

FILED IN COURT  
GREENVILLE CO. S.C.

IN THE STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) 59  
DEC 27 PM 4

William F. Tomz,

Plaintiff,

v.

Capital Funding, et al.,

Defendants.

C. A. No. 2008-CP-23-3665

ARTHUR M. FIELD'S MOTION TO  
ALTER OR AMEND

Arthur Field, pursuant to SCRCPP 52(b) and SCRCPP 59(e) moves before the Honorable Edward M. Miller, at such time and place as his Honor may direct for an order altering or amending his Order filed December 15, 2016. This Motion is made upon the following grounds:

At the December 8, 2016, hearing, Mr. Field stated that three (3) computers may have copies of files containing information related to Capital Investment Funding ("CIF"). Based upon that information, the Court directed that Mr. Field also deliver the other computers and storage devices to Mr. Perry in its Order on December 14, 2016.

The Court ordered Mr. Perry to make a duplicate copy ("mirror") of the computer data so that Arthur M. Field, who lawfully practiced law in foreign jurisdictions, could generate a privilege log pursuant to Rule 26(b)(5) of the South Carolina Rules of Civil Procedure no later than 5:00 p.m. on the fourteenth (14<sup>th</sup>) day following the day Mr. Perry begins the work ordered. The Order provided, "[t]he log shall specifically identify each file and set forth in detail the basis for claiming attorney client privilege or attorney work product."

The Court further ordered attorney Bradford Martin to deliver to the Court (with a copy to Receiver's counsel) a signed privilege log, for the computer that has been in Mr. Martin's office, on the seventh (7<sup>th</sup>) day following the day the Expert completes his copy.

On December 17, 2016, at 9:05 a.m., Mr. Field delivered the three computers in his possession and two (2) flash drives to Mr. Perry. (The computer originally subject to the May 6, 2015, Motion had remained in the custody of Mr. Field's attorney, Bradford Martin, and was provided to Mr. Perry earlier, on December 16, 2016.)

In sum, Mr. Field directly or by his direction delivered four (4) computers, containing a total of six (6) hard drives, and two (2) flash storage drives to Mr. Perry for 'mirroring'. All devices were returned to Mr. Field by December 20, 2016, at 5:30 p.m.

These hard drives and storage devices **contain in excess of 60,000** documents that Mr. Field must review. It is logistically and physically impossible for Mr. Field to comply with the Court's timeline and for Mr. Martin to deliver a privilege log. There simply must be more time for Mr. Field to have a fair opportunity to review the six (6) hard drives and two (2) flash storage drives that Mr. Perry mirrored.

As of 8:00 a.m. on the date this Motion is filed, Mr. Field has already reviewed 2,223 documents.<sup>1</sup> Moreover, to date, Mr. Field has already identified 1,039 documents for which there is an applicable privilege or protection. Based on a conservative estimate, Mr. Field needs between 400 and 550 more hours to complete the privilege logs.

This case, in various forms, has been litigated since 2008 and there have been over 100,000 pages of documents provided in discovery. All of the hard drives and other storage devices (i.e., flash drives) have been mirrored and are preserved. By its Order, this Court has prevented the spoliation of potential evidence relevant to this case by its Order. This Motion requests the Court ensure that there is adequate time to protect the discovery process and the rights of various individual citizens – particularly where the Court provided in its Order, “[i]f no privilege log is

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<sup>1</sup> Field is unable to access documents contained on the computer that was in Mr. Martin's office.

delivered to this Court by that time and date, any assertion of privilege shall be deemed waived and no information shall be considered privileged.”<sup>2</sup>

**A. Additional Time is Required by Field to Prepare a Privilege Log.**

1. The December 15<sup>th</sup> Order states that Field’s time to prepare his privilege log began running when James Perry began his work mirroring the computers. Mr. Field cannot work on a privilege log during the period of time that he does not have access to the computers. Therefore, Field would request that the Court alter its Order to provide that his time begins running on December 21<sup>st</sup> since the computers and flash drives were returned to him at 5:30 p.m. on December 20<sup>th</sup>.
2. Field is reviewing six hard drives and two flash drives to identify privileged documents.
3. Field is unable to access the two hard drives in the computer that had been located at Mr. Martin’s office.<sup>3</sup>
4. It takes Field approximately 1.5 minutes per document to review and determine if they should be added to the privilege log. (Affidavit of Arthur Field)
5. There are approximately 60,000 documents contained on the six hard drives and two flash drives. It is anticipated that it will require 400 to 550 hours to review the files and prepare a privilege log.
6. Field respectfully requests that the Court alter its Order to provide him with 113 additional days (1,500 hours, working 4 hours a day) to complete the privilege log and extra time, if necessary, until the inaccessible hard drives are made accessible.

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<sup>2</sup> As to all computers, folders, files, documents, emails, texts or other communications, Field does not waive and asserts the following: U.S. Constitution Amendments 4, 5 and 14; and S.C. Constitution Article I, Secs. 3,10,12,14 and 22.

As to all documents produced to the State Grand Jury or the Attorney General, Field asserts the restrictions of S.C. Code Ann. 14-7-1720, 14-7-1770 and the Order of Judge Benjamin forbidding dissemination.

As to all documents produced to or from or emails or texts to or from any attorney who has represented Field or is currently representing Field, Fields assert all attorney client and work product privilege in addition to the above rights.

As to all work, research, documents, etc. produced by Field in preparation of any action or any client Field asserts all attorney client and/or work product privileges. As to all work, research, documents, etc. prepared by Field in preparation of any action in which he involved, Field asserts that these documents were prepared in anticipation of litigation and are privileged.

As to all communications between Field and Kathryn Taillon of any type, Field asserts all spousal privileges.

<sup>3</sup> When the computers were returned to Field by Mr. Perry, Field took them to Mr. Caskey’s office. Mr. Caskey was able to confirm that the documents contained on the hard drive that had been held at Mr. Martin’s office could not be accessed.

**B. The Court Erred in Refusing to Grant Arthur Field's Motion for Recusal.**

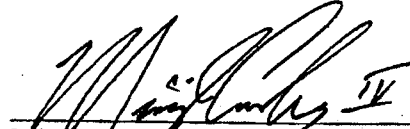
1. Field filed a Motion for Recusal on June 13, 2012. This Motion was renewed at the September 17, 2013 hearing and denied by the Court. The denial of this Motion is currently on appeal to the South Carolina Court of Appeals. The matter is automatically stayed by the appeal.
2. South Carolina Rule of Appellant Procedure Rule 241 provides:
  - (a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court.
3. At the December 9, 2016 hearing on the Rule to Show Cause, Field's counsel, Micah Caskey, renewed the Motion to Recuse.
4. The South Carolina Court of Appeals has stated the "better practice suggests disposition of any motion to recuse prior to the resolution of other pending matters." *Brailsford v. Brailsford*, 380 S.C. 443, 453, 669 S.E.2d 342 (Ct.App.2008).
5. The Court is required to observe high standards of conduct in order to preserve the integrity and independence of, and the public confidence, in the judiciary. *Patel v. Patel*, 359 S.C. 515, 599 S.E.2d 114 (2004)

WHEREFORE, Arthur Field moves this Court for an Order altering or amending the December, 15 2016 Order to allow for a fair opportunity to review each of the files that may be subject to either Attorney-Client privilege, Attorney Work Product protection, or be protected on other grounds. Mr. Field only asks for one-and-a-half minutes per document for 60,000 files. As such, Mr. Field moves that this Court's Order be altered or amended to extend the time for reviewing documents to 1,500 work-hours, divided over 113 four-hour work-days to review the documents and generate a privilege log, taking into account the time it will take to access the documents in the presently inaccessible hard drives.

I hereby affirm that consultation with the opposing side regarding this Motion would serve no useful purpose.

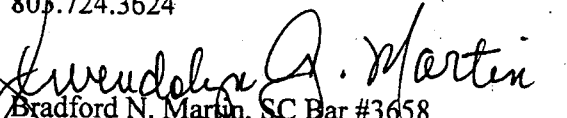
Respectfully submitted,

Date: December 27, 2016



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**ATTORNEYS FOR ARTHUR M. FIELD**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

FILED  
GREENVILLE COUNTY, S.C.  
PAUL H. WICKENS, CLERK

CASE NO.: 2008-CP-23-3665

William F. Tomz and Francis W. Tomz,  
individually and as Class Representatives

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff,

vs.

Capital Investment Funding, LLC

Defendant.

Plaintiff's Attorney: George Brandt, III, Bar No. _____ Address: 360 E. Henry Street, Spartanburg, SC 29605 Phone: 582.2962 Fax _____ E-mail: gbrant@hbvlaw.com Other: _____	Defendant's Attorney: Micajah P. Caskey, Bar No. 100350 Address: 146 State St, West Columbia, SC 29169 Phone: 803.724.3624 Fax _____ E-mail: info@caskeylawfirm.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: to Alter or Amend Estimated Time Needed: 30      Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>Micajah P. Caskey</i> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	For: <i>Micajah P. Caskey</i> 12/27/16 Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	