

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jul 27 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable L. Casey Manning, Circuit Court Judge

Civil Action No.: 2019-CP-40-04352

Richard Dearinger, William Evans, and One 11 Advisory, LLC Respondents,

v.

Andrew Jaeger, SLP Financial LLC and Jaeger Capital Management, LLC, et. al....Appellants.

APPELLANTS' MOTION TO PERMIT THE FILING OF TRANSCRIPTS

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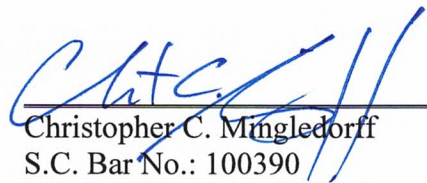
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***Attorney for Brittany Kaliher and William
Patterson***

Andrew Jaeger, SLP Financial LLC and Jaeger Capital Management, LLP (hereinafter collectively “the Appellants”) make this Motion pursuant to Rule 240 of the South Carolina Appellate Court Rules seeking permission to file transcripts in compliance with Rule 207 of the South Carolina Appellate Court Rules. The Appellants respectfully request the Court permit the filing of a January 8, 2020 hearing transcript and February 11, 2020 hearing transcript pursuant to Rule 207 of the South Carolina Appellate Court Rules. In support of this Motion, the Appellants simultaneously file herewith a Memorandum with citation of authorities and supporting documentation.

July 27, 2020



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v.

Andrew Jaeger, SLP Financial LLC and Jaeger Capital Management, LLC, et. al....Appellants.

**MEMORANDUM IN SUPPORT OF APPELLANTS' MOTION TO PERMIT THE
FILING OF TRANSCRIPTS**

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***Attorney for Brittany Kaliher and William
Patterson***

Andrew Jaeger, SLP Financial LLC and Jaeger Capital Management, LLC (hereinafter collectively “the Appellants”) hereby file this Memorandum and Citation of Authority pursuant to Rule 240 of the South Carolina Appellate Court Rules in support of their Motion to Permit Transcripts pursuant to Rule 207 of South Carolina Appellate Court Rules.

This matter is on appeal pursuant to an April 8, 2020 Notice of Appeal. The Notice of Appeal was filed in response to a March 2, 2020 written order entered by the Honorable L. Casey Manning in the Court of Common Pleas for Richland County and subsequent March 27, 2020 written order by Honorable L. Casey Manning affirming the March 2, 2020 order in denial of the Appellants’ Motion for Reconsideration (hereinafter collectively “the March Orders”). Prior to the entry of the March Orders, counsel for the parties appeared twice for the purpose of conducting a hearing regarding the content of the March Orders. The dates of those hearings were January 8, 2020 and February 11, 2020. Enclosed are the written transcripts from January 8, 2020 and February 11, 2020. See pp. 7-23.

As the Court will note, at neither court appearance did Judge Manning take argument or make any decisions regarding the March 2, 2020 Order or March 27, 2020 Order. Instead, on January 8, 2020 Judge Manning instructed the parties to return on February 11, 2020. See pp. 7-9. On February 11, 2020, Judge Manning requested the parties submit written briefs and/or written proposed orders on the subject matter for the Court’s review. See p. 22¹.

As a consequence, when ensuring that the complete record of this matter was sufficiently and timely transmitted to this Court for appellate review, counsel for the undersigned Appellants

¹ Pages 10-21 of the February 11, 2020 transcript concern a motion not on appeal and not pertaining to the Appellants.

1 THE COURT: Okay. I gave both sides an opportunity to try to work
2 out their differences. Everybody was unable to do so it appears. It's all
3 right to fail, not reach an agreement, but it's important to try, and y'all did
4 so, but y'all tried so hard about an hour or so, and no decision was made; I
5 decided as I informed the lawyers in chambers to simply continue this
6 matter. The Clerk here will help reschedule it. You're from -- who is from
7 Greenville, and you're from ---

8 MR. MINGLEDORFF: Charleston.

9 THE COURT: Charleston. So, look at your calendars. She will help
10 you reschedule this as soon as practical, and I will put it this way:
11 Although, I gave y'all an opportunity to resolve it, y'all couldn't, still; I have
12 jurisdiction of this matter, and whether y'all like it or not I can still make a
13 decision on this matter if I want to, if I'm so inclined, based on the pleadings
14 and everything. I'm disinclined to do that. I want everybody to have an
15 opportunity to sort of maintain the status quo. Don't do anything else that
16 this lawsuit is about, and I will take that into account. If something
17 happens between now and the next hearing that either side can report to me
18 that I find is objectionable by the spirit of the effort to try to resolve this
19 matter I'll take that into account and issue a decision since this is -- sua
20 sponte on my own, if that makes sense. Y'all can explain it to your clients.

21 So, with that in mind, happy new year to everybody. The important
22 thing is to try. If you fail it doesn't matter. You have a chance to try again.
23 So, Athena will help you coordinate with your schedules. We'll reset this as
24 soon as possible. I wish everybody the very best. Thank you all.

25 MR. COX: Thank you.

1 MS. FICKLING: Thank you, Your Honor.

2 THE COURT: And your motion in regards to the 12(b)(6), you said it
3 was tied to the other motion; so, both matters are continued, okay?

4 MR. COX: Thank you, Your Honor.

5 THE COURT: Thank you all.

6 MR. MINGLEDORFF: Thank you.

7 MS. FICKLING: Thank you.

8 --- END OF TRANSCRIPT OF RECORD ---

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1 I, the undersigned, T. Dayton Grainger, Jr., Official Court Reporter for
2 the Fifth Judicial Circuit of the State of South Carolina, do hereby certify
3 that the foregoing is a true, accurate and complete Transcript of Record of
4 all the proceedings had and evidence introduced in the trial of the captioned
5 case, on the 8th Day of January, 2020.

6 I do further certify that I am neither of kin, counsel or interest to any
7 party.

8

9

10

January 13, 2020

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T. Dayton Grainger, Jr.

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I N D E X

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<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	14

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
	No exhibits introduced.	

1 THE COURT: So, we have one, two, three. This is the
2 case of *Dearinger vs. Jaeger*, I think it is, and I remember
3 a lot about this case. I gave y'all about two hours to
4 settle it. It's too late to try to hear anything. So, I
5 don't need a whole lot of background. Be quite honest with
6 you, I would suggest that y'all -- I've looked at the file.
7 Y'all need to submit briefs or proposed orders and I'll
8 make my decision, but I'll be happy to hear anything you
9 want to tell me. But I've thought about this long enough
10 and I'm familiar with it well enough from the last time we
11 were here that I don't think it's necessary that we go over
12 plowed ground is what I'm saying. But I invite you to say
13 or do anything you think you need to under the
14 circumstances here.

15 I think it was originally your motion.

16 MS. FICKLING: Yes, sir, Your Honor. Well, the
17 defendant Ms. Kaliher and Mr. Patterson filed a motion to
18 dismiss which is not the constructive trust motion. I
19 don't know if you'd like to ---

20 THE COURT: I'll be happy to hear that now.

21 MS. FICKLING: Okay.

22 MS. MOOSE: Thank you, Your Honor. I apologize. I
23 was not involved in this action at the last motions
24 hearing, but I'm glad to know you do know something about
25 the case. I represent two of the defendants who were named

1 individually, and we have filed a motion to dismiss on the
2 grounds the plaintiff has failed to state a cause of action
3 as to these ---

4 THE COURT: Because of what?

5 MS. MOOSE: --- two employees.

6 THE COURT: Go ahead.

7 MS. MOOSE: Okay. Plaintiffs in their complaint, the
8 main allegations about my clients in paragraphs 62, 63, 64,
9 68, and 74 to 76, the basic, specific bad acts that they
10 allege are that my clients met with their clients without
11 consent, that they created an asset transfer without
12 consent of the account holders, and they used account
13 information that the plaintiffs provided to them under the
14 guise of a consultant agreement.

15 Well, meeting with any clients is not prohibited in
16 any way. If assets were transferred for a client without
17 their consent, they should be the ones to assert those
18 claims. And if account information was provided to my
19 clients that they didn't want them to use to contact the
20 clients, there should have been something in writing
21 prohibiting such disclosure. There's no such agreement in
22 this case; my clients did not sign any agreement with the
23 plaintiffs.

24 So, the first basis for my motion is there's no
25 agreements between my clients, Brittany Kaliher and William

1 Patterson, and secondly everything they did is alleged to
2 have happened within the scope of their employment with
3 Silverleaf Partners.

4 I'd like to go through each cause of action just very
5 quickly as to why we believe we're entitled to relief. The
6 first cause of action is breach of contract. My parties
7 are not a party, not a party to any contract with the
8 plaintiffs. And I would refer you to *Tancik vs. USAA*, 354
9 South Carolina 539, a Court of Appeals opinion in 2013 that
10 says an individual who's not a party to a contract
11 generally cannot be held liable ---

12 THE COURT: You need to slow down.

13 MS. MOOSE: --- for its breach.

14 THE COURT: You're talking too fast, ma'am.

15 MS. MOOSE: Sir?

16 THE COURT: Slow down. You're talking too fast.

17 MS. MOOSE: Okay. I'm sorry.

18 THE COURT: That's all right.

19 MS. MOOSE: I understand you, you already know all
20 this. I will slow down.

21 THE COURT: I'm just saying you're talking too fast;
22 it's hard to keep up with your speed, ma'am.

23 MS. MOOSE: I understand.

24 THE COURT: Go ahead.

25 MS. MOOSE: So, the first cause of action for breach

1 of contract, there's -- the complaint fails to state a
2 cause of, cause of action against my clients because
3 they're not a party to a contract. There's no binding
4 contract between my clients and the plaintiffs.

5 The second cause of action is breach of contract
6 accompanied by a fraudulent act. Again, no contract
7 between my clients and the plaintiffs.

8 The third cause of action is for interference with
9 contractual relations. The plaintiffs allege that my
10 clients interfered with a contract they had with some
11 clients. Well, I'm not aware of any contract between the
12 clients and the plaintiffs, and I believe their
13 relationship is at will. Also, there's been no allegation
14 of an improper purpose or improper methods, and there's no
15 allegation that establishes that my two clients, Ms.
16 Kaliher and Mr. Patterson, used improper methods in
17 contacting the clients. A third party is not liable for
18 tortious interference with a contract where one initially
19 induces a party to a contract not to perform. My clients
20 don't have any contract with the plaintiffs, and they have
21 not induced any clients not to perform, but the allegations
22 of the complaint do not establish any contract that my
23 clients interfered with.

24 The fourth cause of action is for unjust enrichment.
25 My clients didn't receive any money; they haven't been

1 unjustly enriched. Anything -- any contact that my clients
2 made with clients ---

3 THE COURT: This is a 12(b)(6) motion, isn't it?

4 MS. MOOSE: Yes, sir.

5 THE COURT: All right. Go ahead.

6 MS. MOOSE: Was within the scope of their employment
7 as directed by their employer.

8 The fifth cause of action is fraudulent
9 misrepresentation. My clients didn't make any
10 misrepresentations to the plaintiff. They have to rely
11 on ---

12 THE COURT: Is it alleged in the complaint that they
13 made misrepresentations to your client? Aren't there
14 allegations in the complaint ---

15 MS. MOOSE: The allegations ---

16 THE COURT: --- to that effect?

17 MS. MOOSE: --- in the complaint as to
18 misrepresentation are in paragraphs 129 through 134, and
19 what they allege is plaintiffs executed a contract for the
20 purchase of individual Jaeger, Mr. Jaeger's book of
21 business. Jaeger represented he would not compete nor
22 solicit. In exchange, they paid him some money. Jaeger's
23 representation, he knew or should have known he was not
24 abiding by this promise. He subsequently violated his
25 promise. My clients aren't mentioned anywhere in there,

1 Your Honor. No alleged misrepresentations by my client.

2 The seventh cause of action is for defamation and
3 slander. There are no specific alleged defamatory
4 statements made by my client.

5 The eighth cause of action for a violation of the
6 Unfair Trade Practices Act, the contact with clients is
7 what they're basing that on. It is alleged to be wrongful
8 solely because it violates the nonsolicitation, the
9 noncompete agreement that the plaintiffs have with Mr.
10 Jaeger individually, not my clients, Your Honor.
11 Plaintiffs can't allege conduct at issue affects public
12 interest in this case as required to do. It's not alleged
13 in the complaint.

14 The ninth cause of action for *respondeat superior* is
15 against an employer. Clients don't employ anybody; they
16 can't be liable for that cause of action.

17 Plaintiffs seek a constructive trust. Clients don't
18 have any proceeds. I don't know what they would put in
19 trust.

20 The eleventh cause of action is for misappropriation
21 of trade secrets and that, of course, is based upon that
22 same agreement Mr. Jaeger individually signed, and
23 paragraph 162 is the only allegation and it refers only to
24 Mr. Jaeger individually, not my clients. If Mr. -- if the
25 plaintiffs wanted my clients to keep information they were

1 provided confidential, they should have had them sign
2 something requiring that, Your Honor, and they did not.

3 The declaratory and injunctive cause of action doesn't
4 form a basis for a liability, and the rescission cause of
5 action can't be asserted against them because they're not
6 parties to the contract.

7 So, sorry for such a long explanation, Your Honor, but
8 basically my clients have no contract with the plaintiffs.
9 They didn't do anything except what their employer,
10 Silverleaf Partners, directed them to do. Everything was
11 in -- within the scope of their employment, and the
12 allegations in the complaint are insufficient to state each
13 of the causes of action that have been asserted. That the
14 allegations are against Mr. Jaeger individually because of
15 the contract.

16 THE COURT: Thank you, ma'am.

17 MS. MOOSE: Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 MS. FICKLING: Yes, sir, Your Honor. Jessica Fickling
20 for the plaintiffs Mr. Dearing, Mr. Evans, and One 11
21 Advisory, LLC. Obviously in a motion to dismiss, the
22 standard is whether we've alleged any facts which could
23 support recovery under any theory.

24 THE COURT: And I must take the allegations in the
25 four walls of the complaint as true, I think is the rule.

1 Go ahead.

2 MS. FICKLING: That's correct, sir, and I know that
3 you're very familiar with it, and I don't want to waste
4 your time today because I know you're familiar with this
5 case as well.

6 I did want to correct a couple of things that I heard
7 during Ms. Moose's recitation where she sets forth that
8 there were no allegations of an improper purpose or use of
9 improper methods. Well, Your Honor, our complaint
10 specifically alleges the defendants Kaliher and Patterson
11 misappropriated proprietary information from my clients,
12 used that proprietary information to open up accounts
13 without the consent of the underlying account holders, or
14 without my clients' consent, and that those instances of
15 conduct are independently actionable.

16 In addition, as far as tortious interference with a
17 contract, it's not just the contract between these account
18 holders and my clients. It's also the contract for the
19 purchase of sale, the \$900,000 that was exchanged between
20 my clients and Mr. Jaeger for this book of business, and
21 the conduct of defendants Kaliher and Patterson in going
22 about taking that book of business or helping to take that
23 book of business.

24 Now, obviously as Your Honor has pointed out, and as I
25 am very familiar, at a motion to dismiss we're just looking

1 at the four corners of the complaint. However, we have
2 received documents from subpoena responses that do indicate
3 these individuals, William Patterson and Brittany Kaliher,
4 did, in fact, set up client accounts using proprietary
5 information. There's not the need for a contract
6 preventing them, preventing the defendants against using
7 that information. It is -- it's basic business acumen that
8 you can't take proprietary, confidential information.
9 That's an independent and actionable item.

10 We have submitted a memorandum in opposition to the
11 defendants' motion to dismiss. I believe that our
12 complaint is factually sufficient on its face; that the
13 facts that are set forth will support causes of action as
14 discovery in this matter continues; and that there are
15 questions of fact, even if the defendant knows with respect
16 to whether or not there was an improper purpose or improper
17 methods that were used in some of that conduct. So with
18 all being said, Your Honor, we believe questions of fact
19 exist; we believe that the complaint is factually
20 sufficient.

21 In the event that Your Honor were inclined to dismiss,
22 we would either ask for Your Honor to consider a dismissal
23 without prejudice or allowing the defendant -- or the
24 plaintiff, rather, to file under Rule 15, amending
25 complaint.

1 THE COURT: To make more definite and certain? Is
2 that what you're saying?

3 MS. FICKLING: Pardon?

4 THE COURT: Your request is if I grant the motion to
5 dismiss it be without prejudice, and I would assume
6 following that would be I would allow you the opportunity
7 to amend or to make more definite and certain?

8 MS. FICKLING: That's correct. We believe the
9 complaint is sufficient.

10 THE COURT: I understand. I understand.

11 MS. FICKLING: And we think that there are specific
12 references to actual correspondence. So, it's not just
13 fanciful pleadings that are in there. It's based on what
14 we had available to us when the complaint was filed.

15 THE COURT: All right.

16 MS. FICKLING: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Anything further?

19 MS. MOOSE: Yes, Your Honor. I'll just say briefly
20 that there are factual allegations in there, but they don't
21 support the causes of action asserted against my two
22 clients.

23 THE COURT: Proposed orders within ten days. Thank
24 you all so very much.

25 MS. MOOSE: Thank you, Your Honor.

1 THE COURT: Cover all the bases.

2 Beg your pardon?

3 MS. MOOSE: Thank you, Your Honor.

4 THE COURT: Okay. Y'all take your time. If you have
5 any issues within ten days, just let me know. Good to see
6 you all. Happy New Year.

7 MS. FICKLING: Thank you.

8 MR. MINGLEDORFF: Judge, we have one more motion.

9 THE COURT: Okay. What is it?

10 MR. MINGLEDORFF: It's their motion, right?

11 MS. FICKLING: Well, I thought he wanted us to submit
12 briefs.

13 THE COURT: Cover everything.

14 MR. MINGLEDORFF: Oh. I'm sorry.

15 THE COURT: You had two and a half hours with the
16 afternoon when y'all couldn't decide what to do.

17 MR. MINGLEDORFF: Okay. I'm sorry.

18 THE COURT: I'm familiar with the file. Proposed
19 orders.

20 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF FEBRUARY, 2020.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 21ST, 2020

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July 21, 2020


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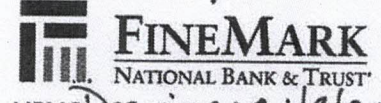
Re: Dearinger v. Jaeger, et al.
19-CP-40-4352

Heard 1-8-20
One (1) copy of transcript (5 pages @ \$5) \$21.25

DATE 7/23/20

PAY TO THE ORDER OF T. Dayton Grainger, Jr. \$ 21.25
Twenty-One and $\frac{25}{100}$ DOLLARS

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MEMO Dearinger 1/8/20 HT

Sarah Powck NP

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INVOICE NUMBER 20722.1
ORDER NUMBER 722.1
TAX NUMBER 9092
JOB DESCRIPTION Transcript
DATE July 22, 2020

SERVICE FOR:
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BILL TO:
 Christopher C. Mingledorff, Esquire
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SERVICE DESCRIPTION	PAGES	RATE	AMOUNT
TRANSCRIPT OF HEARING: DEARINGER VS. JAEGER EXPEDITED DATE TAKEN: 02-11-2020 CASE NUMBER: 2019-CP-40-04352 BEFORE: THE HON. L. CASEY MANNING PURSUANT TO RULE 607(h)(1)(b), SCACR, COURT REPORTERS SHALL BE PAID: "A FEE OF ONE DOLLAR (\$1.00) PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES FROM OPPOSING PARTY OR NON-PARTIES SHOULD BE SENT TO ELIZABETH B. HARRIS.	14	5.00	70.00
			\$70.00
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Mingledorff & Patterson, LLC
260 Seven Farms Drive Suite B
Daniel Island, SC 29492

63-1623/670 1654

DATE 7/23/20

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\$ 70.00

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MEMO Deeringer 2/11/20 HT

Sarah Powock

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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The Honorable L. Casey Manning, Circuit Court Judge

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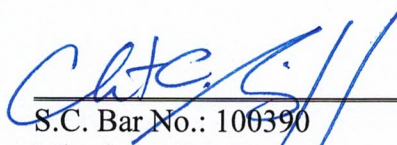
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **APPELLANT'S MOTION TO PERMIT THE FILING OF TRANSCRIPTS (PAGE 1-3)** and **MEMORANDUM IN SUPPORT OF THE MOTION (PAGES 4-28)** has been served upon all parties by forwarding a copy via U.S. Mail and electronic mail, addressed as shown below on this 27th day of July 2020.

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Defendants/Appellants**

**MINGLEDORFF
& PATTERSON**
— ATTORNEYS AT LAW —

Christopher C. Mingledorff
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July 27, 2020

Via Email & U.S. Mail

V. Claire Allen
Chief Deputy Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
Jul 27 2020
SC Court of Appeals

RE: *Richard Dearinger v. Andrew Jaeger*
Appellate Case No. 2020-000618

Dear Clerk of Court:

In response to the July 22, 2020 letter from the Court, please find enclosed an original *Appellants' Motion to Permit the Filing of Transcripts*, along with an original *Memorandum in Support* and supporting documentation. Also enclosed is a check in the amount of \$50.00 for filing of the enclosed Motion. If you need anything further at this time, then please contact me at (843) 471-1015 or chris@mptrial.com.

Sincerely,

MINGLEDORFF & PATTERSON, LLC



Christopher C. Mingledorff

CCM/jlr

Enclosures

cc (w/ encs.): SC Office of Court Administration (via U.S. Mail)
Jessica L. Fickling, Esq. (via email)
Julie Moose, Esq. (via email)

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