleading and defamatory report is reviewed and altered for content by Xcentric and Magedson. Xcentric and Magedson materially contribute to the false, defamatory and misleading reports and further exercise editorial control over such reports through screening software, mandatory registration and drop down menus as the only choices for the user to categorize the individual/entity. Magedson and Xcentric are much more than passive transmitters of information. Magedson and Xcentric develops the content which can be selected by the user to formulate the report.

23. Magedson and Xcentric are responsible in part for the development of the reports as they actively participate in the development of the disputed content rather than allowing users to post and categorize content as they choose. Magedson and Xcentric required users to make defamatory preferences and to disclose information that was false and misleading.

24. Due to the inducement, contributory acts and encouragement by Magedson and Xcentric and potentially Defendant Does and XYZ Companies, they, each of them, culpably assisted Coates in the production, creation and publication of defamatory libelous reports. Magedson and Xcentric contributed to the illegality of the content

contained in the report and shares joint responsibility for the partial creation and development of disputed content.

25. Magedson and Xcentric through the website contains HTML (hyper text markup language) script that is read by internet search engines such as AmericanaOnline (AOL), Google, Yahoo. The host of the webpage has exclusive control over the content of the HTML script. Among other content, the HTML script contains metatags that are designed for internet search engines to read and publish through internet search browsers such as *inter alia*, Internet Explorer, Safari, Firefox, Netscape and Google.

26. Magedson and Xcentric create the title for each webpage on the website by adding their own phrase including Ripoffreport to the beginning of the title of the report given by the computer user, as is here, Coates.

27. Upon information and belief, Magedson and Xcentric attempt to maximize the negative impact of such statements by using "optimization" techniques so that such reports will receive the highest possible results under search engine algorithms.

28. Magedson and Xcentric created the web domain www.ripoffreport.com. The affiliation between the website name and the plaintiff is defamatory as it creates a presumption of negativity which is associated with plaintiffs.

29. Plaintiffs have been damaged through the unlawful conduct of all Defendants by damage of reputation, time and effort of Plaintiffs building their personal and business relationships through impeaching credibility and their integrity, deterring potential customers, community status and exposing plaintiffs to personal and professional disrepute. Plaintiffs have been irreparably harmed and continue to be harmed until the removal of the defamatory untruths.

30. Plaintiffs are further damaged as the plaintiffs are unaware of the knowing how many or who has been exposed to the defamatory statements.

FIRST CLAIM FOR RELIEF
(Defamation/Libel as to all Defendants)

31. To the extent not inconsistent herewith, Plaintiffs incorporate by reference all previous allegations, as set forth *in toto* hereunder.

32. The statements and report regarding plaintiffs are false, misleading and defamatory.

33. Plaintiffs Coates intentionally created the false, misleading, disparaging and defamatory report and the remaining defendants publically communicated the report by disseminating the report via the ripoffreport.com website on the Internet and altering, providing and placing metatags on the website designed to publicize the false statements.

34. Defendants disseminated the false, misleading, disparaging and defamatory report with a reckless disregard for the truth.

35. Defendants, all of them, disseminated false, misleading, disparaging and defamatory comments with intent to damage the business, goodwill and professional and social reputation of plaintiffs.

36. Defendants actions and/or inaction by failing to remove the false report, have caused plaintiffs to damage by exposing them to contempt and ridicule by third parties receiving and viewing the false report.

37. Plaintiffs have also suffered financial loss resulting from loss of clients and damage to reputation, both personal and professional.

38. Defendants acted maliciously with wanton disregard for plaintiffs' rights and with intentional intent to defame and injure plaintiffs.

39. Defendants conduct as outlined above have caused plaintiffs special damages and will continue to cause special damages to plaintiffs by loss of business through the false, misleading and defamatory report by inducing others not to participate in business dealings with plaintiffs and by having to expend time and effort to overcome concerns raised by customers and potential customers after having been exposed to such reports.

40. Plaintiffs are entitled to injunctive relief by way of Defendants being restrained and enjoined from further damage to the business and personal reputation of plaintiffs.

41. Defendants are entitled to an amount to be proved at trial in this matter and punitive damage for their wanton willful conduct as outlined above.

SECOND CLAIM FOR RELIEF
(Defamation *Per Se*/Libel *Per Se* as to all Defendants)

42. To the extent not inconsistent herewith, Plaintiffs incorporate by reference all previous allegations, as set forth *in toto* hereunder.

43. Defendants' written statements by way of the false, misleading and defamatory report published on the website, were defamation *per se* and/or libel *per se* as the report expressly or implicitly accuse plaintiffs of criminal conduct by their very nature and tend to injure plaintiffs' personal and professional reputations.

44. The defamatory statements require no proof of falsity or fault because they were hurtful to plaintiffs.

45. Defendants false, misleading and defamatory statements contained on the report have caused general defamation damages to plaintiffs by exposing them to contempt and ridicule by the public which viewed such statements.

46. Defendants, all of them, disseminated false, misleading, disparaging and defamatory comments with intent to damage the business, goodwill and professional and social reputation of plaintiffs.

47. Defendants actions and/or inaction by failing to remove the false report, have caused plaintiffs to damage by exposing them to contempt and ridicule by third parties receiving and viewing the false report.

48. Plaintiffs have also suffered financial loss resulting from loss of clients and damage to reputation, both personal and professional.

49. Defendants acted maliciously with wanton disregard for plaintiffs' rights and with intentional intent to defame and injure plaintiffs.

50. Defendants conducts as outlined above have caused plaintiffs special damages and will continue to cause special damages to plaintiffs by loss of business through the false, misleading and defamatory report by inducing others not to participate in business dealings with plaintiffs. Additionally, on a number of occasions, Plaintiff has had to spend time and effort to repair the damage to relationships with existing and prospective customers caused by the defamatory postings.

51. Plaintiffs are entitled to injunctive relief by way of Defendants being restrained and enjoined from further damage to the business and personal reputation of plaintiffs.

52. Defendants are entitled to an amount to be proved at trial in this matter and punitive damage for their wanton willful conduct as outlined above.

THIRD CLAIM FOR RELIEF (Injunctive Relief)

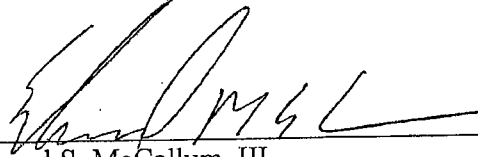
53. To the extent not inconsistent herewith, Plaintiffs incorporate by reference all previous allegations, as set forth *in toto* hereunder.

54. Plaintiffs request the Court to set application for injunctive relief for a full hearing on the issue of removal of the defamatory, false and misleading report against defendants from disseminating, using, and/or further publication of the report concerning the plaintiffs.

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants, each of them, in the following manner:

1. The Court issue permanent injunctive relief against defendants, enjoining and restraining them during the pendency of this action and permanently from disseminating, using or publishing false information, misleading information, disparaging and defamatory information regarding the plaintiffs and ordering the report be removed from public view;
2. Defendants be enjoined from posting any further comments and statements regarding plaintiffs without the plaintiffs express written permission;
3. Defendants notify and contact all internet business directory providers and search engines to terminate all links and references to the false misleading and disparaging defamatory report and all cached pages being kept by the search engines be terminated;
4. Plaintiffs recover special damages sustained in an amount to be determined at trial;
5. Plaintiffs recover compensatory damages in an amount to be determined at trial;
6. Defendants disgorge all profits illegally gained in an amount to be determined at trial;
7. Defendants be required to pay reasonable attorneys fees, costs and expenses incurred by Plaintiffs;
8. For a trial by jury;

9. For such other relief as this Court deems just, equitable and proper.



Edward S. McCallum, III
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(864) 223-8546
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Greenwood, SC
July 17, 2012

of the Complaint.

8. The Defendant admits the allegations of Paragraph Twenty-One of the Complaint.

9. The Defendant denies for lack of information upon which to form a belief the allegations of Paragraphs Twenty-Two and Twenty-Three of the Complaint.

10. The Defendant denies for lack of information upon which to form a belief the allegations of Paragraph Twenty-Four whether the Defendants Magedson and Xcentric as well as potential Defendants Does and XYZ Companies culpably assisted Defendant Coates in the production, creation, and publication of any report. The Defendant specifically denies that the report submitted by Defendant Coates was a libelous report. The Defendant further denies that any of the material contained in the report was illegal.

11. The Defendant denies for lack of information upon which to form a belief the allegations of Twenty-Five, Twenty-Six, and Twenty-Seven of the Complaint.

12. The Defendant denies for lack of information upon which to form a belief whether or not the Defendant Magedson and Xcentric created the web domain www.ripoffreport.com. The Defendant denies that any material reported by him was in fact defamatory.

13. The Defendant denies the allegations of Paragraph Twenty-Nine of the Complaint.

AS TO THE FIRST CLAIM FOR RELIEF
(Defamation/Libel as to all Defendants)

14. The Defendant admits the allegations of Paragraph Thirty-One which have been previously admitted and denies the allegations of Paragraph Thirty-One which have been

previously denied.

15. The Defendant denies the allegations of Paragraphs Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five, Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine, Forty, and Forty-One of the Complaint.

AS TO THE SECOND CLAIM FOR RELIEF
(Defamation *Per Se*/Libel *Per Se* as to all Defendants)

16. The Defendant admits the allegations of Paragraph Forty-Two which have been previously admitted and denies the allegations of Paragraph Forty-Two which have been previously denied.

17. The Defendant denies the allegations of Paragraphs Forty-Three, Forty-Four, Forty-Five, Forty-Six, Forty-Seven, Forty-Eight, Forty-Nine, Fifty, Fifty-One, and Fifty-Two of the Complaint.

AS TO THE THIRD CLAIM FOR RELIEF
(Injunctive Relief)

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18. The Defendant admits the allegations of Paragraph Fifty-Three which have been previously admitted and denies the allegations of Paragraph Fifty-Three which have been previously denied.

19. The Defendant denies the allegations of Paragraph Fifty-Four of the Complaint.

FOR A SECOND DEFENSE BY WAY OF COUNTERCLAIM

20. The Defendant Vince Coates is a citizen and resident of the County of Abbeville , State of South Carolina.

21. The Plaintiff Bay Island Sportswear, Inc. is a corporation incorporated under the laws of the State of South Carolina and doing business in the County of Greenwood, State of

South Carolina.

22. The Defendant Vince Coates is informed and believes that the Plaintiff Bay Island Sportswear, Inc. by and through its office that Renee Simchon, did post upon the website www.ripoffreport.com a statement accusing the Defendant Vince Coates of being a career criminal.

23. This statement is false and Renee Simchon, the Officer and Agent of Bay Island sportswear, Inc. either knew or should have known that the statement is false.

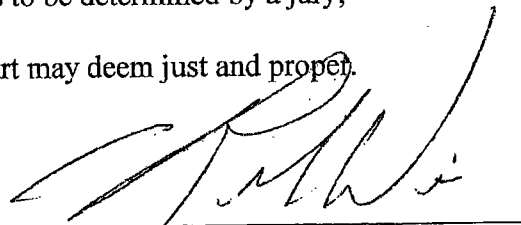
24. The statement is libelous per se in that the statement accuses the Defendant Vince Coates of being a career criminal.

25. As a result of the libelous and defamatory statement of Sam Simchon, the Defendant has suffered damages, both actual and punitive.

WHEREFORE, The Defendant Vince Coates having fully answered the allegations of the Complaint, prays that:

1. The Complaint be dismissed with cost;
2. Judgement be entered against the Plaintiffs Bay Island Sportswear, Inc, and Sam Simchon for the amount of actual and punitive damages to be determined by a jury;
3. For such other and further relief as the Court may deem just and proper.

August 22, 2012



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS

Bay Island Sportswear, Inc., Sam)
Simchon, Individually,)
)
Plaintiffs,)
)
v.)
)
Vince Coates, Individually,)
Xcentric Ventures, LLC, Edward)
Magedson and John or Jane Doe 1-7,)
and XYZ Company X-Z,)
)
Defendants.)
.....

Case No.: 2012-CP-01-227

PLAINTIFF'S REPLY TO DEFENDANT
COATES' ANSWER AND COUNTERCLAIM

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2013 JUN 11 PM 1 34

COMES NOW, the Plaintiff by and through their undersigned attorneys and replies to the Defendant's Answer and Counterclaim as follows:

GENERAL DENIAL

1. Plaintiff denies each and every allegation contained in the Defendant's Answer and Counterclaim except as specifically admitted, qualified or explained herein.

SPECIFIC DENIAL

2. The Plaintiff would show that the Defendant's paragraphs 1-19 of its Answer and Counterclaim do not require a responsive pleading but to the extent that those allegations may be incorporated as a basis for the Defendant's Counterclaim they are hereby denied and the allegations contained in the Plaintiff's Complaint reiterated.

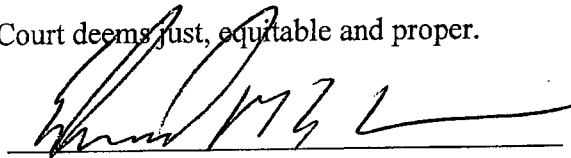
3. The Plaintiff admits the allegations contained in paragraphs 20 and 21.

4. In response to paragraphs 22, 23, 24 and 25 of the Defendant's Counterclaim, the Plaintiff denies the allegations contained therein and demands strict and exacting proof thereof.

5. The balance of the Defendant's Answer and Counterclaim is denied including the prayer for relief.

WHEREFORE, Plaintiff prays:

1. For the Defendant's Answer and Counterclaim be dismissed and all relief requested denied *in toto*;
2. For the Plaintiff's relief contained in its Complaint be granted *in toto*;
3. For attorneys fees and costs;
4. For such further relief as the Court deems just, equitable and proper.



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Greenwood, SC
January 11, 2013

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-01-227

BAY ISLAND SPORTSWEAR, INC., SAM
SIMCHON, INDIVIDUALLY,

Plaintiffs,

v.

VINCE COATES, INDIVIDUALLY,
XCENTRIC VENTURES, LLC, EDWARD
MAGEDSON AND JOHN OR JANE DOE 1-
7 AND XYZ COMPANY X-Z,

Defendants.

TRUE COPY

BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT.

MOTION TO ALTER OR AMEND

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 DEC -9 PM 3:23
EMILY M. MARIAN
CLERK OF COURT

Plaintiffs Bay Island Sportswear, Inc. and Sam Simchon ("Plaintiffs") hereby move, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter or amend the Court's order dated November 24, 2014 in the above entitled civil action ("the Order"), on the following grounds:

1. The Order purports to direct "the internet entity Ripoff Report" to remove disparaging statements about the Plaintiffs from its website. This internet entity is presumably "RipoffReport.com." RipoffReport.com is owned and operated by Xcentrix Ventures, LLC ("Xcentrix"), which was originally named as a defendant in this case. By order dated March 28, 2013 and filed on April 3, 2013, the Honorable Frank R. Addy, Jr. dismissed Xcentrix as a party. By directing "Ripoff Report" to remove content from its website, the Court is effectively awarding injunctive relief against a party which was dismissed from this case more than a year ago. The Court is clearly without any jurisdiction to do so.

2. The Order, which was drafted in its entirety by counsel for Defendant Vince Coates, does not even provide the relief which counsel specifically agreed to before the Court on February 3, 2014. It was recited at those proceedings that "[Coates] has agreed to enter into a

consent dismissal of the Abbeville case which will also request that any search engine carrier would block or remove from their data base a certain comment that was posted on ripoffreports.com." *Transcript of Record* (February 3, 2014) at p. 2, ll. 17-22. Counsel for Coates did not limit this agreement to "the internet entity Ripoff Report." Even the cursory outline of the settlement given at the February 3, 2014 proceeding made it clear that "any search carrier" would be requested to block the disparaging comments posted by Coates on RipoffReport.com. "Search carrier" would obviously include google.com, yahoo.com and other internet content providers who would otherwise display Coates' disparaging remarks in response to search queries on the Plaintiffs' names.

Moreover, in its September 8, 2014 order in the related Greenwood County case of *Vince Coats v. Dorothy Renee Simchon* (Case No. 2011-CP-24-1340) (the "Settlement Enforcement Order"), the Court specifically stated that it would "grant leave for either party to prepare a supplemental order directing any 'internet service' entity maintaining the comments, to remove the publications which either party deems harmful or disparaging to him or her" (emphasis added). In response to these instructions, the Plaintiffs previously submitted a proposed order which directed "all internet service entities" to remove all references to the ripoffreports.com posting, which was specifically identified by URL listing (a copy of the Plaintiffs' proposed order is attached hereto as Exhibit "A" and its proposed terms are incorporated by reference). The Plaintiffs' proposed order was consistent both with the settlement terms outlined on February 3, 2014 and with this Court's instructions in the Settlement Enforcement Order. The Court, however, signed the proposed order submitted by Coates, which essentially reneges on the relief previously agreed to by Coates' own counsel. The Order should be amended, consistent with Plaintiffs' proposed order, to direct internet service entities--not just RipoffReport.com--to

remove the Defendants' disparaging statements. That much at least was agreed to on February 3, 2014, and reflected in the Settlement Enforcement Order. It should not now be withheld.

3. The Order should be amended to provide for additional relief in the event the supplemental order directing internet service entities to remove disparaging or harmful comments is later vacated, reversed or otherwise voided. Since no such entities are presently parties to this or the Abbeville County action, it is likely that any such supplemental order will be the subject of jurisdictional challenges. If such challenges succeed, the Plaintiffs will be deprived of any relief from Coates' disparaging online statements. The Order should be amended to provide that, in the event its relief as to internet service entities is declared void or unenforceable, the Plaintiffs shall become entitled to pursue additional relief from the Defendants' disparaging statements, to include a renewal of the claims asserted in this case.

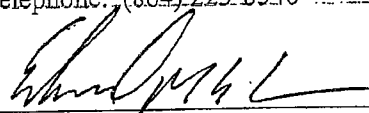
4. Consistent with paragraph 5 of Defendant Dorothy Renee Simchon's Amended Motion to Alter or Amend filed on September 17, 2014 in the aforementioned Greenwood County case, the Plaintiffs move to vacate the Order because the settlement agreement upon which is predicated should not be enforced. In this regard, this Motion is based on the reasons previously argued by Defendant Dorothy Renee Simchon in her Amended Motion to Alter or Amend in Greenwood County case number 2011-CP-24-1340.

Respectfully Submitted,

K&L GATES LLP

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Edward S. McCallum, III

ATTORNEYS FOR PLAINTIFFS

December 9, 2014
Charleston, SC

1 THE COURT: Good morning, ladies and gentlemen, if
2 you will bear with me I have got some questions I need to
3 ask you but I have been speaking with some lawyers this
4 morning about a matter they had before me. And I would
5 like to go ahead and put the resolution on the record.
6 Mr. Henry, would you like to put it on there, or Mr.
7 McCallum, would you like to put it on there?

8 MR. MCCALLUM: I can certainly do it, Your Honor.
9 Your Honor, it is my understanding that the parties have
10 agreed to the resolution not only in this case but also in
11 the pending case in Abbeville County. And I can
12 supplement the record with the caption of that Abbeville
13 case at a later time, I don't have that with me. Your
14 Honor, it is my understanding that the plaintiff has
15 agreed to voluntarily dismiss this case, that there will
16 be a payment made of \$4,500.00 dollars to the plaintiff's
17 attorney in exchange for that voluntary dismissal. In
18 addition, Your honor, the plaintiff has agreed to enter
19 into a consent dismissal of the Abbeville case which will
20 also request that any search engine carrier would block or
21 remove from their data base a certain comment that was
22 posted on ripoffreports.com. This is my understanding of
23 the agreement.

24 THE COURT: Mr. Henry, anything further?

25 MR. HENRY: No, sir. Just to make it clear that the

1 Abbeville case is the case that--

2 THE COURT: The plaintiff is here, the defendant is
3 there.

4 MR. HENRY: Yes.

5 MR. MCCALLUM: That is correct, Your Honor.

6 THE COURT: So there is mutual releases of each of
7 them provided that these terms are met.

8 MR. MCCALLUM: That's correct, Your Honor.

9 MR. HENRY: Provided the terms are met.

10 THE COURT: All right.

11 MR. MCCALLUM: And those settlement documents will be
12 confidential.

13 THE COURT: Very good.

14 MR. HENRY: That's fine.

15 THE COURT: All right. Anything else I need to hear
16 on the record before y'all get out of here?

17 MR. HENRY: No, sir. There will be a written
18 document after this to memorialize.

19 THE COURT: Okay. Good enough.

20 MR. HENRY: That's it.

21 THE COURT: Thank you very much for your hard work.

22 MR. HENRY: Thank you, Judge, for your help.

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24

25

1 State of South Carolina
2 County of Greenwood
3
4

Court of Common Pleas

5 Vince Coates)
6 Plaintiff,) Transcript of Record
7 v.) 11-CP-24-1340
8 Dorothy Renee Simchon)
9 Defendant.)

10
11 June 4, 2014
12 Laurens, South Carolina

13 B E F O R E:

14 The Honorable Eugene C. Griffith, Jr., Judge.
15

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

17 Stephen John Henry, Esquire
18 Attorney for the Plaintiff

19 Edward S. McCallum, III, Esquire
20 Attorney for the Defendant
21
22
23

24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(There were no witnesses.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(There were no exhibits.)

1 (The following proceedings were held on July
2 10, 2014.)

3 **THE COURT:** All right. This is a motion,
4 Mr. Henry, from you to compel enforcement of the
5 settlement.

6 **MR. HENRY:** Yes.

7 **MR. MCCALLUM:** Your Honor, my client,
8 Ms. Simchon, was called away on an emergency over in
9 Georgia. I hope the Court doesn't take any offense
10 at her not being here. I have Howard Bond, her
11 husband, with me today.

12 **THE COURT:** Fair enough.

13 The file has been brought over to me. Judge
14 Addy's law clerk brought it to me.

15 **MR. MCCALLUM:** I asked the clerk yesterday
16 whether she needed --

17 **THE COURT:** I don't know whether we need it or
18 not, but it's here.

19 **MR. HENRY:** You want me to go ahead and start?

20 **THE COURT:** That's fine.

21 **MR. HENRY:** Okay, Judge. The motion itself is
22 the motion to enforce the terms of the settlement.
23 With the motion, I requested and received the
24 transcript of what happened in the court on that
25 day.

1 Let me just give you a little background about
2 the case. This lawsuit was filed in November of
3 2011. The background before the lawsuit was that
4 Vince Coates, my client, had been arrested for a
5 burglary and a larceny from an incident that
6 happened December of 2008. So this whole thing has
7 been going on for a long time, December of 2008.
8 Now we're in June of 2014. The arrest took place in
9 February of 2009.

10 In March 2009, the criminal cases were
11 dismissed at the prelim. He was then indicted
12 directly by the grand jury in April of 2009. From
13 April 2009 until May 2011, he waited for his jury
14 trial in general sessions court. In May 2011, he
15 had his trial. Rauch Wise was his lawyer. The
16 court acquitted him by a directed verdict and then
17 this lawsuit followed in November of 2011.

18 Our case rocked along, bore you with the
19 details, discovery and all of that. But in February
20 3rd of 2014, we appeared for the civil trial in this
21 case. We had a jury pool ready to go. We were
22 getting ready to do jury selection.

23 During that week prior or a few days prior,
24 there had been negotiations going on about possibly
25 settling the case, like always -- often happens

1 anyway in civil cases before trial. And at the time
2 of the trial as we're getting ready to pick a jury,
3 we were a little ways apart in terms of negotiations
4 about the number. My client had agreed, at one
5 point, that he would accept \$10,000 and settle the
6 case and the other side had offered three, and then
7 we settled on 4500. Quite honestly, Vince was not
8 excited about that to say the least. And I
9 encouraged him to accept the settlement, the
10 compromise of \$4500.

11 At that point, we notified you about what we
12 were doing because you had all these other cases
13 that were going to be tried.

14 **THE COURT:** That was right after jury
15 qualifications if I remember --

16 **MR. HENRY:** It was right after jury
17 qualifications. We had not picked our jury, but the
18 jury was qualified and they were all sitting in the
19 courtroom at that point.

20 **THE COURT:** I remember the semblance of the
21 sequence.

22 **MR. HENRY:** The sequence.

23 At that point, it was asked whether -- my
24 recollection was, at that point, you asked whether
25 we wanted to put it on the record. We both agreed

1 to put it on the record. And at that point, again
2 with the jury pool there, Mr. McCallum for the
3 defendant, Renee Simchon, placed the terms of the
4 settlement on the record. And, in my view, that was
5 the settlement.

6 The transcript, as I said, is attached, and the
7 Court can interpret the language itself, of course.
8 But it's important -- a couple of terms are
9 important I think. Generously, looking at the
10 language of the settlement agreement, I came up with
11 six elements. The six elements of the agreement was
12 that -- were that Vince would agree to dismiss this
13 case. There was an Abbeville County case against
14 him that was going to be dismissed. They would pay
15 \$4500 for settlement. The settlement would be paid
16 to me not to Vince directly. The terms of the
17 settlement would be confidential. Although, that
18 was a little bit interesting in light of the fact
19 that everyone was in the courtroom and it was on the
20 record in open court, but that's -- were the terms.

21 The dismissal of the Abbeville case would also
22 include a request, which we would consent to, a
23 request to have the removal of the Ripoff Report
24 from -- that had been posted. And that mutual
25 release -- the mutual releases part you actually

1 mentioned during the discussion about the settlement
2 when you asked me about whether this was an
3 agreement the way Mr. McCallum stated it and I said
4 it was. You just made a comment about mutual
5 releases. So I added that to my list. So we've got
6 six elements.

7 I expected, and you know what they do with --
8 what assumptions do, but I expected, at that point,
9 we'd have two short orders dismissing the two cases
10 with prejudice, a standard mutual release, both
11 sides denied responsibility and liability, and the
12 one extra term about agreeing to request that the
13 Ripoff Report be removed will be included in those
14 short orders.

15 Instead, after the settlement was placed on the
16 record, I received a very, very lengthy release
17 document, a consent order. And those never got
18 signed because they added terms to the settlement
19 that were not placed on the record. I tried to fix
20 some of the language to cooperate and try to get
21 this done, but it never -- that failed. I then
22 notified Mr. McCallum that, you know, whatever is on
23 the record is the agreement and we're sticking with
24 that, and he disagreed. And that's why we're here.

25 A couple other points about this, that was --

1 that was the day for trial for us for one reason, it
2 may not be important, but for one reason, we had a
3 police officer witness who was with Greenwood had
4 moved to Virginia and we had taken a lot of time
5 trying to locate him and get him to show up for
6 trial and he did. He was important, very important
7 to the case. We also had what we thought was a very
8 good panel. We really liked the jury panel. So we
9 were ready to go and we felt good about our chances
10 at trial.

11 And like I said, I wasn't twisting Vince's arm,
12 but he was not excited about it, but in the spirit
13 of compromise, he agreed to come down from his last
14 demand to work the case out, put it on the record.
15 We thought we were done.

16 So now we're here to try to go back to the
17 record -- the settlement that was placed on the
18 record and get this done. I don't think we're
19 negotiating at this point. We're just saying the
20 record says what the settlement is.

21 In fact, if you look at the transcript, the
22 last comment by Mr. McCallum, of course, he put it
23 on the record not me, is, This is my understanding
24 of the agreement. So --

25 **THE COURT:** Where is the misunderstanding?

1 **MR. HENRY:** The misunderstanding, I think --
2 now, there were several things that were sent to me
3 that were not in the settlement agreement. I think
4 the misunderstanding may be that they claim that
5 Vince agreed to admit that he was guilty of
6 defamation of character. And he never -- that
7 never, ever came up.

8 And, again, I'm -- all we agreed to do -- all
9 he agreed to do is they're going to ask for -- that
10 this Ripoff Report be removed and we agreed we would
11 assist and request that, but no admissions of
12 anything were ever discussed. It would be silly.
13 He has a defense to that case and that was being
14 dismissed. So I think that's the dispute now.

15 There were other issues that were sent to me in
16 the mail that were disputed and I'm waiting to hear
17 what the new ones are, but I think that may be one
18 of them, but there were never, ever any discussion
19 between -- with me and none with Vince and me about
20 Vince, at any point, admitting that he defamed
21 anybody.

22 Now, it may have turned out later that the
23 Ripoff Report web site requires more than just a
24 request, but that's not our problem that was never
25 discussed. We agreed -- he agreed, Vince agreed

1 through me, to request that it be removed. If it
2 didn't work, that's not on us.

3 **THE COURT:** Well, I mean, why can't a consent
4 order tell them that y'all have agreed to have it
5 removed and direct it to be done?

6 **MR. MCCALLUM:** Your Honor, if you recall there
7 the -- I believe you presided over the Simchon
8 versus Xcentric and Coates matter in Abbeville.

9 **THE COURT:** No, I didn't, because I was unaware
10 of the thing in Abbeville. I didn't. I don't
11 think. I mean, tell me the facts.

12 **MR. MCCALLUM:** Okay. In any case, there was a
13 lawsuit by Mr. Simchon against Mr. Coates and
14 Xcentric, which is the owner of ripoffreports.com.

15 **THE COURT:** I didn't have anything to do with
16 that.

17 **MR. MCCALLUM:** It may have been Judge Addy.
18 I'm sorry, Your Honor, if it was. In any case,
19 ripoffreports.com got dismissed out of that lawsuit
20 because of the federal statute that says that third
21 party service providers are not responsible for the
22 content that individuals post on their web sites.
23 There's a federal statute to that effect.

24 **THE COURT:** That's unfamiliar, but I'll trust
25 you on that was what was said.

1 **MR. MCCALLUM:** All right. So that got
2 dismissed, the Xcentric got dismissed out of that
3 case. So then Xcentric will only remove, and this
4 has all been hashed out long before this February
5 hearing, Xcentric will only remove a comment off of
6 their web site if you pay a several thousand dollar
7 administrative fee and go through an arbitration
8 proceeding under their auspices and they make a
9 determination.

10 So Ripoff Report, there's no way to get them to
11 remove it. They won't do it. That's their policy.
12 That's been stated in open court repeatedly -- well,
13 before this February negotiation and ultimately
14 resolution of this case. So that case in Abbeville
15 was still pending.

16 Now, the only way to get the search engine
17 indexes to remove it, and this was well known and
18 discussed at the time of the resolution, is for
19 there to be a finding of defamation.

20 During the course of those negotiations, my
21 recollection is we came to an agreement on the
22 money. The money was not the issue. The issue was,
23 will Mr. Coates consent to a finding of defamation
24 so that these things can be removed? Mr. Henry
25 initially said, no, left the courtroom, went back

1 and spoke to his client again, came back and said,
2 We have a deal. That was just outside the door of
3 your chambers. We went into your chambers, said,
4 We've got this thing settled. You asked, Do you
5 want to put it on the record?

6 **THE COURT:** I'm certain I asked that. That's
7 my normal practice.

8 **MR. MCCALLUM:** All right. And I said, Your
9 Honor, it's confidential, but we'd like to put the
10 dismissal on the record. Well, when we got out into
11 the courtroom, you said, and the transcript, I
12 think, bears this is out, Mr. McCallum, would you
13 like to place the agreement on the record, and which
14 kind of took me aback at that point because it was
15 supposed to be confidential. And so we're sitting
16 with 80, 90 people in the courtroom, the jury pool,
17 and I'm trying my best to maintain the
18 confidentiality of the agreement while at the same
19 time putting the basic terms on the record.

20 Now, if you read Rule 43' -- and I don't want to
21 get into a lot of technicality here because we want
22 to get this case settled as much as they do, and I
23 want to make that very clear. The money has been in
24 my trust account since, I don't know, 24 or 48 hours
25 after we walked out of the courtroom that day. So

1 I'm just as anxious to write a check. My client
2 wants this thing resolved as well.

3 The problem that we have -- I believe you
4 should have in your file the return to the motion,
5 and I forwarded it to your clerk yesterday. So you
6 might have -- I don't know if you've had an
7 opportunity to review any of this or not, but the --
8 and I forwarded it as well to Mr. Henry, but I do
9 have another copy for him here as well.

10 **MR. HENRY:** I brought it.

11 Judge, I don't think any of that's relevant,
12 but I mean, leave it to you to consider what you
13 want. If we are here to have you review our letters
14 back and forth, there are a lot of other letters
15 that I can bring in, but I don't see how that really
16 matters.

17 **MR. MCCALLUM:** It's not a question of the
18 letters, Judge.

19 **MR. HENRY:** Here's what I told you, here's --

20 **THE COURT:** All right. Well, let him finish,
21 please. Keep going.

22 **MR. HENRY:** I'm just objecting to it is all.

23 **MR. MCCALLUM:** We don't have an issue with the
24 resolution of the Coates versus Simchon case. Our
25 issue is with what we understood the resolution of

1 Simchon versus Coates to be, the Abbeville case.

2 If you review those documents from Bing and
3 Google and all of the search engines, there has to
4 be a finding of defamation. That's what we asked
5 for in those settlement negotiations. That's what
6 we understood Mr. Henry to agree to. That's the
7 only assistance that is relevant assistance in
8 removing Ripoff Reports from the search engines.
9 That's the only way it can be done. There is no
10 other way to do it.

11 **THE COURT:** I mean, here's the problem: It's
12 not in the record --

13 **MR. MCCALLUM:** It's in the record that they
14 will lend assistance. That's the only assistance.
15 That's it.

16 **THE COURT:** I think y'all are wanting -- I
17 mean, I -- Judge Addy told me what y'all had argued
18 and I reviewed this ahead of time and I think you're
19 stuck with what's in the record.

20 **MR. MCCALLUM:** Well, the only assistance is the
21 admission. That's it. There is no other valid
22 assistance. If that's the case, then the
23 consideration for the dismissal of Simchon versus
24 Coates fails. There is no consideration.

25 **THE COURT:** But it's not a contract. Y'all are

1 settling the case. You have to have --

2 **MR. MCCALLUM:** But we still have to have a
3 meeting of the minds, Your Honor. And, apparently,
4 we don't have -- never had a meeting of the minds.

5 **THE COURT:** So what do you want? I mean,
6 they're not going to do it. I can tell you that
7 just from what he said.

8 **MR. MCCALLUM:** I don't care if we seal it. I
9 don't care if Mr. Henry wants to contact those
10 service providers. If he can figure out another way
11 to do it, we're more than happy to do it, but the
12 only assistance that we've been able to find is a
13 finding of defamation.

14 Now, if the Court wants to, and Mr. Henry's
15 okay with this, you want us to pay the \$4500, we
16 settle the Coates versus Simchon and move forward
17 with the Simchon versus Coates, we're good with that
18 too, but we've got to have that removed from the
19 record. That is the whole basis for the resolution
20 to this and it was clear.

21 **THE COURT:** Well, it's not clear to me. It's
22 clear to me what you said in the courtroom. But I
23 didn't realize, because I remember hearing that your
24 client was unhappy with the settlement being
25 published in the courtroom, I was unaware of that

1 until after it was done.

2 **MR. MCCALLUM:** Yes, sir.

3 **THE COURT:** You know, I think the settlement
4 terms are clear, either you agree to it or you
5 don't. But all of this other removing it and
6 lending assistance, but admitting defamation,
7 there's a huge difference to me, lending assistance
8 and defamation, that -- and admitting defamation, I
9 don't recollect that ever being said in my presence.
10 I don't recollect that. I can't say you didn't and
11 y'all didn't talk about it. I didn't hear it.

12 **MR. MCCALLUM:** It's the only basis my client
13 had for resolving the case. It's the only reason
14 the Simchon v. Coates case was resolved.

15 **THE COURT:** Well, it seems to me if you don't
16 settle both of them, you unsettle both of them.

17 **MR. MCCALLUM:** And we're fine with that. We'll
18 be happy to try them. As a technical point, under
19 Rule 43 and under the Cheap-O Truck Stop versus
20 Cloyd case, Rule 43 requires both the agreement to
21 be placed on the record and it to be noted in the
22 record.

23 **THE COURT:** What do you mean?

24 **MR. MCCALLUM:** This Court never issued an
25 order, never issued a Form Four order. Under this

1 case, we believe it stands, if you turn to page
2 three --

3 **THE COURT:** I don't issue a Form Four order
4 until I get an order that follows it up.

5 **MR. MCCALLUM:** And that's the point that this
6 case makes is that if you look at Form Four, the
7 action is dismissed. And there's a checked box
8 there that a subsequent order will come that it's
9 dismissed pursuant to Rule 43(k) or whatever other
10 reason the court may note. But Rule 43, until it is
11 actually noted in the court's records, is not
12 applicable. The rule itself requires both that it
13 be stated in open court and, there's an "and" there,
14 noted in the record of the courts. And there has
15 been no noting of it in the records of the court.

16 **MR. HENRY:** I can reply to that if I need to,
17 Judge.

18 **THE COURT:** Let me hear you on that one.

19 **MR. HENRY:** Well, first of all, as you said,
20 when we wrapped up the settlement agreement on the
21 record, is, basically, mutual releases to follow.
22 Until that was done, there was no point on you to
23 issue a Form Four, so that doesn't really matter.

24 Plus, as I said before, counsel told the Court,
25 This is our agreement on the record. And there was

1 nothing mentioned about defamation, admission in
2 court or out of court.

3 **MR. MCCALLUM:** That's just wholly untrue.

4 **THE COURT:** Well, it wasn't mentioned to me.
5 Y'all may have talked about it. I don't --

6 **MR. MCCALLUM:** Yeah.

7 **THE COURT:** I didn't hear about it. I mean,
8 here's what I see: I mean, y'all need to get these
9 things resolved. Rehashing it and stirring the pot
10 and stirring the pot, it's going to keep stirring
11 up, just let it go.

12 **MR. MCCALLUM:** Judge, we've got to get that off
13 the search engines.

14 **THE COURT:** I mean, you might not can. You go
15 to trial and it might be here from now on.

16 **MR. MCCALLUM:** Well, we're willing to go to
17 trial on it.

18 **THE COURT:** I would be very cautious about
19 asking -- I mean, be careful what you ask for.

20 I think I'm tied to what's in the record. The
21 defamation issue wasn't ruled on by me, wasn't asked
22 to be ruled on by me. And if y'all want it
23 unsettled and it's not settled, then that's fine,
24 but I think you ought to settle it. I thought it
25 was settled.

1 **MR. HENRY:** We're not asking to unsettle it,
2 Judge. We're asking to enforce the settlement we
3 put on the record and we think it's clear.

4 **MR. MCCALLUM:** And if you read the transcript,
5 Your Honor, there's nothing to be done until this
6 assistance -- the way it reads is, Until this
7 assistance is lended. And there's been no
8 assistance. And the only assistance is a consent
9 order. It's the only effective assistance. If
10 there's another way to do it, we're more than happy
11 to do it.

12 **THE COURT:** Well, I'm not going to figure it
13 out.

14 **MR. MCCALLUM:** And that's why we sent -- that's
15 why we attached our letters because, you know, we
16 think they're relevant to the extent that, you know,
17 Mr. Henry, if you don't like doing it this way, find
18 another way to do it and we're happy to do it.
19 We're not trying to be obstructive.

20 **MR. HENRY:** We will do just what we agreed to
21 on the record, which was to consent to a request to
22 Ripoff. That's it. This is a done deal.

23 What makes the whole thing kind of ridiculous
24 is that these issues that are being brought up now
25 about the defamation, et cetera, those were in his

1 control.

2 **THE COURT:** All right. What about this: Why
3 don't y'all prepare some sort of court order that
4 says, y'all settled this case. The terms are
5 confidential and that one of the terms is that the
6 Internet comments be removed. And direct all the
7 search engine providers to remove them or they'll be
8 held in contempt of court and subject to a rule to
9 show cause, something like that. I mean, load it up
10 and see if they'll come to Greenwood to argue it.

11 **MR. MCCALLUM:** That's what we tried to do.

12 **THE COURT:** Well, do it, but don't --

13 **MR. MCCALLUM:** That's what we proposed.

14 **THE COURT:** Yeah. Don't put, you know, that
15 anybody's got to admit to anything. Y'all have got
16 a confidential agreement and you want them to comply
17 with removing it because y'all have agreed to remove
18 it for whatever reason. None of their business
19 really.

20 **MR. MCCALLUM:** Here's what it says, here's what
21 their guidelines and rules are: We might remove a
22 displayed search result if we receive a valid and
23 narrow court order indicating that a particular link
24 has been found to be defamatory.

25 **THE COURT:** Use some other word. Quit using

1 their word. You're good at drafting stuff. I've
2 read some of your work.

3 **MR. MCCALLUM:** Thank you, Your Honor.

4 **THE COURT:** Load it up and, you know, direct
5 them to do it under no uncertain terms. Because the
6 settlement terms of this are confidential because
7 y'all have agreed to that, even though it was
8 published in the courtroom, but that's part of the
9 deal, it was confidential, so that's in the record,
10 too.

11 I mean, put a strict directive in the order
12 that says they're directed to remove it by agreement
13 of the parties and by order of the Court or either
14 party can petition a rule to show cause to hold them
15 in contempt from not removing it. And see what they
16 do. I mean, that'll cost you a lot less than
17 retrying the case because I'll bet you they don't
18 want to dispatch a lawyer to Greenwood to come say
19 why they shouldn't be held in contempt for not
20 removing it.

21 **MR. MCCALLUM:** Your Honor, and if it doesn't
22 work, where does that leave us?

23 **THE COURT:** Well, let's do that and see. How
24 about that?

25 **MR. MCCALLUM:** Will the Court retain

1 jurisdiction?

2 **THE COURT:** On that order.

3 **MR. MCCALLUM:** And we had drafted the order
4 that we sent to Mr. Henry, that way the Court retain
5 jurisdiction to provide supplemental orders that
6 might be necessary to fulfill --

7 **THE COURT:** I don't mind doing that, I mean if
8 y'all don't.

9 **MR. HENRY:** I don't object to you obtaining
10 jurisdiction, but what I would like to have happen,
11 though, as of today is some kind of order to say,
12 this is the settlement.

13 **THE COURT:** You prepare that.

14 **MR. HENRY:** I'll do that.

15 **THE COURT:** You prepare that and y'all --

16 **MR. HENRY:** To me, this will be just a short
17 order.

18 **THE COURT:** It should be short. And then that
19 that order will direct -- write a order directing
20 the providers, because of confidentiality, to remove
21 them and that order will be supplemental to this
22 one. That way it will split them up.

23 **MR. HENRY:** And can we then also -- can you
24 also do short orders dismissing the two cases with
25 prejudice so those are over?

1 **MR. MCCALLUM:** Judge --

2 **THE COURT:** Until this is done, he's not going
3 to agree to that.

4 **MR. MCCALLUM:** No.

5 **THE COURT:** I mean, I tend to agree with you,
6 but I tend to understand where he's coming from.

7 **MR. MCCALLUM:** You know, Your Honor, like I
8 said, we'll do anything we can. We're not here to
9 bash Mr. Coats' reputation. That's not what we're
10 here about. I don't care if we seal the Abbeville
11 order. I don't care if we, you know, write it in
12 such a manner that there's no -- clear that there's
13 no liability on Mr. Coates. But, you know, the
14 deposition that Mr. Coates gave in this case, in the
15 Coates v. Simchon case, does everything but admits
16 the defamatory nature of these comments.

17 **THE COURT:** I don't want to get into that.

18 **MR. MCCALLUM:** I know you don't want to get
19 into that.

20 **THE COURT:** I don't care about that case.

21 **MR. MCCALLUM:** I don't care if we say that the
22 comments are defamatory and that there's no
23 liability for them. I'm good with that.

24 **THE COURT:** Well, let's try it my way.

25 **MR. MCCALLUM:** I'm not sure what language you

1 want me to use.

2 **THE COURT:** I want you to think up something.
3 You're creative. I've read your -- I'm going to say
4 it again. I've read your stuff. You're creative.

5 **MR. HENRY:** I've got -- I know you're probably
6 trying to resolve this, and that's your job
7 obviously, but it still seems to be that my motion
8 should be granted as it's written. And what we're
9 doing now is we're going into another whole area,
10 which was not part of the agreement. I mean, all
11 that was said on the record was that my client,
12 Vince Coates, would agree to request, along with
13 them in the consent order, that they be removed.

14 **MR. MCCALLUM:** Would agree to assist.

15 **THE COURT:** Lend assistance I think is the
16 characterization y'all used.

17 **MR. HENRY:** Take a look at rule -- either way.

18 **THE COURT:** Whatever the words are. It wasn't
19 admitting anything. It was lend assistance or
20 provide assistance or agree to --

21 **MR. HENRY:** But all the stuff about defamation
22 and all that stuff, none of that was in there. So
23 my motion is out there and if you're holding it in
24 abeyance or if you're denying it or if you're
25 granting it, I would just like to know because to me

1 this is going to go on ad nauseum potentially.

2 **THE COURT:** I thought this case was over when I
3 directed a verdict in their general sessions case.
4 That's when I thought it was over.

5 **MR. HENRY:** I understand that.

6 **MR. MCCALLUM:** And, in fact, at that point in
7 time, you commented, The Simchons have done nothing
8 wrong here; it was a breakdown in law enforcement,
9 is what the transcript of that case reads.

10 **THE COURT:** I remember.

11 **MR. HENRY:** Well, it wasn't and we sued and
12 they settled and now we've got a record.

13 **THE COURT:** You're right.

14 **MR. HENRY:** Now, we got a record, which is --

15 **THE COURT:** It's a whole lot to do about
16 nothing is what it amounts to.

17 All right. Let me -- I'm going to take your
18 motion under advisement. I'm going to decide how to
19 resolve it to issue an order, but I want you to
20 prepare me a proposed order to that effect and you
21 to work on a proposed order of lending assistance to
22 the Abbeville case.

23 And then -- my inkling is I need to grant your
24 motion, but I'm going to take it under advisement.
25 I want to read your proposed order, and I want to.

1 read yours for the assistance you're asking for
2 without using the words admission of whatever.

3 **MR. MCCALLUM:** I would just ask that, he can do
4 the order any way he wants to, but to go back to the
5 transcript for the wording.

6 **THE COURT:** I agree, stick with the transcript.

7 **MR. HENRY:** All right, sir. I'll prepare that
8 and I'll send a copy to Mr. McCallum.

9 **THE COURT:** Okay. Thank y'all.

10

11

END OF PROCEEDINGS

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October 24, 2014

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Fax: (864) 223-8015

Re: COATES v. SIMCHON
Case No. 2011-CP-234-1340

Ed,

Per Judge Griffith's request I am forwarding the two proposed orders. I am sending these orders to Rauch Wise by email.

Sincerely,

Stephen J. Henry

Sjh/tbff

Cc: C. Rauch Wise, Attorney (by email)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	
VINCE COATES,	)	Case No. 2011-CP-24-1340
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
DOROTHY RENEE SIMCHON,	)	
Defendant.	)	

THIS MATTER is before the Court as a motion by the defendant to alter or amend the Court's order and judgment filed on September 18, 2014. The order being challenged granted the plaintiff's motion to enforce the parties' civil case settlement.

IN HER AMENDED MOTION to alter or amend the judgment the defendant sets forth several grounds as follows: 1) the order is unclear as to whether the cases are to be dismissed with or without prejudice; 2) what form any mutual releases would take; 3) whether the order directing the internet service entity to remove harmful comments should be included in this order or in the Abbeville County order; 4) that the order should include supplemental relief with respect to the Internet entity; and 5) alternatively that the settlement agreement announced on the record should be set aside since the true intent of the parties cannot be ascertained.

FOR THE REASONS set forth herein, the defendant's amended motion to alter or amend the final order in this case is denied. I will address each of the defendant's arguments in sequence.

I FIND THAT the parties' clear intent was for this case and the related Abbeville County case to be dismissed with prejudice and so order.

WITH RESPECT to the mutual release, I find that a standard mutual release will be submitted by plaintiff's counsel to opposing counsel for each respective case. There will be no admission of liability by any party and each party will be required to comply with the settlement terms announced by defendant's attorney Mr. McCallum in open court on February 3, 2014. The

terms of the settlement need not be repeated in this order or in the mutual release itself since those terms have previously been announced in open court and presented to the Court and to the parties in transcript form.

WITH RESPECT TO THE INTERNET publication I find that the Abbeville County order is the appropriate place for this matter to be addressed.

THE SUPPLEMENTAL RELIEF sought by the defendant in her motion is denied. The parties' agreement did not include a requirement that the internet statement be removed only that the plaintiff "request" the removal of the offending language by the internet provider. The plaintiff stands ready and willing to make this request consistent with the parties' agreement as his counsel has informed the Court. However, in a subsequent hearing and upon the Court's suggestion the plaintiff agreed that an order be issued by the Court requiring the internet provider to remove the offending language. In the event that the internet provider does not comply with the Court's order to remove the offending language, further proceedings may be justified against that provider. However, no further actions will be required of the plaintiff on this issue.

THE DEFENDANT announced the settlement agreement prior to the trial of this case on February 3, 2014. The agreement was "made in open court and noted upon the record" as required by Rule 43 (k) of the South Carolina Rules of Civil Procedure and was proper in all respects. The agreement was also clear and unambiguous. In as much as the agreement was placed upon the record by defendant's counsel it would be difficult for her to challenge its clarity at this or any stage of the proceedings. All parties and lawyers in both the Greenwood County and Abbeville County cases were present when the settlement agreement was announced and approved by the Court without objection.

FOR THE REASONS set forth herein and those which will be provided in the Abbeville County order in Civil Action No. 2012-CP-1-227, the defendant's amended motion to alter or amend the final judgment in this case is denied in all respects.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Circuit Court Judge

Newberry, South Carolina

Date: _____

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	
BAY ISLAND SPORTSWEAR,	)	Case No. 2012-CP-1-227
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
VINCE COATES, ET AL.,	)	
Defendant.	)	

THIS MATTER is before the Court to address certain issues that relate to this litigation and should be read in conjunction with the order issued in the case of Vince Coates v. Dorothy Renee Simchon, Civil Action No. 2011-CP-24-1340 (Greenwood County case) denying the motion by the defendant in that case to amend or alter the judgment.

ON FEBRUARY 3, 2014 the parties in the Greenwood County case settled that litigation and, as part of that settlement agreement ended the present case by agreement. By way of brief background the plaintiff in this case Bay Island Sportswear is owned by Sam Simchon, the husband of the defendant in the Greenwood County case, Dorothy Simchon. The defendant in this case (Mr. Coates) is also the plaintiff in the Greenwood County case. The lawyer who represents the plaintiff in the present case, Edward McCallum, III, is also the lawyer who represents the defendant in the Greenwood case. Mr. Coates's lawyer in the present case is C. Rauch Wise. His lawyer in the Greenwood case is Stephen J. Henry.

AT ISSUE IN the present case was an internet publication alleged by the plaintiff to have been defamatory. The defendant denied these allegations. Since the issue of the internet publication was raised in this lawsuit, the Court deems it appropriate to deal with those questions herein.

IT IS THE ORDER of the Court based upon the settlement terms of the Greenwood case and with the consent of the defendant Mr. Coates, that the internet entity Ripoff Report shall remove from its website the following language concerning Bay Island Sportswear and Sam Simchon: "This manufacturer is a

crook he quotes you prices on tshirts and go back and change the prices. Once u get the goods he expects you to pay the price of the invoice which is greater then he quoted he will inflate the freight cost and want you to pay for it he will tell you he will ship shirts by boat but then say he had to ship by air with out discussing the possible price increase with the customer please stay away from this crook. When you refuse to pay for extra fees he will try to find your spouses name and falsify the invoice with you and her name on it to try to put a lean against your property."

FAILURE TO REMOVE the above language by Ripoff Report will be considered a violation of this order and subject that entity to sanctions through the Court's contempt powers.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Circuit Court Judge

Newberry, South Carolina

Date: _____

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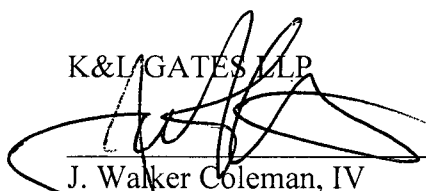
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 23, 2015

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