

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

FROM THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY

Civil Action No. 2015-CP-40-3502

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SEP 30 2016

**SC Court of Appeals**

Peter G. Oliver, ..... Plaintiff,

v.

The University of South Carolina, Martin Goodman, and Nancy Williamson, ..... Defendants.

**MOTION BY DEFENDANT MARTIN GOODMAN TO SUPPRESS  
AUDIO RECORDING PURSUANT TO  
SOUTH CAROLINA CODE ANN. § 17-30-110**

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Under the provisions of the South Carolina Wiretap Act, S.C. Code Ann. §§ 17-30-10, *et seq.*, and, specifically, §§ 17-30-15(9) and 110(A), Martin Goodman respectfully moves this Court to suppress the contents of intercepted oral communications from all further proceedings in the matter styled as *Peter G. Oliver v. the University of South Carolina, Martin Goodman, and Nancy Williamson*. The aforementioned matter is currently pending in the Court of Common Pleas for Richland County with the designation of civil action number 2015-CP-40-3502.

The intercepted oral communications subject to Goodman's instant motion were captured on an audio recording made by a private investigator hired by the Plaintiff's counsel on the Plaintiff's behalf. The private investigator recorded the entirety of a face-to-face conversation between Goodman and Earl Gregorich ["Gregorich"] when they met at a McDonald's restaurant in Bowman, South Carolina on the morning of August 24, 2016. The audio recording is one hour, twenty-three minutes, and forty-one seconds (1:23:41) long.

It is undisputed that the private investigator was "not acting under color of law" on August 24, 2016. It is also undisputed that the private investigator was not a party to the oral communications conveyed by Goodman to Gregorich on August 24, 2016. Finally, it is undisputed that neither Goodman nor Gregorich consented to the interception of any part of their respective oral communications by whatever device the private investigator used to record their conversation on August 24, 2016.

In light of these realities, the interception of the oral communications Goodman conveyed to Gregorich on August 24, 2016 by the private investigator acting on the Plaintiff's behalf violated § 17-30-30(C) of our state's Wiretap Act.

Goodman respectfully asserts that he is an "aggrieved person" under § 17-30-15(10), and, therefore, he respectfully moves this Court, pursuant to § 17-30-110(A)(1), to suppress the

contents of the audio recording in question from use in all further proceedings in this matter. *See State v. Rosier*, Opinion No. 2015-UP-275, 2015 WL 3536564, \*1 (S.C. Ct. App. 2015).

**I. OVERVIEW OF ACTION IN WHICH THE PLAINTIFF NAMED GOODMAN AS AN INDIVIDUAL DEFENDANT**

The Plaintiff identified three (3) defendants in his amended complaint filed October 30, 2015:<sup>1</sup> (1) the University of South Carolina [“USC”], (2) Goodman, and (3) Nancy Williamson [“Williamson”].

The Plaintiff asserted three (3) causes of action in his October 30, 2015 amended complaint: (1) “Defamation;” (2) “Violation of South Carolina Whistleblower Law;” and (3) “Civil Conspiracy.”

The Plaintiff named USC as the sole defendant to both his first and second causes of action, and the Plaintiff named Goodman and Williamson as the only individual defendants in his third cause of action.

The Honorable DeAndrea Gist Benjamin, Chief Judge for Administrative Purposes for the Court of Common Pleas in the Fifth Judicial Circuit, conducted a status conference with the parties’ counsel on August 22, 2016.

At the conclusion of the status conference she conducted, Judge Benjamin placed the case on the trial roster for the term of court scheduled to begin Monday, October 3, 2016, and, as of September 27, 2016, it appeared as case #12 on the aforementioned roster.<sup>2</sup>

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<sup>1</sup> Goodman respectfully submits a copy of the amended complaint as Exhibit 1 in support of his instant motion.

<sup>2</sup> Section 17-30-110(A) provides that “[a]ll proceedings requiring the use of the contents of any intercepted communication that are the subject of the motion to suppress ... are automatically stayed pending the determination of the motion to suppress” and that the instant motion “must be decided on an expedited basis.” [emphasis supplied]. Goodman respectfully submits that the filing of his instant motion automatically stays any effort by the Plaintiff to depose him concerning the claims articulated in the amended complaint filed by the Plaintiff in which the Plaintiff named him, Williamson, and USC as defendants. As the Plaintiff has the right to depose Goodman before the commencement of any trial of the Plaintiff’s claims, Goodman respectfully submits that the trial of the instant civil action is stayed pending the resolution of his instant motion.

## **II. FACTS SURROUNDING THE RECORDING OF THE CONVERSATION BETWEEN GOODMAN AND GRGORICH ON AUGUST 24, 2016**

### **A. RELATIONSHIPS AMONGST AND BETWEEN THE PLAINTIFF, GOODMAN, AND GREGORICH**

The Plaintiff is employed by USC, and he serves as the Columbia Area Manager for the USC Region of the South Carolina Small Business Development Centers [“SCSBDC”].<sup>3</sup> The Plaintiff’s office is located on Laurel Street in Columbia.<sup>4</sup>

Goodman, like the Plaintiff, is employed by USC, and his office is located on the campus of USC-Beaufort. Goodman serves as the Manager of the USC Region for the SCSBDC, and he is the Plaintiff’s supervisor.<sup>5</sup>

Gregorich, like the Plaintiff and Goodman, is employed by USC, and he serves as a Senior Business Counselor for the SCSBDC. While he works in the same building as the Plaintiff, Goodman supervises Gregorich.<sup>6</sup>

### **B. DISCLOSURE OF THE AUDIO RECORDING BY THE PLAINTIFF’S COUNSEL ON AUGUST 31, 2016**

The Plaintiff’s counsel was scheduled to depose Goodman in Beaufort on Thursday, September 1, 2016. On the afternoon of Wednesday, August 31, 2016, the Plaintiff’s counsel telephoned Goodman’s counsel to discuss Goodman’s upcoming deposition.

During their August 31, 2016 conversation, the Plaintiff’s counsel advised Goodman’s counsel for the first time that he possessed an audio recording made by a private investigator, which captured a recent conversation between Goodman and Gregorich.

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<sup>3</sup> Goodman respectfully submits affidavits from both himself and Gregorich in support of his motion. Goodman’s Affidavit appears as Exhibit 2, and Gregorich’s affidavit appears as Exhibit 3. See Exhibit 2 (Goodman Affidavit), ¶¶ 6 – 7, and Exhibit 3 (Gregorich Affidavit), ¶ 6.

<sup>4</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 3 and 5.

<sup>5</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 2 – 5.

<sup>6</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 2, 5, and 7, and Exhibit 2 (Goodman Affidavit), ¶ 12.

The Plaintiff's counsel explained that the conversation between Goodman and Gregorich occurred sometime during the previous week when they met outside of their respective offices at a McDonald's restaurant located in Bowman.<sup>7</sup>

The Plaintiff's counsel stated that the Plaintiff had learned about the meeting between Gregorich and Goodman by having seen a calendar upon which the meeting appeared.<sup>8</sup> The Plaintiff's counsel explained that a private investigator traveled to the McDonald's and recorded the conversation between Goodman and Gregorich.<sup>9</sup>

The Plaintiff's counsel stated that he had only recently received a copy of the audio recording of the conversation, and, consequentially, he had been able to listen to only short excerpts from it. The Plaintiff's counsel advised that from his limited review of the audio recording, it sounded like Goodman and Gregorich had discussed the Plaintiff's lawsuit and the prospect of a position opening up within the SCSBDC.

The Plaintiff's counsel stated that he did not think he was obligated to disclose the existence of the audio recording to Goodman's counsel before Goodman's deposition, but the Plaintiff's counsel said that he was doing so out of an abundance of caution and fairness.

The Plaintiff's counsel then advised Goodman's counsel that he intended to question Goodman about his recent meeting with Gregorich during Goodman's September 1, 2016 deposition and that he intended to play excerpts from the audio recording to assist him in examining Goodman during Goodman's deposition.

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<sup>7</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 14 – 16, and Exhibit 3 (Gregorich Affidavit), ¶¶ 12 – 14.

<sup>8</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 16 – 17.

<sup>9</sup> See Exhibit 2 (Goodman Affidavit), ¶ 38, and Exhibit 3 (Gregorich Affidavit), ¶ 36.

### **C. GOODMAN'S DEPOSITION POSTPONED**

Upon learning of the audio recording's existence and the circumstances associated with its production from the Plaintiff's counsel, Goodman's counsel suggested that they postpone Goodman's September 1, 2016 deposition.

Counsel then discussed various logistical aspects associated with Goodman's deposition. Counsel discussed the reality that Goodman's counsel had not, as of 2 p.m., August 31, 2016, received a copy of the audio recording, and, therefore, Goodman's counsel obviously had not been afforded the opportunity to hear any excerpts from the 83-minute audio recording let alone the entirety of the audio recording. Likewise, the Plaintiff's counsel himself had not heard, as of 2 p.m. August 31, 2016, anything other than excerpts of the audio recording.

Counsel also discussed the reality that remnants of a tropical storm were forecasted to move through the Beaufort area beginning sometime Thursday afternoon, September 1, 2016. Counsel acknowledged the prospect of concluding what could well be a lengthy deposition of Goodman and then traveling back to their respective offices and residences in the Columbia area in severe inclement weather. Accordingly, counsel agreed to postpone Goodman's deposition.<sup>10</sup>

### **D. EVENTS SINCE AUGUST 31, 2016**

At the conclusion of their August 31, 2016 conversation, the Plaintiff's counsel pledged to get a copy of the audio recording to Goodman's counsel as quickly as possible.

After not receiving a copy of the audio recording on August 31, 2016, Goodman's counsel requested a copy of it from the Plaintiff's counsel via e-mail on the morning of September 1, 2016.<sup>11</sup>

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<sup>10</sup> See Exhibit 2 (Goodman Affidavit), ¶ 39.

<sup>11</sup> Goodman respectfully submits a copy of the September 1, 2016 e-mail as Exhibit 4 in support of his motion.

Goodman's counsel transmitted another request to the Plaintiff's counsel via e-mail on the morning of September 2, 2016.<sup>12</sup>

On September 6, 2016, the Plaintiff's counsel transmitted an e-mail to Goodman's counsel in which he invited Goodman's counsel to access an "unedited" copy of the audio recording via "Dropbox."<sup>13</sup> In his September 6, 2016 e-mail, the Plaintiff's counsel also advised Goodman's counsel as follows: **"I have had a local recording studio remove as much background noise as possible and compile the audio file into small tracks;** I will send those over to you momentarily."<sup>14</sup> [emphasis supplied].

Given their respective schedules, Goodman's counsel and the Plaintiff's counsel did not speak again until Thursday, September 8, 2016, when Goodman's counsel called the Plaintiff's counsel to discuss the concerns held by Goodman's counsel regarding the circumstances associated with the audio recording's production. During their September 8, 2016 conversation, the Plaintiff's counsel told Goodman's counsel that his firm hired a private investigator after the Plaintiff told the Plaintiff's counsel about the meeting and that the private investigator traveled to the McDonald's in Bowman and recorded the conversation between Goodman and Gregorich.<sup>15</sup>

During the same conversation, Goodman's counsel told the Plaintiff's counsel that Goodman would not be deposed until the instant matter had been resolved.<sup>16</sup>

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<sup>12</sup> Goodman respectfully submits a copy of the September 2, 2016 e-mail as Exhibit 5 in support of his motion.

<sup>13</sup> Goodman respectfully submits a USB compatible "flash drive," upon which appears a copy of the recording his counsel retrieved per the invitation by the Plaintiff's counsel, as Exhibit 6 in support of his instant motion.

<sup>14</sup> Goodman respectfully submits a copy of the September 6, 2016 e-mail as Exhibit 7 in support of his motion. The recording Goodman submits as Exhibit 6 is a copy of the "unedited" recording secured from "Dropbox" by his undersigned counsel. As of the filing of the instant motion, Goodman's counsel has not yet received copies of "the small tracks" referenced by the Plaintiff's counsel in his September 6, 2016 e-mail.

<sup>15</sup> See Exhibit 2 (Goodman Affidavit), ¶ 40, and Exhibit 3 (Gregorich Affidavit), ¶ 38.

<sup>16</sup> See Exhibit 2 (Goodman Affidavit), ¶ 39.

## **E. THE AUGUST 24, 2016 MEETING OF GOODMAN AND GREGORICH**

Goodman and Gregorich, in fact, met at a McDonald's restaurant before the Plaintiff's counsel called Goodman's counsel on August 31, 2016. Obviously, Goodman and Gregorich coordinated with one another before they met.

Goodman and Gregorich scheduled their meeting so that Goodman, Gregorich's supervisor, could discuss with Gregorich the Employee Personnel Management System ["EPMS"] review Goodman had prepared for Gregorich.<sup>17</sup>

Goodman and Gregorich agreed to meet on August 24, 2016 at 10 a.m. at the McDonald's located inside the Pilot Travel Center off of I-26 at Exit 159, because it's located roughly half way between Goodman's office in Beaufort and Gregorich's office in Columbia.<sup>18</sup> The Pilot Travel Center and McDonald's at which they agreed to meet is located in Bowman.<sup>19</sup>

Sometime before they met, Gregorich noted on the internet-based Google calendar maintained for his office that he would meet with Goodman at the McDonald's at Exit 159 on August 24, 2016 at 10 a.m. Gregorich knew when he made the calendar entry that the Plaintiff and the graduate assistant supervised by the Plaintiff both had access to the Google calendar.<sup>20</sup>

Given that he manages the entire USC Region of the SBSBDC from his office on the campus of USC-Beaufort, Goodman periodically conducts meetings with his employees at facilities, such as restaurants, that are more conveniently located to both himself and his employees. For example, Goodman, well before his August 24, 2016 meeting with Gregorich,

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<sup>17</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 13 and 17, and Exhibit 3 (Gregorich Affidavit), ¶¶ 11 and 15.

<sup>18</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 14 – 16, and Exhibit 3 (Gregorich Affidavit), ¶¶ 12 – 14.

<sup>19</sup> A search of the website operated by Pilot Travel Centers, LLC reveals that the physical address for the Pilot Travel Center, and the McDonald's restaurant located inside at which Goodman and Gregorich met, is 2064 Homestead Road, Bowman, South Carolina 29018. See <https://www.pilotflyingj.com/store-locator/>.

<sup>20</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 16 – 17.

had met with the Plaintiff at the same McDonald's at Exit 159 to discuss various issues associated with the operations of the USC Region and the Columbia Office of the USC Region, for which the Plaintiff is the manager.<sup>21</sup>

Goodman never discussed with the Plaintiff any aspect of his August 24, 2016 meeting with Gregorich by any means of communication (e.g. face-to-face conversation, telephonic conversation, text message, e-mail message, and/or written correspondence).<sup>22</sup>

Moreover, neither Goodman nor Gregorich ever conveyed their consent to the Plaintiff, by any means of communication, for the Plaintiff or anyone on his behalf to have any portion of their conversation intercepted and recorded by any means at any time before or, for that matter, after they met on August 24, 2016.<sup>23</sup>

Goodman arrived at the McDonald's shortly before 10 a.m. on August 24, 2016, and, after not seeing Gregorich, he quickly found a table.<sup>24</sup> Shortly after he sat down, Goodman observed a man sit down at a table by himself right next to the table at which Goodman was seated, and Goodman then saw the man array a number of items (e.g. notebooks, book, and other miscellaneous items) on top of his table.<sup>25</sup>

Goodman also saw the man place some kind of object, which was dark in color and which could have been a book bag or other type of bag, near the very edge of the man's table closest to Goodman's table. It appeared to Goodman that the object was no more than approximately two (2) feet away from him as he sat at his table. Goodman believed that the man

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<sup>21</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 18 – 19.

<sup>22</sup> See Exhibit 2 (Goodman Affidavit), ¶ 20.

<sup>23</sup> See Exhibit 2 (Goodman Affidavit), ¶ 21, and Exhibit 3 (Gregorich Affidavit), ¶ 18.

<sup>24</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 22 – 23.

<sup>25</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 24 – 25.

was engaged in some kind of work, and Goodman assumed that the man was a businessperson who was taking a break in the McDonald's to catch up on some work.<sup>26</sup>

Gregorich arrived at the Pilot Travel Center at Exit 159 at approximately 10 a.m. on August 24, 2016. Upon his arrival, Gregorich walked into the McDonald's and quickly found Goodman sitting by himself at a table.<sup>27</sup>

As he walked towards Goodman, Gregorich saw a man seated alone at a table adjacent to the table at which Goodman was seated. Gregorich saw that the man had arrayed a number of items (e.g. notebooks, books, and other miscellaneous items) on top of his table. Gregorich also saw what appeared to be a book bag that had been placed near the very edge of the table occupied by the man, which was closest to the table at which Mr. Goodman was seated.<sup>28</sup> It appeared to Gregorich that the book bag was no more than approximately three (3) feet away from Goodman's table.<sup>29</sup>

Once Gregorich sat down with Goodman, they began their meeting.<sup>30</sup> Their meeting lasted over an hour, and Goodman and Gregorich spent the vast majority of their meeting reviewing and discussing Goodman's review of Gregorich's performance as reflected by the EPMS form Goodman had prepared.<sup>31</sup>

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<sup>26</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 26 – 27.

<sup>27</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 19 – 20.

<sup>28</sup> See Exhibit 3 (Gregorich Affidavit), ¶¶ 21 – 23.

<sup>29</sup> See Exhibit 3 (Gregorich Affidavit), ¶ 24.

<sup>30</sup> See Exhibit 2 (Goodman Affidavit), ¶ 28, and Exhibit 3 (Gregorich Affidavit), ¶ 25.

<sup>31</sup> See Exhibit 2 (Goodman Affidavit), ¶ 29, and Exhibit 3 (Gregorich Affidavit), ¶ 26.

When their meeting concluded, Goodman and Gregorich exited the McDonald's, and, as they walked away from their table, they saw the same man still seated alone at the table next to their table.<sup>32</sup>

Gregorich also saw that the book bag appeared to be in the same spot on the table occupied by the man as when he first noticed it before he sat down with Goodman.<sup>33</sup>

Neither Goodman nor Gregorich ever communicated by any means with the gentleman seated at the table next to the table at which they sat during their meeting at any time before, during, or after they met on August 24, 2016.<sup>34</sup>

Neither Goodman nor Gregorich ever conveyed their consent to the same man, by any means of communication, to have any portion of their conversation intercepted and recorded by any means at any time before or after they met on August 24, 2016.<sup>35</sup>

Likewise, neither Goodman nor Gregorich ever conveyed their consent to any person or persons, by any means of communication, to have any portion of their conversation intercepted and recorded by any means at any time before or after they met on August 24, 2016.<sup>36</sup>

Neither Goodman nor Gregorich knew that any part of their August 24, 2016 conversation had been recorded until Goodman's counsel, who also represents USC and Williamson in the lawsuit filed by the Plaintiff, called them on August 31, 2016 and told them that a private investigator had recorded the entirety of their conversation.<sup>37</sup>

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<sup>32</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 30 – 31, and Exhibit 3 (Gregorich Affidavit), ¶¶ 27 and 30.

<sup>33</sup> See Exhibit 3 (Gregorich Affidavit), ¶ 31.

<sup>34</sup> See Exhibit 2 (Goodman Affidavit), ¶¶ 34 – 35, and Exhibit 3 (Gregorich Affidavit), ¶¶ 32 – 33.

<sup>35</sup> See Exhibit 2 (Goodman Affidavit), ¶ 36, and Exhibit 3 (Gregorich Affidavit), ¶ 34.

<sup>36</sup> See Exhibit 2 (Goodman Affidavit), ¶ 37, and Exhibit 3 (Gregorich Affidavit), ¶ 35.

<sup>37</sup> See Exhibit 2 (Goodman Affidavit), ¶ 38, and Exhibit 3 (Gregorich Affidavit), ¶ 36.

### III. THE INTERCEPTION OF GOODMAN'S ORAL COMMUNICATIONS TO GREGORICH VIOLATED OUR STATE'S WIRETAP ACT

#### A. PRECEDENT FROM OUR SUPREME COURT APPLYING OUR STATE'S WIRETAP ACT

In *State v. Whitner*, 732 S.E.2d 861 (S.C. 2012), our Supreme Court considered a suppression motion, albeit in the context of an appeal from a conviction in a criminal case, and it observed as follows as the outset of its decision, *Id.*, at 863:

Appellant filed a motion to suppress the recorded telephone conversation, claiming the recording, **intercepted without the prior consent of either party**, violated the South Carolina Homeland Security Act (Wiretap Act), S.C. Code Ann. § 17-30-10 *et. seq.* (Supp. 2010), **which generally prohibits the interception of communications.** [emphasis supplied].

The *Whitner* Court, *Id.*, framed the issues under review as follows:

**Appellant claims the Wiretap Act was violated because neither he nor the victim, the parties to the communication, consented to the recording.** Conversely, the State claims the Wiretap Act was not violated because the recording fell within the consent provision. Specifically, the State contends the statute allows Mother, as a guardian to the minor victim, to vicariously consent on behalf of the victim to record the telephone conversation between the victim and Appellant.

The South Carolina Wiretap Act is patterned after the Omnibus Crime Control and Safe Streets Act of 1968 (Federal Act).<sup>38</sup> **This Court must determine whether the Wiretap Act allows or bars the admission of the recording.** [emphasis supplied].

The *Whitner* Court, *Id.*, at 864, rendered the following analysis of the operative provisions of our state's Wiretap Act:

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<sup>38</sup> Regarding the Federal Wiretap Act, the *Whitner* Court, *Id.*, at 864, observed that our state's Wiretap Act "parallels the Federal Act passed by Congress in 1968, **which similarly permits lawful interception where one party to the communication consents.**" [emphasis supplied]. In the footnote associated with this passage, the *Whitner* Court, *Id.*, at n. 2, quoted 18 U.S.C. § 2511 (2006): "**It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.**" [emphasis supplied].

**The Wiretap Act is violated when a person intercepts oral communications that are not otherwise exempt from or subject to an exception contained in [§ 17-30-30]. Evidence intercepted in violation of the Wiretap Act must be suppressed. See [§ 17-30-110].** However, when a party to a communication gives consent for the communication to be intercepted, such recording does not violate the law. The full text of the consent provision states:

*It is lawful under this chapter for a person not acting under color of law to intercept [an oral communication] where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.*

[Section 17-30-30(C)] [italicized emphasis supplied by the Court; bold emphasis supplied by Goodman].

## **B. OUR STATE'S WIRETAP ACT**

The interception of Goodman's oral communications falls under our state's Wiretap Act. Section 17-30-10 is entitled "Interception of wire, electronic and oral communications authorized," and it provides that the "interception of ... oral communications is hereby authorized **only** in the manner permitted by this chapter." [emphasis supplied].

Goodman is obviously a "person" as defined by § 17-30-15(5), and the oral communications he conveyed to Gregorich during their August 24, 2016 conversation constitute "aural transfers" as defined by § 17-30-15(19).

To produce an audio recording of the "aural transfers" Goodman conveyed to Gregorich, the private investigator used an unknown type of "electronical, mechanical, or other device," as defined under § 17-30-15(4), to capture them.

The act of capturing Goodman's "aural transfers" constituted an "intercept" as defined under § 17-30-15(3), and the recording reflects the "contents" of Goodman's "aural transfers" to Gregorich under § 17-30-15(7).

Section 17-30-15(2) defines "oral communication" as follows:

**Any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation** and does not mean any public oral communication uttered at a public meeting or any electronic communication. [emphasis supplied].

Under § 17-30-15(2), Goodman reasonably expected that his “oral communications” to Gregorich on August 24, 2016 would not be “*subject to interception*” by a recording device deployed by anyone, notwithstanding that Goodman and Gregorich met at the McDonald’s at Exit 159 off of I-26.

Hovering over this entire event are the twin realities that the Plaintiff targeted Goodman as an individual defendant in his lawsuit and that the Plaintiff identified Gregorich as a potential witness in his lawsuit. Thus, Goodman also reasonably expected that his “oral communications” to Gregorich on August 24, 2016 would not be “*subject to interception*” by a recording device deployed by a private investigator acting on the Plaintiff’s behalf, notwithstanding that Goodman and Gregorich met at the McDonald’s at Exit 159 off of I-26. As developed in Section V below, the decisions and actions that resulted in the production of an audio recording, which captured the August 24, 2016 conversation between Goodman and Gregorich, subverted the discovery activity associated with the litigation of the Plaintiff’s lawsuit.

**C. SECTION 17-30-65 OF OUR STATE’S WIRETAP ACT REFERENCES OUR STATE’S FREEDOM OF INFORMATION ACT**

As to the portion of definition of “oral communication” from § 17-30-15(2) which reads “does not mean any public oral communication uttered at a public meeting,” the terms “public oral communication” and “public meeting” are not defined anywhere § 17-30-15 or, for that matter, anywhere in §§ 17-30-10, *et seq.* However, the provisions of § 17-30-65 are illustrative and, as respectfully asserted by Goodman, determinative.

Section 17-30-65(A) provides as follows:

Whenever any ... oral ... communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.

Section 17-30-65(B) provides that the **“contents of any ... oral ... communication intercepted pursuant to this chapter ... are not included in the definition of a public record contained in [§ 30-4-20(c)], and may only be disclosed in a manner provided by this chapter.”** [emphasis supplied].

Just as § 17-30-15 defines terms under our state’s Wiretap Act, § 30-4-20 defines terms under our state’s Freedom of Information Act [“FOIA”]. As referenced in § 17-30-65(B), § 30-4-20(c) defines “public record.”

Significantly, § 30-40-20(d) defines “meeting” as **“the convening of a quorum of the constituent membership of a public body**, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the **public body** has supervision, control, jurisdiction or advisory power.” [emphasis supplied].

Section 30-40-20(e) defines “quorum” as “a simple majority of the constituent membership of a **public body**.” [emphasis supplied].

Section 30-40-20(a) defines the term **“public body”** as follows:

... any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in [§ 1-30-10], any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending [public] funds, including committees, subcommittees, advisory

committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

As his meeting with Gregorich on August 24, 2016 did not constitute a “meeting” of a “quorum” of a “public body,” the “oral communications” Goodman conveyed to Gregorich when they met did not constitute “any public oral communication uttered at a public meeting” as contemplated under § 17-30-15(2).

**D. THIS COURT SHOULD SUPPRESS THE RECORDING MADE BY THE PRIVATE INVESTIGATOR ACTING ON THE PLAINTIFF’S BEHALF**

Based upon the information provided by the Plaintiff’s counsel, Gregorich’s recollections, his own recollections, and logical inferences drawn therefrom, Goodman now respectfully provides his assessment of the events that resulted in the production of an audio recording of his August 24, 2016 meeting with Gregorich.

The Plaintiff learned about the meeting between Goodman and Gregorich, scheduled for 10 a.m. on August 24, 2016 at the McDonald’s located at Exit 159 off I-26, sometime after Gregorich entered the meeting on the internet-based Google calendar on his office computer system, a system to which the Plaintiff had access. The Plaintiff then tipped off his counsel about the meeting, and the Plaintiff’s counsel, through his firm, hired a private investigator.

The private investigator was not hired just to eavesdrop on Goodman’s meeting with Gregorich. Instead, the private investigator was hired to capture objective evidence of precisely what Goodman and Gregorich said to each other during their meeting. In other words, the

private investigator was hired to “bug” the meeting between Goodman and Gregorich with a device that would *intercept* and record their conversation.

In order to do the job, the private investigator indisputably traveled to the McDonald’s before 10 a.m. on August 24, 2016 and placed the “bug” close enough to Goodman and Gregorich so that their conversation would be *intercepted* and recorded.

The man who sat at the table next to the table at which Goodman and Gregorich were seated was almost certainly the private investigator hired on the Plaintiff’s behalf. The “bug” used by the private investigator almost certainly consisted of some kind of recording device concealed inside the bag the private investigator placed on the edge of the table at which he was seated. Thus, the “bug” which recorded the conversation between Goodman and Gregorich was no more than two (2) to three (3) feet away from them.

The private investigator then sat at his table, upon which he placed the bag concealing the “bug,” throughout the entirety of the meeting between Goodman and Gregorich. He did so, because leaving an unattended bag on a table at a McDonald’s located in a truck stop would potentially result in either Goodman, Gregorich, or someone else moving the bag away from the table at which they sat or in Goodman, Gregorich, or someone else turning it in as a lost item.

Once Goodman and Gregorich exited the McDonald’s and the truck stop, the private investigator simply collected up the bag concealing the “bug,” as well as all of the other items he arrayed on his table. At that point, the private investigator could begin listening to the product of his “bugging” and then advising the Plaintiff’s counsel of the audio recording’s contents.

Again, it is undisputed that the private investigator, who acted on the Plaintiff’s behalf, was not acting under color of law. It is also undisputed that the private investigator was not a party to the oral communications Goodman conveyed to Gregorich on August 24, 2016. Finally,

it is undisputed that neither Goodman nor Gregorich consented to the *interception* of the oral communications they exchanged with one another on August 24, 2016 before their *interception* by whatever “bugging” device the private investigator used to record their conversation.

No exception exists under the provisions of §§ 17-30-10, *et seq.*, by which the Plaintiff may avoid the conclusion that the interception of Goodman’s oral communications to Gregorich on August 24, 2016 was unlawful under § 17-30-30(C), irrespective of the fact that Goodman and Gregorich met outside the confines of their respective offices.

Section 17-30-30(C) is clear and unambiguous. *See U.S. v. Crabtree*, 565 F.3d 887, 887 – 88 (4th Cir. 2009), quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253 – 54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” (citations and internal quotation marks omitted)).

Goodman respectfully asserts that the interception of the oral communications he conveyed to Gregorich during their August 24, 2016 meeting, as evidenced by the audio recording disclosed by the Plaintiff’s counsel to Goodman’s counsel, violated § 17-30-30(C) of our state’s Wiretap Act.

As he is an “aggrieved person” under § 17-30-15(10), Goodman possesses the requisite standing under § 17-30-110(A)(1) to bring his instant motion to suppress the audio recording from all further proceedings associated with the litigation of the action filed against him by the Plaintiff. Therefore, for all of the above-provided reasons, Goodman respectfully urges this Court to grant his motion and suppress the audio recording in question.

#### IV. DECISIONS BY FEDERAL COURTS INTERPRETING THE FEDERAL WIRETAP ACT, UPON WHICH OUR STATE'S WIRETAP ACT IS MODELED, ALSO SUPPORT GOODMAN'S SUPPRESSION MOTION

Notwithstanding the reality that § 17-30-30(C), and the rest of our state's Wiretap Act, is clear and unambiguous, Goodman acknowledges that our state's appellate courts have not addressed several facets of his instant motion.

With the possible exception of *Spates v. S.C. Dep't of Employment and Workforce, et al.*, 2015 WL 471705 (S.C.A.J.D. July 31, 2015), discussed further below, no South Carolina case addresses the provisions of § 17-30-30(C) within the context of civil litigation. Likewise, no South Carolina case addresses the definition of "oral communication" from § 17-30-15(2).

In the absence of such cases, Goodman is mindful of the following observations from this Court's decision in *State v. Guerrero-Flores*, 741 S.E.2d 577, 580 (S.C. Ct. App. 2013):

The [South Carolina Wiretap Act] is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510 – 22 (2002) (Federal Act). [*Whitner*]. **Because no South Carolina cases have addressed the issues Guerrero-Flores raises in his motion to suppress, we find that federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the [South Carolina Wiretap Act] applicable to this case. See [*Whitner*, 732 S.E.2d at 864] (explaining "we look to the federal courts' interpretations" of the Federal Act when interpreting comparable provisions of the [South Carolina Wiretap Act]). [emphasis supplied].**

##### A. THE FEDERAL WIRETAP ACT

18 U.S.C. § 2511 (2006) provides as follows:<sup>39</sup>

**It shall not be unlawful** under this chapter for a person not acting under color of law to intercept [an oral communication] where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State. [emphasis supplied].

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<sup>39</sup> See note 38 above.

A side-by-side comparison of § 17-30-30(C) and 18 U.S.C. § 2511 reveals an explicit exception in the federal statute that does not appear in its South Carolina counterpart:

| § 17-30-30(C)   | 18 U.S.C. § 2511   |
|---|--|
| <p>It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication <b>where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.</b> [emphasis supplied].</p> | <p>It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication <b>where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception</b> <i>unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.</i> [italicized and bold emphasis supplied].</p> |

Just like § 17-30-15 provides the definitions of terms in our state’s Wiretap Act, 18 U.S.C. § 2510 provides the definitions of terms in the Federal Wiretap Act.

18 U.S.C. § 2510(2) defines the term “oral communication” as **“any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication.”** [emphasis supplied].

A side-by-side comparison of § 17-30-15(2) and 18 U.S.C. § 2510(2) reveals that the two (2) definitions share an identical first clause, but different subsequent clauses:

| § 17-30-15(2)<br>“Oral Communication”  | 18 U.S.C. § 2510(2)<br>“Oral Communication”   |
|--|---|
| <p>Any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation <i>and does not mean any public oral communication uttered at a public meeting or any electronic communication.</i> [italicized emphasis supplied].</p> | <p>Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, <i>but such term does not include any electronic communication.</i> [italicized emphasis supplied].</p> |

## B. DECISIONS FROM THE FOURTH CIRCUIT COURT OF APPEALS

In *Abraham v. County of Greenville, South Carolina*, 237 F.3d 386, 387 (4th Cir. 2001), the Fourth Circuit Court of Appeals, which is obviously the Court of Appeals vested with jurisdiction over the federal courts in our state, considered the Federal Wiretap Act, and it framed the controversy it confronted as follows:

Several state court judges brought suit against the County of Greenville, South Carolina, under the federal wiretapping statute (Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510 et seq.). Plaintiffs allege that the County illegally recorded the telephone calls they made from their offices in the County's Detention Center. Greenville County argues that its conduct was excused by the "law enforcement exception" to Title III, which permits wiretapping conducted by an "investigative or law enforcement officer in the ordinary course of his duties." 18 U.S.C. § 2510(5)(a)(ii). The district court rejected this argument as a matter of law. Because the County did not record the judges' phone conversations in the ordinary course of its law enforcement duties, and because the district court otherwise acted within its discretion, we affirm the judgment in favor of plaintiffs.

The Fourth Circuit in *Abraham, Id.*, at 389, also observed as follows:

**[The Federal Wiretap Act] provides a civil remedy against any person who "intentionally intercepts" another person's ... oral ... communications. See 18 U.S.C. § 2520(a) & 18 U.S.C. § 2511(1)(a); see also *Sanders v. Robert Bosch Corp.*, 38 F.3d 736, 739 – 40 (4th Cir. 1994).<sup>40</sup> The term "intercept" means the acquisition of such communications through the use of any "electronic, mechanical, or other device." 18 U.S.C. § 2510(4).<sup>41</sup> However, Title III creates a law enforcement exception by defining "electronic, mechanical, or other device" to exclude equipment "being used by ... an investigative or law enforcement officer in the ordinary course of his duties." 18 U.S.C. § 2510(5)(a)(ii).**

**Protecting the privacy of individuals who use the specified means of communication "was an overriding congressional concern [in enacting Title III]." [*Gelbard v. United States*, 408 U.S. 41, 48 (1972)]. Title III commands respect for conversational privacy by requiring resort to the same system of warrants and neutral and detached review that has**

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<sup>40</sup> Our state's Wiretap Act also provides a civil remedy. See § 17-30-135.

<sup>41</sup> See § 17-30-15(3) of our state's Wiretap Act.

historically been used to safeguard the integrity of the person and of property. *See* 18 U.S.C. § 2516 (requiring a warrant for electronic eavesdropping not within one of the statutory exclusions). Title III represents an attempt by Congress to establish a system of electronic surveillance subject to rigorous safeguards. **It protects an individual from all forms of wiretapping except when the statute specifically provides otherwise.** [emphasis supplied].

As articulated in *Abraham*, the Federal Wiretap Act and, by extension, our state's Wiretap Act affords respect to Goodman's conversational privacy, and it protects Goodman from all forms of wiretapping except when our state's Wiretap Act specifically provides otherwise.

More recently, the Fourth Circuit, in *U.S. v. Crabtree*, 565 F.3d 887, 887 – 88 (4th Cir. 2009), again examined the Federal Wiretap Act when it confronted a suppression motion:

Daniel Crabtree was sentenced to twenty-four months imprisonment for violating the terms of his supervised release. The government established some of the violations by introducing into evidence certain audio tapes that were made by Crabtree's girlfriend in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C.A. §§ 2510–2522 (West 2000 & Supp. 2008). **We agree with Crabtree that although the government was not involved in the interception of Crabtree's conversations, Title III nonetheless prohibited the government from introducing evidence of the intercepted conversations.** We therefore vacate the district court's judgment and remand for further proceedings. [emphasis supplied].

The Fourth Circuit in *Crabtree, Id.*, at 888, articulated the following facts associated with the intercepted oral communications at issue:

While on supervised release, Crabtree lived with his girlfriend Betty Starnes in her house. George Huffnagle also lived in the house. In March 2008, Starnes became suspicious about Crabtree's relationship with his ex-wife, and **Starnes began taping the calls made on her home telephone.**

On March 4, Starnes contacted Crabtree's probation officer and told him that she had asked Crabtree to move out of her house. **She also told the probation officer that she had recorded Crabtree's phone calls and heard him threaten to burn her house and her truck and try to set up Huffnagle for arrest.**

**The probation officer obtained copies of Starnes's tapes** and ultimately initiated proceedings to revoke Crabtree's supervised release.

At the revocation hearing, the district court, **over Crabtree's objection**, permitted the government to introduce the recordings of Crabtree's conversations. [emphasis supplied].

Concerning the Federal Wiretap Act, the *Crabtree* Court, *Id.*, observed as follows:

Title III prohibits, among other things, the interception of a telephone conversation by someone not a party to the conversation, *see* 18 U.S.C.A. § 2511(1)(a); *id.* § 2511(2)(d), and the intentional use or disclosure of the contents of a conversation intercepted in violation of the act, *see id.* §§ 2511(1)(c) & (d). **Starnes was not a party to the recorded conversations and Crabtree did not consent to the recording. Thus, there is no dispute that Starnes violated Title III by recording Crabtree's telephone conversations or that disclosure of the contents of Crabtree's conversations is prohibited by Title III.**

**Because the recording of his conversations violated Title III, Crabtree moved in accordance with 18 U.S.C.A. § 2515 to exclude from the revocation hearing the recordings and any evidence derived from the recordings.** Section 2515 is a statutory exclusionary rule that generally prohibits the introduction into evidence of illegally intercepted communications or evidence derived from illegally intercepted communications. [emphasis supplied].

Goodman moves to suppress the audio recording of his conversation with Gregorich under § 17-30-110 of our state's Wiretap Act, the counterpart to 18 U.S.C.A. § 2515.

The *Crabtree* Court, *Id.*, at 889 – 90, offered the following observations that further support Goodman's instant suppression motion:

“[T]he protection of privacy was an overriding congressional concern” when Title III was enacted. [*Gelbard v. United States*, 408 U.S. 41, 48 (1972)]. [The Federal Wiretap Act] thus places strict conditions on the government's use of wiretapping and electronic surveillance and largely prohibits private, nonconsensual wiretapping. It is the broad exclusionary rule of § 2515 that provides the teeth to these prohibitions, as recognized in the Congressional findings supporting the act:

In order to *protect effectively the privacy of wire and oral communications*, to protect the integrity of court and administrative proceedings, ... *it is necessary* for Congress to

define on a uniform basis the circumstances under which the interception of ... **oral communications** may be authorized, *to prohibit any unauthorized interception of such communications, and the use of the contents thereof in evidence in courts and administrative proceedings.*

Pub.L. No. 90-351, § 801(b), 82 Stat. 197, 211 (1968) (emphasis added). Indeed, as the Supreme Court has explained, “[t]he unequivocal language of § 2515 expresses the fundamental policy adopted by Congress on the subject of wiretapping and electronic surveillance.” [*Gelbard*, 408 U.S. at 47] (emphasis added).

...

Title III prohibits not just the wrongful *interception* of communications, but the *disclosure* of improperly intercepted communications. **A disclosure in court of a private conversation violates the privacy of the victim as much as any other kind of disclosure**, and the lack of government involvement does not diminish the intrusion into the victim’s privacy. See [*United States v. Vest*, 813 F.2d 477, 481 [1st Cir. 1987)] (“**[A]n invasion of privacy is not over when an interception occurs, but is compounded by disclosure in court or elsewhere. The impact of this second invasion is not lessened by the circumstance that the disclosing party (here, the government) is merely the innocent recipient of a communication illegally intercepted by the guilty interceptor....**”). Accordingly, we have no doubt that excluding evidence of illegally intercepted communications without regard to whether the government was involved in the procurement furthers Congress’s overriding interest in protecting the privacy of wire communications. [italicized emphasis supplied by the Fourth Circuit, bold emphasis supplied by Goodman].

Under *Abraham* and *Crabtree*, Goodman clearly possessed a privacy interest in not having his August 24, 2016 conversation with Gregorich “bugged” by anyone, let alone a private investigator acting on the Plaintiff’s behalf. As the “bugging” of his August 24, 2016 conversation with Gregorich was indisputably non-consensual and as the private investigator was not acting under color of law, Goodman suffered an invasion of his privacy.

Therefore, as addressed in *Crabtree*, Goodman’s instant motion seeks to negate any effort by the Plaintiff to compound the invasion of Goodman’s privacy by the prospect of the Plaintiff

introducing the recording of his conversation with Gregorich in any future proceedings associated with the litigation of the Plaintiff's action.

Goodman now turns to instances in which other federal circuit courts of appeals have considered issues more precisely applicable to the issues animated by the interception and recording of his August 24, 2016 conversation with Gregorich.

### C. DECISION FROM THE SECOND CIRCUIT COURT OF APPEALS

In *U.S. v. Mankani*, 738 F.2d 538, 543 (2nd Cir. 1984), the Second Circuit Court of Appeals explicitly discussed the type of surveillance used to intercept conversations:

**First, of critical concern in deciding whether a reasonable right to privacy exists, is the type of surveillance employed.** For example, a phone tap in a public telephone booth, bug in a hotel room, detectorscope or other sensitive electronic listening device requires a court order issued by a neutral magistrate. *See Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510, et seq. (1982).* Here, defendants' conversations were overheard by the naked human ear, unaided by any of these sensory enhancing devices. **This distinction is significant because the Fourth Amendment protects conversations that cannot be heard except by means of artificial enhancement.** 1 W. LaFave, *Search and Seizure* § 2.2, at 270 – 72 (1978) (LaFave). **The reason for this is evident. The risk of being overheard is a given in modern life, and any time people speak to one another they necessarily assume that risk.** [*Hoffa v. United States*, 385 U.S. 293, 303 (1966)]. **“But as soon as electronic surveillance comes into play, the risk changes crucially. There is no security from that kind of eavesdropping, no way of mitigating the risk, and so not even a residuum of true privacy.”** [*Lopez v. United States*, 373 U.S. 427, 465 – 66 (1963)] (Brennan, J., dissenting). [emphasis supplied].

As discussed above, the Plaintiff's counsel, in a September 6, 2016 e-mail,<sup>42</sup> advised Goodman's counsel that the “unedited” recording of Goodman's conversation with Gregorich had been sent to “a local recording studio [to] remove as much background noise as possible.”

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<sup>42</sup> See note 14 above and Exhibit 7.

Goodman respectfully asserts that the only reason to reduce such background noise is to artificially enhance the conversation between Goodman and Gregorich to a level at which it may be discerned or heard.

Thus, the artificial enhancement of the conversation, the product of the private investigator's "bugging," profoundly influences how this Court should assess the interception of the conversation, because, under *Mankani*, Goodman lost his "residuum of true privacy."

Before making the above-quoted observation, the *Mankani* Court, *Id.*, at 542, identified the most troubling issue it confronted:

The most troublesome issue on this appeal is the one raised by defendants Mankani and MacFarlane. It questions the constitutionality of Agent Handoga's eavesdropping on their conversation in the Burlington hotel by putting his naked ear against a hole in the wall between his room (130) and defendants' room (128). Concededly, a search warrant was not obtained for this intrusion. Whether overhearing this conversation constituted an unlawful search or seizure in violation of Fourth Amendment rights depends on whether these defendants under the circumstances had *a reasonable expectation of privacy*. **If MacFarlane and Mankani had a reasonable expectation of privacy in their conversation in the Sheraton Hotel room, then the warrantless "seizure" of that conversation violated the Fourth Amendment.** If not, the district court, after conducting a hearing on this issue, properly denied their motion to suppress the conversation.

**Analysis must begin with [*Katz v. United States*, 389 U.S. 347 (1967)], which established the expectation of privacy rationale as the touchstone governing the scope of Fourth Amendment protection.** In that case government agents eavesdropped on conversations in a telephone booth by means of an electronic listening device attached to the top of the booth. **Discarding the notion that a physical trespass is essential to any Fourth Amendment violation, the Supreme Court found the intrusion in *Katz* to be unconstitutional. Thus, *Katz* teaches that "the Fourth Amendment protects people, not places." [389 U.S. at 351].**

Of course, the fact that people are protected does not mean that place has no bearing on one's reasonable expectation of privacy. Plainly it does. Those who claim their privacy has been unlawfully invaded do not live in a vacuum. As Justice Harlan observed in his concurring opinion in *Katz*, the answer to the question of what protection is afforded to those "people

... requires reference to a ‘place.’” [*Katz*, 389 U.S. at 361]. [italicized emphasis supplied by Second Circuit; bold emphasis supplied by Goodman].

As discussed immediately below, the Sixth Circuit very recently examined and interpreted *Katz* in light of the advances in consumer electronics technology in the nearly 50 years since the United States Supreme Court issued the decision.

#### **D. 2015 DECISION BY THE SIXTH CIRCUIT COURT OF APPEALS**

In *Huff v. Spaw*, 794 F.3d 543 (6th Cir. 2015), the Sixth Circuit recently considered a case in which the chairman of a county airport board in Kentucky and his spouse brought suit under the Federal Wiretap Act against the airport’s chief executive officer for the purportedly surreptitious interception of their private conversations.

The Sixth Circuit, *Id.*, at 544, described the issues as follows:

This case requires us to consider whether a person who listens to and subsequently electronically records a conversation from an inadvertent “pocket-dial” call violates Title III of the Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. § 2510 et seq. (Title III). James Huff inadvertently placed a pocket-dial call to Carol Spaw while he was on a business trip in Italy. Spaw stayed on the line for 91 minutes and listened to face-to-face conversations that James Huff had with Larry Savage, James’s colleague, and with Bertha Huff, James’s wife. Spaw transcribed what she heard and used an iPhone to record a portion of the conversation between James and Bertha Huff (the Huffs). The Huffs brought suit against Spaw for intentionally intercepting their private conversations, in violation of Title III. The district court granted summary judgment for Spaw on the ground that, because James Huff placed the pocket-dial call, the Huffs lacked a reasonable expectation that their conversations would not be intercepted, which is a prerequisite for protection under Title III. [footnote omitted].

The facts in *Huff* beg the observation that the “bugging” of Goodman’s August 24, 2016 conversation with Gregorich was clearly intentional rather than inadvertent.

The Sixth Circuit, *Id.*, at 548, provided the following summary of the operative provisions of the Federal Wiretap Act:

Title III makes it unlawful to “intentionally intercept[ ] ... [any oral communication.]” 18 U.S.C. § 2511(1)(a). **The act defines “intercept” to mean “the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.”** *Id.* § 2510(4).<sup>43</sup> Title III further prohibits intentional disclosure or use of “the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of wire, oral, or electronic communication in violation of [Title III].” *Id.* § 2511(1)(c), (d). **In addition to criminal penalties, Title III provides injured parties with a private right of action against violators.** *Id.* § 2520(a). The Huffs relied upon this authorization of a private right of action to bring their federal claims.<sup>44</sup> [emphasis supplied].

The Sixth Circuit in *Huff*, *Id.*, at 548 – 49, began its analysis as follows:

As a threshold question, we consider whether the Huffs’ conversations were protected under Title III, which covers only wire, oral, or electronic communication as those terms are defined by the statute. *In re Askin*, 47 F.3d 100, 102 – 03 (4th Cir. 1995).<sup>45</sup> **Title III defines an oral communication for its purposes as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.”** 18 U.S.C. § 2510(2). **The language makes clear that Congress did not enact Title III to protect every face-to-face conversation from interception. We have held that a person engages in protected oral communication only if he exhibited “an expectation of privacy that is both subjectively and objectively reasonable.”** *Dorris v. Absher*, 179 F.3d 420, 425 (6th Cir. 1999). **This assessment parallels the reasonable-expectation-of-privacy test articulated by Justice Harlan in [Katz, 389 U.S. at 361] (Harlan, J., concurring).** ... The statutory history of Title III also supports such an application. S.Rep. No. 1097, 90th Cong., 2d Sess. (1968), *reprinted* in 1968 U.S.C.C.A.N 2112, 2178. In articulating his well-known test, Justice Harlan wrote that, in order to demonstrate a reasonable expectation of privacy,

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<sup>43</sup> See § 17-30-15(3) of our state’s Wiretap Act. See also § 17-30-15(19).

<sup>44</sup> See note 42 above.

<sup>45</sup> Goodman did not address the Fourth Circuit’s decision from *In re Askin*, because the communications under review consisted of telephone calls amongst individuals using traditional land-based telephones, cellular phones, and cordless phones. The Fourth Circuit’s decision hinged on the reality that the intercepted communications originated from cordless phones, which operate via radio waves, and, therefore, were not protected under the Federal Wiretap Act. *In re Askin*, 47 F.3d at 103 – 04 (“The interception of wire, oral, and electronic communication, without prior judicial approval, is clearly prohibited by § 2511. Yet it was equally clear, as of the time of *Askin*’s conversations, that §§ 2510(1) and 2510(12)(A) permitted the interception of cordless radio waves. It is undisputed that this case involved the interception of the radio component of cordless telephone transmissions by a radio scanning device.”).

[t]here is a two-fold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation [must] be one that society is prepared to recognize as “reasonable.” Thus a man’s home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the “plain view” of outsiders are not “protected” because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable.

[*Katz*, 389 U.S. at 361] (Harlan, J., concurring).

The Sixth Circuit, *Id.*, at 550, ultimately fashioned the following standard:

Therefore the only relevant inquiries are the two objective subparts: (1) whether a person exhibited an expectation of privacy and (2) whether that expectation was reasonable. ... **These two inquiries track Title III’s statutory text that first, a person “exhibit[ed] an expectation that such communication is not subject to interception” and second, “under circumstance justifying such expectation.”** 18 U.S.C. § 2510(2).

The Sixth Circuit in *Huff, Id.*, continued as follows:

The first part of the test requires more than an internal belief in privacy. Rather, one must *exhibit* an intention to keep statements private. **A person fails to exhibit an expectation of privacy under the *Katz* test if he exposes those statements to the “plain view” of outsiders, [389 U.S. at 361] (Harlan, J., concurring), or if he fails to take to steps to prevent exposure to third parties, [*Kee v. City of Rowlett, Tex.*, 247 F.3d 206, 216 – 17 (5th Cir. 2001)] (holding that plaintiffs did not engage in oral communication under Title III because “they failed to present evidence demonstrating any affirmative steps taken to preserve their privacy,” and “point to no reasonable safeguards or common-sense precautions taken to preserve their expectation of privacy”). **The second part of the *Katz* test is satisfied if the expectation of privacy exhibited by the person is reasonable under the circumstances. [*Katz*, 389 U.S. at 361] (Harlan, J., concurring).** The operative question is whether society is prepared to recognize an exhibited expectation as legitimate. *Ibid.* It is essential to consider the two-part *Katz* test with respect to James Huff and Bertha Huff separately. [emphasis supplied].**

After applying to two-part *Katz* test to his circumstances, *Id.*, at 550 – 52, the Sixth Circuit ruled that James Huff did not have a reasonable expectation of privacy from interception.

*Id.*, at 552 (“Having determined that James Huff failed to exhibit an expectation of privacy, we need not determine whether circumstances justified such an expectation to conclude that his statements do not qualify as oral communications and therefore cannot give rise to liability under Title III.”).

The Sixth Circuit then turned its attention to whether Bertha Huff possessed a reasonable expectation of privacy from interception. In the course of its analysis, the Sixth Circuit, *Id.*, at 552 – 53, recognized the following:

Bertha Huff knew that her husband owned a cellphone and that cellphones were capable of inadvertently transmitting conversations to third-party listeners via pocket-dial calls. The district court held that she lacked a reasonable expectation of privacy in her **face-to-face conversation** with her husband in their hotel room on the basis of this awareness. *Huff*, 995 F.Supp.2d at 734. **We disagree with this conclusion because speaking to a person who may carry a device capable of intercepting one’s statements does not constitute a waiver of the expectation of privacy in those statements.**

In addition to placing pocket-dial calls, **a cellphone can also be used directly and purposefully to intercept face-to-face conversations, for example, by surreptitiously recording or transmitting them.** *See, e.g.*, IPHONE USER GUIDE 133 (2014) (instructing the owner on the use of the recording function). If Bertha waived her reasonable expectation of privacy from pocket-dials by speaking to a person who she knew to carry a pocket-dial-capable device, she would also waive her reasonable expectation of privacy from recordings and transmissions by speaking with anyone carrying a recording-capable or transmission-capable device, i.e., any modern cellphone. **The district court’s holding would logically result in the loss of a reasonable expectation of privacy in face-to-face conversations where one party is aware that a participant in the conversation may have a modern cellphone. As nearly every participant in a conversation is a potential cellphone carrier, such a conclusion would dramatically undermine the protection that Title III grants to oral communication.** It would also mean that, had Spaw and James Huff conspired for James to deliberately turn on his phone and transmit his conversation with Bertha Huff for Spaw to hear and share with others, neither James nor Spaw would have violated Title III because no “oral communication” was intercepted. But the law does not support this conclusion. [footnote omitted and emphasis supplied].

The private investigator who “bugged” Goodman’s conversation with Gregorich was not a party to their conversation, and neither Goodman nor Gregorich knew that the private investigator had positioned a “bug” to *intercept* and record their conversation. The “bug” used by the private investigator to *intercept* and record the conversation was very likely a cellphone or some other kind of digital recording device (i.e. an iPad).<sup>46</sup>

As the *Huff* Court concluded, one does not waive their expectation of privacy by making statements made to a person who possesses such a device. Therefore, Goodman did not waive his expectation of privacy when a private investigator acting on the Plaintiff’s behalf positioned a concealable “bug” in such close proximity to Goodman that the “bug” *intercepted* and recorded the statements Goodman uttered to Gregorich during their meeting.

The Sixth Circuit then continued as follows, *Id.*, at 554:

We held in *Boddie v. American Broadcasting Companies Inc.* that someone who knowingly converses with a person who may be carrying an interception-capable device can nonetheless enjoy a reasonable expectation of privacy from interception. 731 F.2d 333, 338 – 39 (6th Cir. 1984). **Boddie agreed to an interview with a TV reporter but refused to give consent to being recorded.** *Id.* at 335. **The reporter nonetheless secretly recorded the conversation, and Boddie sued under Title III.** *Ibid.* In reversing the district court’s summary judgment for the defendant, we held that, although “Boddie was aware that she was speaking to a reporter from ABC,” “it remain[ed] an issue of fact for the jury whether Boddie had an expectation that the interview was not being recorded and whether that expectation was justified under the circumstances.” *Id.* at 338 – 39. **In reaching this conclusion, we noted that there are “some circumstances where a person does not have an expectation of total privacy, but still would be protected by [Title III] because he was not aware of the specific nature of another’s invasion of his privacy.”** *Id.* at 339 n. 5 [italicized emphasis supplied by the Sixth Circuit; bold emphasis supplied by Goodman].

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<sup>46</sup> During his August 11, 2016 deposition, the Plaintiff admitted to using his iPhone and iPad to record several workplace conversations in which both he and Goodman participated. Goodman respectfully submits excerpts from the transcript of the Plaintiff’s deposition in which he discussed the recordings he made as Exhibit 8 in support of his instant motion. As he was a party to the workplace conversations that he recorded, the Plaintiff’s interception of the oral communications uttered by Goodman and others was lawful under § 17-30-30(C) of our state’s Wiretap Act.

The Sixth Circuit, *Id.*, then ruled that Bertha Huff possessed a reasonable expectation of privacy from interception under the facts reflected by the record:

Turning to the question of whether circumstances justified her expectation, the Supreme Court has long held that society is prepared to recognize as legitimate an expectation of privacy in statements that a person made under circumstances similar to Bertha Huff's. [*Katz*, 389 U.S. at 359] (finding a Fourth Amendment violation in the attachment of an eavesdropping device to a public telephone booth). Therefore, Bertha's Huff's expectation of privacy from interception was justified under the circumstances.

**Having found that Bertha Huff exhibited an expectation of privacy in her statements that was reasonable under the circumstances, we reverse the district court's holding that she did not engage in oral communications.** This does not necessarily mean that Spaw is liable, because Title III imposes liability only when a person "intentionally" uses a "device" to intercept oral communications. [emphasis supplied].

**E. GOODMAN POSSESSED A REASONABLE EXPECTATION OF PRIVACY FROM INTERCEPTION, AND, THEREFORE, HE ENGAGED IN ORAL COMMUNICATIONS**

As Goodman stated above in Section IV(D) of his instant motion,<sup>47</sup> the private investigator acting on the Plaintiff's behalf indisputably traveled to the McDonald's before 10 a.m. on August 24, 2016 and intentionally placed the "bug" close enough to Goodman and Gregorich so that their conversation would be *intercepted* and recorded.

As Goodman also asserted in the same section above, the man who sat alone at the table next to the table at which Goodman and Gregorich were seated was almost certainly the private investigator acting on the Plaintiff's behalf. The "bug" used by the private investigator almost certainly consisted of some kind of recording device concealed inside the bag the private investigator intentionally placed on the edge of the table at which he sat. As a result, the "bug" which recorded the conversation between Goodman and Gregorich was no more than two (2) to three (3) feet away from them.

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<sup>47</sup> See pp. 15 – 17 above.

Goodman confronted the same circumstances as those confronted by Bertha Huff. While he may not have enjoyed an expectation of total privacy when he met with Gregorich at the McDonald's at Exit 159, Goodman was completely unaware that a "bug" intentionally placed by the private investigator no more than two (2) to three (3) feet away from where he and Gregorich were seated was *intercepting* and recording his conversation. As Goodman was unaware of the specific nature of the private investigator's invasion of his privacy, the Federal Wiretap Act and, by extension, our State's Wiretap Act protected the private oral communications he conveyed to Gregorich during their August 24, 2016 meeting.

Just as the Sixth Circuit determined when it examined Bertha Huff's expectation of privacy, Goodman exhibited an expectation of privacy that was reasonable under the circumstances, and, accordingly, Goodman engaged in "oral communications" during his August 24, 2016 meeting with Gregorich, which the private investigator acting on the Plaintiff's behalf intentionally *intercepted* and recorded with some kind of concealable "bug."

Further supporting this conclusion is the reality that the audio recording of Goodman's "oral communications," generated by the "bugging" efforts by the by the private investigator acting on the Plaintiff's behalf, has been *artificially enhanced*. Specifically, the recording has been enhanced in such a way that as much "background noise" as possible has been removed or reduced so that what Goodman and Gregorich actually said to one another when they met at the McDonald's at Exit 159 may be discerned or, for that matter, even heard.<sup>48</sup> In light of this reality, Goodman, under *Mankani, supra*, lost his "residuum of true privacy."

Therefore, the intentional interception of Goodman's "oral communications" by the "bug" deployed by the private investigator acting on the Plaintiff's behalf violated our state's Wiretap Act, and Goodman respectfully urges this Court to grant his instant suppression motion.

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<sup>48</sup> See note 14 above and Exhibit 7.

V. **ADDITIONALLY OR ALTERNATIVELY, THIS COURT SHOULD SANCTION CONDUCT COMMITTED ON THE PLAINTIFF'S BEHALF DURING DISCOVERY BY EXCLUDING THE AUDIO RECORDING**

In addition to, or as an alternative to, his above-articulated motion to suppress the audio recording under the provisions of our state's Wiretap Act, Goodman also respectfully moves this Court to sanction the conduct committed on the Plaintiff's behalf during discovery by excluding the audio recording of Goodman's August 24, 2016 conversation with Gregorich.

Again, a private investigator hired by the Plaintiff's counsel and acting on the Plaintiff's behalf traveled to the McDonald's at Exit 159 before 10 a.m. on August 24, 2016 and intentionally placed a "bug" close enough to Goodman and Gregorich so that their conversation would be *intercepted* and recorded.

In *Spates v. S.C. Dep't of Employment and Workforce, et al.*, 2015 WL 471705, \*5 (SCAJD July 31, 2015), the South Carolina Administrative Law Court ["ALC"] observed as follows regarding § 17-30-30(C):

However, South Carolina law permits the use of recordings made by one party (**excluding attorneys**) to a conversation of another party to that conversation. [*See* § 17-30-30(C)] ("**It is lawful under this chapter for a person not acting under color of law to intercept [an oral communication] where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.**"); *see also* [*Mays v. Mays*, 229 S.E.2d 725 (S.C. 1976)] (holding 18 U.S.C.A. § 2511(2)(d), which provides a similar exception for parties not acting under color of law, "makes it clear that one party to a telephone conversation may lawfully tape the conversation without the other's knowledge or permission and subsequently disclose it.") (*cited in* [*State v. Andrews*, 479 S.E.2d 808, 811 (S.C. Ct. App. 1996)]). [emphasis supplied and footnote omitted].

Although it cited no authority for its above-quoted parenthetical observation that attorneys may not record conversations, the following rulings from our Supreme Court's

decision in *Matter of Anonymous Member of South Carolina Bar*, 404 S.E.2d 513, 514 (S.C. 1991), may well have constituted the basis for the ALC's observation:

However, we reaffirm our prior rulings that **an attorney shall not record a conversation or any portion of a conversation of any person whether by tape or other electronic device, without the prior knowledge and consent of all parties to the conversation.** [See *Matter of Anonymous Member of South Carolina Bar*, 322 S.E.2d 667 (S.C. 1984), *supra*; *In re Warner*, 335 S.E.2d 90 (S.C. 1985), *supra*.]<sup>49</sup> **Henceforth, this rule shall be applied irrespective of the purpose(s) for which such recordings were made, the intent of the parties to the conversation, whether anything of a confidential nature was discussed, and whether any party gained an unfair advantage from the recordings.**<sup>50</sup> [emphasis supplied].

In the sole footnote to its decision in *Matter of Anonymous Member of South Carolina Bar*, 404 S.E.2d at 513, n. 1, our Supreme Court referenced the following authorities:

Sup.Ct.Rules, Rule 32, Code of Prof. Resp. DR 1-102(A)(4) prohibited a lawyer from engaging in conduct involving **dishonesty, fraud, deceit or misrepresentation.** This provision is now contained in [South Carolina Appellate Court Rule 407], Rules of Prof.Conduct 8.4(d), effective September 1, 1990. [emphasis supplied].

South Carolina Appellate Court Rule ["SCACR"] 407, Rule of Professional Conduct 8.4 is entitled "Misconduct," and Rule 8.4(d) declares that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

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<sup>49</sup> Earlier in its decision, 404 S.E.2d at 514, our Supreme Court observed the following regarding *In re Warner*:

One year later, this Court was faced with a similar issue. In the case of [*In re Warner*], the attorney, who, in the course of representing a client in a divorce action, engaged in a scheme to first entrap, then record a conference with a family court judge. In *In re Warner*, the attorney arranged for his client to carry a concealed recording device into a conference between the client and the family court judge. ... The Court also unequivocally stated that it was "reprehensible and impermissible for an attorney to secretly record another attorney or, indeed, another person." [*In re Warner*, 335 S.E.2d at 91].

<sup>50</sup> In its subsequent decision in *Matter of Attorney General's Petition*, 417 S.E.2d 526 (S.C. 1992), our Supreme Court modified its rulings from *Matter of Anonymous Member of South Carolina Bar* by declaring that a lawyer does not run afoul of the Rules of Professional Conduct by secretly recording any conversation when the recording is made with the prior consent of, or at the request of, an appropriate law enforcement agency during the course of a legitimate investigation.

Rule 8.4(a) further declares that that it is professional misconduct for a lawyer to “violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or **do so through the acts of another.**” [emphasis supplied].

The first comment to Rule 8.4 provides as follows:

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer’s behalf. [Rule 8.4(a)], however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

As demonstrated above, the private investigator was not, under § 17-30-30(C) of our state’s Wiretap Act, legally entitled place a “bug” close enough to Goodman and Gregorich at the McDonald’s at Exit 159 in order to intercept and record their August 24, 2016 conversation. Likewise, the Plaintiff would not have been legally entitled under § 17-30-30(C) to personally perform the same acts.

Goodman is one of the two (2) individual defendants named by the Plaintiff in his third cause of action.<sup>51</sup> The Plaintiff identified Gregorich, an individual employed by USC, as a potential witness in responses provided by the Plaintiff’s counsel on the Plaintiff’s behalf to interrogatories served during discovery activity associated with the instant litigation.<sup>52</sup> The Plaintiff named USC as the sole defendant to his first two (2) causes of action.

It is undisputed that an audio recording of the August 24, 2016 conversation between Goodman and Gregorich exists. Likewise, it is undisputed that a private investigator traveled to the McDonald’s at Exit 159, the location at which Goodman and Gregorich met and conversed on August 24, 2016, to make the audio recording. It is also undisputed that the Plaintiff’s

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<sup>51</sup> See Exhibit 1, pp. 9 – 10.

<sup>52</sup> Goodman respectfully submits relevant excerpts from the Plaintiff’s responses to the aforementioned interrogatories as Exhibit 9 in support of his instant motion. See Exhibit 9, pp. 3 – 4.

counsel, through his law firm, hired the private investigator who traveled to the McDonald's at Exit 159 on August 24, 2016 and made the audio recording of the conversation between Goodman and Gregorich. It is finally undisputed that the Plaintiff tipped off the Plaintiff's counsel about the meeting between Goodman and Gregorich scheduled for 10 a.m. on August 24, 2016 at the McDonald's located at Exit 159.

From these undisputed facts, it may be logically inferred that the private investigator received an accurate physical description of either Goodman or Gregorich, or both of them, when the private investigator was hired or sometime after he was hired. An accurate physical description of either Goodman or Gregorich, or both of them, must have been provided to the private investigator in order for the private investigator to have been able to precisely identify whom he should "bug" from amongst the numerous potential patrons inside the McDonald's on the morning of August 24, 2016. Possessed with an accurate physical description of one or both of his "subjects," the private investigator was able to select a table at which he could sit and upon which he could position a "bugging" device in sufficiently close proximity to both Goodman and Gregorich so that it captured the entirety of their conversation.

The Plaintiff's attorney told Goodman's counsel during their August 31, 2016 telephone conversation that he wanted to use excerpts of the audio recording made by the private investigator as the basis of questions he intended to ask Goodman during Goodman's deposition scheduled for September 1, 2016.

In *In re Anonymous Member of the South Carolina Bar*, 552 S.E.2d 10, 18 (S.C. 2001), our Supreme Court offered the following applicable observations:

Depositions are widely recognized as one of the "most powerful and productive" devices used in discovery. See A. Darby Dickerson, *The Law and Ethics of Civil Depositions*, 57 Md. L.Rev. 273, 277 (1998). Since depositions are so important in litigation, attorneys face great temptation

to cross the limits of acceptable behavior in order to win the case **at the expense of their ethical responsibilities to the court and their fellow attorneys**. Claiming that any such improper behavior was merely “zealous advocacy” will not justify discovery abuse. When attorneys cross the line during a deposition, their actions do not promote the “just, speedy, and inexpensive determination of every action.” *See* Rule 1, SCRPC.

Actions taken in a deposition designed to prevent justice, delay the process, or drive up costs are improper and warrant sanctions. In South Carolina, our judges have broad discretion in addressing misbehavior during depositions. *See* Rule 37, SCRPC. In addition to their traditional contempt powers, judges may issue orders as a sanction for improper deposition conduct: (1) specifying that designated facts be taken as established for purposes of the action; (2) **precluding the introduction of certain evidence at trial**; (3) striking out pleadings or parts thereof; (4) staying further proceedings pending the compliance with an order that has not been followed; (5) dismissing the action in full or in part; (6) entering default judgment on some or all the claims; or (7) an award of reasonable expenses, including attorney fees. *Id.* ... **Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.** [emphasis supplied].

Goodman respectfully asserts that the sole purpose of “bugging” Goodman’s August 24, 2016 conversation with Gregorich was to generate an audio recording of their conversation that would aid the Plaintiff during discovery activity, namely Goodman’s September 1, 2016 deposition. Toward that end, the audio recording was sent to “a local recording studio [to] remove as much background noise as possible” to further aid the Plaintiff during discovery.<sup>53</sup>

The private investigator who recorded Goodman’s August 24, 2016 conversation with Gregorich did so in an effort to afford the Plaintiff an improper and impermissible advantage during Goodman’s September 1, 2016 deposition. Therefore, Goodman respectfully urges the Court to sanction the Plaintiff’s conduct and/or conduct undertaken on the Plaintiff’s behalf by suppressing the audio recording from use in all further proceedings associated with the litigation of the Plaintiff’s lawsuit.

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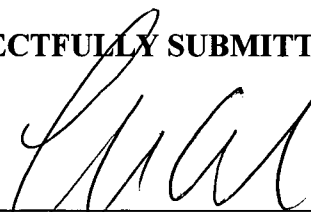
<sup>53</sup> *See* note 14 above and Exhibit 7.

**VI. CONCLUSION**

For all of the foregoing reasons, Goodman respectfully urges the Court to suppress and/or exclude the audio recording of his August 24, 2016 meeting with Gregorich from use in all further proceedings associated with the litigation of the action filed by the Plaintiff in the Court of Common Pleas for Richland County.

**RESPECTFULLY SUBMITTED:**

BY:



\_\_\_\_\_  
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**ATTORNEYS FOR DEFENDANT GOODMAN**

Columbia, South Carolina  
September 30, 2016

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH CIRCUIT  
CASE NO. 2015-CP-40-3502

Peter G. Oliver,

Plaintiff,

v.

University of South Carolina, Martin  
Goodman, and Nancy Williamson,

Defendants.

**FIRST AMENDED COMPLAINT  
(Jury Trial Demanded)**

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The Plaintiff, complaining of the Defendants, would respectfully show to the Court:

**PARTIES AND JURISDICTION**

1. The Plaintiff Peter G. Oliver (hereinafter "Plaintiff") is a citizen and resident of Richland County, South Carolina where he is also employed as the Columbia Area Manager for the South Carolina Small Business Development Centers ("SCSBDC"), which is housed at the Darla Moore School of Business at the University of South Carolina ("USC").

2. The Defendant University of South Carolina ("USC") is a State university and an agency of the State of South Carolina with its principal campus and offices located in Richland County, South Carolina.

3. The Small Business Development Centers ("SCSBDC") is a University of South Carolina Darla Moore School of Business Research Center that seeks to advance South Carolina's economic development by helping entrepreneurs grow successful businesses. The SCSBDC is managed by the State Director, Michele Abraham ("Abraham"), whose office is located in the Moore School of Business at the University of South Carolina. The state is broken into four regions, each region supported further by a major university – USC, S.C. State,

Clemson University, or Winthrop University. The SCSBDC maintains USC emails, addresses, and contacts telephone numbers and otherwise is primarily located in Richland County, South Carolina.

4. The Defendant Martin Goodman (hereinafter "Goodman") resides, upon information and belief, in Beaufort County, South Carolina, and at all times herein is Plaintiff's supervisor and the USC Regional Director of the SCSBDC. His office is located at USC Beaufort.

5. The Defendant Nancy Williamson (hereinafter "Williamson") resides, upon information and belief, in Richland County, South Carolina, and is a contract employee for the USC region of SCSBDC and was formerly Plaintiff's direct report.

#### FACTUAL ALLEGATIONS

6. Prior to becoming employed with USC and SCSBDC in March 2012 as the Columbia Area Manager, Plaintiff owned and managed an international trading company for many years.

7. Plaintiff and his subordinates, his colleagues, Goodman, and Williamson are USC employees.

8. As the Columbia Area Manager, Plaintiff is responsible for managing the Columbia Area office, achieving annual fiscal and financial goals, collaborates with USC SCSBDC staff and mentors, and meets quarterly with the SCSBDC Board of Advisors to discuss progress. Most recently, Plaintiff managed and directly supervised two employees, including Williamson and Jim Giffin ("Giffin"), the latter of whom worked in Sumter. Plaintiff repeatedly had to discuss various issues with Williamson, and she always challenged his authority.

9. Although Plaintiff never received the required Employee Performance Management System ("EPMS") forms from Goodman on an annual basis until 2015, Plaintiff performed his job well and was responsible for increasing business and annual capital formation ("KPI").

10. Plaintiff also worked with Michelle Seigler ("Seigler"). They worked well together. On or around early September 2014, Seigler reported to Plaintiff and his wife during a conference that Larry Stevens ("Stevens"), Goodman's counterpart and Regional Director of the Winthrop SCSBDC division and in Seigler's chain of command, made improper sexual overtures to Seigler. Seigler was very uncomfortable with this conduct and reported the same to Plaintiff, stating that she "never wanted to be around him again." After further discussion with Plaintiff, Seigler allowed Plaintiff to report her complaint to the USC Human Resources Department ("HR"). Plaintiff contacted USC HR and explained the situation; he was informed that Plaintiff would have to make a written complaint herself. Seigler grew concerned about making a written report because she feared retaliation from Stevens and would not go through with the written report. Seigler also feared retaliation and retribution from USC as she was an employee of USC.

11. On February 10, 2015, Plaintiff attended a quarterly meeting with the SCSBDC Advisory Board in Beaufort, South Carolina. Goodman was present along with Advisory Board members, local community members, and others. During the meeting, Goodman stated that Plaintiff's SCSBDC office was not performing well and that it was one of the most underperforming offices in the state. He threw Plaintiff under the bus during the meeting and further commented about the dollar amount, number of loans, and the financial status of Plaintiff's unit, stating that Plaintiff's office had some of the worst numbers of all the offices in the state.

12. During the same meeting, Goodman also stated that a former employee who worked with Plaintiff – Chad Hardaway – never did anything to benefit Plaintiff's office, which was untrue. Moreover, Goodman went on to falsely report that Plaintiff's "office was doing better years ago than today." This was also a false statement, as Plaintiff's office was running very well and making positive financial strides as compared to other state offices. Again, Goodman relied upon false financial information to make these claims, and Plaintiff was aware Goodman was using inaccurate financials because he had the correct financial reports and had seen them himself.

13. Goodman further made a claim during the February meeting that the appointment of Mel Wallace ("Wallace") as the Regional Director of the S.C. State SCSBDC in Orangeburg, S.C had turned that office around. Goodman praised Wallace and his office, stating that it was performing better than Plaintiff's office and was more successful. Such an assertion was false and based upon erroneous reporting of KPI in the Orangeburg office, as the major loan identified never occurred.

14. Prior to and during this time, Goodman advised Plaintiff to "beef-up" his financial reporting by falsely obtaining the referral of potential clients from bank partners, to further falsely report that Plaintiff's office reviewed the necessary business paperwork, and therefore for the entity to take credit for the loan given by the bank. Goodman stated that "you just need a banker to refer clients and you review the business plan and take credit for the capital formation (KPI)." This activity is improper and constitutes falsifying financial credibility, but Goodman instructed Plaintiff to do the same anyway, knowing it was improper. Plaintiff refused.

15. Following the quarterly meeting in February 2015, Goodman informed Plaintiff that the two would meet in March to discuss Plaintiff's EPMS form. After being postponed, the

meeting was eventually held in April 2015. During the meeting, Goodman presented Plaintiff with a performance rating, in which he scored Plaintiff as “unsuccessful” in several areas relating to Plaintiff’s management of his office. Goodman also told Plaintiff that he had received complaints about Plaintiff’s management failures. He refused to give copies of these complaints to Plaintiff. When Plaintiff challenged the authenticity of the complaints, Goodman failed to specifically identify how Plaintiff was the cause and source of the alleged complaints.

16. Plaintiff challenged Goodman’s review immediately, calling into question the numbers upon which Goodman relied at the quarterly meeting and subsequently the numbers used when scoring Plaintiff’s EPMS. Goodman was furious with Plaintiff and refused to accept the true and accurate financials as shown to him by Plaintiff, in writing, on various graphs, charts, and a memorandum of record authored by Plaintiff.

17. Goodman signed Plaintiff’s evaluation as he authored it with the false information and backdated the EPMS form and his signature to February 20, 2015, which was also false since the EPMS form was not reviewed with Plaintiff until April 15, 2015. Plaintiff refused to sign the EPMS form and further submitted the memorandum of record with the financial figures as a rebuttal.

18. On May 5, 2015, after meeting with Goodman, Plaintiff requested to speak with the Dean of the USC Moore School of Business to discuss Goodman’s false and inaccurate misrepresentations and to further share his concerns that Goodman was reporting falsified financial information to the Advisory Board and using false data to implicate Plaintiff as an unsuccessful manager. Plaintiff was directed to Pam Young (“Young”) by the Dean, as Young is employed in the Darla Moore School of Business HR Department.

19. While Plaintiff was waiting for a response from Young, Goodman informed Plaintiff on May 28, 2015, that his direct reports, Williamson and Giffin, would no longer be allowed to report to Plaintiff. There was no valid basis or justification for this decision.

20. On May 6, 2015, Plaintiff attended a Small Business Administration ("SBA") event where the Defendant Williamson was present. Plaintiff did not stay for lunch and excused himself early.

21. On May 7, 2015, Plaintiff met with Young in order to discuss his concerns with her, including showing her his Memorandum for the Record and written financial information. Plaintiff clarified for Young the documents as well as his earlier complaints of Goodman's irresponsible financial reporting. Plaintiff also shared his concerns regarding pay bonuses that Goodman sought to give various employees during 2014, to which Young responded with conflicting information. Plaintiff further shared with Young concerns he had overheard that Abraham desired to restructure the SCSBDC in order to remove the four universities as her direct supervisors – in particular USC. The meeting concluded with discussions of waste of State funds and Federal funds for statewide and national meetings, and Plaintiff's concern of staffing at the Columbia Area Office.

22. Seigler, who continually expressed concerns to Plaintiff about her forced interactions with Stevens, was also supposed to meet with Plaintiff and Young on May 7, 2015. She planned to report Stevens's sexual harassment at that time to Young; Seigler was unable to attend the meeting, and it was her last day on the job. Plaintiff informed Young of the general nature of Seigler's complaints.

23. Young said her office would investigate the matter and get back to Plaintiff.

24. Ironically and after making complaints to Young – both verbally and in writing – Plaintiff received an email from Goodman on or around May 27, 2015, that Williamson accused Plaintiff of inappropriately grabbing her arm during a meeting on February 3, 2015, and again during the public SBA event on May 6, 2015. Goodman sent Plaintiff a portion of Williamson’s written complaint, which included various inaccuracies, falsities, and misstatements that Plaintiff could refute and did refute because he never touched and/or grabbed Williamson at any time, and the incidents leading to the reprimand never occurred.

25. Goodman dismissed Plaintiff’s version of what had transpired and issued Plaintiff a “notice of counseling,” finding that Plaintiff did, in fact, inappropriately grab Williamson during the two reported incidents, although the Defendant Goodman knew or should have known the described incidents never occurred.

26. The Individual Defendants have personal hatred and ill will towards Plaintiff because of his appropriate and fiscally responsible method of running his office and his clients, a reminder to the Individual Defendants to do the same, confronted them with their lies, and reported their bad acts – verbally and in writing – to the appropriate channel as directed by the Dean of the USC Darla Moore School of Business.

27. Plaintiff’s employment record is now irrevocably blemished, as he has been accused of mismanagement, fiscal failure, and inappropriate contact with an employee.

**FOR A FIRST CAUSE OF ACTION**  
**AGAINST DEFENDANT USC**  
**(Defamation)**

28. Plaintiff realleges paragraphs 1 – 27 herein where not inconsistent herewith.

29. Plaintiff is a private figure.

30. Plaintiff was charged verbally of having failed to perform his job appropriately and was further charged with committing a crime against an employee.

31. These false and pretextual accusations, including that Plaintiff allegedly committed a crime, were maliciously published by Defendant agents and employees, including, but not limited to, Goodman, Williamson, and Abraham. As a result, Plaintiff was formally reprimanded, and his direct reports, which consisted of the alleged victim, were removed from his chain of command.

32. Such statements, actions, and utterances were defamatory *per se* charging Plaintiff with being unfit in his profession and inferably committing a criminal act.

33. Goodman, Williamson, Abraham, and others not yet identified made open verbal statements to numerous persons including members of the SCSBDC Advisory Board, community members, Plaintiff's colleagues, and others. These statements and actions alleged herein were false, knowingly made, and made with reckless disregard for the truth and conscious knowledge of falsity.

34. Although Plaintiff is not privy to the date and time of every such statement made by SCSBDC agents and employees as he was not a party to the conversation, Plaintiff is informed that such statements were made about him based upon subsequent communications directed towards him as well as the actions taken against him in the workplace.

35. That such statements and actions have proximately resulted in grave reputational damage to Plaintiff, embarrassment, pain and suffering.

**FOR A SECOND CAUSE OF ACTION**  
**AGAINST THE DEFENDANT USC**  
**(Violation of South Carolina Whistleblower Law)**

36. Plaintiff realleges paragraphs 1-35 herein where not inconsistent herewith.

37. Plaintiff reported serious mistreatment and wrongdoing, in writing as well as orally, as to the matters set forth herein and reported the same to the proper authorities; the same constitutes protected activity under the South Carolina Whistleblower Act (S.C. Code Ann. 8-27-10 *et. seq.*).

38. Plaintiff's reports consisted of illustrating serious internal violations of the law, regulations, public policy, and standards of conduct.

39. As a direct and proximate result of reports made by Plaintiff; he was disciplined.

40. The Defendant USC has violated the Whistleblower Act, and Plaintiff is entitled to receive actual damages as provided therein in the amount of \$15,000 and attorneys' fees not to exceed \$10,000.

**FOR A THIRD CAUSE OF ACTION**  
**AGAINST THE INDIVIDUAL DEFENDANTS**  
**GOODMAN AND WILLIAMSON**  
**(Civil Conspiracy)**

41. The Plaintiff realleges paragraphs 1 – 39 herein where not inconsistent herewith.

42. At diverse times on diverse occasions the Individual Defendants met, planned, schemed, and conspired to falsify charges against Plaintiff relating to his position with the USC SCSBDC, and such actions amount to an unlawful civil conspiracy, a combination of persons for the purpose of harming the Plaintiff and causing him special damages, such as attorneys' fees and costs associated with bringing this cause of action. The actions taken by the Individual Defendants were outside the course and scope of their employment and were done for their personal and malicious reasons – to stymy Plaintiff's complaints of their wrongdoing, make him a scapegoat, and to protect themselves – all to harm Plaintiff and blacklist him from his colleagues and the SCSBDC Board of Advisors.

43. The Individual Defendants not only met with each other but met with others and made clear their intent to punish, harm, and build a case against Plaintiff that would support discipline action taken against him that would seemingly justify their false and pretextual reasons to terminate his employment in the future.

44. As a direct and proximate result of the civil conspiracy described herein, Plaintiff has sustained severe emotional distress from being blackballed and ostracized by his supervisor and former direct report. Plaintiff is further entitled to an award of punitive damages against the Individual Defendants in their individual capacities for their intentional and malicious actions, which have proximately resulted in damage to Plaintiff and to prevent and deter the Individual Defendants from taking similar action in the future.

WHEREFORE, Plaintiff prays for judgment against the Defendant USC in the sum of \$525,000.00 actual damages and against the Individual Defendants in their individual capacities, jointly and severally, in the amount of \$1 million actual damages and \$3 million for punitive damages. Plaintiff further prays for attorneys' fees and costs, where applicable and against the appropriate Defendants, and for any such other relief this Court finds equitable and proper.

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: 

J. Lewis Cromer (#1470)  
Ryan K. Hicks (#100941)  
Ashley C. Story (#100578)  
Post Office Box 11675  
Columbia, South Carolina 29211  
Phone 803-799-9530  
Fax 803-799-9533

*Attorneys for Plaintiff*

October 30, 2015  
Columbia, SC

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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FROM THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY

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Civil Action No. 2015-CP-40-3502

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Peter G. Oliver, ..... Plaintiff,

v.

The University of South Carolina, Martin Goodman, and Nancy Williamson, ..... Defendants.

---

**MOTION BY DEFENDANT MARTIN GOODMAN TO SUPPRESS  
AUDIO RECORDING PURSUANT TO  
SOUTH CAROLINA CODE ANN. § 17-30-110**

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**AFFIDAVIT BY MARTIN GOODMAN**

---

1. My name is David Martin Goodman, and I am a resident of Beaufort County.
2. I am currently employed by the University of South Carolina ["USC"], and my office is located on the campus of USC-Beaufort, specifically 801 Carteret Street, Beaufort, South Carolina 29902.
3. I am the manager of the USC Region of the South Carolina Small Business Development Centers ["SCSBDC"].
4. I have been continuously employed by USC for 24 years, and I have continuously served as the manager of the USC Region of the SCSBDC since 2007.
5. In my capacity as manager of the USC Region for the SBDC, I supervise Peter Oliver.

6. Mr. Oliver is also a USC employee, and he has been continuously employed by USC since 2012.
7. Mr. Oliver serves as the manager of the Columbia Office in the USC Region of the SBSDBC.
8. In a lawsuit he filed in 2015, Mr. Oliver named me as an individual defendant.
9. In my capacity as manager of the USC Region for the SBDC, I also supervise Earl Gregorich.
10. Mr. Gregorich is currently employed by USC, and he serves as a Senior Consultant for the SCSBDC.
11. Mr. Gregorich works in the same office as Mr. Oliver.
12. While he coordinates several of his day-to-day job duties with Mr. Oliver, Mr. Oliver does not supervise Mr. Gregorich. Instead, I supervise Mr. Gregorich, and I have done so since he began his employment with USC in the Columbia Office of the SCSBDC in September 2015.
13. In mid-August 2016, I notified Mr. Gregorich that I wanted to review the Employee Personnel Management System ["EPMS"] review I had prepared for him.
14. Since my office is in Beaufort and his office is in Columbia, Mr. Gregorich and I discussed meeting at a location between our offices.
15. Mr. Gregorich and I agreed to meet on August 24, 2016 at 10 a.m. at the McDonald's restaurant located in the Pilot Travel Center off of I-26 at Exit 159.
16. We agreed to meet at the McDonald's at Exit 159, because it is located approximately half-way between Beaufort and Columbia.
17. We agreed to meet in order to discuss the EPMS that I had prepared for Mr. Gregorich.

18. Given that I manage the entire USC Region of the SBSBDC from my office on the campus of USC-Beaufort, I periodically conduct meetings with the employees I supervise at facilities, such as restaurants, that are more conveniently located to both me and my employees.

19. For example, well before my August 24, 2016 meeting with Mr. Gregorich, I met with Mr. Oliver and Tom Lauria, who manages the Charleston Office of the USC Region of the SCSBDC, at the same McDonald's restaurant at Exit 159 to discuss operations in both the Columbia and Columbia offices.

20. I never discussed with Mr. Oliver any aspect of my upcoming meeting with Mr. Gregorich by any means of communication (e.g. face-to-face conversation, telephonic conversation, text message, e-mail message, and/or written correspondence).

21. I never conveyed my consent to Mr. Oliver, by any means of communication, for him or anyone retained on his behalf to have any portion of my conversation with Mr. Gregorich on August 24, 2016 intercepted and recorded by any means at any time before or after I met with Mr. Gregorich on August 24, 2016.

22. After driving from Beaufort, I arrived at the Pilot Travel Center at Exit 159 on August 24, 2016 shortly before 10 a.m.

23. I parked my vehicle, walked into the McDonald's, and, not seeing Mr. Gregorich, I quickly found a table.

24. Shortly after I sat down, I saw a gentlemen sit down by himself at a table right next to the table at which I was seated.

25. I then saw the gentlemen array a number of items (e.g. notebooks, books, and other miscellaneous items) on top of his table.

26. I also saw the gentlemen place some kind of object which was dark in color and which could have been a book bag or other type of bag near the very edge of his table closest to my table. It appeared to me that the gentlemen was doing some kind of work, and I assumed that he was a businessman who was taking a break in the McDonald's and catching up on some work.

27. I estimate that the object, whether it was a book bag or some other kind of bag, was no more than approximately two (2) feet away from me as I sat at the table.

28. Within several minutes of sitting down, Mr. Gregorich came into the McDonald's, sat down across from me, and we began talking.

29. Our conversation lasted over an hour, and we spent the vast majority of our meeting reviewing and discussing my review of Mr. Gregorich as reflected by the EPMS form I completed concerning his performance.

30. When we reached the end of our conversation, I asked Mr. Gregorich to watch my notebook binder while I visited the restroom. After I returned from the restroom, Mr. Gregorich and I exited the McDonald's at the same time.

31. To the best of my recollection, the gentleman was still seated by himself at the table next to our table when Mr. Gregorich and I made our way out of the restaurant.

32. When we walked out of the restaurant, I saw that Mr. Gregorich had parked his vehicle near my vehicle, and I went to Mr. Gregorich's vehicle and picked up a box of materials that Mr. Gregorich brought for me.

33. I then walked to my vehicle, and Mr. Gregorich and I then drove out of the parking lot of the Pilot Travel Center at or near the same time.

34. I never communicated by any means with the gentleman seated at the table next to the table at which I sat with Mr. Gregorich at any time before, during, or after I met with Mr. Gregorich on August 24, 2016.

35. I never saw Mr. Gregorich communicate by any means with the gentleman seated at the table next to the table at which I sat with Mr. Gregorich at any time before, during, or after I met with Mr. Gregorich on August 24, 2016.

36. Specifically, I never conveyed my consent to the same gentleman, by any means of communication, to have any portion of my conversation with Mr. Gregorich on August 24, 2016 intercepted and recorded by any means at any time before or after I met with Mr. Gregorich on August 24, 2016.

37. I never conveyed my consent to any person or persons, by any means of communication, for them to intercept and record any portion of my conversation with Mr. Gregorich on August 24, 2016 at any time before or after I met with Mr. Gregorich on August 24, 2016.


38. I did not know that any part of my conversation with Mr. Gregorich on August 24, 2016 had been recorded until the attorney who represents me, as well as USC, in the lawsuit filed by Mr. Oliver called me on August 31, 2016 and told me that a private investigator had recorded the entirety of my conversation with Mr. Gregorich.

39. Mr. Oliver's attorney was scheduled to take my deposition on September 1, 2016, but my deposition was postponed, and, as of the date of my instant affidavit, I have received no notice that it has been rescheduled.

40. I never expected that anyone, let alone private investigator hired on Mr. Oliver's behalf, would place a recording device in sufficient proximity to the table at which Mr. Gregorich and I sat for the sole purpose of recording my entire conversation with Mr. Gregorich.

41. I was shocked and outraged to learn that a private investigator hired on Mr. Oliver's behalf had done so.

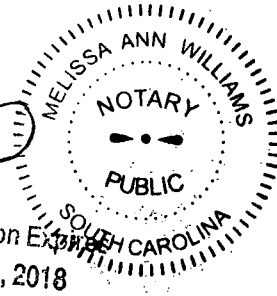
42. Further affiant sayeth not.

  
MARTIN GOODMAN

Sworn to and subscribed before me

This the 19 day of September 2016.

  
Notary Public for South Carolina



My Commission Expires: \_\_\_\_\_ January 28, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

FROM THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY

\_\_\_\_\_  
Civil Action No. 2015-CP-40-3502  
\_\_\_\_\_

Peter G. Oliver, ..... Plaintiff,

v.

The University of South Carolina, Martin Goodman, and Nancy Williamson, ..... Defendants.

\_\_\_\_\_  
**MOTION BY DEFENDANT MARTIN GOODMAN TO SUPPRESS  
AUDIO RECORDING PURSUANT TO  
SOUTH CAROLINA CODE ANN. § 17-30-110**  
\_\_\_\_\_

**AFFIDAVIT OF EARL E. GREGORICH, JR.**  
\_\_\_\_\_

1. My name is Earl Eugene Gregorich, Jr., and I am a resident of Lexington County.
2. I am currently employed by the University of South Carolina ["USC"], and I serve as a Senior Business Counselor for the South Carolina Small Business Development Centers ["SCSBDC"].
3. My office is located at 1225 Laurel Street – 3<sup>rd</sup> Floor; Columbia, South Carolina 29201.
4. I have been employed by USC in the above-described capacity since September 2015.
5. I work in the same building as Peter Oliver, who, is also a USC employee.
6. Mr. Oliver is the manager of the Columbia Office in the USC Region of the SCSBDC.
7. While I coordinate several of my day-to-day job duties with him, Mr. Oliver is not my supervisor. Instead, Martin Goodman is my supervisor.

8. Mr. Goodman is also employed by USC.
9. Mr. Goodman's office is located on the campus of USC-Beaufort, and he is the manager of the USC Region of the SCSBDC.
10. Mr. Goodman has been my supervisor since I began my employment with USC in the Columbia Office of the SCSBDC in September 2015.
11. In mid-August 2016, Mr. Goodman notified me that he wanted to review the Employee Personnel Management System ["EPMS"] review he had prepared for me.
12. Since his office is in Beaufort and my office is in Columbia, Mr. Goodman and I discussed meeting at a location between our offices.
13. Mr. Goodman and I agreed to meet on August 24, 2016 at 10 a.m. at the McDonald's restaurant located in the Pilot Travel Center off of I-26 at Exit 159.
14. We agreed to meet at the McDonald's at Exit 159, because it is located approximately half-way between Beaufort and Columbia.
15. We agreed to meet in order to discuss the EPMS that Mr. Goodman had prepared for me.
16. Shortly after Mr. Goodman and I agreed to meet, I noted on the internet-based Google calendar maintained in my office that I was scheduled to meet with Mr. Goodman at the McDonald's at Exit 159 beginning at 10 a.m. on August 24, 2016.
17. When I made the calendar entry regarding my upcoming meeting with Mr. Goodman, I knew that Mr. Oliver, and a graduate assistant supervised by Mr. Oliver, had access to the Google calendar.
18. I never conveyed my consent to Mr. Oliver, by any means of communication, for him or anyone retained on his behalf to have any portion of my conversation with Mr. Goodman on

August 24, 2016 intercepted and recorded by any means at any time before or after I met with Mr. Goodman on August 24, 2016.

19. After driving from Columbia, I arrived at the Pilot Travel Center at Exit 159 on August 24, 2016 at approximately 10 a.m.

20. I parked my vehicle, walked into the McDonald's, and quickly found Mr. Goodman sitting by himself at a table.

21. As I walked towards Mr. Goodman, I saw a gentlemen seated by himself at a table adjacent to the table at which Mr. Goodman was seated.

22. I saw that the same gentlemen had arrayed a number of items (e.g. notebooks, books, and other miscellaneous items) on top of his table.

23. I also saw what appeared to be a book bag that had been placed near the very edge of the table occupied by the same gentlemen which was closest to the table at which Mr. Goodman was seated.

24. I estimate that the book bag was no more than approximately three (3) feet from the table at which Mr. Goodman was seated.

25. I sat down across from Mr. Goodman at the table, and we began talking.

26. Our conversation lasted over an hour, and we spent the vast majority of our meeting reviewing and discussing my EPMS.

27. After our meeting ended, Mr. Goodman and I exited the McDonald's at the same time, and we walked into the parking lot of the Pilot Travel Center.

28. I had materials in my vehicle that I brought with me to give to Mr. Goodman, and I provided them to Mr. Goodman while we were in the parking lot after our meeting.

29. I then exited the parking lot, and I drove back to Columbia to conduct a client meeting. I did not return to the Columbia SBDC office that day.

30. As I walked away from our table, I noticed that the gentleman was still seated by himself at the table adjacent to our table.

31. I also saw that the book bag appeared to be in the same spot on the table occupied by the gentlemen as when I first noticed it before I sat down with Mr. Goodman.

32. I never communicated by any means with the gentleman seated at the table adjacent to the table at which I sat with Mr. Goodman at any time before, during, or after I met with Mr. Goodman on August 24, 2016.

33. I never saw Mr. Goodman communicate by any means with the gentleman seated at the table adjacent to the table at which I sat with Mr. Goodman at any time before, during, or after we met on August 24, 2016.

34. Specifically, I never conveyed my consent to the same gentleman, by any means of communication, to have any portion of my conversation with Mr. Goodman on August 24, 2016 intercepted and recorded by any means at any time before or after we met on August 24, 2016.

35. I never conveyed my consent to any person or persons, by any means of communication, for them to intercept and record any portion of my conversation with Mr. Goodman on August 24, 2016 at any time before or after we met on August 24, 2016.

36. I did not know that any part of my conversation with Mr. Goodman on August 24, 2016 had been recorded until the attorney who represents Mr. Goodman, USC, and Nancy Williamson in the lawsuit filed against them by Mr. Oliver called me on August 31, 2016 and told me that a private investigator had recorded the entirety of my conversation with Mr. Goodman.

37. While I had learned several months ago that Mr. Oliver had filed a lawsuit against USC, Mr. Goodman, and Ms. Williamson, I had never seen a copy of any documents associated with the lawsuit until the attorney who represents them in the lawsuit sent me a copy of the amended complaint filed by Mr. Oliver's attorney on his behalf via e-mail on the evening of August 31, 2016.

38. I never expected that anyone, let alone a private investigator hired on Mr. Oliver's behalf, would place a recording device in sufficient proximity to the table at which Mr. Goodman and I sat for the sole purpose of recording my entire conversation with Mr. Goodman.

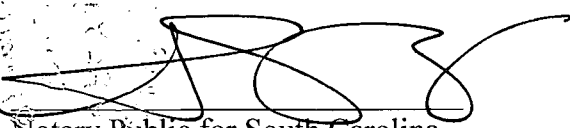
39. I was shocked and outraged to learn that a private investigator hired on Mr. Oliver's behalf had done so.

40. Further affiant sayeth not.

  
**EARL E. GREGORICH, JR.**

Sworn to and subscribed before me

This the 14 day of September 2016.

  
Notary Public for South Carolina

My Commission Expires: My Commission Expires April 15, 2025

## Lake Summers

---

**From:** Lake Summers  
**Sent:** Thursday, September 01, 2016 8:04 AM  
**To:** Ryan Hicks (rhicks@jlewiscromerlaw.com)  
**Cc:** Iris Ray (iray@jlewiscromerlaw.com)  
**Subject:** Oliver v. USC, et al - Copy of Audio Recording and Rescheduling Mr. Goodman's Deposition

Ryan –

In light of our discussion yesterday afternoon (8/31), I wanted to follow up to see if I'll be able to get a copy of the audio recording made by the private investigator sometime this morning.

You can certainly have a runner drop it the recording at my office or I can send our administrative office your way to pick it up.

Also, I checked with Mr. Goodman, and it turns out that Thursday, 9/8 works best for him as far as rescheduling his deposition.

Just let me know about both items as quickly as your schedule permits.

Thanks.

Lake

*Lake Summers*  
*Malone, Thompson, Summers & Ott LLC*  
*339 Heyward Street – Suite 200*  
*Columbia, South Carolina 29201*  
*(803) 254-3300 – Office*  
*(803) 254-0309 – Fax*  
*summers@mtsolawfirm.com*

## Lake Summers

---

**From:** Lake Summers  
**Sent:** Friday, September 02, 2016 9:34 AM  
**To:** Ryan Hicks  
**Cc:** Iris Ray  
**Subject:** RE: Oliver v. USC, et al - Copy of Audio Recording and Rescheduling Mr. Goodman's Deposition

Ryan –

Just following up on my e-mail to you from yesterday morning (9/1).

In addition to a copy of the audio recording, I respectfully request the name of and contact information for the private investigator who traveled to the McDonald's restaurant and recorded the conversation between Mr. Gregorich and Mr. Goodman.

Also, I'm hoping we can pin down a date late next week (or even early the following week) upon which you'll depose Mr. Goodman.

Thanks.

Lake

*Lake Summers  
Malone, Thompson, Summers & Ott LLC  
Attorneys & Counselors at Law  
339 Heyward Street – Suite 200  
Columbia, South Carolina 29201  
(803) 254-3300 – Office  
(803) 254-0309 – Office Fax  
[summers@mtsolawfirm.com](mailto:summers@mtsolawfirm.com)*

---

**From:** Lake Summers  
**Sent:** Thursday, September 01, 2016 8:04 AM  
**To:** Ryan Hicks ([rhicks@jlewiscromerlaw.com](mailto:rhicks@jlewiscromerlaw.com))  
**Cc:** Iris Ray ([iray@jlewiscromerlaw.com](mailto:iray@jlewiscromerlaw.com))  
**Subject:** Oliver v. USC, et al - Copy of Audio Recording and Rescheduling Mr. Goodman's Deposition

Ryan –

In light of our discussion yesterday afternoon (8/31), I wanted to follow up to see if I'll be able to get a copy of the audio recording made by the private investigator sometime this morning.

You can certainly have a runner drop it the recording at my office or I can send our administrative office your way to pick it up.

Also, I checked with Mr. Goodman, and it turns out that Thursday, 9/8 works best for him as far as rescheduling his deposition.

Just let me know about both items as quickly as your schedule permits.

Thanks.

Lake

*Lake Summers*

*Malone, Thompson, Summers & Ott LLC*

*339 Heyward Street – Suite 200*

*Columbia, South Carolina 29201*

*(803) 254-3300 – Office*

*(803) 254-0309 – Fax*

*[summers@mtsolvfirm.com](mailto:summers@mtsolvfirm.com)*

## Lake Summers

---

**From:** Ryan Hicks <rhicks@jlewiscromerlaw.com>  
**Sent:** Tuesday, September 06, 2016 9:54 AM  
**To:** Lake Summers  
**Cc:** Iris Ray  
**Subject:** RE: Oliver v. USC, et al - Copy of Audio Recording and Rescheduling Mr. Goodman's Deposition

Lake-

See the attached dropbox link for the unedited audio file. I have had a local recording studio remove as much background noise as possible and compile the audio file into smaller tracks; I will send those over to you momentarily.

Regarding the deposition rescheduling, I have depositions tomorrow, Thursday, and Friday in another case and simply am going to be unable to move them. I can make any day next week work on my end, however. Thanks.

<https://www.dropbox.com/s/ctr4s51i08ovo3i/8-24-16%20S.MP3?dl=0>

**Ryan K. Hicks**  
J. Lewis Cromer & Associates, L.L.C.

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211  
Phone 803.799.9530 | Fax 803.799.9533  
[rhicks@jlewiscromerlaw.com](mailto:rhicks@jlewiscromerlaw.com)  
[www.jlewiscromerlaw.com](http://www.jlewiscromerlaw.com)

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**From:** Lake Summers [<mailto:summers@mtsolawfirm.com>]  
**Sent:** Thursday, September 01, 2016 8:04 AM  
**To:** Ryan Hicks  
**Cc:** Iris Ray  
**Subject:** Oliver v. USC, et al - Copy of Audio Recording and Rescheduling Mr. Goodman's Deposition

Ryan –

In light of our discussion yesterday afternoon (8/31), I wanted to follow up to see if I'll be able to get a copy of the audio recording made by the private investigator sometime this morning.

You can certainly have a runner drop it the recording at my office or I can send our administrative office your way to pick it up.

Also, I checked with Mr. Goodman, and it turns out that Thursday, 9/8 works best for him as far as rescheduling his deposition.

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Thanks.

Lake

*Lake Summers*

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*339 Heyward Street – Suite 200*

*Columbia, South Carolina 29201*

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*[summers@mtsolawfirm.com](mailto:summers@mtsolawfirm.com)*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF  
COMMON PLEAS  
FOR THE FIFTH CIRCUIT

- - -

PETER G. OLIVER,

Plaintiff,

vs.

UNIVERSITY OF SOUTH CAROLINA,  
MARTIN GOODMAN, AND NANCY  
WILLIAMSON,

Defendants.

:  
:  
: Case No.  
: 2015-CP-40-3502  
:  
:  
:  
:  
:  
:

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DEPOSITION OF PETER G. OLIVER

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DATE TAKEN: Thursday, August 11, 2016  
TIME BEGAN: 10:10 a.m.  
TIME ENDED: 5:09 p.m.  
LOCATION: J. Lewis Cromer & Associates  
1418 Laurel Street, Suite A  
Columbia, South Carolina 29211  
REPORTED BY: Cynthia First, RPR, CRR, CCP  
EveryWord, Inc.  
P.O. Box 1459  
Columbia, South Carolina 29202  
803-212-0012

APPEARANCES:

J. LEWIS CROMER & ASSOCIATES, LLC  
BY: RYAN K. HICKS, ESQUIRE  
1418 Laurel Street, Suite A  
Columbia, South Carolina 29201  
803-799-9530  
rhicks@jlewiscromerlaw.com  
Representing the Plaintiff

MALONE, THOMPSON, SUMMERS & OTT, LLC  
BY: LAKE E. SUMMERS, ESQUIRE  
339 Heyward Street  
Suite 200  
Columbia, South Carolina 29201  
803-254-3300  
summers@mtsolawfirm.com  
Representing the Defendants

1 BY MR. SUMMERS:

2 Q Before the break, I handed you what was  
3 marked as Deposition Exhibit 16 in front of you. If  
4 you look at the cover of it, it reads: Audio  
5 Transcription of Michele Abraham, Martin Goodman,  
6 Peter Oliver, and Mel Wallace, Date: December 2nd,  
7 2013.

8 Do you see that, sir?

9 A Yep.

10 Q Let's talk a little bit about recordings.  
11 We talked a little bit about it previously. You  
12 mentioned that you used your iPad to make  
13 recordings, correct?

14 A Yep.

15 Q And I've got a list here of, hopefully in  
16 some degree of chronological order, of the  
17 recordings that your attorney provided to me. Do  
18 you understand that?

19 A Uh-huh.

20 MR. HICKS: Is that a yes?

21 THE WITNESS: Yes.

22 BY MR. SUMMERS:

23 Q Very good. Let me start this way. What  
24 compelled you, prompted you, or otherwise spurred  
25 you to begin recording meetings in the workplace?

1 We'll call it that.

2 A Because I would be told one thing one  
3 minute and complete opposite five minutes later.  
4 And then everybody denies what was said. So I was  
5 being misled, misdirected, misguided, and I needed  
6 something to document what was going on.

7 Q For example, we're looking at the  
8 transcript, or the cover of it, from a meeting that  
9 appears to have occurred December the 2nd of 2013.

10 A Right.

11 Q Did you tell Ms. Abraham that you were  
12 recording?

13 A No.

14 Q Did you tell Mr. Goodman you were  
15 recording?

16 A No.

17 Q Did you tell Mr. Wallace that you were  
18 recording?

19 A No.

20 Q Would that be the case for all of the  
21 recordings that your attorney provided to me?

22 A Yeah.

23 Q Why didn't you tell folks that you were  
24 going to record them? It seems like an obvious  
25 question, but I wanted to hear your side of it, too,

1 obviously.

2 A Because I needed it for my records.

3 Q And records to support what?

4 A That Martin Goodman tells me something,  
5 and then he turns around and does the complete  
6 opposite and tells me the complete opposite and said  
7 he never said the thing in the first place.

8 Q Are there -- are there any other  
9 recordings in your possession that you made at the  
10 workplace that your attorney hasn't received yet?

11 A I think they got them all.

12 Q How would you store them after you made  
13 the recording? Would you store them on the iPad?

14 A I just left them on my iPads, iPhone,  
15 whatever it was.

16 Q So we're talking multiple devices?

17 A Uh-huh.

18 Q How many devices did you use at various  
19 times to make these recordings?

20 A I used the iPads, and I may have something  
21 on an iPhone -- I'm not sure -- but two or three.

22 Q The best you can recall, if you can break  
23 it down, two iPads, three iPads, one iPhone, two  
24 iPhones?

25 A The iPads were the majority of them, for

1 sure.

2 Q How many iPads are we talking?

3 A Two.

4 Q Did you buy one to replace an older one or  
5 did you just happen to have two in your household  
6 that you used?

7 I'll start with this: Were they  
8 university-issued equipment?

9 A No.

10 Q So they were your own personal equipment?

11 A Correct.

12 Q Did one belong to you and one to your  
13 wife?

14 A They both belong to me. I paid for them,  
15 but don't tell my wife that.

16 Q I understand. I won't share this part of  
17 the transcript with her on that particular account.

18 So your purpose in making these recordings  
19 was to document what you describe as misleading or  
20 otherwise inaccurate statements you would receive  
21 from Mr. Goodman, correct?

22 A Correct.

23 Q Were there any other individuals, aside  
24 from Mr. Goodman, whom you claim were providing you  
25 misleading, inaccurate statements?

1           A     Well, I think there are recordings of our  
2 statewide meetings, there are recordings of our  
3 advisory board meetings, and I think they portray an  
4 accurate account of what's going on.

5           Q     How so?

6           A     Well, they're recordings of what those  
7 people said.

8           Q     And you would agree that the recordings  
9 speak for themselves?

10          A     Yeah.

11          Q     I'll ask this question because I have to.  
12 Did you do any editing of any of the recordings  
13 after they were made, once they were captured, if  
14 you will, on your iPad or your iPhone?

15          A     Absolutely not, but let me say this. If I  
16 took an excerpt of a recording and e-mailed it to my  
17 attorney, I just -- is that editing?

18          Q     Tell me what you believe editing to be.

19          A     Where I actually change, alter, or  
20 anything like that. That I did not do.

21          Q     And I would respectfully include in that  
22 definition if you eliminated one portion of a  
23 recording but sent it as what appeared to be one  
24 continuing recording.

25          A     Well, they've got all the recordings, but

1 I would take an excerpt of a piece of it, 30  
2 seconds, a minute.

3 Q And you would send that to your attorney?

4 A Correct.

5 Q Would you send any type of excerpt like  
6 that to anyone else?

7 A No.

8 Q I mentioned a few names. Did you send any  
9 excerpts or recordings in their entirety to Tom  
10 Barilovits?

11 A No.

12 Q Did you send any excerpts or the entirety  
13 of the recordings to anybody at the Legislative  
14 Audit Council?

15 A No.

16 Q Did they ever ask you to provide them, the  
17 recordings?

18 A I don't -- I don't think so.

19 Q Did you ever tell them -- I'm talking  
20 about the Legislative Audit Council. I can't  
21 remember -- her first name is Marcia. I can't  
22 remember her last name.

23 A I did.

24 Q Did you ever tell them you had made  
25 recordings and they would be available for their

1 consideration and listening?

2 A Oh, I never said that.

3 Q What did you say, sir?

4 A I'm not sure that I said anything. I just  
5 can't recall, but I know I didn't say that.

6 Q So you know that you didn't tell them that  
7 you had made recordings that they could listen to?

8 A No, I don't -- I never offered them any  
9 recordings.

10 Q And they never asked for recordings, to  
11 your recollection?

12 A To my recollection.

13 Q Did you ever tell them that you had made  
14 recordings?

15 A I don't recall.

16 Q In the course of making any recordings,  
17 did anyone ever ask you or hear a sound from your  
18 iPad or something like that? Did it otherwise  
19 intrude or interrupt a meeting by virtue of, I'll  
20 call it, a mechanical failure with the device?

21 A No.

22 Q How would you position the device, if you  
23 had an iPad, for example?

24 A Just sit it on the desk.

25 Q So it would be out in front of everybody?

1 A Yeah.

2 Q Would you set it up to record before the  
3 meeting began?

4 A It's whenever I went in the meeting, I'd  
5 turn it on.

6 Q Would you do that in front of other  
7 attendees at the meeting or would you be by yourself  
8 when you did that?

9 A Possibly.

10 Q Possibly you would do it in front of  
11 others?

12 A In the meeting, but they wouldn't know  
13 what I was doing.

14 Q Would the same apply to your iPhone?

15 A Yeah.

16 Q Just for the sake of clarity -- I hate to  
17 ask this question, but I'll do it anyway -- did you  
18 bring any recording devices or anything like that to  
19 today's deposition?

20 A I've got an iPhone.

21 Q Is it currently recording?

22 A No.

23 Q And you don't have an iPad with you,  
24 correct?

25 A No.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Peter G. Oliver,

Plaintiff,

vs.

University of South Carolina, South  
Carolina Small Business Development  
Centers, Martin Goodman, and Nancy  
Williamson,

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Case No.: 2015-CP-40-3502

**PLAINTIFF'S ANSWERS AND  
RESPONSES TO DEFENDANTS'  
FIRST SET OF DISCOVERY  
REQUESTS**

**TO: LAKE SUMMERS, ESQUIRE, OF MALONE THOMPSON SUMMERS & OTT, LLC,  
ATTORNEYS FOR DEFENDANTS.**

Plaintiff, by and through his undersigned counsel, responds to Defendant's *First Set of Interrogatories* and *First Set of Requests for Production* as follows. Plaintiff reserves his right to amend and/or supplement his responses accordingly.

**GENERAL OBJECTIONS**

Plaintiff incorporates each of the following general objections into his responses to the Defendants' individually-numbered Interrogatories and Requests below.

1. Plaintiff objects to Defendants' Interrogatories and Requests, including the accompanying instructions, to the extent they purport to place a different or higher burden on Plaintiff than that imposed by the Federal Rules of Civil Procedure. Plaintiff will respond to Defendants' Interrogatories and Requests in accordance with Rules 26, 33, and 34 of the Federal Rules of Civil Procedure and will not respond or provide information to the extent that doing so would exceed the requirements of those Rules.

2. Plaintiff objects to Defendants' Interrogatories and Requests to the extent they seek information protected from disclosure pursuant to any applicable state or federal law, rule, or

(6) any instance which illustrated serious internal violations of regulations as asserted Paragraph 35 of the complaint," (7) any instance which illustrated serious internal violations of public policy as asserted in Paragraph 35 of the complaint," and/or (8) any instance which illustrated serious internal violations of standards of conduct as asserted in Paragraph 35 of the complaint."

**ANSWER: See documents produced herewith.**

### **FIRST SET OF INTERROGATORIES**

1. Specify with particularity what each of the Defendants allegedly did, or allegedly failed to do, which entitles the Plaintiff to obtain the relief sought by him in this action.

**ANSWER: See Plaintiff's factual allegations as outlined in his filed Complaint. Also, Plaintiff responds as follows: Martin Goodman has continually misled, misinformed and bullied Plaintiff. Mr. Goodman hired Plaintiff as a University of South Carolina Employee, Columbia Area Manager for the Columbia Area Small Business Development Center. Then, he told Plaintiff that Plaintiff is not a University of South Carolina Employee, that Plaintiff is an employee of the SC Small Business Development centers. Mr. Goodman told Plaintiff that Michele Abraham is trying to remove the Small Business Development Centers from the University of South Carolina and become an independent state agency. Plaintiff was not allowed to use the University of South Carolina in any way other than the words, in partnership with USC. Meanwhile, the Clemson Small Business development Centers use Clemson including their brand Logo "Tiger Paw" on official correspondence. Mr. Goodman has stated, "I do not report to the Dean of the University of South Carolina Moore School of Business Dean Brews, I report of the Dean of USC Beaufort." He has told Plaintiff to use interns in the course of serving clients; then he told Plaintiff not to use interns while serving clients. Conversely, Mr. Goodman told Plaintiff**

**of Plaintiff's allegations;**

- bb) Scott Adams is expected to testify to his knowledge of Plaintiff's allegations, Principal of Palmetto CF at 803-312-1870;**
- cc) Greg White, Assistant Director of US SBA in South Carolina, is expected to testify to his knowledge of Plaintiff's allegations;**
- dd) Alice Becker, Administrative Assistant in the State Director's Office of the SCSBDC, is expected to testify to her knowledge of Plaintiff's allegations;**
- ee) Scott Bellows, PTAC Program Manager of the State Director's Office of the SCSBDC, is expected to testify to his knowledge of Plaintiff's allegations;**
- ff) Scott Whelchel, Area Manager of the Clemson Region SCSBDC, is expected to testify to his knowledge of Plaintiff's allegations;**
- gg) Leslie Armstrong, Office Manager of the Clemson Region of SCSBDC, is expected to testify to her knowledge of Plaintiff's allegations;**
- hh) Sherry Pittinger, Procurement Specialist of the Clemson Region of SCSBDC, is expected to testify to her knowledge of Plaintiff's allegations;**
- ii) Ben Smith, Area Manager of the Clemson Area SCBD, is expected to testify to his knowledge of Plaintiff's allegations;**
- jj) Beth Smith, Area Manager of the Spartanburg Area SBDC, is expected to testify to her knowledge of Plaintiff's allegations;**
- kk) Jim Johnson, SC State Region Director of SCSBDC, is expected to testify to his knowledge of Plaintiff's allegations;**
- ll) Pamela Free, Orangeburg Area SBDC Area Manager, is expected to testify to her knowledge of Plaintiff's allegations;**
- mm) Earl Gregorich, Senior Counselor of Columbia Area SBDC, is expected to**

**testify to his knowledge of Plaintiff's allegations;**

**nn) Laura DiSano, Business Consultant – USC Aiken, is expected to testify to her knowledge of Plaintiff's allegations;**

**oo) Bob Clark, Business Consultant – USC Aiken, is expected to testify to his knowledge of Plaintiff's allegations;**

**pp) Marilyn Miller, Administration – USC Aiken, is expected to testify to her knowledge of Plaintiff's allegations;**

**qq) Patricia K. Cameron, Business Consultant for SBDC Hilton Head, is expected to testify to her knowledge of Plaintiff's allegations;**

**rr) Darrell Jones, Area Manager for North Charleston SBDC, is expected to testify to his knowledge of Plaintiff's allegations;**

**ss) Melinda Low, Administration for North Charleston SBDC, is expected to testify to her knowledge of Plaintiff's allegations;**

**tt) Linda Blanton, Business Consultant for North Charleston SBDC, is expected to testify to her knowledge of Plaintiff's allegations;**

**uu) Wayne Mulligan, Business Consultant for North Charleston SBDC, is expected to testify to his knowledge of Plaintiff's allegations;**


**vv) Jim Wasson, Technology Commercialization Business Consultant for North Charleston SBDC, is expected to testify to his knowledge of Plaintiff's allegations;**

**ww) Larry Stevens, Region Director of Rock Hill SBDC, is expected to testify to his knowledge of Plaintiff's allegations;**

**xx) Carol Daly, Business Consultant for Rock Hill SBDC, is expected to testify to her knowledge of Plaintiff's allegations;**

**yy) Eduardo Venegas Mejias, Business Consultant for Rock Hill SBDC, is expected to**

**J. LEWIS CROMER & ASSOCIATES, LLC**

BY: 

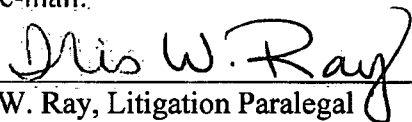
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Fax 803-799-9533

*Attorneys for Plaintiff*

February 26, 2016  
Columbia, SC

**Certificate of Service**

I hereby certify that on the date above, I served on Counsel of Record a true and correct copy of this document by U.S. Mail and e-mail.

  
Iris W. Ray, Litigation Paralegal

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

FROM THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY

Civil Action No. 2015-CP-40-3502

Peter G. Oliver, ..... Plaintiff,

v.

The University of South Carolina, Martin Goodman, and Nancy Williamson, ..... Defendants.

**RECEIVED**

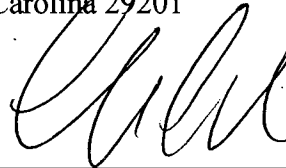
SEP 30 2016

SC Court of Appeals

**PROOF OF SERVICE**

I certify that I have served **the MOTION BY DEFENDANT MARTIN GOODMAN TO SUPPRESS AUDIO RECORDING PURSUANT TO SOUTH CAROLINA CODE ANN. § 17-30-110** on the above-named Plaintiff by mailing a copy to his counsel, first class postage pre-paid, at the following address:

Ryan K. Hicks, Esquire  
J. LEWIS CROMER & ASSOCIATES, LLC  
1418 Laurel Street – Suite A  
Columbia, South Carolina 29201



September 30, 2016

\_\_\_\_\_  
**LAKE E. SUMMERS**