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**Jan 19 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas for the Thirteenth Circuit

Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No.: 2019-001707

George H. Brock, .....Appellant,

v.

Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC; Donna Carlson;  
Jeremy Marsh, Individually, and d/b/a The Techknow Dude, LLC; and  
Katherine Jernigan, ..... Defendants,

Of Which

Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC;  
Donna Carlson; and Katherine Jernigan are the..... Respondents.

**RECORD ON APPEAL**

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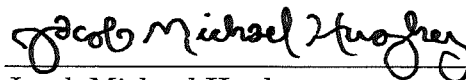
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(864) 569-2498

*Attorney for Appellant George H. Brock*

January 19, 2021  
Beaufort, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 George H. Brock, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Kris Langville, Individually, and d/b/a )  
 Preferred Paralegals, LLC; Donna Carlson; )  
 Jeremy Marsh, Individually, and d/b/a )  
 The Techknow Dude, LLC; and )  
 Katherine Jernigan, )  
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 Defendants. )  
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IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2018-CP-23-04123

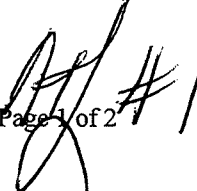
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 PAUL MCKENSIEMER, CLERK, SCLCS

**ORDER**

ENTERED COMPUTER

THIS MATTER having heard before the undersigned Judge for the Court of Common Pleas at the March 7, 2018 hearing in the Greenville County Court of Common Pleas upon Defendants’ Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC, Donna Carlson, and Katherine Jernigan (“Defendants”) Motion to Dismiss Plaintiff George Brock’s (“Plaintiff”) Complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(7). A second hearing occurred on July 23, 2019 at which the additional evidence was presented.

AND IT APPEARING TO THE COURT after consideration of the pleadings, Defendants’ Motion to Dismiss and supporting Memorandum, Plaintiff’s Memorandum in Opposition to Defendants’ Motion to Dismiss (Both being attached to this Order), and the arguments of counsel and authorities cited thereby, I find that Plaintiff failed to properly join Defendants in his previous action pursuant to Rule 19, S.C.R.C.P., and is therefore subject to dismissal pursuant to Rule 12(b)(7), S.C.R.C.P.

  
 Page 1 of 2

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IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is GRANTED and that Plaintiff's Complaint shall be dismissed as to Defendants with prejudice.

This the <sup>9<sup>th</sup></sup> day of September 9, 2019.



THE HONORABLE ALEX KINLAW, JR.

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

JUDGMENT IN A CIVIL CASE

CASE NO:

19 SEP 9 AM 21  
Paul Wickensimer  
Clerk of Court

George H Brock vs. Jeremy Marsh

CHECK ONE:

ENTERED COMPUTER

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

**NOTICE**

This is an Order filed in the Clerk of Court's Office.  
Dated at Greenville, South Carolina, this 9<sup>th</sup> day of September, 2019 .

Court Reporter:

\_\_\_\_\_  
PRESIDING JUDGE - Alex Kinlaw Jr

\_\_\_\_\_  
Jacob Michael Hughes 601 Bladen Street P.O.  
Drawer 1207 Beaufort, SC 29901-1207

ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
Kenneth Edward Norsworthy Jr. 218 Trade Street  
Suite D Greer, SC 29651

ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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George H. Brock, )  
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Plaintiff, )  
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vs. )  
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Kris Langville, Individually, and d/b/a )  
Preferred Paralegals, LLC; Donna Carlson; )  
Jeremy Marsh, Individually, and d/b/a )  
The Techknow Dude, LLC; and )  
Katherine Jernigan, )  
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Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2018-CP-23-\_\_\_\_\_

**COMPLAINT**

**(Jury Trial Demanded)**

Plaintiff George H. Brock (“Mr. Brock” or “Plaintiff”), complaining of the above-named Defendants Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC (“Langville”), Donna Carlson (“Carlson”), Jeremy Marsh, Individually, and d/b/a/ The Techknow Dude, LLC (“Marsh”), and Katherine Jernigan (“Jernigan”), would respectfully allege the following:

**PARTIES, JURISDICTION, AND VENUE**

1. Mr. Brock is a resident and citizen of Greenville County, South Carolina.
2. Upon information and belief, Langville, Carlson, and Jernigan are residents and citizens of Greenville County, South Carolina.
3. Upon information and belief, Marsh is a resident and citizen of Douglas County, Georgia.
4. Upon information and belief, Preferred Paralegals, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and headquartered

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in Greenville County, South Carolina.

5. Upon information and belief, The Techknow Dude, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and headquartered in Greenville County, South Carolina.

6. The present action involves acts that were performed in whole or in part in Greenville County, South Carolina.

7. This Court has jurisdiction over the subject matter and parties to this action and venue is appropriate concerning the civil conspiracy cause of action because the associated acts were performed in Greenville County, South Carolina. All the parties to this matter reside, own property, and/or conduct business in Greenville County, South Carolina.

**FACTUAL ALLEGATIONS**

8. In mid- to late 2015, Mr. Brock, nearing the age of retirement, began negotiations for the sale of his eighteen-year-old public accounting practice (“Brock CPA”).

9. Leading up to these pivotal talks, on or about February of 2015, Mr. Brock hired Ronald Johnson (“Johnson”) as an independent contractor to assist Brock CPA during its final months. Johnson contracted with Mr. Brock through a separate entity, R&T Johnson, LLC (“R&T”).

10. Almost immediately, Johnson initiated a clandestine campaign against Brock CPA, e.g., installing (with assistance) all of Mr. Brock’s costly tax programs on his personal computer, stealing confidential client files, and siphoning prospective clients away from Brock CPA to R&T.

11. During the first eight months of 2015, Mr. Brock could not devote complete attention to Brock CPA because his elderly mother was in poor health, ultimately passing away on August 16, 2015. Johnson took advantage of this tragic situation by soliciting Mr. Brock's clients; misappropriating said clientele and company property; and publishing ill-gotten confidential and personal information in a lawsuit meant to disrupt the sale of Brock CPA.

12. In furtherance of his illegal purposes, Johnson sought cooperation from current and former employees of Mr. Brock.

13. Marsh, Brock CPA's in-house information technology specialist, installed proprietary tax software owned by Mr. Brock on Johnson's personal computer. His piracy of the programs, at length, was discovered, yet Marsh continued to troubleshoot issues regarding the tax software for Johnson. Marsh also kept Johnson apprised of negotiations to sell Brock CPA by accessing the private e-mail account(s) of Mr. Brock and divulging the confidential information therein to Johnson. Marsh received instructions and periodic updates via e-mail from Johnson and Langville, the conspirator-in-chief.

14. Following Johnson's termination on or about February 28, 2016, Langville, an administrative assistant, acted as the covert agent inside Brock CPA, notifying Johnson of events and changes in circumstances, current hires, rates of pay, and other illicit information. Langville e-mailed business secrets, strategies, marketing plans, and expensive tax seminar data to Johnson.

15. Once Johnson began exploiting Mr. Brock's proprietary tax programs, representatives from the software companies would occasionally call Brock CPA to answer

questions posed by Johnson; Langville screened such calls from Mr. Brock lest he discover the subterfuge. However, Mr. Brock eventually became aware after answering the phone himself.

16. In order to discredit and malign Mr. Brock, Johnson approached Jernigan, a former employee of Brock CPA who had been terminated. Jernigan told Johnson that Mr. Brock advised clients to utilize LLCs as a means to default upon and avoid future obligations. Jernigan also falsely claimed that Mr. Brock himself had defaulted on mortgages. Jernigan's untrue allegations were later leveraged by Johnson in his lawsuit against Mr. Brock.

17. By her own admission, Langville formatted the complaint filed by Johnson against Mr. Brock.

18. Numerous non-essential, frivolous, and false assertions about Brock CPA were included in Johnson's lawsuit, despite the fact that these allegations had no bearing on the merits. Moreover, his complaint contained "facts" concerning day-to-day operations that transpired after Johnson was terminated, thus confirming the presence of conspiratorial agents within the walls of Brock CPA.

19. At the encouragement of Johnson and because of other personal motives, Carlson, another former administrative assistant, filed a complaint against Mr. Brock less than forty-five (45) days before the anticipated sale of Brock CPA. Carlson subsequently dropped the lawsuit when she realized that her deposition would be necessary.

20. Both Johnson's litigation and that of Carlson were instigated mere months before the prospective sale of Brock CPA—in a concerted attempt by Defendants to derail the deal and cause considerable injury to Mr. Brock.

**FOR A FIRST CAUSE OF ACTION**  
*Civil Conspiracy*

21. To the extent they are consistent with this cause of action, Plaintiff re-alleges and incorporates the foregoing paragraphs of the Complaint as if repeated verbatim.

22. Langville, Carlson, Marsh, and Jernigan conspired together for the purpose of injuring Plaintiff by:

a. Stealing and disseminating Mr. Brock's proprietary information and tools of the trade, including high-priced tax software;

b. Unlawfully accessing the private e-mail account(s) of Mr. Brock;

c. Using information illegally obtained to the detriment of Mr. Brock, including correspondence concerning potential purchasers of the practice;

d. Misappropriating and publishing confidential information related to Mr. Brock's practice, finances, and other business interests;

e. Assembling a complaint against Mr. Brock as amanuensis and/or agents for Johnson;

f. Filing a lawsuit in order to create an environment of uncertainty surrounding the proposed sale of Brock CPA and to impugn the professional and personal reputation of Mr. Brock.

23. The actions of Langville, Carlson, Marsh, and Jernigan have resulted in special damages to Mr. Brock that include loss of prospective business opportunities in the accounting industry, loss of profits, and damage to Mr. Brock's reputation in the accounting industry, as well as the business community in general.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Court grant the following relief:

1. As to the First Cause of Action, judgment against Langville, Carlson, Marsh, and Jernigan in an amount to be determined by the Court and requests punitive damages.
2. For such other relief as the Court deems just and proper.

Respectfully Submitted,

HUGHES LAW FIRM, L.L.C.

s/ Jacob M. Hughes

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jacobmhughes@gmail.com  
*Attorney for Plaintiff*

August 3, 2018  
Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 George H. Brock, )  
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 Plaintiff, )  
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 vs. )  
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 Kris Langville, Individually, and d/b/a )  
 Preferred Paralegals, LLC; Donna Carlson; )  
 Jeremy Marsh, Individually, and d/b/a )  
 The Techknow Dude, LLC; and )  
 Katherine Jernigan, )  
 )  
 Defendants. )  
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IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2018-CP-23-04123

**ANSWER AND COUNTERCLAIMS OF  
 DEFENDANTS KRIS LANGVILLE AND  
 PREFERRED PARALEGALS, LLC**

Defendant Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC (hereinafter “Defendant”) answering Plaintiff’s Complaint, will respectfully show the Court as follows:

**FOR A FIRST DEFENSE**

1. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 1 and, therefore, denies the same;
2. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 2 and, therefore, denies the same. Defendant is a citizen and resident of Greenville County, South Carolina;
3. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 3 and, therefore, denies the same;
4. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 4 and, therefore, denies the same. Defendant

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Preferred Paralegals, LLC is not owned, controlled or managed by Defendant Kris Langville. Defendant Preferred Paralegals, LLC should be dismissed as a part to this Action as it has had no involvement with George Brock;

5. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 5 and, therefore, denies the same;
6. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 6 and, therefore, denies the same;
7. Defendant admits the allegations contained in Paragraph 7 of the Complaint;
8. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 8 and, therefore, denies the same;
9. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 9 and, therefore, denies the same;
10. Paragraph 10 is denied. Upon information and belief, Plaintiff brought suit against Ron Johnson by way of counterclaims to Ron Johnson's lawsuit in the Court of Common Pleas for Greenville County, South Carolina. Those claims were tried by a jury and Plaintiff was unsuccessful in such claims;
11. Paragraph 11 is denied. Upon information and belief, Plaintiff brought up the passing of his mother in the previous lawsuit, which was tried by jury and which Plaintiff was unsuccessful;
12. Paragraph 12 is denied. Upon information and belief, Ron Johnson's lawsuit against Plaintiff was tried by jury, which did not find that Ron Johnson performed any activities with "illegal purposes";

13. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 13 and, therefore, denies the same;
14. Paragraph 14 is denied;
15. Paragraph 15 is denied;
16. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 16 and, therefore, denies the same;
17. Paragraph 17 is denied;
18. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 18 and, therefore, denies the same;
19. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraph 19 and, therefore, denies the same;
20. Paragraph 20 is denied. During the previous litigation, trial testimony evidenced no anticipated sale of Plaintiff's practice on the misleading timeline made by Plaintiff;
21. Defendant lacks knowledge and/or information sufficient to admit or deny the allegations contained in Paragraphs 21 through 23 and, therefore, denies the same;

**FOR A SECOND DEFENSE**

***Failure to state a claim or cause of action***

22. Defendant alleges that the Complaint fails to sufficiently constitute a cause of action against Defendant or fails to state facts upon which a claim can be based;

**FOR A THIRD DEFENSE**

***Laches, Estoppel and/or Waiver***

23. Defendant alleges that the Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel;

**FOR A FOURTH DEFENSE**

*Failure to Mitigate*

24. Defendant alleges that the Plaintiff has failed to mitigate his alleged damages as required by law and, therefore, his recovery, if any, should be reduced accordingly;

**FOR A FIFTH DEFENSE**

*Unclean Hands*

25. Defendant alleges that the Plaintiff's action is barred under the equitable doctrine of unclean hands. Due to the willful and material misrepresentations to the Court and the fraudulent actions and omissions of Plaintiff, Plaintiff has unclean hands and is entitled to no relief of any kind, but instead should be sanctioned by the Court for his conduct;

**FOR A SIXTH DEFENSE**

*Bad Faith*

26. Defendant alleges that Plaintiff's bad faith bars his claims or that any damages must be reduced as a result of Plaintiff's comparative bad faith;

**FOR A SEVENTH DEFENSE**

*Condonation, Misrepresentation, or Mistake*

27. Defendant alleges that Plaintiff's claims are barred or limited by condonation, misrepresentation, or mistake;

**FOR AN EIGHTH DEFENSE**

*Statute of Limitations*

28. Defendant alleges that Plaintiff's claims are barred from any recovery by the Statute of Limitations;

**FOR A NINTH DEFENSE**

*Contributory Negligence*

29. Defendant alleges that Plaintiff's recovery, if any, should be barred or reduced by the contributory negligence of Plaintiff;

**FOR A TENTH DEFENSE**

***Intentional Acts and Intentional Conduct of Plaintiff***

30. Due to the Intentional Acts and Intentional Conduct of Plaintiff, which precipitated any controversy between the parties, and which includes willful and material misrepresentations to the Court and the fraudulent actions and omissions of Plaintiff, Plaintiff is entitled to no relief, but instead should be sanctioned by the Court;

**FOR AN ELEVENTH DEFENSE**

***Unconscionability***

31. Due to the material and willful misrepresentations by Plaintiff and the fraudulent conduct by Plaintiff, any relief to Plaintiff would be unconscionable and must be denied;

**FOR A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM**

***Intentional Acts***

32. That Plaintiff is on course in an ongoing effort to intentionally and willfully harass his former employees, which constitutes Intentional Acts;

**FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

***Abuse of Process***

33. That this Action by Plaintiff, together with Plaintiff's incessant harassment through threatening and erratic correspondence with Defendant, has been brought by Plaintiff with and through ulterior purpose, and constitutes willful acts in the use of legal process which are not proper or warranted in the regular conduct of actions with Defendant;

34. That the aforesaid actions of Plaintiff, who has acted with fraud and deceit, and who has unclean hands, are aimed at objectives not legitimate in the use of legal process;
35. That the aforesaid actions by Plaintiff are an attempt to coerce, to obtain collateral advantage, to harass, threaten and to obtain inappropriate advantage;
36. That Plaintiff has acted with fraud and deceit and has unclean hands, and is entitled to none of the relief he seeks in his legal action;
37. That Plaintiff, in his Complaint, has made and continues to make patently false representations to the Court;
38. That as a proximate result, Defendant suffered damages, including emotional harm, attorney's fees and costs, along with other such damages as Defendant reserves the right to bring forth;

**FOR A FOURTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

***Declaratory Judgment and Injunction***

39. That Defendant is in need of, and entitled to, an Order and/or Declaratory Judgment and/or Injunction of this Court:
  - (A) Preventing Plaintiff from bringing any future suit against any former employees and/or witnesses to Plaintiff's failed trial against Ron Johnson;
  - (B) Finding that Plaintiff has already litigated the matter against Ron Johnson, which Plaintiff lost at a trial by a jury of Plaintiff's peers;
  - (C) Finding that Plaintiff's continued harassment by means of legal process against all parties involved in Plaintiff's previous failed lawsuit constitutes abuse of process; and

- (D) Ordering Plaintiff cease and desist communication, correspondence, as well as filing of any legal process against all Defendants, Defendants' attorneys, and/or any other individual having participated in Plaintiff's previous lawsuit against Ron Johnson;

**FOR A FIFTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

*Fraud*

- 40. Defendant alleges that Plaintiff intentionally misrepresented to Defendant and to this Court that Plaintiff was damaged by actions of Defendant. Plaintiff knew his misrepresentations were false and that they were material to Defendant's witness testimony at the trial of Plaintiff against Ron Johnson, which Plaintiff lost. After testifying at trial and providing witness testimony during litigation, Defendant discovered, to her damage, both actual and punitive, that Plaintiff's attempts to induce Defendant into supporting Plaintiff's previous frivolous claims against Ron Johnson caused Plaintiff to bring abusive legal process against Defendant. As a result, Defendant suffered damages, actual and punitive, for which Defendant seeks judgment against Plaintiff;

**FOR A SIXTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

*Intentional Infliction of Emotional Distress*

- 41. Plaintiff intentionally and recklessly inflicted severe emotional distress and was certain that such distress would result from Plaintiff's harassment during the course of his litigation against Ron Johnson and by Plaintiff's filing of frivolous and fraudulent legal process against Defendant;

42. Plaintiff's conduct is so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
43. Plaintiff's actions caused Defendant's emotional distress; and
44. Defendant's emotional distress suffered was severe to the extent that no reasonable person could be expected to endure it;

**FOR A SEVENTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**  
***Malicious Prosecution***

45. Plaintiff instituted an original civil judicial proceeding against Defendant by, and at the instance of Plaintiff;
46. Plaintiff's claims will be dismissed and terminated in favor of Defendant;
47. Plaintiff acted with malice in bringing frivolous proceedings using fraud and misrepresentation to the Court in order to harass Defendant;
48. Plaintiff lacks probable cause; and
49. Defendant suffered both economic and actual damages as to be determined by this Court;

**FOR AN EIGHTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM**  
***Defamation***

50. Plaintiff's institution of the pending Action has a defamatory meaning in that Plaintiff wrongfully alleges Defendant is a civil conspirator, which Defendant is not;
51. Plaintiff filed the pending action with actual and/or implied malice;
52. Plaintiff's claims are false;

53. Plaintiff published said claims against Defendant by filing the current action. Such Action is available to the public through the Court's online records portal;
54. Plaintiff's claims concern Defendant in that Plaintiff specifically wrongfully names Defendant for wrongful and malicious claims meant to harass;
55. Defendant was damaged by such claims such that Defendant is subject to public scrutiny, judgment, and/or outrage, which Plaintiff proximately caused in an effort to slander Defendant's name. Defendant also suffers damages related to defending such claims in this Court;

**FOR A NINETEENTH DEFENSE**

*Res Judicata*

56. Plaintiff received a judgment on the merits in favor of Ron Johnson and against Plaintiff, including actual damages and attorney's fees, in a prior action. The judgment bars Plaintiff because the issues in Plaintiff's previous judgment were actually litigated or could have been litigated, as Plaintiff's admissions from the previous litigation evidence;
57. Plaintiff admitted in previous litigation that Defendant, who was a substantial fact witness in the previous action, could have or should have been added as party to said litigation;
58. The subject matter was identical to Plaintiff's previous litigation, which Plaintiff received a judgment on the merits in favor of Ron Johnson;
59. The previous litigation received a final adjudication on the merits of Plaintiff's previous case;

60. As such, Plaintiff's claims against Defendant should be dismissed;

**FOR A TWENTIETH DEFENSE**  
***Issue Preclusion/Collateral Estoppel***

61. Plaintiff's Complaint is essentially an identical lawsuit to his suit against Ron Johnson, for which an adjudication on the merits of the case occurred. Plaintiff's Complaint specifically names Ron Johnson in almost every paragraph because Plaintiff's claims were already litigated and Plaintiff was unsuccessful in attempts to persuade a jury of his claims;

62. Plaintiff's claims were actually litigated in the previous litigation;

63. Plaintiff's claims were directly determined in the prior action;

64. Plaintiff's claims were necessary to support the prior judgment;

65. As such, Plaintiff's claims against Defendant should be dismissed;

**WHEREFORE**, having fully answered Plaintiff's Complaint, Defendant prays:

- (A) That all claims of Plaintiff be denied and dismissed;
- (B) For Judgment against Plaintiff for damages related to any and all Counterclaims advanced herein, as actual damages;
- (C) For Punitive Damages, for any and all acts or omissions of Plaintiff constituting fraud, fraudulent behavior, any form of fraud, and/or intentional acts, in an amount to be determined by this Court;
- (D) For Declaratory Judgment, Injunction and/or Order of this Court, as set forth hereinabove; and
- (E) For such other and further relief as this Court may deem just and proper.

NORSWORTHY LAW, LTD. CO.

/s/ Kenneth E. Norsworthy, Jr.

Kenneth E. Norsworthy, Jr. (SC Bar No. 101823)

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*Attorney for Defendant Kris Langville*

October 29, 2018

Greenville, SC

STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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George H. Brock, )  
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IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2018-CP-23-04123

**DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S CLAIM**

**TO THE ABOVE-CAPTIONED PLAINTIFF AND ITS COUNSEL:**

YOU WILL PLEASE TAKE NOTICE that Defendants Kris Langville, Preferred Paralegals, LLC, Donna Carlson, and Katherine Jernigan will move this Honorable Court on the tenth day hereafter, or as soon as Defendants may be heard, for an order dismissing this matter, pursuant to Rule 12, SCRPC. As Plaintiff's cause of action for civil conspiracy against Defendants is an attempt by Plaintiff to retry a case<sup>1</sup> that Plaintiff lost and for which Plaintiff was required to add such Defendants in the previous matter, Plaintiff is barred from bringing such claim via *issue preclusion* and *res judicata*. As such, Plaintiff's civil action should be dismissed. This motion may be supported by further authority through memorandum and/or oral argument.

<sup>1</sup> Plaintiff argued the same case through counterclaims against Plaintiff Ronald Johnson in 2016-CP-23-01836; Plaintiff lost such case on January 11, 2018, The Honorable Robin Stilwell presiding. The previous case is currently being appealed.

NORSWORTHY LAW, LTD. CO.

/s/ Kenneth E. Norsworthy, Jr.

Kenneth E. Norsworthy, Jr. (SC Bar No. 101823)

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January 22, 2019

Greenville, SC

STATE OF SOUTH CAROLINA )  
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COUNTY OF GREENVILLE )  
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George H. Brock, )  
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Plaintiff, )  
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Defendants. )  
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IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
  
CIVIL ACTION NO.: 2018-CP-23-04123

**MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

Plaintiff George H. Brock ("Brock") submits the following memorandum in opposition to Defendants' Motion to Dismiss.

**INTRODUCTION**

Brock filed the current action on August 3, 2018. In early 2016, Ronald Johnson, former contract employee of Brock CPA, filed a pro se complaint against Brock regarding an unpaid wages claim. *Johnson v. Brock* (2016-CP-23-01836). Kenneth E. Norsworthy, Jr., Esq., counsel for Defendants, represented Johnson at trial. Brock's prior counsel asserted four counter-claims against Johnson: interference with a business opportunity, fraud, violation of the Trade Secrets Act, and injunctive relief. After the parties presented their respective cases, and counsel having held a conference with the Court, it was decided that the only submission to the jury would be interference with a business opportunity, Brock thus waiving all other claims without prejudice. The jury found for Johnson, and Brock appealed.

Citing collateral estoppel and res judicata, defense counsel takes the position that Brock, having been sued by Johnson in 2016, cannot as plaintiff bring a separate claim against separate parties for civil conspiracy. Apparently, Defendants' counsel considers the case now

before the Court as “identical . . . to [that] . . . [involving] Johnson,” namely, the 2016 case. (Answer ¶ 61.)

Issues of civil conspiracy were never determined during the 2016 case. Brock’s sole submission to the jury was interference with a business opportunity. The facts or proofs required to sustain a civil conspiracy action are entirely different than those necessary to prove interference with a business opportunity. Therefore, Brock deserves an opportunity to litigate his civil conspiracy claim.

### QUESTION PRESENTED

Is Brock’s current claim for civil conspiracy against Defendants barred by collateral estoppel or res judicata on account of the 2016 case, *Johnson v. Brock*, which involved separate parties and where the single question submitted to the jury was interference with a business opportunity?

### ARGUMENT

Defendants filed a motion to dismiss “pursuant to Rule 12, SCRCP,” without alleging any specific subsections in support thereof. Brock respectfully contends that no part of Rule 12 supports Defendants’ motion under the facts of this case. Below, Brock addresses the grounds specifically alleged in Defendants’ motion—collateral estoppel and res judicata.

#### I. Collateral Estoppel

Defendants mistakenly argue that Brock’s present civil conspiracy claim is barred by issue preclusion, or collateral estoppel. Collateral estoppel prevents reconsideration of an *issue* that was “(1) actually litigated in [a] prior action; (2) directly determined in th[at] . . . action; and (3) necessary to support the prior judgment.” *Carolina Renewal, Inc. v. S.C. Dep’t. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). South Carolina courts “have applied [this doctrine] . . . only when the party against whom estoppel is asserted had a full and fair opportunity to . . . litigate the issue [previously].” *Id.* at 555, 684 S.E.2d at 782.

Brock brought four counterclaims against Johnson in 2016: interference with a business opportunity, fraud, violation of the Trade Secrets Act, and injunctive relief. Near the end of trial, after a conference with the Court and opposing counsel, it was decided that the only submission to the jury would be Brock's claim for interference with a business opportunity. Thus, the sole issue determined in the 2016 case was whether Johnson, seeking leverage for his unpaid wages claim, intentionally interfered with the prospective sale of Brock CPA to a third party by publishing confidential company information in his lawsuit.

Brock, however, did not plead civil conspiracy during the 2016 case, much less submit that issue for the jury's adjudication. His decision made perfect sense. Brock's prior counsel was unaware of the existence of a conspiracy until late in the previous trial, even if then. Requiring Brock to amend his pleadings and add additional parties (the Defendants) would have been unreasonable, especially given the fact that the conspiracy was not yet fully apparent. As recent as January 2019, Brock has discovered new evidence that further confirms his claims against Defendants. Accordingly, Brock will move to join Wayne Bullock as party defendant.

Moreover, Defendants' joinder was not required in the 2016 case. Rule 19, SCRCP; *see also* James F. Flanagan, *South Carolina Civil Procedure* 154 (2d ed. 1996) ("General considerations of efficiency or convenience . . . do not require joinder under Rule 19. . . . [T]he joint-tortfeasor remains merely a permissive party in an action.").

Defendants simply cannot show that the issue of civil conspiracy was actually litigated, directly determined, and necessary to support the judgment in the 2016 case. Since "[a] party asserting the defense of collateral estoppel has the burden of proving all of the elements," Brock respectfully requests a full and fair opportunity to litigate his separate claim for civil conspiracy. *Carolina Renewal*, 385 S.C. at 559, 684 S.E.2d at 784 (Konduros, J., dissenting).

## II. Res Judicata

Likewise, Defendants have failed to establish elements of res judicata: “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992). A court should not apply res judicata unless “it . . . appear[s] that the *precise question* involved in the subsequent action was determined in the former.” *Griggs v. Griggs*, 214 S.C. 177, 186, 51 S.E.2d 622, 626 (1949) (emphasis added). None of these requirements has been met by Defendants.

Brock’s present civil conspiracy action includes different parties. This fact itself should end the inquiry. While Johnson is mentioned in the complaint, these paragraphs refer to his participation with Defendants as co-conspirator to convert Brock CPA’s customers to customers of another competing tax-service business, for which Defendants, Johnson, and Wayne Bullock would serve. *See* Flanagan, *supra*, at 154-55 (“[A] joint tortfeasor is not required to be joined because the existing defendant[s are] . . . jointly and severally liable and accord[] the plaintiff complete relief.”). Therefore, Brock had no obligation to join Johnson in the current action. He “may elect to sue one, some, or all [of] the joint tortfeasors.” F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 625 (2d ed. 1997).

Second, Brock’s claim for civil conspiracy deals with a different subject matter. The 2016 case concerned a transaction between Brock and a potential purchaser of his public accounting practice. Johnson allegedly interfered with Brock’s business opportunity by publishing confidential company information about, and in advance of, the prospective sale. In addition to subject matter, Defendants must also demonstrate identity of the cause of action. *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209-10, 345 S.E.2d 740, 743 (Ct. App. 1986) (explaining that “a fundamental test . . . for comparing causes of action is to determine whether the primary right and duty and the delict or wrong are the same in each action”).

Civil conspiracy is a separate cause of action not previously before the Court. In the present case, Brock has pleaded additional, specific facts supporting his civil conspiracy claim, and “[i]f . . . two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions[,] a judgment in one is no bar to the maintenance of the other.” *Griggs*, 214 S.C. at 185, 51 S.E.2d at 626.<sup>1</sup>

Finally, adjudication of the issue of civil conspiracy never occurred in the 2016 case. After a conference with the Court and opposing counsel, it was decided that the only submission to the jury would be interference with a business opportunity. The jury determined that issue alone. Because Brock’s current civil conspiracy claim is a *different cause of action*, “the established rule is that the [past] judgment . . . operates as an estoppel only as to the [issues] . . . or question actually litigated and determined, and not as to matters not litigated in the former action, even though such matters might properly have been determined therein.” *Lowe v. Clayton*, 264 S.C. 75, 81-82, 212 S.E.2d 582, 585-86 (1975).

### CONCLUSION

Defendants cannot assert collateral estoppel and res judicata to enjoin this action on matters not considered, not litigated, and not determined in the 2016 case.

Respectfully submitted,

HUGHES LAW FIRM, L.L.C.

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February 5, 2019  
 Greenville, South Carolina

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<sup>1</sup> For the distinct elements of interference with a business opportunity (prospective contractual relations), see *Crandall Corp. v. Navistar Int’l Transp. Corp.*, 302 S.C. 265, 395 S.E.2d 179 (1990).

STATE OF SOUTH CAROLINA )  
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 COUNTY OF GREENVILLE )  
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 George H. Brock, )  
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 Plaintiff, )  
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 vs. )  
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 Kris Langville, Individually, and d/b/a )  
 Preferred Paralegals, LLC; Donna Carlson; )  
 Jeremy Marsh, Individually, and d/b/a )  
 The Techknow Dude, LLC; and )  
 Katherine Jernigan, )  
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 Defendants. )  
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IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2018-CP-23-04123

**DEFENDANTS’ MEMORANDUM IN  
 SUPPORT OF DEFENDANTS’ MOTIONS  
 AND IN OPPOSITION TO PLAINTIFF’S  
 MOTIONS**

Defendants Kris Langville, Preferred Paralegals, LLC, Donna Carlson, and Katherine Jernigan submit the following memorandum in support of Defendants’ Motion for Entry of Default and Motion to Dismiss and in opposition to Plaintiff’s Motions.

**I. DEFENDANTS’ MOTION FOR ENTRY OF DEFAULT**

**Standard of Review**

A court may set aside an entry of default “[f]or good cause shown” and to serve the interests of justice. Rule 55Ic), SCRCF.

**Procedural History**

Counsel for Plaintiff admits, concedes and acknowledges in Plaintiff’s Memorandum in Opposition to Defendants’ Motion for Entry of Default that counsel failed to timely file responsive pleadings to Defendants’ counterclaims. Counsel for Plaintiff begs the Court grant leniency as to the Rules of Civil Procedure because “[t]his case is Plaintiff’s counsel’s first

litigation from the filing of a summons and complaint.” Counsel for Plaintiff asks the mistake not to be imputed to Plaintiff. Were this the one and only mistake Counsel for Plaintiff has made throughout the course of this litigation, Defendants would consent to the late submission of Plaintiff’s responses to Defendants’ counterclaims. Unfortunately, however, Counsel for Plaintiff has taken misguided steps since the filing of the summons and complaint. A timeline of events follows:

1. Plaintiff George Brock became involved in litigation with Ron Johnson in late 2016 and early 2017. The previous case was tried in January of 2018. The case was brought by Ron Johnson for breach of contract by then-defendant, George Brock. George Brock made counterclaims against Ron Johnson, arguing that Johnson ruined the sale of Brock’s business when Johnson filed the summons and complaint for breach of contract along with exhibits in Greenville County Court of Common Pleas. George Brock alleged that the filing of the lawsuit ruined the sale of his business to Steven Stokes, a local CPA who wanted to purchase Brock’s CPA firm. Defendants Kris Langville, Donna Carlson, and Katherine Jernigan were employed by Brock and were listed as witnesses by Brock in the previous case. Defendants Langville and Carlson were deposed in the previous case and were witnesses at the trial in January, 2018. Brock’s claims were ultimately unsuccessful, and the jury awarded Johnson damages related to Brock’s breach of contract. Brock appealed, and the appeal is currently ongoing. Counsel for Plaintiff was present at trial, but did not represent Brock.
2. On August 3, 2018 Brock filed the current lawsuit, alleging that his former employees and witnesses in the previous litigation had acted in a civil conspiracy to ruin the sale of Brock’s business. The Complaint references Ron Johnson in almost every paragraph and line. Put simply, the Complaint alleges that Defendants acted as civil conspirators with Johnson, causing Brock special damages.
3. On September 20, 2018, Counsel for Plaintiff filed a Petition in Supplementary Proceedings under the previously tried action.<sup>1</sup> Counsel for Plaintiff improperly filed said Petition and the Court denied the Petition on September 25, 2018.
4. On October 29, 2018, Defendants represented by Counsel<sup>2</sup> filed their Answers and Counterclaims. Defendants’ Counterclaims include abuse of process,

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<sup>1</sup> Ronald Johnson v. George Brock, et. al., C.A. No.: 2016-CP-23-1836; tried before the Honorable Robin Stilwell on January 11-12, 2018; currently submitted for appeal by George Brock.

<sup>2</sup> To date, Counsel for Defendants is unaware that Defendant Jeremy Marsh, individually, and d/b/a The Techknow Dude, LLC has been served.

- injunctive relief, fraud, intentional infliction of emotional distress, malicious prosecution, and defamation. Defendants' defenses include res judicata and issue preclusion/collateral estoppel.
5. Thereafter, approaching the holidays, counsel for both parties discussed dates for depositions in early 2019, however no specific dates were set for depositions.
  6. In December of 2018, Counsel for Defendants became aware of Plaintiff's default as to Defendants' counterclaims. Counsel for Defendants discussed the matter with Defendants and with other attorneys and decided to wait until ninety (90) days had passed before moving for default. Counsel for Defendants scheduled the filing of the motion for default for late January, 2019.
  7. Only a few days before Plaintiff was ninety (90) days into default, Counsel for Plaintiff sent deposition notices for Defendants Donna Carlson and Kris Langville, both Defendants having already been deposed in the course of the previous litigation and both having been subpoenaed to court for trial. The deposition notices were sent by Plaintiff's Counsel without any correspondence regarding the dates. The date listed for the depositions was January 28, 2019.
  8. After receiving deposition notices while Plaintiff was in default, Counsel for Defendants contacted Plaintiff's Counsel and made it clear that Defendants would not be showing up for depositions, Plaintiff having failed to file responsive pleadings and Defendants' current Motion for Entry of Default and Motion to Dismiss pending with the Court. On January 22, 2019, Counsel for Plaintiff told Defense Counsel that Defendants' motion "has no effect upon Defendants' depositions duly noticed and scheduled ..." On that same day, Counsel for Defendants responded that no depositions would take place while Plaintiff was in default, that Defendants' success on the motions would render the depositions useless and unnecessarily costly, and that Plaintiff's Counsel failed to properly schedule the depositions with counsel per the Rules. On January 23, 2019, Counsel for Plaintiff responded that the depositions would "produce information relevant to your Motion to Dismiss. If you choose not to go forward with the depositions, I plan to ask the Court to postpone said motion until these depositions are conducted." That same afternoon, counsel for the parties spoke over the phone. Counsel for Plaintiff stated that he would be amenable to rescheduling the depositions, but that he needed permission from his client. Counsel for Defendants responded that client consent was absolutely unnecessary. Nevertheless, Counsel for Plaintiff said that he would speak to the client, and, upon being granted permission, he would agree to reschedule the depositions.
  9. Two days later, on Friday, January 25, 2018, Counsel for Plaintiff sent a letter stating "Because the testimony of Defendants is essential, and because we believe that the information sought should bear upon a determination of your recent motion ... the depositions will take place on Monday as planned. ... I even coordinated with you in early November 2018 regarding a suitable date. ... I then waited an additional month - of inaction by you - before mailing notice on January 14. If you refuse to attend the depositions, I will be forced to take

appropriate action(s) which may include recovery of court reporter costs and attorney's fees." This letter was sent via email on Friday afternoon at 3:19pm. The depositions were scheduled for the following Monday morning. Counsel for Defendants responded in great detail why the depositions would not go forward at 4:37pm on that same Friday.

10. Nevertheless, Counsel for Plaintiff went so far as to making court reporter show up for the depositions when he knew the parties would not be in attendance. On February 15, 2019, Counsel for Plaintiff sent a letter demanding Counsel for Defendants send a check for court reporter costs in the amount of \$223.85 along with "deposition costs" for Plaintiff's Counsel in the amount of \$500.00.
11. Since trying to shakedown Defense Counsel and Defendants, Counsel for Plaintiff now seeks this Court's mercy in not granting default in favor of Defendants.

### **Argument**

Defendants acknowledge that an affidavit of default is required by the Rules and submits the Affidavit of Default, attached hereto as Exhibit 1.

The Rule 60(b) factors to be considered by the Court are: promptness with which relief is sought; reasons for the failure to act promptly; existence of a meritorious defense; and prejudice to the other party.

#### **1. Promptness with which relief is sought**

Defendants filed their Answer and Counterclaims on October 29, 2018. Plaintiff failed to promptly file a response within thirty (30) days and did not file a response until Defendants filed the pending Motion, the Reply being filed on January 23, 2019, eighty-six (86) days later. Plaintiff's Reply admittedly contained only general denials of Defendants' counterclaims.

#### **2. Reasons for the failure to act promptly**

Plaintiff incorrectly summarizes the history of events to the Court in Plaintiff's Memorandum in Opposition when Plaintiff states "[i]n light of ongoing communications between counsel, e.g. the scheduling of Defendants' depositions, counsel for Plaintiff was led to

believe that all issues, factual and legal, had been joined as to the complaint and counterclaims. Both counsel for Plaintiff and Defendants were likely unaware of the default.” In reality, Counsel for Defendants was aware of the default and went so far as to discuss the issue on numerous occasions with Counsel’s clients and with other attorneys. As stated hereinabove, Counsel for Defendants scheduled the filing of the Motion for Entry of Default for ninety (90) days after the filing of the Answer and Counterclaims. Further, Plaintiff’s Counsel suggested dates for depositions in November, 2018, and thereafter Counsel for Plaintiff failed to litigate any of the issues presented in Plaintiff’s Complaint. Counsel for Plaintiff further failed to submit responses to Defendants’ Counterclaims and failed to initiate written discovery requests. Counsel for Plaintiff also failed to discuss dates for depositions after the holidays, instead embarking on a unilateral attempt to control Defendants’ schedules and require deposition attendance while Plaintiff was in default. That Counsel for Plaintiff would allege that Defense Counsel was unaware of the default is further evidence that Counsel for Plaintiff is admittedly lacking in the necessary experience to properly participate in discovery.

### **3. Existence of a meritorious defense**

Counsel for Plaintiff argues in his Memorandum in Opposition that Defendants’ Counterclaims lack merit and that they are “mere conclusory statements.” Defendants crave reference to Defendants’ counterclaims, which were properly pleaded. Defendants’ Counterclaims alleged that Plaintiff is using the legal system to harass, intimidate, and cause damage to Defendants, who testified at a previous trial for the same legal issues in a light unfavorable to Plaintiff. The Counterclaims were properly pleaded.

### **4. Prejudice to the other party**

Counsel for Plaintiff also argues in his Memorandum in Opposition that “Defendants’ long delay (almost two months) in seeking an entry of default ... will not prejudice Defendants.” To the contrary, Defendants are highly prejudiced in that they enlisted Counsel to defend Plaintiff’s claim and to file Counterclaims on their behalf, Counsel did so, and Plaintiff failed to properly follow the Rules of Civil Procedure. Further, Defendants relied on their attorney to litigate the case in the best and most non-prejudicial manner as is possible. After the period for responses to Counterclaims passed, Defendants further relied on their attorney to make arrangements to put Plaintiff in default and to have Plaintiff’s civil conspiracy claim dismissed. Counsel for Defendants has done just that, and if the Court determines that Plaintiff is not in default, Defendants are absolutely prejudiced.

## II. DEFENDANTS’ MOTION TO DISMISS

The doctrines of res judicata, collateral estoppel, and issue preclusion present this Court with an opportunity to preserve the judicial process and its economy. George Brock had every opportunity to join the parties in the present action as co-defendants in the previous litigation, when Brock admitted time and time again that he was aware of the alleged civil conspiracy by the current Defendants and Ron Johnson. In fact, the joinder was compulsory and Brock failed to join the parties. For the reasons set forth below, Defendants request the Court dismiss Brock’s civil conspiracy claim.

Plaintiff’s Memorandum in Opposition incorrectly summarizes the procedural history of the jury trial that occurred January 11-12, 2018 between George Brock and Ron Johnson. Plaintiff states in said Memorandum “it was decided that the only submission to the jury would

be interference with a business opportunity, Brock thus waiving all other claims without prejudice.” Put simply, this statement is misleading because Brock only released other claims against Ron Johnson when Brock knew he could not successfully submit those claims to the jury. But the Court need not focus on what claims made it to the jury in the previous case. The Court should view the issues of collateral estoppel and res judicata based on Plaintiff’s own testimony in the previous case, as discussed in detail hereinbelow.

George Brock had every opportunity to join Defendants in his previous lawsuit, which centered around his allegations that Ron Johnson, along with Defendants, ruined the sale of his CPA firm to Steven Stokes. In fact, Defendants’ joinder in the previous matter was compulsory and Plaintiff Brock failed to join those parties after threatening to join them on numerous occasions throughout the course of the previous litigation. It is important to note that the jury heard testimony as to to said business sale, including the fact that George Brock did end up selling his business to Stokes. Stokes further told the jury that the delayed sale of the business was not caused by Ron Johnson or the suit brought by Johnson. George Brock was deposed in the previous lawsuit on December 6, 2017. Deposition testimony relevant to the doctrines of issue preclusion, res judicata and collateral estoppel, where Brock admits that Defendants were involved in the allegations against Johnson, are as follows:

GB: You know, he got into my client list. He got into my employees’ heads. (P. 22, L. 17-18)

GB: ...and then I had Ron Johnson communicating with my current employees months after left, and they were — I mean, one of the ladies, Kris Langville, even typed the service for his pro se complaint against me. She had it typed during working hours...” (P. 32, L.1-5)

GB: *...and then there was a lot of conspiracy going on in the office*, and I was tracking — it just seemed like everybody was against me, you know, even my own people. So rather than trying to replace everybody, I just said, “Okay. I’m going to sell this thing, and I’m leaving...” (P. 43, L. 15-23) [emphasis added]

GB: Well, Kris Langville was obviously very close to Mr. Johnson, and she was also very close to Donna — *it was like a conspiracy* — and she was close to Jay, and evidently you and Donna’s attorney were very close, too, because you all had lunch and talked about me. ... but I have a keylogger on her — on Kris Langville’s computer while she was working, because I was suspecting a lot of stuff was getting out to Mr. Johnson, okay, and so I put a key logger on there and found that she was sending him advice, legal advice. She had typed up the service form that I got served on that pro se agreement, while she was working and being paid by me, okay, to type a complaint against me for him, and she actually sent it on that computer. She was actually sending things that she read over the Internet, and she was saying, “Oh, Mr. Johnson, you ought to consider this.” (P. 48-49, L.18-25, 1-10)[emphasis added]

GB: Well, I just know that it was *one big conspiracy* of everybody’s attorneys and *everybody that worked for me* — and *I think Mr. Johnson was the leader of the whole deal*, you know?” (P.49, L. 17-20)[emphasis added]

GB: “They’re losing their jobs, I’m the bad guy, and they’re all trying to figure out what they’re going to do, *and they all conspired to get whatever they could from me and to hurt me all they could.*” (P.52, L. 5-9)[emphasis added]

KN: And after getting close to them, you hold that he turned them all against you?

GB: He was the leader, but they were all part of it. I mean, they’re all adults.

KN: And when you say “everybody,” we’re talking about Donna Carlson. Correct?

GB: Correct.

KN: Kris Langville?

GB: Correct

KN: Catherine Jernigan?

GB: Yes. (P. 52-53, L. 19-25, 1-5)

GB: And my absence, and Mr. Johnson got to be one of the boys, so to speak, and they all — I know they weren’t working, because I could tell. There wasn’t enough work there at that time, at the end of ’15, to keep everybody busy, so Mr. Johnson stood in the hall where he could talk to everybody, *and they all just conspired, you know?* (P. 88-89, L.21-25, 1-2)[emphasis added]

George Brock also testified at trial:

GB: *But it was like a conspiracy in my office instigated by Mr. Johnson.* (P.218, L. 20-21) [emphasis added]

GB: But like I said, I had an IT guy and I'd leave my computer open, maybe go to lunch or whatever. They would all congregate into my office and see what's going on. *I'm sorry, it was like a conspiracy, you know. I mean, we thought about suing everybody. I mean, this is my complete staff was after me.* (P.222, L. 8-13)[emphasis added]

GB: *They all got into a little conspiracy there.* (P. 226, L. 10-11)[emphasis added]

In fact, George Brock went onto tell the jury at trial all about his belief that Defendants in the current case and Ron Johnson conspired together to ruin the sale of his practice. This is a clear situation where the parties should have been necessary as to joinder in the previous case, and Mr. Brock cannot piecemeal litigation together when he does not get the verdict he incorrectly believes he deserves.

### CONCLUSION

For the reasons set forth hereinabove, and for other such reasons as will be presented at the hearing on this matter, Defendants respectfully request the Court grant Defendants' Motion for Entry of Default and Motion to Dismiss Plaintiff's civil conspiracy claim.

NORSWORTHY LAW, LTD. CO.

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March 5, 2019  
Greenville, SC

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 COUNTY OF GREENVILLE )  
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IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2018-CP-23-04123

**DEFENDANTS' SUPPLEMENTAL  
 MEMORANDUM IN SUPPORT OF  
 DEFENDANTS' MOTION TO DISMISS**

19 SEP 9 PM 2:21  
 PAM WILKINSON-0100@DLSC

ENTERED COMPUTER

Defendants Kris Langville, Preferred Paralegals, LLC, Donna Carlson, and Katherine Jernigan submit the following supplemental memorandum in support of Defendants' Motion to Dismiss.

George Brock had every opportunity to join Defendants in his previous lawsuit, which centered around his allegations that Ron Johnson, along with Defendants, ruined the sale of his CPA firm to Steven Stokes. In fact, Defendants' joinder in the previous matter was compulsory and Plaintiff Brock failed to join those parties after threatening to join them on numerous occasions throughout the course of the previous litigation. It is important to note that the jury heard testimony as to to said business sale, including the fact that George Brock did end up selling his business to Stokes. Stokes further told the jury that the delayed sale of the business was not caused by Ron Johnson or the suit brought by Johnson. George Brock was deposed in the previous lawsuit on December 6, 2017. Deposition testimony relevant to the doctrines of

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issue preclusion, res judicata and collateral estoppel, where Brock admits that Defendants were involved in the allegations against Johnson, are as follows:

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After the first hearing on the matter, Defendant located additional evidence in support of the Motion. Specifically, Defendant located an email where Plaintiff George Brock's previous counsel requested consent to join the current Defendants in the previous litigation for civil conspiracy. The email is specifically on point to the pending matter. Attorney Robert C. Wilson states:

"Pursuant to Rule 11 SCRPC, please advise if you will consent to the amendment of Mr. Brock's pleadings, in the above-captioned case, to add two parties as Third-Party Defendants. It now appears that Ms. Langville and another may well have actionable involvement, as joint tort feorsors and/or co-conspirators, in activities which have given rise to Mr. Brock's claims for trade secrets violations, violation of employee fiduciary duty, and interference with business opportunity."

*See Exhibit 1 [emphasis added].*

This request by Plaintiff's former counsel specifically speaks to the heart to the issue of Rule 19's joinder requirement. Plaintiff George Brock's attorney not only contemplated joining the current Defendants, but took steps to do so during litigation and over a month before his trial. The fact that Brock's former counsel did not proceed in moving the Court to join the parties is not a valid excuse for the failure to do so, and George Brock should not have the opportunity to waste the parties' or the Courts' time and resources with an additional trial on the same underlying facts that Brock alleges occurred, but which are unsubstantiated, which were presented to the jury, and which were not persuasive as to his outcome and verdict.

#### CONCLUSION

For the reasons set forth hereinabove, and for other such reasons presented at the hearing on this matter, Defendants respectfully request the Court grant Defendants' Motion to Dismiss Plaintiff's civil conspiracy claim.

NORSWORTHY LAW, LTD. CO.

/s/ Kenneth E. Norsworthy, Jr.

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August 22, 2019  
Greenville, SC

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

GEORGE H. BROCK, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 KRIS LANGVILLE, ET AL., )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

2018-CP-23-04123

TRANSCRIPT OF RECORD

MARCH 7, 2019  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE ALEX KINLAW, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JACOB M. HUGHES, ESQ.

ATTORNEY FOR DEFENDANTS:

KENNETH A. NORSWORTHY, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1           **THE COURT:** All right. This matter is captioned George  
2 H. Brock versus Kris Langville, defendant, case number 2018-  
3 CP-23-4123. This is a -- we've got a couple of matters.  
4 We've got motion for default judgment and a couple of  
5 motions. We've got -- what lawyers we got here?

6           **MR. NORSWORTHY:** Ken Norsworthy for the defendants,  
7 Your Honor.

8           **THE COURT:** Mr. Norsworthy, Kenneth Norsworthy for the  
9 defendant. And Mr. -- is it Hughes?

10          **MR. HUGHES:** Yes, sir. Jacob Hughes for the plaintiff,  
11 George Brock.

12          **THE COURT:** All right. Okay. We've got several  
13 motions. Let's see. We've got defendant's motion to  
14 dismiss. Plaintiff's got two motions, defendant's got two  
15 motions, is that right?

16          **MR. HUGHES:** Yes, Your Honor.

17          **THE COURT:** All right.

18          **MR. NORSWORTHY:** Your Honor, we'd move for default.  
19 One of their motions is for relief of default. I think it's  
20 the same issue. So they're all kind of intertwined. So I  
21 don't know how you want to go about hearing about those.

22          **THE COURT:** I'll let y'all decide who goes first. You  
23 going to go first?

24          **MR. HUGHES:** Yes, sir, I'll go first, Judge.

25          **THE COURT:** Which motion we going on of yours?

1           **MR. HUGHES:** If the Court would oblige, we will start  
2 with opposition to the motion to dismiss.

3           **THE COURT:** Okay. Well, I tell you what -- defendant's  
4 motion to dismiss, that's your motion?

5           **MR. NORSWORTHY:** That's correct, Your Honor.

6           **THE COURT:** All right. Let me hear his motions, and  
7 then I'll let you ---

8           **MR. HUGHES:** Yes, sir.

9           **THE COURT:** --- chime in. And then we'll go down the  
10 road. Go ahead.

11           **MR. NORSWORTHY:** Your Honor, our motion to dismiss is  
12 based on a previous case that was heard by Judge Stilwell on  
13 January 11th and 12th of last year. Plaintiff, Mr. Brock,  
14 had a suit against my former client, Ron Johnson. It was  
15 related to a breach of contract that the jury found in our  
16 favor for.

17           Mr. Brock had counterclaims and essentially argued that  
18 Mr. Johnson, by filing the lawsuit along with a number of  
19 exhibits that were internal office documents and his  
20 correspondence with other CPA's in the community, interfered  
21 with his business opportunity to sell his business. He  
22 brought it in front of a jury. We were successful on it.

23           The jury didn't essentially buy what he was saying. He  
24 did, in fact, sell his business to the same gentleman who he  
25 was trying to sell it to, who was also a witness in that

1 case, who testified that Mr. Johnson did not ruin the sale  
2 of his business.

3 Well, the defendants that I represent in this case are  
4 Kris Langville, Donna Carlson, who's here with me today, and  
5 Katherine Jernigan. The other defendants was Jeremy Marsh  
6 and his LLC. To this day we don't know if they've been  
7 served.

8 This case was filed on -- August of last year. And  
9 they have one claim for civil conspiracy, Your Honor. And  
10 he essentially has just sued all the witnesses from the  
11 case. They all worked together in his office.

12 And during his deposition and his trial testimony he  
13 made a plethora of references to the whole office being  
14 involved in the conspiracy. Well, we were successful in  
15 that case. They appealed that case. That case is still on  
16 appeal.

17 And as I said, and as I listed out in our memorandum,  
18 starting on page 7, Your Honor, there are just -- I mean, he  
19 was very aware, Mr. Brock, that he thought a conspiracy was  
20 going on in his office. And this is from the previous  
21 litigation. So our position is that these were -- these  
22 were necessary parties under Rule 19, and pursuant to 12(b)7  
23 we'd like to have this dismissed.

24 Now, if you reference any of these transcript snippets  
25 we've included; And then there was a lot of conspiracy

1 going on in the office. It was like a conspiracy.  
2 Everybody that worked for me, and I think Mr. Johnson was  
3 the leader of the whole deal, one big conspiracy. And they  
4 all conspired to get whatever they could from me and to hurt  
5 me all they could. And they just conspired, you know.

6 Now, Your Honor, the ones we've included in this memo  
7 don't include Mr. Brock alleging that counsel along with  
8 Jeremy Sutherland, who was Ms. Carlson's former attorney in  
9 a wrongful termination suit, he alleged that I was part of  
10 the conspiracy. He alleged that Mr. Sutherland was. And on  
11 cross-examination he apologized to me in front of the jury.

12 Well, we think it would set an awful precedent for this  
13 Court to allow this litigation to be piecemealed out party-  
14 by-party, individual-by-individual. And we also think it's  
15 an abuse of process to turn around and sue the witnesses who  
16 didn't testify in his favor.

17 Ms. Carlson, who's here today, testified. And we  
18 introduced testimony in a recording of Mr. Brock firing Ms.  
19 Carlson and threatening to withhold her last paycheck to pay  
20 for deposition fees. There are things that have gone on  
21 that I don't even believe I'm able to bring up to the Court  
22 under some of the ethics rules that have gone on.

23 And so essentially we want -- we would request the  
24 Court to dismiss their one and only claim for civil  
25 conspiracy as their summons and complaint is chock full of

1 references to the former plaintiff, Ron Johnson. It's  
2 almost every line of their complaint.

3 Paragraph 9; Leading up to pivotal talks for the sale  
4 of his business, which was litigated, the sale of his  
5 business was absolutely litigated. The person who purchased  
6 his business was a witness to it, and he got a fair jury  
7 trial. He's appealing it right now.

8 And, you know, Ron Johnson, paragraph 9 -- paragraph  
9 10; Johnson initiated a clandestine campaign against Brock.  
10 Okay? Paragraph 11; Johnson took advantage of this tragic  
11 situation. Paragraph 12; In furtherance of his illegal  
12 purposes, Johnson sought cooperation from current and former  
13 employees.

14 Well, Your Honor, a jury heard this. Heard every word  
15 of it. And they didn't buy it. And they ruled in our  
16 favor. So now I'm representing former witnesses who all  
17 have very low hourly pay jobs. And this is just essentially  
18 a shake-down because Mr. Brock's unhappy with the decision  
19 from the previous trial and which is still on appeal.

20 We had a final adjudication of the matters. Judge  
21 Stilwell heard it. He offered -- he ordered attorney fees  
22 under the Wage Payment Act related to the breach of contract  
23 claim we won at the trial. And the Appellate Court's  
24 holding that right now.

25 So for him to turn around and just sue the witnesses

1 and allege throughout the entire complaint, almost every  
2 paragraph, I mean, I could go on ad nauseam through this  
3 complaint. But the complaint essentially says this guy who  
4 already sued and the witnesses for that trial all worked  
5 together in a civil conspiracy to ruin the sale of my  
6 business. That has already been tried, Your Honor.

7 I would beg the Court, look through the cause of action  
8 for civil conspiracy and compare it to previous  
9 counterclaims he brought against Mr. Johnson that he lost at  
10 a jury trial. If Your Honor just references the transcript  
11 snippets I've put in the -- in our memorandum, ---

12 **THE COURT:** Um-hum (affirmative).

13 **MR. NORSWORTHY:** --- I mean, all of these defendants  
14 I'm representing, every one except the ones that haven't  
15 been served, 120 days has passed, it's alleged they all  
16 worked together, all of these people listed throughout his  
17 deposition and trial transcript. And that's why previously  
18 we had asked that Judge Stilwell hear this because he was  
19 aware of the facts of the previous case.

20 But, Your Honor, we think that this is a shake-down.  
21 We think that the cause of action should be dismissed. And  
22 this kind of rolls into -- we also -- and I guess I'll let  
23 him respond to that before we get into the default, Your  
24 Honor. Thank you.

25 **THE COURT:** Yes, sir.

1           **MR. HUGHES:** Thank you, Your Honor. Plaintiff alleges  
2 that our current claim and, in fact, it is a totally  
3 separate claim than the 2016 case. In that case in which  
4 Mr. Norsworthy represented plaintiff Ron Johnson, brought  
5 four counterclaims against Johnson, that is, interference  
6 with a business opportunity, fraud, violation of the Trade  
7 Secrets Act and injunctive relief.

8           And after the parties had presented their respective  
9 cases and having held a conference with the court and  
10 opposing counsel, Brock agreed to only submit one question  
11 to the jury, and that was interference with a business  
12 opportunity. Brock did lose that trial and now the case is  
13 on appeal.

14           Defense counsel cites collateral estoppel and *res*  
15 *judicata* and takes the position that Brock having been sued  
16 by Johnson in 2016 cannot as plaintiff bring a separate  
17 claim against separate parties for civil conspiracy. As  
18 he's just stated, he considers the case now before the Court  
19 as "identical to that involving Johnson" namely the 2016  
20 case.

21           We argue that issues of civil conspiracy were never  
22 determined in the 2016 case. And from what I can tell,  
23 reading the record, that is without a doubt the fact.  
24 Brock's sole submission to the jury was interference with a  
25 business opportunity.

1           Now, the facts or proof required to sustain a civil  
2 conspiracy claim are entirely different than those necessary  
3 to prove interference with a business opportunity. So  
4 plaintiff takes the position that he deserves a full and  
5 fair opportunity to litigate his civil conspiracy claim.

6           Now defense counsel in his motion to dismiss cited two  
7 grounds under Rule 12 of the South Carolina Rules of Civil  
8 Procedure. I'm not sure those fall under that Rule or not.  
9 He didn't cite a subsection, but he cited *res judicata* and  
10 collateral estoppel.

11           Collateral estoppel, as you know, Your Honor, requires  
12 that the party prove three factors, that the issue, one, was  
13 actually litigated in the prior action, two, directly  
14 determined in the prior action, and, three, necessary to  
15 support the prior judgment. And as Justice Konduros has  
16 stated, a party asserting that defense, collateral estoppel,  
17 has the burden of proving all of the elements including  
18 whether the issue was actually litigated.

19           Now, as Mr. Norsworthy just stated and has quoted,  
20 there were snippets of deposition testimony in which my  
21 client apparently referred to a conspiracy. And I don't  
22 dispute that. My client became aware of the possible  
23 existence of a conspiracy after taking the depositions of  
24 Ms. Carlson or Ms. Langville.

25           **THE COURT:** But it was prior to trial?

1           **MR. HUGHES:** Yes, sir.

2           **THE COURT:** So there -- because I'm reading your  
3 memorandum. I think you put in there that you weren't aware  
4 of anything regarding a conspiracy until either late in the  
5 trial or even at -- if then. But now you're saying that you  
6 were aware of a potential conspiracy before the trial in  
7 2016. I'm just trying to get some clarity. That's what you  
8 just said.

9           **MR. HUGHES:** Yes, sir, Your Honor. Well, I was not the  
10 prior counsel. I'm sure you know that. But if he became  
11 aware, it was at the taking of depositions. But it -- I  
12 don't mean to proclaim to the Court that he knew without a  
13 doubt that there was a conspiracy.

14           **THE COURT:** Why didn't he file a motion to amend at  
15 that time?

16           **MR. HUGHES:** Because he wasn't sure. I think the fact  
17 that he said there was a conspiracy is not -- is not equal  
18 to being able to allege a conspiracy. He felt that due to  
19 some interactions between prior employees he had and the  
20 plaintiff in that suit there might have been conspiracy, but  
21 plaintiff's counsel at that time chose not to amend. And I  
22 don't know his thought process, but I don't think he was  
23 completely sure there was a conspiracy.

24           **THE COURT:** Well, you can't speak for him because you  
25 don't know.

1           **MR. HUGHES:** Right. But I would argue that it was  
2 unreasonable to require them to have to amend his pleadings  
3 to add additional parties, to add additional causes of  
4 action because ---

5           **THE COURT:** Well, I mean, I didn't mean to cut you off,  
6 counselor, but in this memoranda you said that the -- any  
7 conspiracy was not -- that you didn't find out about it  
8 until January of 2019. That's in your -- that's in your  
9 memoranda.

10          **MR. HUGHES:** No ---

11          **THE COURT:** I'll go back and -- let me just read it.

12          **MR. HUGHES:** Respectfully, Your Honor, we have found  
13 out further information as of January '19 which tends to  
14 further confirm our conspiracy claim.

15          **THE COURT:** You said as of -- as recent as January 2019  
16 Brock has discovered new evidence to confirm his claim  
17 against -- I guess my -- let me go back to requiring Brock  
18 to amend his pleading and add additional parties would have  
19 been unreasonable given the fact that the conspiracy was not  
20 yet fully apparent.

21           But you said that the prior attorney knew about  
22 potential conspiracy prior to the trial in 2016 and really  
23 prior subsequent to a deposition. And I'm just trying to  
24 travel the street as to why a motion to amend wasn't filed  
25 -- let me hear from him on that point.

1           **MR. NORSWORTHY:** Your Honor, Bob Wilson and I had  
2 multiple conversations about them being added. I think I  
3 have it in emails. And I'm happy to supplement the Court's  
4 record with those. But we had multiple conversations about  
5 Kris, Donna and Katherine being added in.

6           And they're specifically listed in the depositions. He  
7 talks directly about how it was a conspiracy amongst all of  
8 them in the office.

9           **THE COURT:** Whose deposition is that?

10          **MR. NORSWORTHY:** This is Mr. Brock's. This was taken  
11 in December of 2017. He says, so we're going to try to do a  
12 second agreement. Then, you know, when things start  
13 happening again, we couldn't get this lawsuit settled.

14          And then there was a lot of conspiracy going on in the  
15 office, and I was tracking. It just seemed like everybody  
16 was against me, you know, even my own people. So rather  
17 than trying to replace everybody, I just said, okay, I'm  
18 going to sell this thing, and I'm leaving.

19          **THE COURT:** And that was Mr. Brock's deposition that  
20 was taken how long before the actual trial?

21          **MR. NORSWORTHY:** Months before, Your Honor.

22          **THE COURT:** Months before the trial?

23          **MR. NORSWORTHY:** Yes. At least 60 days before.

24          **THE COURT:** So the theory of conspiracy was floating  
25 around at that time?

1           **MR. NORSWORTHY:** Absolutely. We had multiple  
2 conversations about it with Mr. Wilson.

3           **MR. HUGHES:** Your Honor, that may be the case that it  
4 was floating around. But our position is that Brock's prior  
5 counsel was not required to add additional parties, to add  
6 an additional cause of action per the Rules. That was in  
7 the midst of trial, towards the late stage of trial or the  
8 late stage of discovery. So requiring him to add those  
9 parties at that point, we argue would be unreasonable.

10           We also argue that per Rule 19 their joinder was not  
11 compulsory or required. It states under the Rules that  
12 general considerations of efficiency or convenience do not  
13 require a joinder under Rule 19.

14           **THE COURT:** Hold on one ---

15           **MR. HUGHES:** --- tortfeasor remains merely a permissive  
16 party in an action ---

17           **THE COURT:** This is a real important motion. So I'm  
18 going to handle it a little different. Typically I let one  
19 side speak and the other side wait until -- but I want to  
20 hear some dialogue back and forth. So what do you want to  
21 tell me on that point?

22           **MR. NORSWORTHY:** Your Honor, as to new evidence, ---

23           **THE COURT:** Uh-huh (affirmative).

24           **MR. NORSWORTHY:** --- that would just be additional  
25 evidence that he was already aware, according to him,

1 according to his own words, that there was a, quote,  
2 conspiracy going on well before trial:

3 Now we have -- I'm happy to supply the Court with  
4 correspondence to that effect, but I just found out when  
5 they submitted this memo on February 5th they're now talking  
6 about adding in defendant Wayne Bullock as a party due to  
7 new evidence. Your Honor, Wayne Bullock was a former client  
8 of mine. And they're going to allege that he provided  
9 additional legal advice as a non-attorney to Mr. Johnson.

10 Your Honor, Mr. Bullock did provide him advice. He  
11 sent Mr. Johnson to me. That's how Mr. Johnson came to be  
12 represented by me. I mean, they're -- this piecemeal, I  
13 mean, this could go on forever.

14 They filed this in August. Now it's March, and they're  
15 going to add another party now and say, oh, well, you know,  
16 anybody who talked about this litigation they're ready to  
17 sue for civil conspiracy? I mean ...

18 **THE COURT:** Well, apparently -- let me just ask you  
19 this, counsel. Apparently there was -- Brock brought four  
20 counterclaims. I'm reading this to you. So apparently the  
21 trial had commenced and these counterclaims were presented.  
22 I'm assuming it was argued during the trial.

23 Then it says near the end of the trial after a  
24 conference with the court and opposing counsel, it was  
25 decided that the only submission to the jury would be the

1 claim of interference with a business opportunity. So  
2 apparently there was some dialogue ---

3 **MR. NORSWORTHY:** That's a mischaracterization, Your  
4 Honor.

5 **THE COURT:** Well, so, okay, tell me what happened.

6 **MR. NORSWORTHY:** We went in chambers after the jury was  
7 let out before closing arguments. And Judge Stilwell said,  
8 I don't think these claims of yours are going to survive,  
9 and I don't think these claims of yours are going to  
10 survive. I haven't heard enough evidence to let those go  
11 forward on charges. And they volunteered to drop them. And  
12 we volunteered to drop everything but our breach of contract  
13 claim. I mean, it was -- it was all tried.

14 And I'm not even aware that it was -- that Mr. Wilson  
15 said it was without prejudice. But it was tried and now  
16 they just want to start over against different defendants --  
17 against the witnesses that testified honestly and that the  
18 jury believed.

19 **THE COURT:** All right. Yes, sir.

20 **MR. HUGHES:** Your Honor, I would say to that that  
21 there's no evidence of what transpired in that conversation.  
22 There was a conversation with the court and opposing  
23 counsel. The ultimate decision after that was that all of  
24 Brock's claims would be dropped save one, which was  
25 interference with a business opportunity. That was the only

1 claim that went to the jury for adjudication. That was the  
2 only claim upon which they delivered a verdict. So per the  
3 elements of collateral estoppel defense counsel has failed  
4 to show the civil conspiracy was actually litigated,  
5 directly determined or necessary to support the prior  
6 judgment.

7 Now, there may have been a bantering about of this word  
8 conspiracy by my client at that time. I don't know what his  
9 counsel had in mind, but I do know that if he was aware of a  
10 conspiracy, it was only at some point late in the trial.  
11 And we would argue that he had no obligation to totally add  
12 different parties, to amend his pleadings with a different  
13 cause of action. That would be totally different than  
14 interference with a business opportunity.

15 **THE COURT:** Let me ask you this. If your client was  
16 successful at the trial level would he have filed this  
17 action?

18 **MR. HUGHES:** I believe he would. Yes, sir. This is a  
19 totally separate action.

20 **THE COURT:** Okay. So if he was successful in 2016,  
21 you're standing there telling me that he would still go  
22 ahead and file this current action?

23 **MR. HUGHES:** I believe so. It has nothing to do with  
24 the fact that he was unsuccessful because those defendants  
25 were not involved in the prior action. And our position is

1 he had no obligation to bring them in.

2 And I think the defense counsel should have raised that  
3 at the prior trial if their absence was going to ---

4 **THE COURT:** I thought they were witnesses in the prior  
5 trial.

6 **MR. NORSWORTHY:** They were deposed, Your Honor.

7 **THE COURT:** Weren't they -- didn't you take depositions  
8 of them?

9 **MR. HUGHES:** Yes, sir.

10 **THE COURT:** Well, and the issue of conspiracy never  
11 came up during any of those depositions with any of these  
12 witnesses?

13 **MR. NORSWORTHY:** With Mr. Brock himself.

14 **MR. HUGHES:** I would -- I would say it came -- it was  
15 mentioned by my client. I don't know the extent to which  
16 his counsel knew about it. He made a -- he made a strategic  
17 decision based on his expertise not to amend his pleadings.

18 And we believe that because that issue of civil  
19 conspiracy was not determined, it was not necessary to  
20 support the prior judgment, Mr. Brock can now bring a  
21 separate claim against separate parties. And that goes to  
22 the *res judicata* defense, which requires identity of the  
23 parties, identity of the subject matter and adjudication of  
24 the issue ---

25 **THE COURT:** But, counsel, you understand why the

1 Court's concerned about traveling this road. Let me tell  
2 you why. It's because if you have a case and one party is  
3 unsuccessful, then that party looks back and says, okay, let  
4 me -- the thrust of the dispute hasn't changed. I mean, the  
5 parameters may be a little different, but the thrust of the  
6 dispute hasn't changed.

7 So then that party says, well, let me just go and see  
8 if I could just sue these other parties. I'm not successful  
9 there. Then let me just get another cause of action and sue  
10 these parties over here.

11 And if that's how it works, this could go on, and on,  
12 and on, and on. And that would just bog down the courts  
13 forever and ever if we -- so, you know, as counsel, and I  
14 know you weren't the counsel of record at the time, but at  
15 least I -- when I used to do this, when I sat down and I  
16 looked at the entire picture, and it's almost like in these  
17 wreck cases that you have and lawyers file these pleadings.

18 They might not be able to prove every single cause of  
19 action, but if they think they can or they think they may  
20 come up with some basis of it, they all stick it in the  
21 complaint, you know, cause for a first cause of action, for  
22 a second, for a third or a fourth. And then you sort of  
23 throw it all out there. You don't put two, you're not  
24 successful with those and then you come back again and sue  
25 somebody else for another cause of action you could have

1 brought the first time.

2 So the whole thing about notice of pleadings is you put  
3 everything in there, you know, I think if you talked to a  
4 hundred lawyers, they'll tell you that they're going in --  
5 probably the two of you because y'all have been around in  
6 it, you put that stuff in there, you know going in you hope  
7 you might be able to be successful on some of them, but you  
8 can't -- so when I did it I kind of looked at everything and  
9 said, okay, I'm going to -- and I'm just using you for an  
10 example, my client talks about a conspiracy, I don't know  
11 about it, but I'm going to just put it in there because I  
12 want everything before the court at that time. So I'm going  
13 to stick it in there.

14 And I got -- I'm not real excited about that, but I'm  
15 going to stick it in there because maybe between the time of  
16 the filing of the pleadings and the time the matter is  
17 adjudicated something may arise. That's how you do it.

18 And, you know, so, you know, and I hear what you're  
19 telling me. And I understand the Rule about *res judicata*.  
20 I understand all that. But my concern is -- and that's why  
21 I asked you the question a minute ago, if your client was  
22 successful in 2016 would he, in fact, file this action? And  
23 you said, yes, he probably would. I'll take you at your  
24 word on that. I tend to doubt that, but I'll take you at  
25 your word.

1           But that's the concern because if we -- if courts allow  
2 what you're asking, we'd just litigate case, after case,  
3 after case where the parameters -- the dispute is there,  
4 parameters might be a little different, but the initial  
5 dispute is there.

6           So, you know, it's almost -- and I know this is  
7 probably not the case in this instance, but it's almost like  
8 both sides are just mad at each other. And it's -- somebody  
9 has to win and somebody has to lose. You won this time,  
10 I'll win next time. You won this time, I'll win next -- I  
11 hope that's not what we're doing here. But you understand  
12 what I'm saying?

13           **MR. NORSWORTHY:** Absolutely, Your Honor. I've put 22  
14 claims in a complaint before.

15           **THE COURT:** I mean, that's just -- that's just not  
16 judicially expedient to do stuff -- I'm not saying you're  
17 doing that, but I'm just, you know -- go ahead.

18           I just wanted to go down that street for a minute to --  
19 because I think this motion is, you know, is an important  
20 motion. And, you know, courts are reluctant to dismiss  
21 actions. You know, as you both well know, I mean,  
22 everybody's entitled to their day in court. And the court's  
23 reluctant to do that.

24           But on the other hand, the court -- and I'm pretty sure  
25 that Judge Stilwell is, you know, thoroughly siphoned all of

1 these matters when it was before him, at least the  
2 counterclaim. I'm sure there was an intelligent dialogue  
3 between himself as well as counsel on both sides prior to  
4 submitting any requests to charges to the jury. I'm pretty  
5 sure that took place. But, anyway, I'll hear the rest of  
6 your argument.

7 **MR. HUGHES:** Thank you, Your Honor. I appreciate your  
8 suggestions and guidance on this tricky issue.

9 I would say that when a personal injury attorney files  
10 a lawsuit, they are the instigator. So they probably should  
11 be very cautious and thorough in their causes of action. In  
12 this prior lawsuit my client was sued by Johnson. He  
13 responded with counterclaims. At some point in that trial  
14 counsel for my client may have been aware of the possible  
15 existence of a conspiracy.

16 **THE COURT:** Um-hum (affirmative).

17 **MR. HUGHES:** Our position is that he was not required  
18 to add another cause of action. I will say that also I tend  
19 to only allege causes of action that I can prove. And I am  
20 confident that the civil conspiracy cause of action is  
21 sound.

22 Now the interference with a business opportunity cause  
23 of action, that's a whole different set of facts than the  
24 civil conspiracy. And we allege in our complaint that the  
25 defendants worked in conjunction, yes, with Johnson. But

1 they also worked in conjunction with each other.

2 We would like to add, if the Court does not grant this  
3 motion to dismiss, we would like to add an additional party  
4 about whom we found out in January of this month [sic] was a  
5 possible conspirator. The conspiracy ---

6 **THE COURT:** Who would that be?

7 **MR. HUGHES:** Wayne Bullock. We've named him in our  
8 memorandum. That was the evidence we discovered in January.

9 Now, the conspiracy is not the same issue as the  
10 interference because that interference -- Johnson had sued  
11 my client and published a lot of allegedly confidential  
12 information in his lawsuit. So the interference was my  
13 client saying by doing so, you, Johnson, interfered with my  
14 contract with a third party.

15 Our conspiracy claim says that the defendants worked  
16 together to hijack and to take my client's clients and bring  
17 them over to another business. We didn't mention this  
18 specifically in our complaint, but Bullock is key. We think  
19 that these clients would serve Bullock -- serve Johnson in a  
20 competing tax service business. So although the  
21 circumstances are somewhat similar, the conspiracy does  
22 attack my client's business, but for a different purpose.

23 **THE COURT:** But your client's indicated in his  
24 deposition he thought there were conspiracies all over the  
25 place. And that was prior to the trial of the 2016 case.

1           **MR. HUGHES:** He ---

2           **THE COURT:** He may not have said Wayne Bullock, but I  
3 think he said it was conspiracies all over the place.

4           **MR. HUGHES:** That's correct. And I would say, Judge,  
5 no offense to my client, he was not the attorney, so he can  
6 say conspiracy. But that doesn't mean there was enough  
7 evidence at that time to allege conspiracy.

8           **THE COURT:** So you're saying he said conspiracy, but he  
9 didn't know what it meant? Talk to me, counsel. Is that  
10 what you said?

11          **MR. HUGHES:** I'm not saying that, Your Honor. But ---

12          **THE COURT:** What are you saying?

13          **MR. HUGHES:** --- I would say a statement from a witness  
14 in a deposition is different than what the counsel assessed  
15 at that point in time.

16          **MR. NORSWORTHY:** Your Honor, Wayne Bullock came up in  
17 the previous litigation. If I could just read one more ---

18          **THE COURT:** Go ahead.

19          **MR. NORSWORTHY:** This is where I'm part of the  
20 conspiracy, Your Honor. Well, Kris Langville, that's one of  
21 the new defendants, was obviously very close to Mr. Johnson.  
22 And she was also very close to Donna. It was like a  
23 conspiracy. And she was close to Jay. That's the defendant  
24 that hasn't been served in six months.

25           And evidently you and Donna's attorney were very close,

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1 too, because you all had lunch and talked about me. That  
2 wasn't on this email, it was on another email. But I had a  
3 key logger on Kris Langville's computer while she was  
4 working because I suspect a lot of stuff was going --  
5 getting out to Mr. Johnson. So I put a key logger on there  
6 and found out that she was sending him advice, legal advice.

7 She had typed up the service form that I got served on  
8 the *pro se* agreement while she was working and being paid by  
9 me to type a complaint against me for him. And she actually  
10 sent it on that computer.

11 Well, I just know that it was one big conspiracy of  
12 everybody's attorney and everybody that worked for me. And  
13 I think Mr. Johnson was the leader of the whole deal.  
14 That's on page 49 -- 48 and 49 of Mr. Brock's testimony from  
15 December 2017, Your Honor.

16 And, Your Honor, as I said, Mr. Brock literally  
17 apologized to me in front of the jury for alleging that I  
18 was part of this conspiracy. Conspiracy was thrown around  
19 the entire litigation. Mr. Wilson and I discussed adding  
20 these parties -- these witnesses, multiple occasions.

21 What happened was when they got deposed, Mr. Wilson  
22 made the legal discretion and said, oh, they're not going to  
23 be bad witnesses against us. So they weren't going to sue  
24 them. They had every opportunity, Your Honor.

25 The actual facts of what happened were what he's

1 alleging is Mr. Johnson along with these people while he was  
2 dealing with personal issues were conspiring against him,  
3 collecting documents, sending out correspondence, taking  
4 clients back. And that's the exact same case we're dealing  
5 with today, Your Honor, it just has a different name on it,  
6 civil conspiracy, interfering with the business  
7 relationship.

8 By the way, Mr. Hughes just warranted to the Court that  
9 there was an interference with a contract. Mr. Stokes  
10 testified already in a jury trial that there was no  
11 contract, that they -- when he did sell the business, it  
12 happened for other reasons. It's already been litigated,  
13 this whole thing. Thank you.

14 **THE COURT:** All right. Okay. Let me -- what's the  
15 next motion? Are you finished? I don't mean to cut you  
16 off.

17 **MR. HUGHES:** All I would say was issues of civil  
18 conspiracy were never litigated, determined or necessary to  
19 support the prior judgment.

20 **THE COURT:** All right. What other motions we got?

21 **MR. NORSWORTHY:** Your Honor, for the entry of default  
22 motion we were -- we filed our answer and counterclaims in  
23 October last year. And after the 30 days ran I spoke with  
24 probably a dozen attorneys. This is my fifth year, Your  
25 Honor, so I still call up and beg anybody to talk to me that

1 has the time. And they all told me the same thing, give  
2 them some more time, but if they go 90 days, just file it.

3 Your Honor, I literally calendared 90 days at the end  
4 of January to file the motion. Several days before that Mr.  
5 Hughes preempted, and having not filed a reply to our  
6 counterclaims, noticed depositions for the two -- for two of  
7 my clients, Ms. Carlson, who is here, and Ms. Langville, who  
8 had already been deposed in the last case. He noticed it  
9 without talking to me about it.

10 We had last spoken about depositions back in November.  
11 And I said, whoa, whoa, we're not getting into discovery if  
12 you're in default. So anyway, Your Honor, plaintiff's  
13 memorandum in opposition he concedes that it was an error.  
14 He says this is plaintiff counsel's first litigation from  
15 the filing of the summons and complaint and he begs the  
16 Court not impute that mistake onto his client.

17 Your Honor, we're trying to -- I'm trying to help these  
18 ladies that were kind enough to show up for depositions and  
19 trial in the previous case. None of them are in financial  
20 capacity to take off their hourly jobs.

21 And I'd spoke with Mr. Hughes about that. And we're  
22 kind of getting into the other motion, but, Your Honor, he  
23 concedes it was late. It was only -- he says he filed  
24 basically -- what's he called them? Formed responses in his  
25 reply brief or in his reply to our counterclaims, Your

1 Honor. And they were filed after we filed the motion. I  
2 mean, I think it's 84 days ---

3 **THE COURT:** 84 days.

4 **MR. NORSWORTHY:** --- is how long it took.

5 Like I said, Your Honor, I'm just trying to help these  
6 people out and get this off of their backs. I mean, we  
7 think it's abuse of process to turn around and sue witnesses  
8 that didn't help you at a trial. And, you know, we can get  
9 into the plaintiff's motion to compel discovery after this,  
10 ---

11 **THE COURT:** Yeah.

12 **MR. NORSWORTHY:** --- but this is all related to he  
13 wants to do depos before we even get through initial  
14 pleadings and while he's in default. Thank you, Your Honor.

15 **THE COURT:** Tell me about it, Mr. Hughes. You know  
16 what the Rule says. I'm listening. Go ahead.

17 **MR. HUGHES:** Yes, sir. Rule 55(a) states that when a  
18 party against whom a judgment for affirmative relief is  
19 sought has failed to plead or otherwise defend as provided  
20 by these rules and that fact is made to appear by affidavit  
21 or otherwise, the clerk shall enter, et cetera, his default  
22 upon the rule book -- upon the file book.

23 What defense counsel did in January, January 22nd was  
24 file a motion for entry of default judgment. Our beginning  
25 allegation is that there is no affidavit of default in the

1 record of this case. There was not until Tuesday when he  
2 filed an exhibit with that affidavit attached. There is no  
3 entry of default, respectfully, Your Honor.

4 Furthermore, plaintiff's counsel filed his reply on  
5 January the 23rd. Now I do concede that I was late in  
6 filing my reply to defense counsel's counterclaims. I ask  
7 the Court not to impute that mistake to my client. I will  
8 say, though, respectfully, that defense counsel did not  
9 follow the proper procedure per Rule 55(a). It requires  
10 that fact, that is, of default be made to appear by  
11 affidavit or otherwise. He filed a motion for entry of  
12 default judgment.

13 **THE COURT:** So your argument is he didn't file an  
14 affidavit of default ---

15 **MR. HUGHES:** Yes, sir.

16 **THE COURT:** --- per the Rule?

17 **MR. HUGHES:** Correct.

18 **THE COURT:** And that should excuse you?

19 **MR. HUGHES:** That's not -- I wouldn't say that should  
20 excuse me. I went ahead and -- he makes the statement in  
21 his memorandum that he spoke allegedly with other counsel  
22 and concluded to wait 90 days. That is simply a sham  
23 argument in our opinion to somehow give credence to his  
24 delay.

25 The fact is he did not even follow his own strategy.

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1 He filed his motion for entry of default judgment, I think,  
2 85 days after the default. So he didn't wait 90 days. So  
3 that itself seems to go against his argument that he should  
4 wait 90 days as a matter of prudence.

5 Now, we have filed a motion for relief. On January  
6 22nd defense counsel filed this motion. The next day I  
7 filed my reply. The day after that on the 24th I filed a  
8 motion for relief. And I will be happy to get into those  
9 factors under Rule 60(b), the good cause factors, which we  
10 believe should help the Court make a determination as to  
11 whether default should or should not be entered.

12 Now that I just said goes upon the assumption that an  
13 entry of default has been entered. There has been no entry  
14 of default in this case. So with the Court's sanction, I  
15 will go ahead and outline those factors, but our initial  
16 position is defense counsel did not follow the proper  
17 procedure under Rule 55(a).

18 **THE COURT:** And you didn't either.

19 **MR. HUGHES:** Under the responses, ---

20 **THE COURT:** And you didn't either.

21 **MR. HUGHES:** --- correct. Correct.

22 **THE COURT:** Or allegedly you didn't. You admit that  
23 you didn't.

24 **MR. HUGHES:** I admit I didn't. I didn't file my reply  
25 before he properly, if he ever, followed Rule 55(a). So we

1 believe that obviates entry of default. However, we have  
2 elucidated some reasons in our memoranda to which we hope  
3 the Court will agree show good cause. I can go through  
4 those if Your Honor would like me to.

5 **MR. NORSWORTHY:** Your Honor, I'm not sure where in  
6 55(a) requires the affidavit to be filed at a certain point  
7 before I asked him for the entry of default. So I'm not  
8 sure why he had to file a motion for relief of default when  
9 no default's been ordered by the Court.

10 **MR. HUGHES:** We were taking a preemptive step, Your  
11 Honor, but we feel, I mean, I do admit I was late. I wanted  
12 to do everything I could to show the Court ---

13 **THE COURT:** Well, the Court, I mean, the Court would  
14 have to rule on whether or not -- on the default before he  
15 could file a motion to set it aside.

16 **MR. HUGHES:** Correct. That is -- but I was trying ---

17 **THE COURT:** That's how it's done.

18 **MR. HUGHES:** Correct. I was trying to everything I  
19 could in case that were to happen, but that has not  
20 happened, Your Honor.

21 The entry of default, as I've quoted in my memorandum  
22 per Professor Flanagan, is a ministerial act and requires a  
23 showing of default by affidavit. So perhaps Your Honor  
24 could enter that, but that has not been entered by the clerk  
25 to this day. So we chose to file a motion for relief in

1 case that were to be entered.

2 **MR. NORSWORTHY:** Your Honor, it got accepted and  
3 stamped when -- and we filed the memo with it. It's an  
4 exhibit to it.

5 **MR. HUGHES:** That was filed Tuesday, Your Honor.  
6 There's no entry of default at this time. And the Rule  
7 60(b) factors which should be applied, if there is an entry  
8 of default, for relief under Rule 55(c) are, one, promptness  
9 with which relief is sought, two, reasons for the failure  
10 act promptly, three, existence of a meritorious defense,  
11 and, four, prejudice to the other party.

12 On January 22nd defense counsel filed his motion for  
13 entry of default judgment. The day after that I filed my  
14 reply. The day after that I filed a motion for relief from  
15 entry of default.

16 For the reasons for the failure to act promptly there  
17 were ongoing communication between counsel. For instance,  
18 the scheduling of defendant's depositions. Plaintiff's  
19 counsel was led to believe that all issues, factual and  
20 legal, had been joined as to the complaint and  
21 counterclaims.

22 And I do make the allegations that both counsel were  
23 probably unaware that there was a default. I never knew of  
24 the default until January 22nd when defense counsel filed  
25 ---

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1           **THE COURT:** Yeah, I understand that.

2           **MR. HUGHES:** He never mentioned that in our discussions  
3 over depositions.

4           **THE COURT:** Let me tell you where I'm at. And I know  
5 you've got a motion to compel, and I don't think I'm going  
6 to get there. You know, let me just kind of tell you ---

7           **MR. NORSWORTHY:** That's ---

8           **THE COURT:** Go ahead and let me hear from you.

9           **MR. NORSWORTHY:** The discovery one's going to be a lot  
10 of fun, Your Honor, if you want to ---

11          **THE COURT:** Yeah, I ...

12          **MR. NORSWORTHY:** Your Honor, I mean I talked to my  
13 clients about it. We had it scheduled out. He preempted  
14 it, and he filed or he sent a notice of depos. How are we  
15 going to do discovery before I have an idea of what they're  
16 going to -- how they're going to respond to our  
17 counterclaims? I mean, it's just -- I don't even understand  
18 what's going on here.

19          **THE COURT:** Well, can I say this? You know, I've got  
20 some -- I've got some issues regarding the whole thing. You  
21 know, going back to the arguments of both sides regarding  
22 motions to dismiss, you know, I'm still grappling with that,  
23 you know. Because, you know, it depends upon how I rule on  
24 that, these other things just kind of go away.

25          **MR. NORSWORTHY:** Exactly.

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1           **THE COURT:** I mean, they just go away. And I think,  
2 Mr. Hughes, you're in a -- position you're in is you weren't  
3 the counsel of record in 2016, this Mr. Wilson was.

4           **MR. HUGHES:** Correct.

5           **THE COURT:** All right.

6           **MR. NORSWORTHY:** He was present for trial, though, Your  
7 Honor.

8           **THE COURT:** He was present? Okay.

9           **MR. HUGHES:** I was not present for trial. I'm not sure  
10 how that is relevant for the ---

11           **THE COURT:** Well, I don't know if I'm so much thinking  
12 about that. What I'm really thinking about is this whole  
13 argument about a conspiracy and the filing of that at this  
14 particular junction, you know. And I don't want to repeat  
15 what I said earlier, but that is the hurdle I'm trying to  
16 get across.

17           So I think what I'd like to do -- and even though you  
18 said earlier -- and I asked the question if your client had  
19 been successful in the 2016 trial would he have filed this  
20 action? And you said, yes, I believe he would. And, you  
21 know, and as I said to you and I said to counsel, I don't  
22 know if he would have, you know.

23           So this thing just takes the frame of one of these  
24 situations where one side seeks -- and I don't want to use  
25 the word retribution, whatever, but just seeks against the

1 other. And I hope it's not that.

2 But what I'm going to require you to do is this. I  
3 want both sides to submit to me within 30 days, or if you  
4 need more time than that, a proposed order on the issue  
5 regarding the motion to dismiss. Okay?

6 I am going to continue the other motions, the motion  
7 for entry of default, whatever, because depending upon what  
8 I do, that's going to be, you know, dispositive of these  
9 other motions. Other words, these other motions would go  
10 away depending upon what I do.

11 And -- but I'm going to continue those motions for,  
12 Madam Clerk, I want you to put them on the April non-jury  
13 term. And that term is presided -- will be presided over by  
14 Judge Stilwell. I think that's the -- if it gets on that  
15 roster. I think that's the appropriate place to put it ---

16 **MR. NORSWORTHY:** Yes, Your Honor.

17 **THE COURT:** --- since he was the trial judge in the  
18 original case.

19 And I'm just saying -- so I strongly suggest that you  
20 put forth your best arguments when you submit me the  
21 proposed orders and any supporting case law that you may  
22 have contained in those orders because I really -- I'm going  
23 to tell you on the front end of this, I think everybody's  
24 entitled to their day in court, I really believe that, but  
25 this is a little unusual situation.

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1           When you have a trial in 2016 where these parties  
2 addressed certain issues, there was four counterclaims --  
3 four counterclaims filed by your client, after discussion by  
4 the court with lawyers on both sides prior to the submission  
5 of the case to the jury there was an agreement to not send  
6 those requests back to the jury. And everybody agreed to  
7 it.

8           And in your client's deposition he talks about  
9 conspiracies all over the place against everybody. You  
10 weren't the lawyer. You weren't, I mean, you weren't the  
11 lawyer at the time, but there was no motion to amend the  
12 pleadings, which was ample time to do that at that time, but  
13 nothing didn't happen.

14           So I need to hear from both sides. And I -- to be  
15 honest with you, I have not decided a thing. I'm just --  
16 I'm just like a boat in the water. I'm floating that way  
17 and floating that way. And I just need to hear from both  
18 sides.

19           But it's a very difficult decision because we can't  
20 allow the court to be clogged up with case, after case,  
21 after case where we start talking about the same kind of  
22 dispute. If we do that, cases would never move along.

23           So -- but I understand your argument. I think it was a  
24 very good argument. And I understand counsel's argument.  
25 And I think his argument is a good argument. And I guess

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1 that's why I sit here -- sit up here, and I guess that's why  
2 the people in Columbia sit where they sit. And that's why  
3 you have appellate courts because they check my homework.  
4 And that's why they -- that's the decision that's in my  
5 bread basket, so to speak. So -- yes.

6 **MR. NORSWORTHY:** To clarify, so you want a proposed  
7 order in 30 days to you or to you and Stilwell both or ...

8 **THE COURT:** No, no, no, no. Just send me a proposed  
9 order ---

10 **MR. NORSWORTHY:** Okay.

11 **THE COURT:** --- in 30 days, both sides. The reason I  
12 said Judge Stilwell, these other motions, if they go  
13 forward, they're going to be heard by him in the April non-  
14 jury term. But it depends upon what I do on your motion to  
15 dismiss, there may not be a need. So I -- you kind of  
16 understand, Mr. Hughes, what I want you to do?

17 **MR. HUGHES:** I do. Thank you, Your Honor.

18 I would say that the motion to compel, which we filed,  
19 our position is that those depositions would be essential to  
20 the Court's determination in the motion to dismiss. So we  
21 would ask that the Court -- our position would be that the  
22 Court delay the determination. This is going to today's  
23 hearing. To delay the determination until those depositions  
24 were taken. But I accept and am cognizant of what you just  
25 expressed ---

1           **THE COURT:** But you know what I can do and what I  
2 started to do at the outset was to reschedule everything and  
3 put it before Judge Stilwell in April. Since he was the  
4 trial judge, let him say grace over everything. He was the  
5 trial judge.

6           And I still may do that, you know what? Because I  
7 think he heard it, he heard the trial, he sat there and  
8 heard it, he knows everything about it. I think you lawyers  
9 might want him to say grace over it.

10           **MR. NORSWORTHY:** Your Honor, we had it in front of him.  
11 I got the flu, I had to get a continuance. And then I asked  
12 him to last week, and he said you're a better judge to ---

13           **THE COURT:** I saw that. I saw that. I saw that. I  
14 saw that. I read that. I read that. And I appreciate his  
15 kind words, but -- so what are you telling me? What are you  
16 saying?

17           **MR. HUGHES:** So we should still submit our proposed  
18 order for ---

19           **THE COURT:** You can send it to me. Send it to me  
20 within 30 days and I'll make a determination. And then if I  
21 -- depending upon what I do, those other motions will be  
22 heard by Judge Stilwell. You want me to hear the motion to  
23 compel, but I'm not going to do that.

24           **MR. HUGHES:** Well, we've taken up a lot of your time  
25 already.

1           **THE COURT:** You have.

2           **MR. HUGHES:** Thank you, Judge.

3           **THE COURT:** You're welcome. Thirty days.

4           **MR. NORSWORTHY:** Thank you, Your Honor.

5           **THE COURT:** Okay.

6                               (Hearing Ended at 10:32 am)

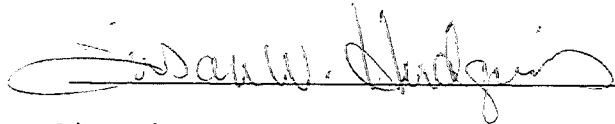
7                               (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 7th day of March 2019.

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

December 27, 2019

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

GEORGE H. BROCK, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 KRIS LANGVILLE, ET AL., )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

2018-CP-23-04123

TRANSCRIPT OF RECORD

JULY 23, 2019  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE ALEX KINLAW, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JACOB M. HUGHES, ESQ.

ATTORNEY FOR DEFENDANTS:

KENNETH A. NORSWORTHY, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

NO                      DESCRIPTION    ID    EVIDENCE

(No Exhibits Were Presented During This Hearing)

1           **THE COURT:** This is in the interest of George H. Brock  
2 versus Kris Langville. And this is case number 2018-CP-23-  
3 4123. And motion to dismiss, is that right?

4           **MR. NORSWORTHY:** That's correct, Your Honor.

5           **THE COURT:** All right. I'm ready.

6           **MR. NORSWORTHY:** It's our motion, so ...

7           **THE COURT:** Yes. Go ahead.

8           **MR. NORSWORTHY:** Thank you, Your Honor. May it please  
9 the ---

10          **THE COURT:** And, you know, before you start, I think we  
11 -- from what I recall, we heard that motion before.

12          **MR. NORSWORTHY:** That's correct, Your Honor, we heard  
13 it.

14          **THE COURT:** And then something happened subsequent to  
15 me hearing the motion, I guess, some receipt of other  
16 information or something to that ---

17          **MR. NORSWORTHY:** That's correct, Your Honor.

18          **THE COURT:** Okay. Go ahead.

19          **MR. NORSWORTHY:** At the previous hearing Your Honor was  
20 concerned with whether previous counsel in the trial case  
21 that went down early in 2018, ---

22          **THE COURT:** Uh-huh (affirmative).

23          **MR. NORSWORTHY:** --- whether counsel had considered  
24 adding conspiracy claims and adding defendants to the case.

25          **THE COURT:** Um-hum (affirmative).

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1           **MR. NORSWORTHY:** After Your Honor asked about that, we  
2 located additional evidence ---

3           **THE COURT:** All right. Before you do that, let me  
4 stand up because I have the privilege of introducing -- this  
5 is Judge Pope -- Courtney Clyburn Pope. She is a new judge  
6 from Aiken County. And she would have the -- I'll have the  
7 privilege of having her sit with me this week. And just  
8 wanted to introduce her to you.

9           So she's going to be sitting next to me. And so you  
10 may have the opportunity to see her if you do some work down  
11 in Aiken County or in that neck of the woods, but, anyway,  
12 just wanted to do that.

13           **MR. NORSWORTHY:** Thank you, Your Honor. Nice to meet  
14 you.

15           **THE COURT:** All right. Go ahead, counsel.

16           **MR. NORSWORTHY:** Your Honor, we had offered to submit  
17 this via email, and counsel objected and actually submitted  
18 some affidavits, which counsel argued supported their claim  
19 against dismissing this.

20           **THE COURT:** Right.

21           **MR. NORSWORTHY:** But what we have is I have -- I found  
22 an email between myself and Mr. Wilson, Mr. Robert Wilson,  
23 who ---

24           **THE COURT:** You got a copy of it or what?

25           **MR. NORSWORTHY:** I do, Your Honor, if I could hand it

1 up.

2 **THE COURT:** Yeah.

3 **MR. NORSWORTHY:** In this email, Your Honor, short and  
4 sweet, but counsel asked me about a month before trial if he  
5 could amend the complaint to add joint tortfeasors and  
6 specifically referenced co-conspirators, including one of  
7 the defendants in the current case.

8 So to answer your question now plaintiff, previously  
9 defendant, George Brock and counsel had not only  
10 contemplated adding those defendants, but they had actually  
11 taken steps to do so. We objected to them adding them only  
12 because they had objected to an extension due to Mr. Brock's  
13 filing a complaint with ODC against me, which Judge Miller  
14 did continue that trial while that got ---

15 **THE COURT:** Right.

16 **MR. NORSWORTHY:** --- resolved.

17 So to answer Your Honor's question, counsel had every  
18 opportunity to move the court to add those -- what they call  
19 co-conspirators as joint tortfeasors under Rule 19. They  
20 did not pursue that. And that's one of the reasons we  
21 believe that this should be dismissed under issues precluded  
22 and *res judicata*, et cetera.

23 Additional evidence that came up after the last  
24 hearing, there was a mix-up with Mr. Brock's appeal of the  
25 previous case, which is still on appeal. When they ordered

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1 the transcript, they only ordered the first day of it. So  
2 counsel for plaintiff, Ron Johnson, had to order the second  
3 day's transcript, which included testimony from Mr. Brock,  
4 which we didn't previously have ---

5 **THE COURT:** Yeah.

6 **MR. NORSWORTHY:** --- access to.

7 And in that transcript, if I can read from it, ---

8 **THE COURT:** Go ahead.

9 **MR. NORSWORTHY:** --- this is me examining Mr. Brock.  
10 You referred to the things that have happened to you amongst  
11 your staff and with Mr. Johnson as a conspiracy, is that  
12 correct? Yes, I did.

13 And who would you say was involved in that conspiracy?  
14 Certainly Mr. Johnson. Certainly Kris Langville, who's now  
15 a defendant.

16 **THE COURT:** Right.

17 **MR. NORSWORTHY:** She typed the complaint that's before  
18 us today. She's certainly part of it. Then I had an IT guy  
19 named Jeremy Marsh, who now lives in Atlanta. It goes on.  
20 Mr. Marsh was named as a defendant. To our knowledge he has  
21 never been served.

22 Going on. I'm not really sure quite honestly if Donna  
23 Carlson, defendant now, was involved. She was the one that  
24 probably emotionally took the biggest hit. Obviously, she  
25 was upset, but I can't see that she did anything of that

1 nature, you know, nature of a conspiracy.

2 And then I said, you did say Ms. Carlson -- you said  
3 before that she was part of this conspiracy, correct? And,  
4 Your Honor, this was referencing Mr. Brock's deposition,  
5 which is -- the snippets that are pertinent are in our  
6 memorandum. So I'm not going to re-read those to you.

7 **THE COURT:** Right.

8 **MR. NORSWORTHY:** You said before that she was part of  
9 this conspiracy, correct? Well, I'm sure that they all got  
10 together in the hall and passed around -- things were  
11 floating around while I was seeing my mother. And I'm sure  
12 she was a part of it.

13 I can see more direct things that these other people  
14 such as Mr. Johnson, Ms. Langville and Mr. Marsh did other  
15 than Ms. Carlson, but it was all, you know, they just got  
16 together. They knew that because they did access my private  
17 emails that I was interested, or somebody did, and I'm not  
18 sure if it was Mr. Marsh, that they may be losing their job,  
19 and they conspired of what they were going to do.

20 It goes on to -- he goes on to reference Ms. Langville  
21 again. And in pertinent part it says, Your Honor, -- I  
22 asked, you've also accused Donna's attorney and myself as  
23 part of that conspiracy as well, correct? He goes on to say  
24 -- and as far as this conspiracy goes, why would you accuse  
25 myself? And he said, because you had lunch with Ms.

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1 Carlson's attorney.

2 And I say, that's a serious accusation, would you agree  
3 with that? Yes, I would agree with that. I know you did  
4 have lunch with Donna Carlson's attorney. Do you have lunch  
5 with associates in the community ever? Occasionally. Okay.  
6 You ever have lunch on a regular basis with an associate?  
7 Occasionally. Okay. How would you feel if somebody accused  
8 you? Okay. I'm sorry if I accused you, and wrongly.

9 I mean, Your Honor, this just goes on and on. They not  
10 only contemplated these -- all of these defendants as a  
11 conspiracy in the previous case, they actually took actions  
12 to add them and then withdrew them.

13 Additionally, Your Honor, from the deposition, it was  
14 one big conspiracy. They all conspired to get whatever they  
15 could from me and to hurt me all they could.

16 And, Your Honor, I'll just reference the previous  
17 hearing. The complaint -- I've underlined -- and this is in  
18 our memorandum as well. Almost the entire complaint is  
19 almost identical to the claims brought factually in the  
20 previous case. And now they're here today.

21 They've just essentially sued all of the witnesses from  
22 the prior case. The jury didn't buy it last time. And  
23 we're asking this Court not to put us through that process  
24 again. It's going to waste the court's time.

25 My clients are ready to let this case go. They want it

1 dismissed. We have valid counterclaims that we're ready to  
2 withdraw and let this go. And we would beg this Court to  
3 take all this into consideration.

4 **THE COURT:** All right. Thank you, sir.

5 **MR. NORSWORTHY:** Thank you.

6 **THE COURT:** Yes, sir.

7 **MR. HUGHES:** Good morning, Judge.

8 **THE COURT:** Good morning.

9 **MR. HUGHES:** Thank you for this opportunity to reargue  
10 the motion. I believe we were before you last in March of  
11 this year. And at that time you advised both of us to  
12 submit proposed orders setting forth our best arguments for  
13 our positions, respectfully. I think you acknowledged that  
14 both of us had good positions, good arguments.

15 I would like to put on the record that Mr. Norsworthy  
16 failed to follow your advice. He submitted a proposed  
17 order. And the only Rule he cites in it is Rule 19. The  
18 original grounds for his motion was Rule 12 and collateral  
19 estoppel and *res judicata*. Those were the grounds for his  
20 motion to dismiss, which we're here today to argue. In his  
21 proposed order all he cited is Rule 19. Not only that, he  
22 didn't even argue, he just stated the Rule.

23 And I would respectfully submit that plaintiff George  
24 Brock followed your advice. We submitted a several page  
25 proposed order. Of course, length is never a good

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1 indication of substance, but we addressed *res judicata*, we  
2 addressed collateral estoppel, we also addressed Rule 19  
3 whereas Mr. Norsworthy just stated the Rule in minimal  
4 fashion. And not even the Rule that he cited is grounds for  
5 his motion to dismiss.

6 Issue preclusion, as you know, Your Honor, prevents  
7 reconsideration of an issue that was actually litigated in a  
8 prior action, directly determined in that action and, three,  
9 importantly necessary to support the prior judgment.

10 Now Mr. Norsworthy read a lot of comments and random  
11 statements from depositions, but the fact remains that the  
12 only issue submitted to the jury for Mr. Brock in the 2016  
13 case was interference with a business opportunity. Mr.  
14 Johnson had published multiple contracts that were totally  
15 unrelated to his lawsuit against Mr. Brock in his lawsuit.  
16 And Brock counterclaimed saying those were in interference  
17 with his business opportunity, his sale of his CPA practice,  
18 which ultimately didn't go through or at least it went  
19 through at a far greater value -- lesser value than what  
20 originally had been discussed between those interested  
21 parties.

22 Issue preclusion essentially is only applied in South  
23 Carolina when the party against whom estoppel is asserted  
24 had a full and fair opportunity to litigate the issue  
25 previously. And I believe that to mean not that he could

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1 have brought that issue or that cause of action, but that he  
2 actually was able to present all the facts and a jury decide  
3 that question.

4 Now in the first case he never submitted civil  
5 conspiracy to the jury. He may have mentioned civil -- and  
6 when I say he, Mr. Brock may have mentioned civil ---

7 **THE COURT:** I remember him mentioning civil conspiracy.  
8 Go ahead.

9 **MR. HUGHES:** Yes, sir. And we did submit an affidavit  
10 of Mr. Brock. And he stated that as an accountant I had no  
11 knowledge of the elements of civil conspiracy or what is  
12 required to prove them. I have not researched these  
13 requirements and continue to rely upon my attorneys.

14 Furthermore, Mr. Wilson, who was plaintiff's counsel in  
15 the prior lawsuit did actually complete an affidavit, which  
16 we submitted. He stated in his affidavit that predicate  
17 facts necessary to support an action for conspiracy by  
18 Brock, however, were not available until after the trial of  
19 the Johnson wages suit.

20 Mr. Norsworthy did give me this email a few moments  
21 ago. He said that it was a month before trial. And he also  
22 mentioned that he objected to adding these parties at that  
23 time. So our position still remains the same that Mr. Brock  
24 had no obligation to add these parties, that the issue  
25 determined was interference with a business opportunity.

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1 That was the sole issue.

2 Civil conspiracy was not necessary to support the prior  
3 judgment. And it was not directly determined or even  
4 actually litigated. I think just the mention of these  
5 random comments, that's not -- that's not litigating the  
6 issue.

7 The second thing, Your Honor, and I'm sure you recall  
8 about the *res judicata*. It's the same principle. It  
9 requires identity of the parties, identity of the subject  
10 matter and adjudication of the issue in the former suit.  
11 That issue, again, of civil conspiracy was not adjudicated.

12 And I would just like to read one quotation from the  
13 case -- the case is *Lowe v. Clayton*. It's a 1975 South  
14 Carolina Supreme Court case. And it says the established  
15 rule is that the past judgment operates as an estoppel only  
16 as to the issues or question actually litigated and  
17 determined and not as to matters not litigated in the former  
18 action even though such matters might properly have been  
19 determined therein.

20 And finally, Your Honor, I would just like to briefly  
21 address Rule 19, which evidently is Mr. Norsworthy's ground  
22 for his proposed order. Rule 19 does not apply to this  
23 case. It did not apply to the former case. And I would  
24 like to ask Mr. Norsworthy, and I would like him to answer,  
25 why he didn't bring up Rule 19 in the prior suit if those

1 parties were truly indispensable?

2 A case in the Court of Appeals states that generally a  
3 person must be joined as a party to an action if his absence  
4 precludes complete relief among those already parties or his  
5 interest in the subject matter is so intertwined that he  
6 would not receive complete relief or resolution without his  
7 participation.

8 In that prior suit Rule 19 did not apply because the  
9 sole counterclaim I brought was interference for the  
10 business opportunity. The defendants were not part of that.  
11 They didn't publish the contracts. Mr. Norsworthy never  
12 brought up Rule 19 in the prior case.

13 And, essentially, as Professor Flanagan has stated,  
14 general considerations of deficiency or convenience of the  
15 parties do not require joinder under Rule 19. The joint  
16 tortfeasor remains merely a permissive party in an action.

17 And so, Your Honor, in conclusion I would submit that  
18 defendants, as Justice Konduros has stated, they have the  
19 burden of showing all elements of collateral estoppel. They  
20 also have the burden of showing *res judicata*.

21 And they, finally, failed to established that Rule 19  
22 required joinder in the prior action. So I respectfully ask  
23 Your Honor to dismiss defendant's motion to dismiss.

24 **THE COURT:** Let me ask you this. Read that portion of  
25 Mr. Brock's deposition where conspiracy is mentioned. You

1 -- I think you read that to me earlier.

2 **MR. NORSWORTHY:** That's correct, Your Honor.

3 **THE COURT:** Read that to me again. Because I'm looking  
4 at his affidavit. I knew that there was some mention of  
5 conspiracy in the deposition that was taken. Go ahead.

6 **MR. NORSWORTHY:** Certainly, Your Honor. Mr. Brock:  
7 And then I have Ron Johnson, the former plaintiff,  
8 communicating with my current employees months after left.  
9 And they were, I mean, one of the ladies, Kris Langville,  
10 current defendant, even typed the service for his *pro se*  
11 complaint against me. She had it typed during working  
12 hours.

13 And then there was a lot of conspiracy going on in the  
14 office. And I was tracking -- it just seemed like everybody  
15 was against me, you know, even my own people. So rather  
16 than trying to replace everybody, I just said, okay, I'm  
17 going to sell this thing, and I'm leaving.

18 It goes on. Well, Kris Langville was obviously very  
19 close to Mr. Johnson. And she was also very close to Donna,  
20 another current defendant, another former witness from the  
21 trial. It was like a conspiracy.

22 Going on. Well, I just know that it was one big  
23 conspiracy of everybody's attorneys, everybody that worked  
24 for me. And I think Mr. Johnson was the leader of the whole  
25 deal.

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1           Going on. They're losing their jobs. I'm the bad guy.  
2           And they're all trying to figure out what they're going to  
3           do. And they all conspired to get whatever they could from  
4           me and to hurt me all they could.

5           Another time. So Mr. Johnson stood in the hall where  
6           he could talk to everybody. And they all just conspired,  
7           you know. Going on. But it was like a conspiracy in my  
8           office instigated by Mr. Johnson.

9           Going on. But like I said, I had an IT guy, another  
10          current defendant, former witness that they didn't call to  
11          trial, ---

12          **THE COURT:** Right.

13          **MR. NORSWORTHY:** I had an IT guy. And I'd leave my  
14          computer open, maybe go to lunch or whatever, they would all  
15          congregate into my office and see what's going on. I'm  
16          sorry, it was like a conspiracy, you know. I mean, we  
17          thought about suing everybody. I mean, this is my complete  
18          staff was after me.

19          So that's all from his deposition, Your Honor. The  
20          trial transcript I previously read ---

21          **THE COURT:** Yeah.

22          **MR. NORSWORTHY:** --- includes me in it.

23          **THE COURT:** Paragraph 4 of his affidavit, you know,  
24          this is what I was grappling with the last time you appeared  
25          before me back in March, I think that was back in March, ---

1           **MR. NORSWORTHY:** March 7th, Your Honor.

2           **THE COURT:** --- I believe it was, is in his deposition  
3 he said I mentioned the word conspiracy, but then in his  
4 deposition he said he had no idea where the conspiracy was,  
5 didn't know anything about it. And then he in his -- in the  
6 deposition just goes over and over him mentioning it.

7           **MR. HUGHES:** Right. Well, I would ---

8           **THE COURT:** So, I mean, I don't know -- the affidavit  
9 that was submitted and the deposition, they clash in my  
10 mind. And ---

11          **MR. NORSWORTHY:** Your Honor, that's what the jury saw.

12          **THE COURT:** You know, and that's where -- and that's  
13 the only reason I brought you back in because I wanted to  
14 get some more information from both sides.

15           Now if you're going to submit the same memorandum that  
16 you did before, and I'll just read it again or you can  
17 resubmit it. And then, counsel, I'll let you send me  
18 something.

19           Now, I've got the proposed orders that you sent me  
20 before, but if you're telling me it's a duplicate of the  
21 same thing if you do it again, but I don't know if you've  
22 told me anything today any different than what you told me  
23 months -- a few months ago.

24          **MR. NORSWORTHY:** We have the email, Your Honor.

25          **THE COURT:** Yeah, I mean, other than the -- yeah, the

1 email is what -- originally that's the reason we reconvened.  
2 And you've addressed -- I'm assuming you've addressed that a  
3 little bit.

4 **MR. HUGHES:** Right. Well, respectfully, Your Honor, I  
5 don't think that the deposition and the affidavit clash.

6 **THE COURT:** Yeah, I understand.

7 **MR. HUGHES:** He says, my client, in his affidavit, I  
8 have not researched these requirements and rely upon my  
9 attorneys. Statements made by a party during a deposition  
10 should not reflect legal conclusions.

11 I don't think my client understands to this day civil  
12 conspiracy. I've never gone through in-depth with him the  
13 legal elements. He relies upon me. He relied upon Mr.  
14 Wilson, his predecessor counsel.

15 **THE COURT:** Right.

16 **MR. HUGHES:** Civil conspiracy is difficult to prove.  
17 He has a tendency to state things, but that doesn't mean  
18 that that's -- Mr. Wilson in his affidavit states that  
19 affiant affirms it is better practice to abstain from  
20 commencement of a legal action until facts sufficient to  
21 support the action are known and can be presented by  
22 admissible testimony or other evidence at the trial of the  
23 action.

24 **MR. NORSWORTHY:** Your Honor, the implication is that  
25 Mr. Brock's not having knowledge of the conspiracy claim

1 when he was represented by counsel that was a member of the  
2 bar for 40 years, the implication is that that mistake  
3 should be imparted on our party. This is the same thing Mr.  
4 Hughes has argued in our motion for entry of default ---

5 **THE COURT:** Right.

6 **MR. NORSWORTHY:** --- that his failure to file  
7 responsive pleadings should be imparted on my party as well.

8 **THE COURT:** Right. All right. Okay, gentleman, I'm  
9 going to grapple with this again, but you want to -- if you  
10 want to resubmit me some proposed orders, memorandums, any  
11 supporting case law you have, I assure you that I will make  
12 a decision very, very, very promptly, very quickly. I just  
13 needed to get you back in here because I got the email from,  
14 I think, you, I believe it was.

15 **MR. NORSWORTHY:** Well, Your Honor, we had not submitted  
16 that additional evidence and asked the Court if you would  
17 prefer it, and then Mr. Hughes objected and submitted  
18 additional evidence ---

19 **THE COURT:** Right, right.

20 **MR. NORSWORTHY:** --- unilaterally.

21 **THE COURT:** Yeah, and that's why -- that's why we're  
22 here. Okay. So ---

23 **MR. HUGHES:** May I say one more thing?

24 **THE COURT:** Yes, sir.

25 **MR. HUGHES:** Again, I'd just like to reiterate that I

1 do not think the mention of conspiracy in a deposition even  
2 at the trial constitutes the termination of that issue.  
3 That was not a cause of action. The jury did not determine  
4 that issue in the prior suit.

5 **THE COURT:** Let me ask you a million dollar question,  
6 counsel. I think I asked you that the last time. Of  
7 course, if your side was successful at the trial, would you  
8 even -- would we even be here?

9 **MR. HUGHES:** And ---

10 **THE COURT:** You know, it's almost like, you know, and  
11 I'm not saying that because I'm going to look at what you  
12 send me, both sides, and I'm going to be fair to both sides  
13 and look at it and make a determination.

14 But I think I asked that question before, is that, of  
15 course, you don't want to get a situation where there's a  
16 trial, issues were litigated, you weren't, you know, parties  
17 weren't successful, and then you just pick out something  
18 else, some of the same witnesses and then relitigate because  
19 I assume if this case was tried, this current case, this  
20 case actually went to trial, it'd almost be a duplicate of  
21 the trial that you had back, what, 2016?

22 **MR. NORSWORTHY:** '18, Your Honor.

23 **THE COURT:** '18? It'd probably be -- I'm not saying it  
24 would be, but it'd be very similar. I think you've got to  
25 agree with that. Wouldn't it be similar?

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1           **MR. NORSWORTHY:** Exactly.

2           **THE COURT:** It might be almost like putting one trial  
3 right on top of the other except -- but I'm going to look at  
4 what you give me because I've had this on my desk, I've  
5 looked at it sometimes, and I was looking forward to you  
6 guys coming back before me again because this is -- this  
7 requires some thought on my part, and I wanted to give it as  
8 much thought as possible.

9           But hearing the arguments again, and I appreciate the  
10 information that you've given. So anything else before I  
11 ---

12           **MR. NORSWORTHY:** One final thing, Your Honor. It's a  
13 mischaracterization to say the jury only was presented with  
14 one cause of action.

15           **THE COURT:** Right.

16           **MR. NORSWORTHY:** They had a -- multiple causes of  
17 action centering around the same facts that match both  
18 complaints. And they withdrew those after trial before the  
19 jury deliberated. So it's a ---

20           **MR. HUGHES:** None of which ---

21           **MR. NORSWORTHY:** --- mischaracterization to say ---

22           **MR. HUGHES:** None of which had civil conspiracy among  
23 them.

24           **MR. NORSWORTHY:** Your Honor, the facts are ---

25           **THE COURT:** I do remember ---

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1           **MR. NORSWORTHY:** --- the same. You don't shop around  
2 for causes of action on different trials. It's just wasting  
3 the court's time.

4           **THE COURT:** I do remember some causes of action being  
5 withdrawn prior to deliberations by consent.

6           **MR. NORSWORTHY:** Both parties.

7           **THE COURT:** By consent.

8           **MR. HUGHES:** That's correct.

9           **MR. NORSWORTHY:** After Judge Stilwell recommended it.

10          **THE COURT:** Well, y'all -- by consent ---

11          **MR. HUGHES:** That's correct, but civil conspiracy was  
12 not one of those that were withdrawn.

13          **THE COURT:** And then I guess shortly after the  
14 disposition of that case, then this case was filed. And I  
15 guess there were some counterclaims filed by your side. But  
16 this case on civil conspiracy is the same -- essentially the  
17 same witnesses, ---

18          **MR. NORSWORTHY:** Mr. Johnson's named in the complaint,  
19 almost every line. It's the same facts.

20          **THE COURT:** All right. Okay.

21          **MR. NORSWORTHY:** Thank you, Your Honor

22          **MR. HUGHES:** Thank you.

23          **THE COURT:** All right. Appreciate it. Can y'all --  
24 I'm going to give you -- I want you to resubmit the proposed  
25 orders that you send me and any supporting memorandum. I'm

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1 going to give you -- is 30 days enough time?

2 **MR. NORSWORTHY:** Sure.

3 **THE COURT:** Because we need to sort of move this along.  
4 So 30 days, ---

5 **MR. HUGHES:** That's great.

6 **THE COURT:** --- both sides?

7 **MR. NORSWORTHY:** And I like my orders short and sweet,  
8 like me. Thank you.

9 **THE COURT:** That's a good one. I like that.

10 (Hearing Ended at 9:38 am)

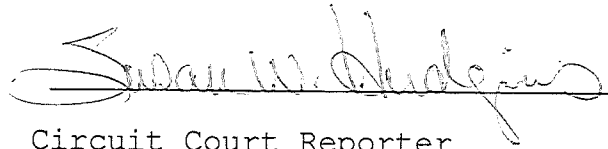
11 (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 23rd day of July 2019.

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

December 27, 2019

  
Circuit Court Reporter

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 George H. Brock, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Kris Langville, Individually, and d/b/a )  
 Preferred Paralegals, LLC; Donna )  
 Carlson; Jeremy Marsh, Individually, )  
 and d/b/a The Techknow Dude, LLC; )  
 and Katherine Jernigan, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 THIRTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2018-CP-23-04123

**ORDER**

This matter came before the Court on March 7, 2019, upon Defendants’ Motion to Dismiss on grounds of collateral estoppel and res judicata. Present at the hearing were the Plaintiff, George H. Brock, represented by his counsel, Jacob M. Hughes, Esq., and Kenneth E. Norsworthy, Jr., Esq., on behalf of Defendants Kris Langville, Preferred Paralegals, LLC, Donna Carlson, and Katherine Jernigan. After careful consideration of the memoranda, arguments, and applicable case law, the Court hereby finds and holds as follows:

Brock filed the current action on August 3, 2018. In early 2016, Ronald Johnson, a former contract employee of Brock CPA, filed suit against Brock regarding an “unpaid wages” claim. *Johnson v. Brock* (2016-CP-23-01836). Mr. Norsworthy, counsel for Defendants, represented Johnson at trial. Brock’s prior counsel, Robert C. Wilson, Jr., Esq., asserted four counter-claims against Johnson: interference with a business opportunity, fraud, violation of the Trade Secrets Act, and injunctive relief. After the parties presented their respective cases, and counsel having held a conference with the Court, it was decided that the only submission to the jury would be interference with a business opportunity, Brock thus waiving all other claims without prejudice. The jury found for Johnson, and Brock appealed.

Defense counsel has moved to dismiss Brock's current civil conspiracy action "pursuant to Rule 12, SCRCP," on grounds of collateral estoppel and res judicata.

### **I. Collateral Estoppel**

Collateral estoppel prevents reconsideration of an *issue* that was "(1) actually litigated in [a] prior action; (2) directly determined in th[at] . . . action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). South Carolina courts "have applied [this doctrine] . . . only when the party against whom estoppel is asserted had a *full and fair opportunity to . . . litigate the issue* [previously]." *Id.* at 555, 684 S.E.2d at 782 (Hearn, C.J.) (emphasis added).

Brock brought four counterclaims against Johnson in 2016: interference with a business opportunity, fraud, violation of the Trade Secrets Act, and injunctive relief. Near the end of trial, after a conference with the Court and opposing counsel, it was decided that the only submission to the jury would be Brock's claim for interference with a business opportunity. Thus, the sole issue determined was whether Johnson, seeking leverage for his "unpaid wages" claim, intentionally interfered with the prospective sale of Brock CPA to a third party by publishing confidential company information in his lawsuit.

During the 2016 case, Brock did not submit to the jury (or even plead) the issue of civil conspiracy. This decision made sense. Brock's prior counsel was unaware of the existence of a conspiracy until late in the previous trial, even if then. Requiring Brock to amend his pleadings and add additional parties (the Defendants) would have been unreasonable, especially given the fact that the conspiracy was not yet fully apparent. As recent as January 2019, Brock has discovered new evidence that further confirms his claims against Defendants.

Moreover, Defendants' joinder was not compulsory in the 2016 case. Rule 19, SCRCP; *see also* James F. Flanagan, *South Carolina Civil Procedure* 154 (2d ed. 1996) ("General

considerations of efficiency or convenience of the parties do not require joinder under Rule 19. . . . [T]he joint-tortfeasor remains merely a permissive party in an action.”).

Defendants have not shown that the issue of civil conspiracy was actually litigated, directly determined, and necessary to support the judgment in the 2016 case. Since “[a] party asserting the defense of collateral estoppel has the burden of proving all of the elements,” Brock deserves a full and fair opportunity to litigate his separate claim for civil conspiracy. *Carolina Renewal*, 385 S.C. at 559, 684 S.E.2d at 784 (Konduros, J., dissenting).

## II. Res Judicata

Likewise, Defendants have failed to establish the elements of res judicata, namely, “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992). A court should not apply res judicata unless “it . . . appear[s] that the precise question involved in the subsequent action was determined in the former.” *Griggs v. Griggs*, 214 S.C. 177, 186, 51 S.E.2d 622, 626 (1949).

Brock’s present civil conspiracy action includes different parties. References to Johnson in the complaint concern his participation with Defendants as alleged co-conspirator to convert Brock CPA’s customers to customers of another competing tax-service business, for which Defendants, Johnson, and Wayne Bullock would serve. *See Flanagan, supra*, at 154-55 (“[A] joint tortfeasor is not required to be joined because the existing defendant[s] are] . . . jointly and severally liable and accord[] the plaintiff complete relief.”). Brock had no obligation to join Johnson in the current action. He “may elect to sue one, some, or all [of] the joint tortfeasors.” F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 625 (2d ed. 1997).

Brock’s claim for civil conspiracy deals with different subject matter. The 2016 case involved a transaction between Brock and a purchaser of his public accounting practice, Stephen Stokes. Johnson allegedly interfered with Brock’s business opportunity by publishing

confidential company information in advance of the sale. In addition to subject matter, Defendants must also demonstrate identity of the cause of action. *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209-10, 345 S.E.2d 740, 743 (Ct. App. 1986) (explaining that “a fundamental test . . . for comparing causes of action is to determine whether the primary right and duty and the delict or wrong are the same in each action”).

Civil conspiracy is a separate cause of action not previously before the Court. In the present case, Brock has pleaded additional, specific facts supporting his civil conspiracy claim, and “[i]f . . . two actions rest upon different states of facts, or if different proofs would be required to sustain the two actions[,] a judgment in one is no bar to the maintenance of the other.” *Griggs*, 214 S.C. at 185, 51 S.E.2d at 626.<sup>1</sup>

Lastly, adjudication of the issue of civil conspiracy never occurred in the 2016 case. After a conference with the Court and opposing counsel, it was resolved that the only submission to the jury would be interference with a business opportunity. The jury decided that issue alone. Because Brock’s current civil conspiracy claim is a different cause of action, “the established rule is that the [past] judgment . . . operates as an estoppel only as to the [issues] . . . or question actually litigated and determined, and not as to matters not litigated in the former action, even though such matters might properly have been determined therein.” *Lowe v. Clayton*, 264 S.C. 75, 81-82, 212 S.E.2d 582, 585-86 (1975).

Defendants cannot assert collateral estoppel and res judicata to enjoin this action on matters not considered, not litigated, and not determined in the 2016 case. Therefore, the Court hereby **DENIES** Defendants’ Motion to Dismiss.

**It is so ordered.**

April \_\_\_, 2019  
Greenville, South Carolina

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The Honorable Alex Kinlaw, Jr.

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<sup>1</sup> For the distinct elements of interference with a business opportunity (prospective contractual relations), see *Crandall Corp. v. Navistar Int’l Transp. Corp.*, 302 S.C. 265, 395 S.E.2d 179 (1990).

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) 2018-CP-23-04123

George H. Brock, )  
 )  
Plaintiff, )

vs. )

**AFFIDAVIT OF ROBERT WILSON**

Kris Langville, individually, and )  
d/b/a Preferred Paralegals, LLC, )  
Donna Carlson, Jeremy Marsh, )  
individually and d/b/a The Techknow )  
Dude, LLC, and Katherine Jernigan, )  
 )  
Defendants. )

Personally appeared before me Robert Wilson, who, being first duly sworn, deposes and states the following:

1. Affiant is an attorney duly admitted, and licenced, to practice law in the State of South Carolina.
2. Affiant represented George Brock, CPA, in a lawsuit brought by Ron Johnson for allegedly unpaid wages owed to Mr. Johnson by Mr. Brock. ("Johnson Wage Suit"). (*Ronald Johnson, v. George H. Brock, Individually, and d/b/a George H. Brock, CPA, LLC, MILBRO Properties, LLC, Integrative FS, LLC, Diwood Partnership*, 2016-CP-23-1836).
3. Mr. Johnson had prepared a Complaint with numerous attachments which unnecessarily included two (2) drafts of confidential contracts for the sale of Brock's CPA practice to another CPA.
4. The sale of Mr. Brock's accountancy practice had no relevance to the Johnson Wage Suit; the attachment of proposed contracts for the sale of Brock's CPA practice was transparently designed to force Brock to settle with Johnson to avoid publication of Brock's confidential, proprietary business information.
5. As a result of the unnecessary and wrongful publication of Brock's proposed contracts for the sale of Brock's CPA practice in the Johnson Wage Suit, Brock lost his deal with the CPA/buyer of Brock's CPA practice.

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6. As counsel for Mr. Brock, Affiant prepared a counterclaim asserting Mr. Brock's right to recover damages for Mr. Johnson's wrongful and unnecessary publication about Brock's sale of his accountancy practice because the Johnson Wage Claim Suit interfered with Brock's sale of his accountancy practice.

7. After the trial of the Johnson Wage Suit, Affiant determined to retire from practicing law, for health reasons. Affiant has been informed, though, that further facts have since come to light which could have supported Brock's bringing suit against various parties for conspiracy. Predicate facts necessary to support an action for conspiracy by Brock, however, were not available until after the trial of the Johnson Wage Suit.

8. Affiant affirms that it is better practice to abstain from commencement of a legal action until facts sufficient to support the action are known and can be presented by admissible testimony or other evidence at the trial of the action.

**AND FURTHER AFFIANT SAYETH NOT.**

SWORN TO BEFORE ME THIS  
18<sup>th</sup> DAY OF APRIL, 2019.

George E. Lafaye IV  
Notary Public for South Carolina  
My comm'n expires: 12-8-2025

Robert C. Wilson  
Robert Wilson

**PRINTED NAME OF NOTARY:**

George E. Lafaye IV

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Jan 19 2021**

**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas for the Thirteenth Circuit

Alex Kinlaw, Jr., Circuit Court Judge

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Appellate Case No.: 2019-001707

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George H. Brock, .....Appellant,

v.

Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC; Donna Carlson;  
Jeremy Marsh, Individually, and d/b/a The Techknow Dude, LLC; and  
Katherine Jernigan, ..... Defendants,

Of Which


Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC;  
Donna Carlson; and Katherine Jernigan are the..... Respondents.

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**CERTIFICATE OF COUNSEL**

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I certify that the Record on Appeal contains all material proposed to be included by any  
of the parties and not any other material.



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*Attorney for Appellant George H. Brock*

January 19, 2021  
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
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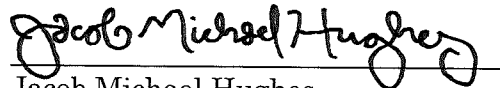
Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC; Donna Carlson;  
Jeremy Marsh, Individually, and d/b/a The Techknow Dude, LLC; and  
Katherine Jernigan, ..... Defendants,

Of Which

Kris Langville, Individually, and d/b/a Preferred Paralegals, LLC;  
Donna Carlson; and Katherine Jernigan are the..... Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal has been redacted in accordance with the Supreme Court's Order on redaction of private data and personal identifiers.



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January 19, 2021  
Beaufort, South Carolina