

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Please

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-000581

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SC Court of Appeals

Harland Jones.....Appellant,

v.

Karen Robinson Respondent.

RECORD ON APPEAL – VOLUME I

Wallace K. Lightsey (S.C. Bar No. 6476)
Meliah Bowers Jefferson (S.C. Bar No. 74064)
WYCHE, P.A.
Post Office Box 728
Greenville, SC 29602-0728

John C. Moylan, III (S.C. Bar No. 11227)
WYCHE, P.A.
Post Office Box 12247
Columbia, SC 29211

Lane Douglas Jefferies (S.C. Bar No. 101764)
Eric Marc Poulin (S.C. Bar No. 100209)
Roy T. Willey, IV (S.C. Bar No. 101010)
Gus A. Anastopoulos (S.C. Bar No. 103713)
Anastopoulos Law Firm

Attorneys for Appellant

Brett H. Bayne, Esq. (S.C. Bar No. 10018)
Sterling G. Davies, Esq. (S.C. Bar No. 5840)
Michael M. Trask, Esq. (S.C. Bar No. 103120)
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211

Helen F. Hiser, Esq. (S.C. Bar No. 76124)
McAngus, Goudelock & Courie, LLC
55 East Camperdown Way, Suite 300
Greenville, SC 29601

Attorneys for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4001518

Harland Jones
 PLAINTIFF(S)

Karen Robinson et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Motion to compel - granted. Remaining records and all supplemental responses should be received in 20 days.
 Motion to Dismiss granted without prejudice, with leave to re-file. Preserving right as specified in statute.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson

Case Number: 2018CP4001518

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-10-03 11:22:38 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

HARLAND JONES,

Plaintiff,

vs.

KAREN ROBINSON,

Defendant.

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO.:2018-CP-40-01518
)

) **ORDER GRANTING PLAINTIFF'S**
) **MOTION TO DISMISS FRIVOLOUS**
) **CIVIL PROCEEDINGS SANCTIONS**
) **ACT COUNTERCLAIM WITHOUT**
) **PREJUDICE**
)
)
)
)
)

This matter came before the Court on October 1, 2018 on Plaintiff's Motion to Dismiss Defendant's Frivolous Civil Proceedings Sanctions Act counterclaim. Lane Jefferies was present for Plaintiff Harland Jones. Brett Bayne was present for Defendant Karen Robinson. For the reasons described below, Plaintiff's motion is GRANTED.

This action arises out of collision on June 7, 2016 between a motor vehicle and a bicyclist. The parties do not dispute that the collision occurred. However, they disagree as to fault. The cyclist, Harland Jones ("Plaintiff"), filed suit on March 16, 2018. On May 8, 2018, the motorist, Karen Robinson ("Defendant"), filed an Answer. On May 23, 2018, Defendant filed an Amended Answer and Counterclaim which included a counterclaim purportedly under the South Carolina Frivolous Civil Proceedings Sanctions Act ("Counterclaim"). Plaintiff moved to dismiss Defendant's Counterclaim.

As described more fully below, the Frivolous Civil Proceedings Sanctions Act ("Act") does not provide for an independent cause of action which may be brought by counterclaim. Accordingly, Plaintiff's Motion to Dismiss Defendant's Counterclaim must be, and hereby is, GRANTED. Defendant's Counterclaim is dismissed without prejudice to Defendant's rights under the Act, if any, to seek relief in the future.

The Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq., (“Act”) provides for sanctions if certain conditions are met. Pee Dee Health Care, P.A. v. Estate of Thompson, No. 2017-000681, 2018 WL 4101089, at *3 (S.C. Aug. 29, 2018). Such conditions may arise either (1) while the action is still pending (as provided by Section 15-36-10(B)), or (2) when the action is concluded by trial to verdict¹, or dismissed by directed verdict, summary judgment, or judgment notwithstanding the verdict, (as provided by Section 15-36-10(C)). Among other things, sanctions under the Act may include attorney’s fees. S.C. Code Ann. § 15-36-10(G)(1).

Regardless of whether an aggrieved party proceeds under subsection B or C, the plain language of the Act indicates that the proper procedure is to file a motion. See S.C. Code Ann. § 15-36-10(B)(2) (“If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion *or motion of a party*, may impose [sanctions]”) (emphasis added) and S.C. Code Ann. § 15-36-10(C)(1) (“At the conclusion of [the action], *upon motion of the prevailing party*, the court shall proceed to determine if the claim or defense was frivolous.”) (emphasis added).

This Court must honor the plain language of the Act, which provides only for motions, not for independent causes of action. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) (“The legislature's intent should be ascertained primarily from the plain language of the statute.”); Id. (“Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation.”); Id. at 102, 606

¹ Unless the action survived summary judgment before being lost at trial, in which instance sanctions are precluded. Pitman v. Republic Leasing Co., 351 S.C. 429, 431–32, 570 S.E.2d 187, 189 (Ct. App. 2002) (noting that “use of the word ‘trial’ is a misnomer because when a case survives summary judgment and proceeds to trial, an award of sanctions is precluded.”).

S.E.2d at 506 (“When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning.”).

Moreover, because the Act provides for attorney’s fees, it is in derogation of the common law, and must be strictly construed. Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001) (“In South Carolina, courts interpret statutes that grant the power to award attorney's fees narrowly because these laws were enacted in derogation of the common law.”). No cases were cited by which our appellate courts have created an independent cause of action for alleged violations of the Frivolous Civil Proceedings Sanctions Act.

WHEREFORE, for the reasons set forth above, Defendant’s Counterclaim must be and hereby is DISMISSED without prejudice to Defendant’s rights under the Act, if any, to seek relief in the future pursuant to the terms of the Act.

Dated this ____ day of October, 2018

The Honorable DeAndrea Benjamin
Presiding Judge, Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson

Case Number: 2018CP4001518

Type: Order/Dismissal

So Ordered

s/DeAndrea Gist Benjamin, #2161

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING RULE TO SHOW
	)	CAUSE
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

Defendant moved the court for a hearing to determine whether Plaintiff should be held in contempt of this court for failing to comply with a judicial order issued on October 23, 2018. Based on the filings of Defendant, it appears to the court that there is just cause for granting the motion. It is therefore ORDERED that the motion for a rule to show cause is granted.

It is further ordered that Plaintiff shall appear before this court on _____, 2018 at _____ AM/PM to show cause, if any he can, why he should not be held in contempt of this court for failing to comply with the order of this court dated October 3, 2018.

DeAndrea G. Benjamin, Judge

October _____, 2018



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson

Case Number: 2018CP4001518

Type: Order/Rule To Show Cause

So Ordered

s/DeAndrea Gist Benjamin, #2161

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING DEFENDANT'S
	)	MOTION TO COMPEL
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on May 7, 2019 on Defendant's Motion to Compel Plaintiff to disclose the identities of various fact witnesses Plaintiff contends have information regarding this litigation. Based on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, it appears to this Court that there is just cause for granting the Motion. It is therefore **ORDERED** that the Motion to Compel is **GRANTED**.

This matter arises out of a motor vehicle accident that occurred on June 7, 2017 in Columbia, Richland County, South Carolina. Plaintiff filed his Complaint on March 16, 2018 in the Court of Common Pleas for Richland County, and alleges a cause of action for negligence against Defendant. On May 8, 2018, Defendant served upon the Plaintiff Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. On June 5, 2019, Plaintiff's counsel stated in sworn, signed pleadings to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. As a result of this assertion, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production.

As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

'...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'"

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with the Order. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. Plaintiff responded on November 7, 2018 and admitted within the responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named "Alex" who witnessed the motor vehicle

accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.”

Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this individual is his wife’s cousin. Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

It is apparent that Plaintiff has failed to fully comply with the discovery requests of Defendant. Specifically, Plaintiff has failed to identify in full persons sought by Defendant in discovery while simultaneously seeking to introduce these unidentified witnesses’ statements about the accident.

This action has been pending since March 16, 2018. This matter is currently scheduled to be heard at trial the week of July 8, 2019. Plaintiff has introduced evidence of these witnesses and admitted he has known about them for nearly two years. Because this information is clearly relevant and is the proper subject of written discovery within our State’s rules, Plaintiff is ordered to respond to discovery and identify and produce these alleged witnesses.

IT IS HEREBY ORDERED THAT Plaintiff shall fully respond to Defendant’s

discovery regarding the identification and contact information of these purported factual witnesses, and it is further

ORDERED THAT compliance with this Order shall be had on or by **June 1, 2019**, and it is further

ORDERED THAT the failure of Plaintiff to comply with this Order shall result in Plaintiff's inability to use the aforementioned witnesses or any other unidentified witness at trial, and it is further

ORDERED THAT, should Plaintiff fail to fully respond to the Defendant's discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant's attorney's fees, court costs and expenses.

IT IS SO ORDERED!

Roger L. Couch, Judge

_____, 2019



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson , defendant, et al
Case Number: 2018CP4001518
Type: Order/Other

IT IS SO ORDERED

s/ Roger L. Couch

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF'S
	)	RULE 59 MOTION TO ALTER OR
KAREN ROBINSON,	)	AMEND
	)	
Defendant.	)	
	)	

This matter came before the Court on May 7, 2019 on Defendant's Motion to Compel¹ Plaintiff to disclose the identities of various undisclosed fact witnesses Plaintiff contends have information regarding this case. Based on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, I determined there was just cause for granting the Motion. I issued a ruling from the bench on May 7, 2019 ordering Plaintiff to identify any unnamed the witnesses by June 1, 2019. I further ordered that if the witnesses were not identified by June 1, 2019, they would be barred from trial. Plaintiff agreed with both the June 1, 2019 deadline and to the exclusion of unnamed witnesses as a penalty for failure to meet the deadline. I instructed Defendant's counsel to prepare a written order memorializing my May 7, 2019 bench ruling on this matter. Defendant's counsel submitted the proposed order to my attention through email—per my instructions—on May 14, 2019. On June 24, 2019, I directed Defendant's counsel to e-

¹ Based on a review of the public index and submissions of the parties, I note that this is the second time Defendant has had to file a Motion to Compel over the same witness issue. On October 3, 2018 Judge Benjamin granted Defendant's first Motion to Compel this information. Judge Benjamin then issued a Rule to Show Cause to Plaintiff on October 30, 2018, over non-compliance with October 3rd Order. Following the issuance of the Rule to Show Cause, Plaintiff submitted discovery responses to Defendant on November 7, 2018, and stated there were no witnesses to disclose. Plaintiff then disclosed the purported existence of these same witnesses at his deposition on March 6, 2019—which caused this second Motion to Compel to be filed.

file the order memorializing my May 7 ruling as submitted for my signature. I e-signed the proposed order memorializing the May 7, 2019 ruling on July 3, 2019. Thereafter, Plaintiff filed a Rule 59(e) Motion to Alter or Amend the Order asserting three grounds: 1) impossibility of compliance, 2) lack of authority for this court to exclude witnesses, and 3) incorrect factual findings in the Order. I have reviewed the May 7 hearing, the transcript from the May 7 hearing submitted by Defendant's counsel, the Motion filed by Plaintiff, the Memorandum in Opposition filed by Defendant, and the correspondence between the court and parties related to this matter. Based on my review of the entirety of the record, I can find no error of fact or law in my original May 7 ruling and the subsequent July 3 written Order memorializing the May 7 ruling. A review of my May 7 ruling and July 3 Order contains more than sufficient factual findings and reasoning to support the conclusions in my Order. Plaintiff has failed to establish the ruling or the Order are wholly unsupported by the evidence or contain any error of law. Therefore, as further set out below, Plaintiff's Motion to Alter or Amend is **DENIED** in its entirety.

I. Plaintiff Asserts This Court's Order Was "Impossible" to Comply With Because it Purported to "Compel Plaintiff to Perform Actions in the Past."

Plaintiff asserts that he could not follow my May 7 ruling because it was not reduced to writing at the time of the hearing. Using this reasoning, Plaintiff now takes the position that he was not required to comply with my May 7 ruling to produce witnesses by June 1, 2019 until he received a filed written order. It is clear from the record that Plaintiff then failed to identify any previously unnamed witnesses by the June 1, 2019 deadline. I note with particularity that Plaintiff took no issue with the June 1, 2019 deadline and has not disputed that he fully understood the nature of the deadline. For example, during the May 7, 2019 hearing, Plaintiff's counsel acknowledges the deadline during these two exchanges with the undersigned:

16 THE COURT: Well, I mean, what I would do is I would
 17 bar them from presenting the witness to give you time to
 18 be prepared if they don't produce the person by a certain
 19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.
 22 We're perfectly comfortable not being able to use that
 23 witness.

3 THE COURT: Okay. If they don't have it by June 1st
 4 if they don't have it, that witness will be prevented from
 5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

This is further reflected in an email provided to the court and sent by Plaintiff's counsel to Defendant's counsel on May 13, 2019 wherein Plaintiff's counsel stated "[w]hat I recall Judge Couch instructing you to put in the order is that Plaintiff must comply with your discovery requests by identifying known fact witnesses on or before June 1, 2019." Plaintiff's counsel was fully aware of the June 1, 2019 deadline both at the May 7 hearing and on May 13, 2019.

Plaintiff has complained of impossibility of compliance as my written Order was not filed until after the June 1 deadline. Plaintiff had approximately 16 months to identify witnesses and failed to do so. Plaintiff was given several more weeks to name witnesses at the May 7, 2019 hearing and failed to do so. Plaintiff then had another month after the June 1 deadline where he could have named witnesses and failed to do so. Based on representations of the parties, Plaintiff

still—as of this Order—has failed to comply with the South Carolina Rules of Civil Procedure, Judge Benjamin’s two October 2018 Orders, this court’s May 7 ruling, and this court’s July 3 Order².

Based on this, I find Plaintiff’s counsel’s argument that he could not comply with my May 7, 2019 ruling and July 3, 2019 written Order memorializing my May 7 ruling to be without merit. Plaintiff’s counsel asserted it would require an “H.G. Wells-style time machine” to comply with my May 7 ruling. Plaintiff’s counsel needed not look further than any one of the South Carolina Rules of Civil Procedure, Judge Benjamin’s October 3, 2018 Order Granting Motion to Compel, Judge Benjamin’s October 30, 2018 Rule to Show Cause, and/or my May 7, 2019 ruling in order to know he was required to identify the unnamed witnesses. No time machine was needed. Plaintiff’s counsel instead failed to comply with the South Carolina Rules of Civil Procedure, Judge Benjamin’s October 3, 2018 Order Granting Motion to Compel, Judge Benjamin’s October 30, 2018 Rule to Show Cause, and/or my May 7, 2019 ruling. Accordingly, I find no error of law or unsupported facts which would warrant reversal of my July 3, 2019 written Order and Plaintiff’s Motion is **DENIED**.

II. Plaintiff Argues the Order Barring Witnesses Invades the Purview of the Trial Judge

Plaintiff next argues I lacked authority to issue a discovery penalty barring unnamed witnesses from trial based on Plaintiff’s repeated failure to identify witnesses. Plaintiff’s Motion and argument omits that Plaintiff’s counsel agreed to this very penalty during the May 7, 2019 hearing. Specifically, this exchange occurred between the undersigned and Plaintiff’s counsel:

² Defendant’s counsel informed this court on July 15, 2019 that Plaintiff provided the names of two individuals at 4:04 PM on July 5, 2019—the Friday before trial was set to begin on July 8, 2019. However, Defendant’s counsel noted that Plaintiff did not provide contact information, testimony information, or any way of contacting these new alleged witnesses. Defendant’s counsel represented that following the roster meeting on July 8, 2019, Plaintiff’s counsel continued to refuse to give the requested information. Plaintiff’s counsel has not contested this representation or disputed his continued failure to comply with the rules of discovery or the orders of this court.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.
20 MR. BAYNE: Certainly, Judge.
21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

Plaintiff now seeks to withdraw this agreement and assert the undersigned lacked authority to exclude unnamed witnesses. I will note that this decision wasn't a lone decision of this court. Defendant requested the entire Complaint be struck with prejudice³. I elected to give Plaintiff one more opportunity to follow the Rules of discovery and the prior Orders of Judge Benjamin and identify the unnamed witnesses Defendant had been seeking for almost 16 months. Plaintiff's counsel agreed to the exclusion of any witnesses not identified by June 1, 2019 as a remedy for the failure to disclose. I am not inclined to overlook Plaintiff's clear, unambiguous agreement made to this court related to the exclusion of unnamed witnesses. Even if I were inclined to overlook Plaintiff's agreement made with this court related to the exclusion of unnamed witnesses, I am not aware of any case that precludes a court from barring witnesses from trial as a discovery penalty for failure to comply with both the South Carolina Rules of Civil Procedure and multiple orders and rulings from multiple judges. Accordingly, I find no error of law or unsupported facts which would warrant reversal of my July 3, 2019 written Order and Plaintiff's Motion is **DENIED**.

³ "And our motion that we filed calls to produce that—or we would ask the case be dismissed as a sanction at this point..." May 7, 2019 Hr'g Trans. 22:11-13

III. Plaintiff Finally Asserts the Order is “Not Based on Any Evidence”

A review of the record and the transcript of the May 7 Hearing reveals that Plaintiff’s counsel did not take any exception with the recitation of facts or the sequence of events that brought us before this court for Defendant’s second Motion to Compel. For example:

19	THE COURT: What's -- what's the deal?	
20	MR. JEFFERIES: Your Honor, plaintiff's wife passed	
21	away about six months ago --	

When directly asked by this court why discovery was grossly overdue, Plaintiff’s counsel did not contest the previous several minutes of recitation of facts or any of the contents of the pleadings, motions, memorandums, etc. A review of the transcript shows there was not a single objection made to any of the facts as asserted.

I find nothing in the record, pleadings, filings, or hearing transcript that is incorrect or inaccurate⁴ and, more importantly, no recitation of fact that—even if incorrect or inaccurate—would alter my decision to order compliance with discovery requests that were more than a year overdue or the two prior orders issued by Judge Benjamin in October 2018.

Accordingly, I find no error of law or unsupported facts which would warrant reversal of my July 3, 2019 written Order and Plaintiff’s Motion is **DENIED**.

Therefore, based on my prior May 7 ruling and July 3 written Order and based on the submissions of the parties since the May 7 hearing, I find as follows:

IT IS HEREBY ORDERED THAT compliance with my prior ruling and Order was required by June 1, 2019, and

⁴ There is one exception to this finding. It does appear there is one scrivener’s error in my July 3 written Order. On page 1, I noted that Plaintiff’s counsel made mention of the purported unnamed witnesses in a June 5, 2019 filing. This filing was actually made on June 5, 2018 according to the public index. However, this is immaterial to the underlying content and nature of my May 7, 2019 ruling and my July 3, 2019 written Order memorializing the May 7, 2019 ruling.

IT IS FURTHER ORDERED THAT the record reflects Plaintiff agreed to the June 1, 2019 deadline and agreed to the discovery penalty of exclusion of unnamed witnesses for failure to comply with the June 1, 2019 deadline, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to fully respond to Defendant's discovery requests regarding the identification, contact information, and summary of testimony of any unnamed factual witnesses by June 1, 2019, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to comply with my May 7, 2019 ruling and my July 3, 2019 written Order, and

IT IS FURTHER ORDERED THAT the failure of Plaintiff to comply with my May 7, 2019 ruling and July 3, 2019 written Order results in Plaintiff's inability to use any witness that was unidentified as of June 1, 2019 at trial—as further agreed to by Plaintiff at the May 7 hearing, and

IT IS FURTHER ORDERED THAT, as a result of Plaintiff's failure to comply with my ruling and Order, Plaintiff may be sanctioned in any manner accordance with South Carolina Rules of Civil Procedure 37. The determination of sanctions, if any, as set out herein shall be referred to the Chief Administrative Judge for Richland County for a determination of sanctions, if any, based on this Order and for a determination on Defendant's pending Motion for Sanctions filed in Richland County.

IT IS SO ORDERED!

July ____, 2019

Roger L. Couch, Judge



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson , defendant, et al
Case Number: 2018CP4001518
Type: Order/Other

IT IS SO ORDERED

s/ Roger L. Couch

Electronically signed on 2019-07-24 15:14:41 page 8 of 8

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING DEFENDANT'S
	)	MOTION FOR SANCTIONS
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

This matter comes before this court on Defendant's Motion for Sanctions. Defendant filed this Motion on June 27, 2019 and served a Memorandum in Support on Chief Administrative Judge Jocelyn Newman on the same date. Defendant's Motion sought sanctions pursuant to SCRCR Rules 11 and 37, ADR Rules 6, 8, and 10, and for "repeated discovery abuses and violations" as outlined in the Motion, Memorandum, prior Orders of this court, and exhibits presented at the hearing. A hearing on this matter was held before the undersigned on September 27, 2019. Present at the hearing were Lane Jefferies, counsel for Plaintiff and Brett Bayne and Andy Delaney, counsel for Defendant. Based on the reasons set out herein—including repeated discovery violations, mediation violations, and disobedience of court orders—Defendant's Motion is GRANTED in full. Plaintiff's Complaint is dismissed with prejudice and costs and fees sought in the Motion are awarded.

I. Factual Background

This case involves an automobile on bicycle accident on Old Bluff Road in Columbia, South Carolina on June 7, 2017. Plaintiff has accused Defendant of, among other things 1) driving erratically, 2) speeding, 3) crossing the double yellow line, 4) changing lanes into oncoming traffic,

and 5) striking Plaintiff in Plaintiff's lane of travel. Defendant has asserted the accident occurred when Plaintiff, while riding a bicycle on the roadway, turned left across a double yellow line directly into the path of Defendant's vehicle causing an accident.

II. Legal Standard

The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. See Fields v. Regional Med. Ctr. Orangeburg, 354 S.C. 445, 581 S.E.2d 489 (Ct. App. 2003) (decision of what kind and whether to impose discovery sanctions is left to sound discretion of (Circuit Court)); Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (noting that imposition of sanctions is generally entrusted to sound discretion of Circuit Court).

When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193 at 198, 511 S.E.2d 716 at 718 (Ct. App. 1999) (citing Rule 37(b)(2)(c), SCRCF); see also Karppi, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCF, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198, 511 S.E.2d at 719; Karppi, 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 334 S.C. at 198-99, 511 S.E.2d at

719.

III. Plaintiff's Claims About Eyewitnesses

In response to the Complaint, Defendant filed an Answer with various affirmative defenses and a claim pursuant to the South Carolina Frivolous Claims Act.¹ In response, Plaintiff filed a "Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof" on June 5, 2018. Within this signed filing, Plaintiff claimed to have eyewitnesses to the accident who would testify and stated:

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

See June 5, 2018 Memorandum, Page 5.²

In response to Plaintiff's claims, Defendant served "Defendant's First Supplemental Interrogatories and Requests for Production" on Plaintiff on August 14, 2018.³ As part of these discovery requests, Defendant requested information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant asked: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.'"

¹ Defendant's Answer filed May 22, 2018.

² As will be outlined within this Order, Plaintiff later admitted in discovery responses there actually were no eyewitnesses as Plaintiff claimed in the June 5, 2018 filing.

³ Defendant's Tab 5 from September 27, 2019 Hearing.

Plaintiff did not respond to the supplemental discovery requests which specifically sought the identity of the alleged eye witnesses referenced in the June 5, 2018 Memorandum. As a result, Defendant filed a Motion to Compel for various outstanding discovery requests. On September 28, 2018, Plaintiff served responses to the first set of discovery but did not name any eye witnesses as alleged in the June 5, 2018 Memorandum.⁴ While Plaintiff responded to the first set of discovery requests, Plaintiff did not respond to the supplemental requests for the alleged eyewitnesses.

IV. Judge Benjamin's Order and Rule to Show Cause

All outstanding discovery issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, Defendant's Motion to Compel was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Specifically, Judge Benjamin stated "Motion to compel-granted. Remaining records and all supplemental responses should be received in 20 days."⁵

Despite being given a 20-day deadline to respond to discovery and identify the alleged eyewitnesses from the June 5, 2018 Memorandum, Plaintiff failed to comply with Judge Benjamin's Order and failed to provide discovery responses. On October 23, 2018, Defendant was forced to file a Motion for Rule to Show Cause. The Rule to Show Cause was granted through written Order of Judge Benjamin on October 30, 2018. After issuance of the Rule by Judge Benjamin, Plaintiff finally responded to discovery on November 7, 2018 and admitted within those responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.⁶ Despite claiming the existence of eyewitnesses, refusing to provide discovery responses, and causing Defendant to file a Motion to Compel and a Rule to Show Cause, Plaintiff never

⁴ Defendant's Tab 6 from September 27, 2019 Hearing.

⁵ See Judge Benjamin's Form 4 Order filed October 3, 2018.

⁶ Defendant's Tab 10 from September 27, 2019 Hearing.

identified the claimed eyewitnesses.

V. Ongoing Discovery Violations

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who Plaintiff claimed witnessed the motor vehicle accident that is the subject of this lawsuit. As outlined in Defendant’s March 7, 2019 Motion to Compel and Judge Couch’s July 3, 2019 Order, Plaintiff admitted he was aware of “Alex” from the time immediately following the accident but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.” Additionally, Plaintiff consistently referenced another individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this unidentified individual is his wife’s cousin. Plaintiff admitted he had spoken to this individual and this individual came to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff sought to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident. According to Plaintiff this individual observed the accident, and spoke with Plaintiff about the accident at a later date.

As a result of these new disclosures by Plaintiff during his deposition on March 6, 2019—which directly contradicted the November 7, 2018 discovery responses—Defendant was required to file a second Motion to Compel. The second Motion to Compel, filed on March 7, 2019, outlined in detail the prior discovery abuses from 2018 and the prior non-compliance with Judge Benjamin’s Order and Rule to Show Cause. The March 7, 2019 Motion to Compel included a request for sanctions against Plaintiff for the late disclosures and prior discovery abuses.

Defendant's March 7, 2019 Motion quoted prior filings by Plaintiff where Plaintiff agreed that significant sanctions were appropriate for discovery abuses. For example, Plaintiff previously stated the following related to discovery:

"The intent of South Carolina's discovery rules...is to provide information, not to hide information. Indeed, the 'entire thrust of the discovery rules involves full and fair disclosure.' Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997)."

"...failure to fully answer thwart [sic] the purpose of discovery—they prolong litigation and unnecessarily increase costs to the parties and the Court. They are simply another example of 'Rambo style obstructionist discovery tactics... [that] if not stopped dead in their tracks by appropriate sanctions, [will] have a virus like potential...' in this case and only serve '...to corrupt the fairness of our civil justice system.' St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 517 (N.D. Iowa 2000)."

After filing the March 7, 2019 Motion to Compel, Defendant attempted to continue discovery related to the alleged eyewitnesses and served a Second and Third Set of Requests for Admission. On April 4, 2019 Plaintiff answered the Second Set of Requests for Admission. Plaintiff provided the following answer:

"After conducting written discovery and depositions, it appears that Defendant was no longer traveling in the lane of oncoming traffic when she wrongfully struck Plaintiff. Nevertheless, it was Defendant's illegal passing maneuver, in which she unlawfully travelled in the lane of oncoming traffic, which caused her to strike Plaintiff immediately after she returned to the westbound lane of travel." ⁷

This answer was given following the March 6, 2019 deposition in which Plaintiff admitted he did not witness the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged eyewitnesses from the June 5, 2018 Memorandum. This answer to the Second Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

⁷ Defendant's Tab 12 from September 27, 2019 Hearing.

As a result of this response, Defendant served a Third Requests for Admission on Plaintiff.

Defendant asked only one question:

“Admit that there is no deposition testimony, witness, or any other material to support the allegation asserted in Plaintiff’s Responses to Defendant’s Second Set of Requests for Admission that state ‘it was Defendant’s illegal passing maneuver, in which she was unlawfully traveling in the lane of oncoming traffic, which caused her strike Plaintiff immediately after she returned to the westbound lane of travel.’”

Plaintiff answered the Third Requests for Admission on April 26, 2019, responding only with “Denied.”⁸ This answer was given despite Plaintiff’s March 6, 2019 testimony where he admitted he did not see the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged eyewitnesses from the June 5, 2018 Memorandum. This answer to the Third Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

VI. Judge Couch’s Ruling and Order

Judge Couch heard Defendant’s Motion for Summary Judgment and Defendant’s second Motion to Compel on March 7, 2019. Judge Couch heard the Motion for Summary Judgment first. Plaintiff relied upon the unidentified and unnamed eyewitness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to Compel. Following a hearing on the second Motion to Compel, Judge Couch discussed the possible penalties and sanctions he was considering for Plaintiff. Specifically, the following exchanges occurred between Judge Couch and counsel:

2 || MR. JEFFERIES: Your Honor, I don't know that we can
3 || find it. If Your Honor wants to give us 30 days and say
4 || that's all you've got, we're comfortable with that.

⁸ Defendant’s Tab 13 from September 27, 2019 Hearing.

16 THE COURT: Well, I mean, what I would do is I would
 17 bar them from presenting the witness to give you time to
 18 be prepared if they don't produce the person by a certain
 19 point in time.

20 MR. BAYNE: Certainly, Judge.

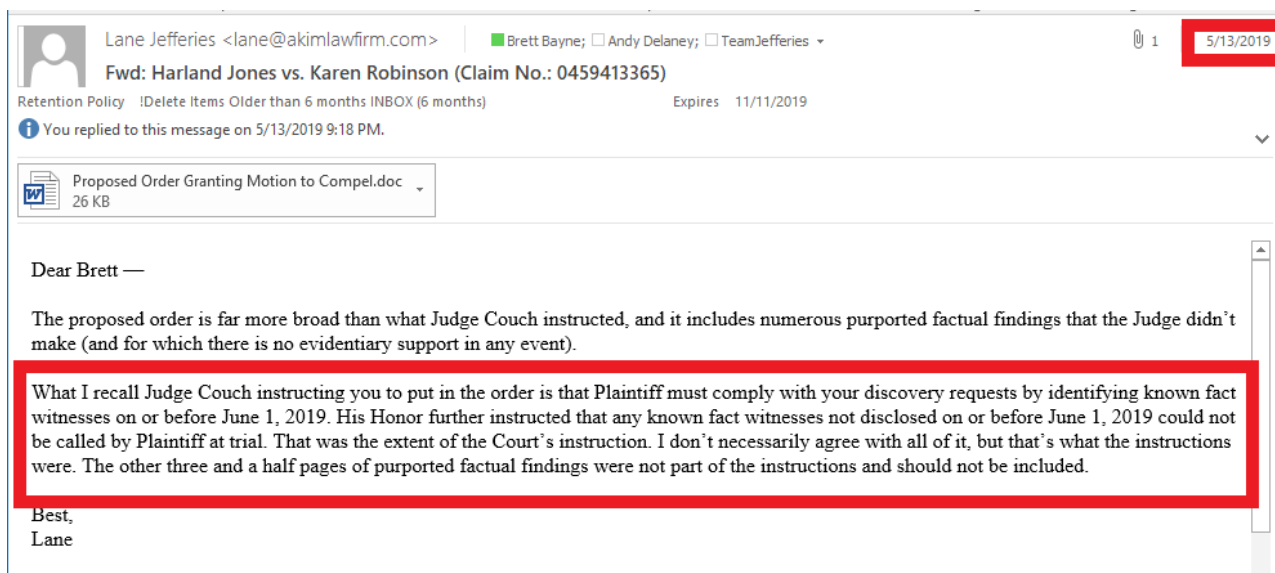
21 MR. JEFFERIES: And we agree with that, Your Honor.
 22 We're perfectly comfortable not being able to use that
 23 witness.

3 THE COURT: Okay. If they don't have it by June 1st
 4 if they don't have it, that witness will be prevented from
 5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

Plaintiff's counsel never objected to the June 1st deadline—he consented to it. Plaintiff's counsel then re-affirmed his understanding of the June 1st deadline in a May 13, 2019 email to counsel:



Judge Couch issued a bench ruling on May 7, 2019 and instructed Defendant's counsel to prepare a written order. Nevertheless, Plaintiff refused to identify the alleged eyewitnesses from the June 5, 2018 Memorandum and failed to disclose the alleged witnesses (and any other unnamed witnesses) as ordered by Judge Couch by June 1, 2019.

As discussed herein, Judge Couch's formal written Order was not filed until July 3, 2019 but there can be no doubt Plaintiff was both aware of the June 1, 2019 deadline and that Plaintiff agreed to the June 1, 2019 deadline.

When the formal Order was filed by Judge Couch on July 3, 2019, Plaintiff filed a Rule 59 motion for reconsideration within a matter of hours. Plaintiff raised three bases for reconsideration of Judge Couch's May 7th ruling and July 3rd Order: 1) the Order was "impossible" to comply with because it purported to "compel plaintiff to perform actions in the past"; 2) the Order barring witnesses invades the purview of the trial judge; and 3) the Order is "not based on any evidence." Essentially, Plaintiff has taken the position that he was not required to follow Judge Couch's ruling from the bench until it was reduced to writing. Plaintiff's position is that no judge in the State of South Carolina can order any party to do anything unless it is in writing. Plaintiff's counsel failed to comply with previous discovery requests, Judge Benjamin's October 2018 Order and Rule, and Judge Couch's May 7th Ruling and July 3rd Order.

VII. Mediation

In the middle of Defendant's repeated and ongoing attempts to acquire discovery, and Plaintiff's continued willful failure to comply with orders from this court. The parties met for a mediation on June 21, 2019.

Plaintiff's counsel and Plaintiff's counsel's firm has history of demanding and compelling strict compliance with SCADR Rule 6 by defendants. Plaintiff's firm routinely demands each and

every single person—adjuster, lead attorney, individual party, etc.—appear in person at the mediation and refuses to waive or ease the requirements.⁹ Despite this, Plaintiff’s counsel—Lane Jefferies—own letter admitting he was required by rule to be present (Exhibit A above), Mr. Jefferies did not appear at the mediation.

Rule 6(b)(3) requires the attendance of “[t]he party’s counsel of record.” Plaintiff’s lead counsel of record are Lane Jefferies (the lead counsel who has appeared at every hearing, nearly every deposition, and who has authored nearly every filing in this case), Roy Willey (listed counsel who has appeared at one deposition), and Eric Poulin (who has appeared on every filing but has not appeared at any deposition or hearing). Any of these three would satisfy the Rule 6(b)(3) requirements. And it appears from Lane Jefferies’s letter at Exhibit A, that Mr. Jefferies was well aware of this rule and further Mr. Jefferies interpreted the rule to require his own presence.

Instead, Plaintiff was represented at the mediation by Gus A. Anastopoulo. Mr. Anastopoulo could provide no explanation for why Plaintiff’s counsel of record was not present. Mr. Anastopoulo is a 2018 law graduate who was licensed on November 27, 2018.¹⁰ Mr. Anastopoulo has not appeared on a single pleading in this case, has not filed a Notice of Appearance, has not been on any email or correspondence in this case, has not been present at any deposition, and has not been present at any hearing. Mr. Anastopoulo is not a counsel of record for Plaintiff.¹¹ Plaintiff’s counsel failed to provide a reason as to why the actual counsel of record

⁹ See, Exhibit A and B to Defendant’s Memorandum in Support of Sanctions. Exhibit A is a letter from Plaintiff’s lead counsel Lane Jefferies from this specific case about the mediation, acknowledging his personal physical presence was required by Rule. Exhibit B is a collection of letters, emails, and filings from Mr. Jefferies and other members of Plaintiff’s counsel’s firm related to mediation rules and the absolute virtue of requiring attendance in person of the parties requires by SCADR Rule 6. There can be no argument from Mr. Jefferies that he was unaware of Rule 6(b)(3)’s physical attendance requirements.

¹⁰ While Mr. Anastopoulo’s level of experience would not typically be relevant, it gives context to what followed at mediation in terms of the opening statement, the lack of knowledge about the case and prior rulings, and the demands.

¹¹ This finding is not intended to conclude that merely failing to be listed on a pleading means that an attorney is not a counsel of record pursuant to Rule 6(b)(3). Indeed, plenty of attorneys appear for mediation and conduct successful and proper mediations despite not being listed on a pleading. But, rather, it is the totality of the circumstances, conduct,

could not appear at the June 21, 2019 mediation.

Defendant's counsel asserted his belief based on the course of the mediation that Mr. Anastopoulo had not met with—or even spoken to—Plaintiff before the day of the mediation. Additionally, Mr. Anastopoulo appeared to lack any functional knowledge of the case, the facts, or the status of the prior hearings, rulings (for example, that witnesses were barred by Judge Couch), and/or Orders in this case.¹² As mediations typically proceed, the mediator presented a brief opening to each party then deferred to Mr. Anastopoulo to present the Plaintiff's opening statement. Mr. Anastopoulo got several key facts and details wrong about the case. He asserted medical damages that were inaccurate and that have never been produced in discovery. Later, he asserted that there were “several eyewitnesses to the accident who would be called to testify”—something that has been expressly barred by Judge Couch, but that Mr. Anastopoulo was completely unaware of. However, the most egregious part of the mediation occurred during Mr. Anastopoulo's opening wherein he openly admitted that Plaintiff had a “1 in 10 chance” of prevailing at trial but that “1 chance out of 10 is going to be costly to Defendant so you should settle.” Mr. Anastopoulo openly and candidly admitted the lawsuit filed by Plaintiff had just a 10% chance of success—an open and brazen violation of SCRCP Rule 11.¹³ Shortly after describing Plaintiff's case as a veritable “snowball's chance”, Mr. Anastopoulo revised his prediction to a “1 in 6” chance and compared his case to “a game of Russian Roulette” wherein Defendant “may win

and the numerous issues with Mr. Anastopoulo's appearance at the mediation which necessitate the determination that, while Mr. Anastopoulo is in the same firm as Mr. Jefferies, he was not a counsel of record for Plaintiff.

¹² Typically, mediation discussions and disclosures are confidential. However, there are limited exceptions to confidentiality pursuant to ADR Rule 8(c). Rule 8(c)(5) and (6) provide for disclosure of various mediation matters when it is 1) offered to report, prove, or disprove professional misconduct occurring during the mediation and/or 2) in a report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules.

¹³ If a claim being made has, at best, a 10% chance of success it is the undersigned's opinion this claim cannot possibly meet the requirements of Rule 11(a)—that “to the best of [the attorney's] knowledge, information and belief there is good ground to support it.” This simply is not the good ground standard applied to a Complaint filed in a case—that there is a 10% chance of success and a 90% chance of failure.

5 out of 6 times but that one time there's a bullet in the chamber and we [Plaintiff] win." After this statement, the parties broke into separate rooms and the mediator started with Plaintiff. The mediator returned shortly with a demand of \$500,000—20 times the insurance policy limits and, when the demand was rejected, Mr. Anastopoulo left the mediation.¹⁴

Defendant's counsel Brett Bayne attempted to resolve these mediation issues with Plaintiff's actual counsel of record—Lane Jefferies—via email on June 21, 2019.¹⁵ Mr. Jefferies failed to respond to the email. The undersigned notes Mr. Jefferies' current email signature bars defendant's attorneys and other opposing counsel from contacting him in any manner other than by telephone between 4:00 PM and 4:30 PM and allocates only five (5) minutes to each opposing

¹⁴ Plaintiff did not file a counter memorandum or memorandum in opposition to Defendant's Motion for Sanctions outlining the mediation behavior. Plaintiff similarly did not file any affidavits related to the mediation until *after* the September 27, 2019 hearing. At the hearing, Plaintiff did hand up a copy of an affidavit signed by Gus Anastopoulo on the same day as the hearing proceeded—September 27, 2019. Accordingly, I have reviewed Mr. Gus Anastopoulo's affidavit which was handed up at the hearing for the first time and filed after the hearing, Rule 6(d) requires opposing affidavits to be served "not later than two days before the hearing." The undersigned requested any supporting materials, which would include affidavits, from Plaintiff by email on September 24, 2019 and September 26, 2019. Plaintiff did not supply any evidence, materials, or affidavits in response to the undersigned's emails.

¹⁵ See Exhibit C to Defendant's Memorandum in Support of Sanctions

attorney. Specifically, the email signature states¹⁶:

--
Lane D. Jefferies
Division Chair and Trial Lawyer
Commercial and Construction Liability Division
 Anastopoulos Law Firm, LLC
 32 Ann Street | Charleston, SC 29403
 Tel: 843-614-8888* | Fax: 843-494-5536
www.akimlawfirm.com | TeamJefferies@GoogleGroups.com
 Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville | Myrtle Beach
 | Raleigh, NC
 By Appointment Only: Wilmington, NC
 *There are two ways for opposing attorneys to reach me by phone:
 (1) **Call my cell any day between 4:00 p.m. and 4:30 p.m.** If I am not already on the phone with another
 opposing counsel, I will answer and spend up to five minutes on the phone with you. At the end of our five-
 minute talk, I may instruct my staff to schedule a longer meeting with you if you satisfy the criteria set forth in
 #2 below. Please note that I spend just five minutes on each call, so if I don't answer when you call, wait a few
 minutes and try again. My cell is [843.814.7719](tel:843.814.7719). Call only between 4:00 p.m. and 4:30 p.m., as I spend the rest
 of my day focused solely on achieving my clients' goals.
 OR,
 (2) **Schedule a longer meeting.** Begin by providing my office with a *specific* agenda of items you would like to
 discuss ([email TeamJefferies@GoogleGroups.com](mailto:TeamJefferies@GoogleGroups.com)). Be sure to identify the tangible outcomes to be achieved as
 to each item, and persuasively describe how these outcomes, if achieved, would promote the greatest recovery
 for my client in the least amount of time and for the least expense. If you believe that a statute or rule of
 procedure requires us to speak by phone, then please specifically identify it. If your email persuades my staff
 that using my time to meet with you is legally required or is likely to be a worthy investment **from the**
perspective of my client, then they will schedule such a meeting (probably a meeting by phone initially). On
 the other hand, if you do not persuade my staff that scheduling a meeting is consistent with my promise to my
 clients not to try to do 1000 things at once that won't contribute much, if anything, to the results we are trying
 to achieve, then no meeting will be scheduled (though you will remain free to call any afternoon as described in
 #1 above). Fair warning: generalized requests to "discuss the case" or "talk about the status" or the like will be
 considered conclusive evidence of a request to waste time, and no meeting will be scheduled.
 We have instituted the above procedure in order to accommodate your desire to speak with me by phone in a
 manner that does not interfere with my ethical obligation to devote my time and attention to the pursuit of
 justice for my clients as quickly and economically as possible.
 Naturally, the above procedure does not apply to Judges, judicial staff, clerks of court, my wife, or my children
 — they are all welcome to call or text me anytime.

During the sanctions hearing, Defendant's counsel candidly admitted he did not call Mr. Jefferies between 4:00 and 4:30 PM to discuss the mediation but, rather, believed the email sent about the mediation was sufficient. The undersigned agrees. Contrary to Mr. Jefferies email

¹⁶ This email was sent to the undersigned on September 24, 2019 at 4:16 PM.

signature, opposing counsel was not required to contact Mr. Jefferies only between 4:00 and 4:30 PM for a period of time not to exceed five (5) minutes.

Further, Mr. Jefferies provided no satisfactory explanation for his absence at mediation nor did he provide any satisfactory explanation for the actions of Mr. Anastopoulo. During the September 27, 2019 hearing, Mr. Jefferies asserted that Mr. Anastopoulo was “acting at his direction” and that “Mr. Anastopoulo appeared in the case by appearing at the mediation.”

SCADR Rule 10 and SCRCP Rule 37 provide the framework for this Court to determine the appropriate sanction for Plaintiff’s counsel’s actions related to the mediation. SCADR Rule 10(b) states:

“If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, **including, but not limited to**, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.”

SCRCP Rule 37(b) provides several remedies authorized by Rule 10(b) including: “[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.” SCRCP Rule 37(b)(2)(C).

VIII. Judge Lee’s Hearing

Following the mediation, this matter was scheduled for trial in Richland County the week of July 8, 2019. Plaintiff argued the trial could not go forward because of the pending Rule 59 for Judge Couch’s July 3rd Order. Judge Lee conducted a full pre-trial hearing to evaluate the claims and issues prior to ruling on whether the case could go forward or had to be continued until Judge Couch could issue a rule on the Rule 59. However, of particular concern are statements made about

the discovery abuses and Judge Couch's May 7th Ruling and July 3rd Order. Judge Lee asked:

15 And I wasn't at the hearing. I don't know how
16 certain, how forceful, how convinced Judge Couch was that
17 this was what his ruling was and that's what he wanted it
18 to be. What part -- what portion of that oral argument or
19 oral ruling did you disagree with? I mean, was -- I --
20 I'm just trying to understand that.
21 MR. JEFFRIES: Several portions, Your Honor, and --
22 and this was, of course, laid out in our Rule 59 memo.

In response to this question by Judge Lee about whether Plaintiff disagreed with Judge Couch's ruling, Plaintiff's counsel answered:

8 The second piece is barring every witness who wasn't
9 disclosed by the arbitrary deadline of June 1 from trial.
10 At that point trial hadn't even been set as I recall. I
11 could be wrong, but I'm 99 percent sure trial was not set
12 as of June 1. If I -- if I'm wrong, please correct me.
13 In any event, barring all those witnesses, I didn't
14 think 30 day -- well, No. 1, I didn't think barring was
15 proper at all. I didn't think 30 days was a sufficient
16 time frame or to the June 1 deadline was a sufficient time
17 frame.

As is evident, Plaintiff took the position with Judge Lee on July 8th that he opposed the June 1st deadline and that he opposed the remedy of exclusion of witnesses. However, as already discussed herein, during the Judge Couch hearing on May 7, 2019, Plaintiff proposed the exclusion of witnesses with a time limitation and agreed with Judge Couch at the hearing on this decision:

2 MR. JEFFERIES: Your Honor, I don't know that we can
3 find it. If Your Honor wants to give us 30 days and say
4 that's all you've got, we're comfortable with that.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

3 THE COURT: Okay. If they don't have it by June 1st
4 if they don't have it, that witness will be prevented from
5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

The representations made by Plaintiff's counsel to Judge Lee on July 8, 2019 regarding the exclusion of witnesses were inconsistent with Plaintiff's agreement and representations made to Judge Couch on May 7, 2019.

IX. Judge Couch's Rule 59 Order

Following Judge Couch's July 3, 2019 Order, Plaintiff filed a Rule 59 Motion to reconsider or alter the July 3rd Order and May 7th Ruling. This Motion was pending during the July 8, 2019 Judge Lee hearing. Judge Couch issued an order denying Plaintiff's Rule 59 Motion on July 24,

2019. Judge Couch made a number of specific findings related to the multitude of discovery abuses, reiterated his sanction of exclusion of all unnamed witnesses, and determined additional sanctions may be awarded at a later date.

First, Judge Couch noted that the motions before him were “...the second time Defendant has had to file a Motion to Compel over the same witness issue” and “[o]n October 3, 2018 Judge Benjamin granted Defendant’s first Motion to Compel this information. Judge Benjamin then issued a Rule to Show Cause to Plaintiff on October 30, 2018, over non-compliance with October 3rd Order. Following the issuance of the Rule to Show Cause, Plaintiff submitted discovery responses to Defendant on November 7, 2018, and stated there were no witnesses to disclose. Plaintiff then disclosed the purported existence of these same witnesses at his deposition on March 6, 2019—which caused this second Motion to Compel to be filed.”

Next, Judge Couch reiterated his ruling based on the submissions, record, and facts of the case: “[b]ased on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, I determined there was just cause for granting the Motion. I issued a ruling from the bench on May 7, 2019 ordering Plaintiff to identify any unnamed the witnesses by June 1, 2019. I further ordered that if the witnesses were not identified by June 1, 2019, they would be barred from trial.” Judge Couch then noted “Plaintiff agreed with both the June 1, 2019 deadline and to the exclusion of unnamed witnesses as a penalty for failure to meet the deadline.” This is both consistent with the Judge Couch hearing transcript and inconsistent with Plaintiff’s statements made to Judge Lee on July 8, 2019.

Judge Couch addressed Plaintiff’s “impossibility” argument— “Plaintiff now takes the position that he was not required to comply with my May 7 ruling to produce witnesses by June 1, 2019 until he received a filed written order. It is clear from the record that Plaintiff then failed to

identify any previously unnamed witnesses by the June 1, 2019 deadline. I note with particularity that Plaintiff took no issue with the June 1, 2019 deadline and has not disputed that he fully understood the nature of the deadline. For example, during the May 7, 2019 hearing, Plaintiff's counsel acknowledges the deadline...Plaintiff's counsel was fully aware of the June 1, 2019 deadline both at the May 7 hearing and on May 13, 2019...Plaintiff had approximately 16 months to identify witnesses and failed to do so. Plaintiff was given several more weeks to name witnesses at the May 7, 2019 hearing and failed to do so. Plaintiff then had another month after the June 1 deadline where he could have named witnesses and failed to do so. Based on representations of the parties, Plaintiff still—as of this Order—has failed to comply with the South Carolina Rules of Civil Procedure, Judge Benjamin's two October 2018 Orders, this court's May 7 ruling, and this court's July 3 Order.” Plaintiff made the same argument before the undersigned, taking the position that Plaintiff was not required to follow orders or rulings of this court if not reduced to writing.

Following a recitation of the case, Judge Couch re-issued his ruling as follows:

“IT IS HEREBY ORDERED THAT compliance with my prior ruling and Order was required by June 1, 2019, and

IT IS FURTHER ORDERED THAT the record reflects Plaintiff agreed to the June 1, 2019 deadline and agreed to the discovery penalty of exclusion of unnamed witnesses for failure to comply with the June 1, 2019 deadline, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to fully respond to Defendant's discovery requests regarding the identification, contact information, and summary of testimony of any unnamed factual witnesses by June 1, 2019, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to comply with my May 7, 2019

ruling and my July 3, 2019 written Order, and

IT IS FURTHER ORDERED THAT the failure of Plaintiff to comply with my May 7, 2019 ruling and July 3, 2019 written Order results in Plaintiff's inability to use any witness that was unidentified as of June 1, 2019 at trial—as further agreed to by Plaintiff at the May 7 hearing, and

IT IS FURTHER ORDERED THAT, as a result of Plaintiff's failure to comply with my ruling and Order, Plaintiff may be sanctioned in any manner accordance with South Carolina Rules of Civil Procedure 37. The determination of sanctions, if any, as set out herein shall be referred to the Chief Administrative Judge for Richland County for a determination of sanctions, if any, based on this Order and for a determination on Defendant's pending Motion for Sanctions filed in Richland County.”

Plaintiff did not appeal this Order and it is now final, including the findings therein.

X. Judge Manning's Hearing

Finally, this matter came before Judge Casey Manning for trial on August 12, 2019. Judge Manning did conduct a pretrial conference related to Defendant's Motion in Limine to exclude witnesses based on the Judge Couch May 7th Ruling and July 3rd Order. Plaintiff appeared for trial and purported to identify new witnesses not named before June 1, 2019 and attempted to call those witnesses to testify. Judge Manning reviewed Judge Couch's July 3rd Order and questioned Plaintiff about his compliance with the June 1, 2019 deadline to name witnesses. Judge Manning deferred hearing and ruling on this underlying Motion for Sanctions until the conclusion of the trial. The trial ended in a mistrial and Judge Manning ultimately did not hear the Motion for Sanctions or rule on the same.

Initially, Judge Manning sought clarification from Plaintiff's counsel with a very simple question:

21	THE COURT: I -- I'm going to ask you this, did you
22	comply with the terms of Judge Couch's order?
23	MR. JEFFERIES: Yes, Your Honor --
24	THE COURT: Did you fail to comply? Look, I can read
25	this myself. I'm asking for a straight answer on the

1	record, did you -- did you comply or not? "Yes" or "no"?
2	MR. JEFFERIES: Yes, Your Honor.

This court has spelled out above how Plaintiff did not comply with the terms of Judge Couch's May 7th Ruling and July 3rd Order. That Order, referenced herein, required disclosure of all unnamed witnesses by June 1, 2019 or the witnesses would be barred from trial. Plaintiff, unquestionably, did not name any witnesses by June 1, 2019. Despite this unquestioned fact of this case—that the witnesses, were not disclosed by June 1, 2019—when asked specifically and directly if he had complied with the Order “did you comply or not? ‘Yes’ or ‘No’?” Plaintiff's counsel stated “Yes, Your Honor.”

Later in the same pretrial hearing, Judge Manning probed further into the issue with

Plaintiff counsel:

4 THE COURT: Well, did Judge Couch exclude any
5 additional witnesses after a certain date? Yes or no?
6 MR. JEFFERIES: Yes, he did.
7 THE COURT: Well, they're excluded then, aren't they?
8 MR. JEFFERIES: He --
9 THE COURT: Wait. Let me finish. He said they were
10 to be provided -- they were not disclosed prior to --
11 prior to Judge Couch's order; is that true?
12 MR. JEFFERIES: If I may correct what Mr. Bayne said.
13 First off, we did not refuse to identify them. We
14 identified them on July --
15 THE COURT: Did you meet the deadline imposed by
16 Judge Couch? Yes or no?
17 MR. JEFFERIES: Yes, Your Honor.

Judge Manning again establishes Judge Couch's May 7th Ruling and July 3rd Order bars witnesses after June 1, 2019. Plaintiff's counsel acknowledges this Order. Judge Manning again asks "[d]id you meet the deadline imposed by Judge Couch? Yes or No?" Despite clear evidence to the contrary, Plaintiff's counsel states "Yes" and asserts compliance with the Order.

Judge Manning inquired one final time about compliance with the Ruling and Order:

14 But my question to you is simple, did you disclose
15 these names before Judge Couch's order or not? Yes or no?
16 MR. JEFFERIES: Yes, Your Honor. We disclosed them
17 on -- pardon me --
18 THE COURT: All right. Stop --

Again, Plaintiff's counsel asserts he did comply with the Order and did disclose the witnesses by June 1, 2019—a fact which is not true.

XI. Sanctions

Defendant has sought full sanctions for Plaintiff's repeated discovery abuses, failures to comply with Rulings and Orders of this court, and ADR violations. This Court agrees that, based on the totality of the circumstances, sanctions pursuant to Rule 37 for violations of SCADR Rules, SCRCP Rule 11, and SCRCP Discovery Rules are warranted.

Despite two Orders from Judge Benjamin, a Ruling from Judge Couch, an Order from Judge Couch, and pre-trial and trial rulings by Judge Manning, Plaintiff continues to violate discovery rules and willfully ignore the prior orders of this court. Plaintiff has acted in bad faith, with willful disobedience of numerous court orders and rulings, and with gross indifference toward the court and counsel highlighted herein.

The only proper remedy is to strike the Complaint, with prejudice, pursuant to SCADR Rule 10(b) and 37(b)(2)(C). With this decision, this Court grants the entirety of Defendant's attorney fees and costs incurred to date.

Accordingly, Plaintiff's Complaint is hereby dismissed with prejudice. Plaintiff's response to Defendant's counterclaim is not dismissed and this matter shall proceed to trial on Defendant's counterclaims.

Plaintiff's counsel is ordered to pay Defendant's attorneys costs and fees incurred to date. Based on the affidavit of Defendant's counsel submitted, costs and fees in the amount of \$23,277.14 are hereby awarded.

IT IS SO ORDERED!

(Judge's Electronic Signature Page to Follow)



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson , defendant, et al

Case Number: 2018CP4001518

Type: Order/Other

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-10-31 14:26:18 page 23 of 23

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED ORDER GRANTING
	)	DEFENDANT'S MOTION FOR
KAREN ROBINSON,	)	SANCTIONS
	)	
Defendant.	)	
	)	

This matter comes before this court on Defendant's Motion for Sanctions. Defendant filed this Motion on June 27, 2019 and served a Memorandum in Support on Chief Administrative Judge Jocelyn Newman on the same date. Defendant's Motion sought sanctions pursuant to SCRCR Rules 11 and 37, ADR Rules 6, 8, and 10, and for "repeated discovery abuses and violations" as outlined in the Motion, Memorandum, prior Orders of this court, and exhibits presented at the hearing. A hearing on this matter was held before the undersigned on September 27, 2019. Present at the September 27, 2019 hearing were Lane Jefferies, counsel for Plaintiff and Brett Bayne and Andy Delaney, counsel for Defendant. The Court issued an order on October 31, 2019. Plaintiff filed a Motion to Reconsider on November 8, 2019 and a hearing was held on December 5, 2019. Present at the December 5, 2019 hearing were Lane Jefferies, counsel for Plaintiff, Ronnie Richter and Eric Bland, counsel for Plaintiff's law firm, and Brett Bayne, counsel for Defendant. Based on the reasons set out herein—including repeated discovery violations and disobedience of court orders—Defendant's Motion is GRANTED in full. Plaintiff's Complaint is dismissed with prejudice and costs and fees sought in the Motion are awarded.

I. Factual Background

This case involves an automobile on bicycle accident on Old Bluff Road in Columbia, South Carolina on June 7, 2017. Plaintiff has accused Defendant of, among other things 1) driving erratically, 2) speeding, 3) crossing the double yellow line, 4) changing lanes into oncoming traffic, and 5) striking Plaintiff in Plaintiff's lane of travel. Defendant has asserted the accident occurred when Plaintiff, while riding a bicycle on the roadway, turned left across a double yellow line directly into the path of Defendant's vehicle causing an accident.

II. Legal Standard

The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. See Fields v. Regional Med. Ctr. Orangeburg, 354 S.C. 445, 457, 581 S.E.2d 489, 495 (Ct. App. 2003) (decision of what kind and whether to impose discovery sanctions is left to sound discretion of (Circuit Court)); QZO, Inc. v. Moyer, 358 S.C. 246, 255-56, 594 S.E.2d 541, 546-57 (Ct. App. 2004) *citing* (Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) (noting that imposition of sanctions is generally entrusted to sound discretion of Circuit Court).

When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (citing Rule 37(b)(2)(c), SCRCP); see also Karppi, 327 S.C. at 542, (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198; Karppi, 327 S.C. at 543. The sanction imposed

should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Karppi, 327 S.C. at 543. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 334 S.C. at 198-99 *citing* Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991).

III. Plaintiff's Claims About Witnesses

In response to the Complaint, Defendant filed an Answer with various affirmative defenses and a claim pursuant to the South Carolina Frivolous Claims Act.¹ In response, Plaintiff filed a "Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof" on June 5, 2018. Within this signed filing, Plaintiff claimed to have witnesses to the accident who would testify and stated:

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

See June 5, 2018 Memorandum, Page 5.²

In response to Plaintiff's claims, Defendant served "Defendant's First Supplemental Interrogatories and Requests for Production" on Plaintiff on August 14, 2018.³ As part of these discovery requests, Defendant requested information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle

¹ Defendant's Answer filed May 22, 2018.

² As will be outlined within this Order, Plaintiff later admitted in discovery responses there actually were no witnesses as Plaintiff claimed in the June 5, 2018 filing.

³ Defendant's Tab 5 from September 27, 2019 Hearing.

accident. Specifically, Defendant asked: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.'

Plaintiff did not respond to the supplemental discovery requests which specifically sought the identity of the alleged witnesses referenced in the June 5, 2018 Memorandum. As a result, Defendant filed a Motion to Compel for various outstanding discovery requests. On September 28, 2018, Plaintiff served responses to the first set of discovery but did not name any witnesses as alleged in the June 5, 2018 Memorandum.⁴ While Plaintiff responded to the first set of discovery requests, Plaintiff did not respond to the supplemental requests for the alleged witnesses.

IV. Judge Benjamin's Order and Rule to Show Cause

All outstanding discovery issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, Defendant's Motion to Compel was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Specifically, Judge Benjamin stated "Motion to compel-granted. Remaining records and all supplemental responses should be received in 20 days."⁵

Despite being given a 20-day deadline to respond to discovery and identify the alleged witnesses from the June 5, 2018 Memorandum, Plaintiff failed to comply with Judge Benjamin's Order and failed to provide discovery responses. On October 23, 2018, Defendant was left no choice but to file a Motion for Rule to Show Cause. The Rule to Show Cause was granted through written Order of Judge Benjamin on October 30, 2018. After issuance of the Rule by Judge Benjamin, Plaintiff finally responded to discovery on November 7, 2018 and admitted within those

⁴ Defendant's Tab 6 from September 27, 2019 Hearing.

⁵ See Judge Benjamin's Form 4 Order filed October 3, 2018.

responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.⁶ Despite claiming the expectation of witnesses, refusing to provide discovery responses, and causing Defendant to file a Motion to Compel and a Rule to Show Cause, Plaintiff never identified the claimed witnesses.

V. Ongoing Discovery Violations

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who Plaintiff claimed witnessed the motor vehicle accident that is the subject of this lawsuit. As outlined in Defendant’s March 7, 2019 Motion to Compel and Judge Couch’s July 3, 2019 Order, Plaintiff admitted he was aware of “Alex” from the time immediately following the accident but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, a mailing address, a phone contact, or any way to find or get in touch with “Alex.” Plaintiff did say “Alex” lived in Winnsboro. Additionally, Plaintiff consistently referenced another individual who remained unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this unidentified individual is his wife’s cousin. Plaintiff admitted he had spoken to this individual and this individual came to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff sought to rely on testimony or inferences arising from this individual, as this individual was allegedly operating the vehicle in front of Defendant immediately prior to the accident. According to Plaintiff, this individual observed the accident and spoke with Plaintiff about the accident at a later date.

As a result of these new disclosures by Plaintiff during his deposition on March 6, 2019—which directly contradicted the November 7, 2018 discovery responses—Defendant filed a second

⁶ Defendant’s Tab 10 from September 27, 2019 Hearing.

Motion to Compel. The second Motion to Compel, filed on March 7, 2019, outlined in detail the prior discovery abuses from 2018 and the prior non-compliance with Judge Benjamin's Order and Rule to Show Cause. The March 7, 2019 Motion to Compel included a request for sanctions against Plaintiff for the late disclosures and prior discovery abuses. Defendant's March 7, 2019 Motion quoted prior filings by Plaintiff where Plaintiff agreed that significant sanctions were appropriate for discovery abuses. For example, Plaintiff previously stated the following related to discovery:

"The intent of South Carolina's discovery rules...is to provide information, not to hide information. Indeed, the 'entire thrust of the discovery rules involves full and fair disclosure.' Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997)."

"...failure to fully answer thwart [sic] the purpose of discovery—they prolong litigation and unnecessarily increase costs to the parties and the Court. They are simply another example of 'Rambo style obstructionist discovery tactics... [that] if not stopped dead in their tracks by appropriate sanctions, [will] have a virus like potential...' in this case and only serve '...to corrupt the fairness of our civil justice system.' St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 517 (N.D. Iowa 2000)."

After filing the March 7, 2019 Motion to Compel, Defendant attempted to continue discovery related to the alleged witnesses and served a Second and Third Set of Requests for Admission. On April 4, 2019 Plaintiff answered the Second Set of Requests for Admission. Plaintiff provided the following answer:

"After conducting written discovery and depositions, it appears that Defendant was no longer traveling in the lane of oncoming traffic when she wrongfully struck Plaintiff. Nevertheless, it was Defendant's illegal passing maneuver, in which she unlawfully travelled in the lane of oncoming traffic, which caused her to strike Plaintiff immediately after she returned to the westbound lane of travel." ⁷

This answer was given following the March 6, 2019 deposition in which Plaintiff admitted

⁷ Defendant's Tab 12 from September 27, 2019 Hearing.

he did not witness the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged witnesses from the June 5, 2018 Memorandum. This answer to the Second Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

As a result of this response, Defendant served a Third Requests for Admission on Plaintiff.

Defendant asked only one question:

“Admit that there is no deposition testimony, witness, or any other material to support the allegation asserted in Plaintiff’s Responses to Defendant’s Second Set of Requests for Admission that state ‘it was Defendant’s illegal passing maneuver, in which she was unlawfully traveling in the lane of oncoming traffic, which caused her strike Plaintiff immediately after she returned to the westbound lane of travel.’”

Plaintiff answered the Third Requests for Admission on April 26, 2019, responding only with “Denied.”⁸ This answer was given despite Plaintiff’s March 6, 2019 testimony where he admitted he did not see the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged witnesses from the June 5, 2018 Memorandum. This answer to the Third Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

VI. Judge Couch’s Ruling and Order

Judge Couch heard Defendant’s Motion for Summary Judgment and Defendant’s second Motion to Compel on May 7, 2019. Judge Couch heard the Motion for Summary Judgment first. Plaintiff relied in part upon the unidentified and unnamed witness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to Compel. Following a hearing on the second Motion to Compel, Judge Couch discussed the possible penalties and sanctions he was considering for Plaintiff. Specifically, the following exchanges occurred between Judge Couch and counsel:

⁸ Defendant’s Tab 13 from September 27, 2019 Hearing.

2 MR. JEFFERIES: Your Honor, I don't know that we can
3 find it. If Your Honor wants to give us 30 days and say
4 that's all you've got, we're comfortable with that.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.

20 MR. BAYNE: Certainly, Judge.

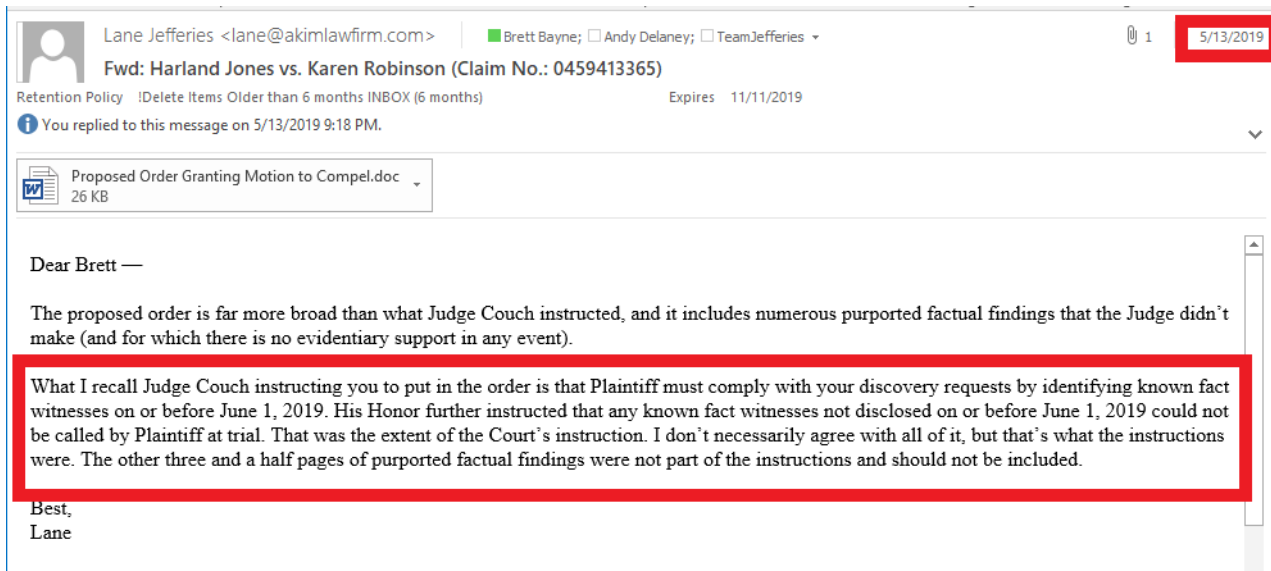
21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

3 THE COURT: Okay. If they don't have it by June 1st
4 if they don't have it, that witness will be prevented from
5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

Plaintiff's counsel never objected to the June 1st deadline—he consented to it. Plaintiff's counsel then re-affirmed his understanding of the June 1st deadline in a May 13, 2019 email to counsel:



Judge Couch issued a bench ruling on May 7, 2019 and instructed Defendant's counsel to prepare a written order. Nevertheless, Plaintiff refused to identify the alleged witnesses from the June 5, 2018 Memorandum and failed to disclose the alleged witnesses (and any other unnamed witnesses) as ordered by Judge Couch by June 1, 2019.

As discussed herein, Judge Couch's formal written Order was not filed until July 3, 2019 but there can be no doubt Plaintiff was both aware of the June 1, 2019 deadline and that Plaintiff agreed to the June 1, 2019 deadline.

When the formal Order was filed by Judge Couch on July 3, 2019, Plaintiff filed a Rule 59 motion for reconsideration within a matter of hours. Plaintiff raised three bases for reconsideration of Judge Couch's May 7th ruling and July 3rd Order: 1) the Order was "impossible" to comply with because it purported to "compel plaintiff to perform actions in the past"; 2) the Order barring witnesses invades the purview of the trial judge; and 3) the Order is "not based on any evidence." Essentially, Plaintiff has taken the position that he was not required to follow Judge Couch's ruling from the bench until it was reduced to writing. Plaintiff's position is that no judge in the State of South Carolina can order any party to do anything unless it is in writing. Plaintiff's counsel failed

to comply with previous discovery requests, Judge Benjamin's October 2018 Order and Rule, and Judge Couch's May 7th Ruling and July 3rd Order.

VII. Mediation

The parties met for mediation on June 21, 2019. Plaintiff had been harassing Defendant for almost a year to schedule mediation even though Plaintiff was not turning over discovery or complying with court orders.

Plaintiff's counsel and Plaintiff's counsel's firm has history of demanding and compelling strict compliance with SCADR Rule 6 by defendants. Plaintiff's firm routinely demands each and every single person—adjuster, lead attorney, individual party, etc.—appear in person at the mediation and refuses to waive or ease the requirements.⁹ Despite this, Plaintiff's counsel—Lane Jefferies—own letter admitting he was required by rule to be present (Exhibit A above), Mr. Jefferies did not appear at the mediation.

Rule 6(b)(3) requires the attendance of “[t]he party's counsel of record.” Plaintiff's lead counsel of record are Lane Jefferies (the lead counsel who has appeared at every hearing, nearly every deposition, and who has authored nearly every filing in this case), Roy Willey (listed counsel who has appeared at one deposition), and Eric Poulin (who has appeared on every filing but has not appeared at any deposition or hearing). Any of these three would satisfy the Rule 6(b)(3) requirements. And it appears from Lane Jefferies's letter at Exhibit A, that Mr. Jefferies was well aware of this rule and further Mr. Jefferies interpreted the rule to require his own presence.

Instead, Plaintiff was represented at the mediation by Gus A. Anastopoulos. Mr.

⁹ See, Exhibit A and B to Defendant's Memorandum in Support of Sanctions. Exhibit A is a letter from Plaintiff's lead counsel Lane Jefferies from this specific case about the mediation, acknowledging his personal physical presence was required by Rule 6(b)(3). Exhibit B is a collection of letters, emails, and filings from Mr. Jefferies and other members of Plaintiff's counsel's firm related to mediation rules and the absolute virtue of requiring attendance in person of the parties requires by SCADR Rule 6. There can be no argument from Mr. Jefferies that he was unaware of Rule 6(b)(3)'s physical attendance requirements.

Anastopoulos could provide no explanation for why Plaintiff's counsel of record was not present. Mr. Anastopoulos is a 2018 law graduate who was licensed on November 27, 2018.¹⁰ Mr. Anastopoulos has not appeared on a single pleading in this case, has not filed a Notice of Appearance, has not been on any email or correspondence in this case, has not been present at any deposition, and has not been present at any hearing. Mr. Anastopoulos is not a counsel of record for Plaintiff.

This finding is not intended to conclude that merely failing to be listed on a pleading means that an attorney is not a counsel of record pursuant to Rule 6(b)(3). Indeed, plenty of attorneys appear for mediation and conduct successful and proper mediations despite not being listed on a pleading. This decision is based on the totality of the circumstances, conduct, and the numerous issues at the mediation which necessitate the determination that, while Mr. Anastopoulos is in the same firm as Mr. Jefferies, he was not a counsel of record for Plaintiff.

Plaintiff's counsel failed to provide a reason as to why the actual counsel of record could not appear at the June 21, 2019 mediation. To this day, Plaintiff has never provided an explanation why counsel of record was not present at the mediation. Defense counsel was left with no other option but to attempt to go forward with Mr. Anastopoulos and the scheduled mediation. The case was scheduled for trial the week of July 8, 2019.

Defendant's counsel asserted his belief based on the course of the mediation that Mr. Anastopoulos had not met with—or even spoken to—Plaintiff before the day of the mediation. Additionally, Mr. Anastopoulos appeared to lack any functional knowledge of the case, the facts, or the status of the prior hearings, rulings (for example, that witnesses were barred by Judge

¹⁰ While Mr. Anastopoulos's level of experience would not typically be relevant, it gives context to what followed at mediation in terms of the opening statement, the lack of knowledge about the case and prior rulings, and the demands.

Couch), and/or Orders in this case.¹¹ As mediations typically proceed, the mediator presented a brief opening to each party then deferred to Mr. Anastopoulos to present the Plaintiff's opening statement. Mr. Anastopoulos got several key facts and details wrong about the case. He asserted medical damages that were inaccurate and that have never been produced in discovery. Later, he asserted that there were "several eyewitnesses to the accident who would be called to testify"—something that has been expressly barred by Judge Couch, but that Mr. Anastopoulos was completely unaware of. However, the most egregious part of the mediation occurred during Mr. Anastopoulos's opening wherein he openly admitted that Plaintiff had a "1 in 10 chance" of prevailing at trial but that "1 chance out of 10 is going to be costly to Defendant so you should settle." Mr. Anastopoulos openly and candidly admitted the lawsuit filed by Plaintiff had just a 10% chance of success. Shortly after describing Plaintiff's case as a veritable "snowball's chance", Mr. Anastopoulos revised his prediction to a "1 in 6" chance and compared his case to "a game of Russian Roulette" wherein Defendant "may win 5 out of 6 times but that one time there's a bullet in the chamber and we [Plaintiff] win." After this statement, the parties broke into separate rooms and the mediator started with Plaintiff. The mediator returned shortly with a demand of \$500,000—20 times the insurance policy limits and, when the demand was rejected, Mr. Anastopoulos left the mediation.¹²

¹¹ Typically, mediation discussions and disclosures are confidential. However, there are limited exceptions to confidentiality pursuant to ADR Rule 8(c). Rule 8(c)(5) and (6) provide for disclosure of various mediation matters when it is 1) offered to report, prove, or disprove professional misconduct occurring during the mediation and/or 2) in a report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules.

¹² Plaintiff did not file a counter memorandum or memorandum in opposition to Defendant's Motion for Sanctions outlining the mediation behavior. Plaintiff similarly did not file any affidavits related to the mediation until *after* the September 27, 2019 hearing. At the hearing, Plaintiff did hand up a copy of an affidavit signed by Gus Anastopoulos on the same day as the hearing proceeded—September 27, 2019. Accordingly, I have reviewed Mr. Gus Anastopoulos's affidavit which was handed up at the hearing for the first time and filed after the hearing, Rule 6(d) requires opposing affidavits to be served "not later than two days before the hearing." The undersigned requested any supporting materials, which would include affidavits, from Plaintiff by email on September 24, 2019 and September 26, 2019. Plaintiff did not supply any evidence, materials, or affidavits in response to the undersigned's emails.

Defendant's counsel Brett Bayne attempted to resolve these mediation issues with Plaintiff's actual counsel of record—Lane Jefferies—via email on June 21, 2019.¹³ Mr. Jefferies failed to respond to the email. The undersigned notes Mr. Jefferies' email signature at that time bars defendant's attorneys and other opposing counsel from contacting him in any manner other than by telephone between 4:0 PM and 4:30 PM and allocates only five (5) minutes to each

¹³ See Exhibit C to Defendant's Memorandum in Support of Sanctions.

opposing attorney. Specifically, the email signature states¹⁴:

--
Lane D. Jefferies
Division Chair and Trial Lawyer
Commercial and Construction Liability Division
 Anastopoulo Law Firm, LLC
 32 Ann Street | Charleston, SC 29403
 Tel: 843-614-8888* | Fax: 843-494-5536
www.akimlawfirm.com | TeamJefferies@GoogleGroups.com
 Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville | Myrtle Beach
 | Raleigh, NC
 By Appointment Only: Wilmington, NC
 *There are two ways for opposing attorneys to reach me by phone:
 (1) **Call my cell any day between 4:00 p.m. and 4:30 p.m.** If I am not already on the phone with another opposing counsel, I will answer and spend up to five minutes on the phone with you. At the end of our five-minute talk, I may instruct my staff to schedule a longer meeting with you if you satisfy the criteria set forth in #2 below. Please note that I spend just five minutes on each call, so if I don't answer when you call, wait a few minutes and try again. My cell is 843.814.7719. Call only between 4:00 p.m. and 4:30 p.m., as I spend the rest of my day focused solely on achieving my clients' goals.
 OR,
 (2) **Schedule a longer meeting.** Begin by providing my office with a *specific* agenda of items you would like to discuss ([email TeamJefferies@GoogleGroups.com](mailto:TeamJefferies@GoogleGroups.com)). Be sure to identify the tangible outcomes to be achieved as to each item, and persuasively describe how these outcomes, if achieved, would promote the greatest recovery for my client in the least amount of time and for the least expense. If you believe that a statute or rule of procedure requires us to speak by phone, then please specifically identify it. If your email persuades my staff that using my time to meet with you is legally required or is likely to be a worthy investment *from the perspective of my client*, then they will schedule such a meeting (probably a meeting by phone initially). On the other hand, if you do not persuade my staff that scheduling a meeting is consistent with my promise to my clients not to try to do 1000 things at once that won't contribute much, if anything, to the results we are trying to achieve, then no meeting will be scheduled (though you will remain free to call any afternoon as described in #1 above). Fair warning: generalized requests to "discuss the case" or "talk about the status" or the like will be considered conclusive evidence of a request to waste time, and no meeting will be scheduled.
 We have instituted the above procedure in order to accommodate your desire to speak with me by phone in a manner that does not interfere with my ethical obligation to devote my time and attention to the pursuit of justice for my clients as quickly and economically as possible.
 Naturally, the above procedure does not apply to Judges, judicial staff, clerks of court, my wife, or my children — they are all welcome to call or text me anytime.

During the sanctions hearing, Defendant's counsel candidly admitted he did not call Mr. Jefferies between 4:00 and 4:30 PM to discuss the mediation but, rather, believed the email sent about the mediation was sufficient. The undersigned agrees. Contrary to Mr. Jefferies email signature, opposing counsel was not required to contact Mr. Jefferies only between 4:00 and 4:30

¹⁴ This email was sent to the undersigned on September 24, 2019 at 4:16 PM.

PM for a period of time not to exceed five (5) minutes.

Further, Mr. Jefferies provided no satisfactory explanation for his absence at mediation nor did he provide any satisfactory explanation for the actions of Mr. Anastopoulo. During the September 27, 2019 hearing, Mr. Jefferies asserted that Mr. Anastopoulo was “acting at his direction” and that “Mr. Anastopoulo appeared in the case by appearing at the mediation.”

Plaintiff raised in the Rule 59(e) Motion that Defendant consented to Mr. Anastopoulo appearing at the mediation by signing the mediation agreement – this assertion is without merit and has never been raised before the 59(e) Motion hearing. Defendant’s attorney was left with virtually no choice but to go forward with the mediation. It was not until after the mediation started that Defendant’s attorney became aware of the full ramifications of Mr. Anastopoulo appearance. SCADR Rule 10 and SCRCP Rule 37 provide the framework for this Court to determine the appropriate sanction for Plaintiff’s counsel’s actions related to the mediation. SCADR Rule 10(b) states:

“If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, **including, but not limited to**, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.”

SCRCP Rule 37(b) provides several remedies authorized by Rule 10(b) including: “[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.” SCRCP Rule 37(b)(2)(C).

VIII. Judge Lee’s Hearing

Following the mediation, this matter was scheduled for trial in Richland County the week

of July 8, 2019. Plaintiff argued the trial could not go forward because of the pending Rule 59 for Judge Couch's July 3rd Order. Judge Lee conducted a full pre-trial hearing to evaluate the claims and issues prior to ruling on whether the case could go forward or had to be continued until Judge Couch could issue a rule on the Rule 59. However, of particular concern are statements made about the discovery abuses and Judge Couch's May 7th Ruling and July 3rd Order. Judge Lee asked:

15 And I wasn't at the hearing. I don't know how
 16 certain, how forceful, how convinced Judge Couch was that
 17 this was what his ruling was and that's what he wanted it
 18 to be. What part -- what portion of that oral argument or
 19 oral ruling did you disagree with? I mean, was -- I --
 20 I'm just trying to understand that.
 21 MR. JEFFRIES: Several portions, Your Honor, and --
 22 and this was, of course, laid out in our Rule 59 memo.

In response to this question by Judge Lee about whether Plaintiff disagreed with Judge Couch's ruling, Plaintiff's counsel answered:

8 The second piece is barring every witness who wasn't
 9 disclosed by the arbitrary deadline of June 1 from trial.
 10 At that point trial hadn't even been set as I recall. I
 11 could be wrong, but I'm 99 percent sure trial was not set
 12 as of June 1. If I -- if I'm wrong, please correct me.
 13 In any event, barring all those witnesses, I didn't
 14 think 30 day -- well, No. 1, I didn't think barring was
 15 proper at all. I didn't think 30 days was a sufficient
 16 time frame or to the June 1 deadline was a sufficient time
 17 frame.

As is evident, Plaintiff took the position with Judge Lee on July 8th that he opposed the June 1st deadline and that he opposed the remedy of exclusion of witnesses. However, as already

discussed herein, during the Judge Couch hearing on May 7, 2019, Plaintiff proposed the exclusion of witnesses with a time limitation and agreed with Judge Couch at the hearing on this decision:

2 MR. JEFFERIES: Your Honor, I don't know that we can
3 find it. If Your Honor wants to give us 30 days and say
4 that's all you've got, we're comfortable with that.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

3 THE COURT: Okay. If they don't have it by June 1st
4 if they don't have it, that witness will be prevented from
5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

The representations made by Plaintiff's counsel to Judge Lee on July 8, 2019 regarding the exclusion of witnesses were inconsistent with Plaintiff's agreement and representations made to Judge Couch on May 7, 2019.

IX. Judge Couch's Rule 59 Order

Following Judge Couch's July 3, 2019 Order, Plaintiff filed a Rule 59 Motion to reconsider

or alter the July 3rd Order and May 7th Ruling. This Motion was pending during the July 8, 2019 Judge Lee hearing. Judge Couch issued an order denying Plaintiff's Rule 59 Motion on July 24, 2019. Judge Couch made a number of specific findings related to the multitude of discovery abuses, reiterated his sanction of exclusion of all unnamed witnesses, and determined additional sanctions may be awarded at a later date.

First, Judge Couch noted that the motions before him were "...the second time Defendant has had to file a Motion to Compel over the same witness issue" and "[o]n October 3, 2018 Judge Benjamin granted Defendant's first Motion to Compel this information. Judge Benjamin then issued a Rule to Show Cause to Plaintiff on October 30, 2018, over non-compliance with October 3rd Order. Following the issuance of the Rule to Show Cause, Plaintiff submitted discovery responses to Defendant on November 7, 2018, and stated there were no witnesses to disclose. Plaintiff then disclosed the purported existence of these same witnesses at his deposition on March 6, 2019—which caused this second Motion to Compel to be filed."

Next, Judge Couch reiterated his ruling based on the submissions, record, and facts of the case: "[b]ased on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, I determined there was just cause for granting the Motion. I issued a ruling from the bench on May 7, 2019 ordering Plaintiff to identify any unnamed the witnesses by June 1, 2019. I further ordered that if the witnesses were not identified by June 1, 2019, they would be barred from trial." Judge Couch then noted "Plaintiff agreed with both the June 1, 2019 deadline and to the exclusion of unnamed witnesses as a penalty for failure to meet the deadline." This is both consistent with the Judge Couch hearing transcript and inconsistent with Plaintiff's statements made to Judge Lee on July 8, 2019.

Judge Couch addressed Plaintiff's "impossibility" argument— "Plaintiff now takes the

position that he was not required to comply with my May 7 ruling to produce witnesses by June 1, 2019 until he received a filed written order. It is clear from the record that Plaintiff then failed to identify any previously unnamed witnesses by the June 1, 2019 deadline. I note with particularity that Plaintiff took no issue with the June 1, 2019 deadline and has not disputed that he fully understood the nature of the deadline. For example, during the May 7, 2019 hearing, Plaintiff's counsel acknowledges the deadline...Plaintiff's counsel was fully aware of the June 1, 2019 deadline both at the May 7 hearing and on May 13, 2019...Plaintiff had approximately 16 months to identify witnesses and failed to do so. Plaintiff was given several more weeks to name witnesses at the May 7, 2019 hearing and failed to do so. Plaintiff then had another month after the June 1 deadline where he could have named witnesses and failed to do so. Based on representations of the parties, Plaintiff still—as of this Order—has failed to comply with the South Carolina Rules of Civil Procedure, Judge Benjamin's two October 2018 Orders, this court's May 7 ruling, and this court's July 3 Order.” Plaintiff made the same argument before the undersigned, taking the position that Plaintiff was not required to follow orders or rulings of this court if not reduced to writing.

Following a recitation of the case, Judge Couch re-issued his ruling as follows:

“IT IS HEREBY ORDERED THAT compliance with my prior ruling and Order was required by June 1, 2019, and

IT IS FURTHER ORDERED THAT the record reflects Plaintiff agreed to the June 1, 2019 deadline and agreed to the discovery penalty of exclusion of unnamed witnesses for failure to comply with the June 1, 2019 deadline, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to fully respond to Defendant's discovery requests regarding the identification, contact information, and summary of testimony of

any unnamed factual witnesses by June 1, 2019, and

IT IS FURTHER ORDERED THAT Plaintiff has failed to comply with my May 7, 2019 ruling and my July 3, 2019 written Order, and

IT IS FURTHER ORDERED THAT the failure of Plaintiff to comply with my May 7, 2019 ruling and July 3, 2019 written Order results in Plaintiff's inability to use any witness that was unidentified as of June 1, 2019 at trial—as further agreed to by Plaintiff at the May 7 hearing, and

IT IS FURTHER ORDERED THAT, as a result of Plaintiff's failure to comply with my ruling and Order, Plaintiff may be sanctioned in any manner accordance with South Carolina Rules of Civil Procedure 37. The determination of sanctions, if any, as set out herein shall be referred to the Chief Administrative Judge for Richland County for a determination of sanctions, if any, based on this Order and for a determination on Defendant's pending Motion for Sanctions filed in Richland County.”

Plaintiff did not appeal this Order and it is now final, including the findings therein.

X. Judge Manning's Hearing

Finally, this matter came before Judge Casey Manning for trial on August 12, 2019. Judge Manning did conduct a pretrial conference related to Defendant's Motion in Limine to exclude witnesses based on the Judge Couch May 7th Ruling and July 3rd Order. Plaintiff appeared for trial and purported to identify new witnesses not named before June 1, 2019 and attempted to call those witnesses to testify. Judge Manning reviewed Judge Couch's July 3rd Order and questioned Plaintiff about his compliance with the June 1, 2019 deadline to name witnesses. Judge Manning deferred hearing and ruling on this underlying Motion for Sanctions until the conclusion of the trial. The trial ended in a mistrial and Judge Manning ultimately did not hear the Motion for

Sanctions or rule on the same.

Initially, Judge Manning sought clarification from Plaintiff's counsel with a very simple question:

21	THE COURT: I -- I'm going to ask you this, did you
22	comply with the terms of Judge Couch's order?
23	MR. JEFFERIES: Yes, Your Honor --
24	THE COURT: Did you fail to comply? Look, I can read
25	this myself. I'm asking for a straight answer on the
1	record, did you -- did you comply or not? "Yes" or "no"?
2	MR. JEFFERIES: Yes, Your Honor.

This court has spelled out above how Plaintiff did not comply with the terms of Judge Couch's May 7th Ruling and July 3rd Order. That Order, referenced herein, required disclosure of all unnamed witnesses by June 1, 2019 or the witnesses would be barred from trial. Plaintiff, unquestionably, did not name any witnesses by June 1, 2019. Despite this unquestioned fact of this case—that the witnesses, were not disclosed by June 1, 2019—when asked specifically and directly if he had complied with the Order “did you comply or not? ‘Yes’ or ‘No’?” Plaintiff's counsel stated “Yes, Your Honor.”

Later in the same pretrial hearing, Judge Manning probed further into the issue with Plaintiff counsel:

4 THE COURT: Well, did Judge Couch exclude any
5 additional witnesses after a certain date? Yes or no?
6 MR. JEFFERIES: Yes, he did.
7 THE COURT: Well, they're excluded then, aren't they?
8 MR. JEFFERIES: He --
9 THE COURT: Wait. Let me finish. He said they were
10 to be provided -- they were not disclosed prior to --
11 prior to Judge Couch's order; is that true?
12 MR. JEFFERIES: If I may correct what Mr. Bayne said.
13 First off, we did not refuse to identify them. We
14 identified them on July --
15 THE COURT: Did you meet the deadline imposed by
16 Judge Couch? Yes or no?
17 MR. JEFFERIES: Yes, Your Honor.
18 Can I explain how? Because that's important.

Judge Manning again establishes Judge Couch's May 7th Ruling and July 3rd Order bars witnesses after June 1, 2019. Plaintiff's counsel acknowledges this Order. Judge Manning again asks "[d]id you meet the deadline imposed by Judge Couch? Yes or No?" Despite clear evidence to the contrary, Plaintiff's counsel states "Yes" and asserts compliance with the Order.

Judge Manning inquired one final time about compliance with the Ruling and Order:

14 But my question to you is simple, did you disclose
15 these names before Judge Couch's order or not? Yes or no?
16 MR. JEFFERIES: Yes, Your Honor. We disclosed them
17 on -- pardon me --
18 THE COURT: All right. Stop --

Again, Plaintiff's counsel asserts he did comply with the Order and did disclose the witnesses by June 1, 2019—a fact which is not true.

XI. Sanctions

Defendant has sought full sanctions for Plaintiff's repeated discovery abuses, failures to comply with Rulings and Orders of this court and ADR violations. This Court agrees that, based on the totality of the circumstances, sanctions pursuant to Rule 37 for violations of SCADR Rules, SCRCP Rule 11 and SCRCP Discovery Rules are warranted.

Despite two Orders from Judge Benjamin, a Ruling from Judge Couch, an Order from Judge Couch, and pre-trial and trial rulings by Judge Manning, Plaintiff continues to violate discovery rules and willfully ignore the prior orders of this court. Plaintiff has acted in bad faith, with willful disobedience of numerous court orders and rulings, and with gross indifference toward the court and counsel highlighted herein.

Pursuant to SCRCP 37(b)(2)(C) and SCADR Rule 10(b), the only proper remedy is to strike the Complaint with prejudice. With this decision, this Court grants the entirety of Defendant's attorney fees and costs incurred to date.

Accordingly, this Court specifically finds that Plaintiff's counsel acted with bad faith, willful disobedience, and gross negligence during this case. Plaintiff's Complaint is hereby dismissed with prejudice. Plaintiff's response to Defendant's counterclaim is not dismissed and this matter shall proceed to trial on Defendant's counterclaims.

Plaintiff's counsel is ordered to pay Defendant's attorneys costs and fees incurred to date. Defense counsel is awarded \$23,277.14. Defendant's counsel is also permitted to provide the court a new affidavit for costs and fees specifically related to the 59(e) motion.

IT IS SO ORDERED.

(Judge's Electronic Signature Page to Follow)



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson , defendant, et al
Case Number: 2018CP4001518
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4001518

Harland Jones
PLAINTIFF(S)

Karen Robinson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Per the Amended Order Granting Defendant's Motion for Sanctions filed on March 2, 2020, Plaintiff's counsel is ordered to pay Defendant's attorneys costs and fees incurred to date. Based on the affidavit filed by Brett Bayne, Defense counsel is awarded \$29,788.24.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/23/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Harland Jones vs Karen Robinson , defendant, et al

Case Number: 2018CP4001518

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2020-03-23 10:35:53 page 3 of 3

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-40-_____

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

SUMMONS
(Jury Trial Demanded)

TO: DEFENDANT ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon Plaintiff or his attorneys, Eric M. Poulin, Roy T. Willey IV, and Benjamin W. Lee, at their office located at 32 Ann Street, Charleston, South Carolina, 29403, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, you may be found in default, and Plaintiff will apply to the Court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 16th day of March, 2018.

[Signature Block on Following Page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Benjamin W. Lee

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Benjamin W. Lee, Esquire

S.C. Bar No.: 103213

32 Ann Street

Charleston, S.C. 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-40-_____

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

COMPLAINT
(Jury Trial Demanded)

TO: DEFENDANT ABOVE-NAMED

Plaintiff, Harland Jones, complaining of the acts and/or omissions of Defendant, Karen Robinson, hereby alleges and states as follows:

PARTIES

1. That Plaintiff, Harland Jones ("Plaintiff"), is a citizen and resident of Richland County, South Carolina.
2. That, upon information and belief, Defendant, Karen Robinson ("Defendant"), is a citizen and resident of Richland County, South Carolina.

JURISDICTION AND VENUE

3. That the motor vehicle collision that is the subject of this action occurred in Richland County, South Carolina on June 7, 2016.
4. That this Court has jurisdiction over the parties and the subject matter of this action.
5. That venue is proper because the most substantial part of the alleged acts or omissions giving rise to this cause of action occurred in Richland County, South Carolina.

FACTS

6. That, on or about June 7, 2017, Plaintiff was travelling Eastbound on Old Bluff

Road on a bicycle.

7. That, on or about June 7, 2017, Defendant was travelling westbound Old Bluff Road in a 2014 Nissan sedan bearing VIN 3N1AB7AP7EY226734 and South Carolina license plate CDI139.

8. That, at the time of the subject incident, Defendant unlawfully attempted to pass a vehicle immediately in front of her.

9. That once Defendant unlawfully attempt to pass the vehicle in front of her, crossed over into Plaintiff's lane of travel.

10. That Defendant caused Plaintiff to strike the front of Defendant's vehicle by unlawfully traveling into the lane of oncoming traffic.

11. That Defendant unlawfully collided with Plaintiff, causing Plaintiff to suffer personal injuries and property damage.

12. That, at all times material hereto, Defendant had a duty to operate her vehicle in a safe and prudent manner, and to avoid injuring other pedestrians/bicyclists, including Plaintiff.

13. That the collision and the resulting injuries and damages to Plaintiff were caused, directly and proximately, by one or more of the following negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and unlawful acts, and/or omissions of Defendant in any one or more of the following respects:

- a. In failing to keep a proper lookout while operating her vehicle then and there existing;
- b. In failing to maintain control of her vehicle;
- c. In failing to stay in her lane of traffic;
- d. In failing to slow down to a controllable speed to stay in her lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;

- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use her horn, if she had any;
- j. In failing to properly maintain her vehicle;
- k. In failing to yield the right of way to Plaintiff;
- l. In operating her vehicle without using due care and without regard for safety and rights of Plaintiff;
- m. In operating her vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful manner so as to create a dangerous situation;
- n. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- o. In negligently and carelessly operating her vehicle in such a manner as to cause her vehicle to strike Plaintiff and cause personal injuries and property damage to Plaintiff;
- p. In driving while distracted;
- q. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- r. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

14. That, as a direct and proximate result of the negligence, gross negligence, negligence *per se*, carelessness, recklessness, willfulness, and wantonness of Defendant, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, has incurred property damage, and has otherwise been damaged and injured.

15. That, as a direct and proximate result of the negligence, gross negligence,

carelessness, recklessness, willfulness, and wantonness of Defendant, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a. Plaintiff has been required to expend a significant amount of money for his medical care, treatment and attendant services;
- b. Upon information and belief, the nature of Plaintiff's injuries will require him to expend a significant amount of money for his medical care, treatment, and attendant services in the future;
- c. Plaintiff has been unable to work and has been deprived of his income;
- d. Upon information and belief, the nature of Plaintiff's injuries will deprive him of employment opportunity and income in the future;
- e. The pain of Plaintiff's injuries has resulted in his loss of enjoyment of life and change in his personality, all to the permanent detriment of his health and physical well-being; and
- f. Upon information and belief, Plaintiff was required to expend significant amounts of money to replace and repair property damage caused in the subject collision.

16. That Defendant's acts and/or omissions, as is set forth more fully above, show willful misconduct, malice, wantonness, and an entire want of care, thus raising a presumption of Defendant's conscious indifference to the consequences of such acts and/or omissions.

17. That, because of the Defendant's acts and/or omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact in order to punish and penalize Defendant, and to deter Defendant and others from similar behavior.

18. That, upon information and belief, Plaintiff is entitled to judgment against Defendant for actual, compensatory, exemplary, and/or punitive damages for his personal injuries and property damage, as set forth herein, in an amount that is fair, just, and reasonable under the circumstances, plus whatever costs, interest, and attorney's fees that he may be entitled

to be determined by a jury.

WHEREFORE, Plaintiff prays for judgment against Defendant for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, both pre-judgment and post-judgment interest, and for such other and further relief, in law or in equity, in favor of Plaintiff as this Court may deem just and proper.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Benjamin W. Lee

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Benjamin W. Lee, Esquire

S.C. Bar No.: 103213

32 Ann Street

Charleston, SC 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
March 16, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	(Jury Trial Demanded)
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

Defendant, Karen Robinson (herein after “Defendant”), answers the Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint unless specifically admitted herein.
2. Defendant is without sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint.
3. Defendant admits the allegations of Paragraph 2 of the Complaint.
4. In response to the allegations of Paragraph 3 of the Complaint, Defendant asserts that the motor vehicle accident that is the subject of this Complaint occurred on June 7, 2017 and not June 7, 2016 as alleged in Paragraph 3 of the Complaint.
5. Defendant asserts the allegations of Paragraph 4 of the Complaint amount to a legal conclusion and, therefore, no response to the same is required.
6. Defendant asserts the allegations of Paragraph 5 of the Complaint amount to a legal conclusion and, therefore, no response to the same is required.

7. Defendant admits the allegations of Paragraph 6 of the Complaint.

8. Defendant admits the allegations of Paragraph 7 of the Complaint.

9. Defendant denies the allegations of Paragraph 8 of the Complaint.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant admits the allegations of Paragraph 12 of the Complaint consistent with South Carolina common law. Defendant denies that she caused the accident that is the subject of Plaintiff's Complaint.

14. Defendant denies the allegations of Paragraph 13 of the Complaint including all subparts (a) through (r).

15. Defendant denies the allegations of Paragraph 14 of the Complaint.

16. Defendant denies the allegations of Paragraph 15 of the Complaint including all subparts (a) through (f).

17. Defendant denies the allegations of Paragraph 16 of the Complaint.

18. Defendant denies the allegations of Paragraph 17 of the Complaint.

19. Defendant denies the allegations of Paragraph 18 of the Complaint.

20. Defendant denies the remaining allegations of the Complaint including Plaintiff's prayer for relief.

FOR A SECOND DEFENSE

21. Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be a violation of the Due Process and Equal Protection Clauses of the United States and South Carolina Constitutions.

FOR A THIRD DEFENSE

22. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE

23. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A FIFTH DEFENSE

24. Defendant would show that any injuries or damages sustained by the Plaintiff allegedly caused by any act or omission of the Defendant were either caused by an intervening efficient act, omission, or event, or could not be avoided and was an unavoidable accident.

FOR A SIXTH DEFENSE

25. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by sole and negligent acts or omissions of a third

party, over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE

26. Defendant alleges that at the time and place alleged in the Complaint, while through no fault of her own, she was placed in an unexpected and sudden emergency, and because of the unexpected emergency and sudden and negligent or intentional acts of another over which she had no control, Defendant was required to act only as appeared to her best under the circumstances, considering the emergency in which she was placed. Defendant acted in all respects in a careful and prudent manner and as any reasonable and prudent person would have acted under similar circumstances, for which reason the Defendant is not liable to Plaintiff in any sum whatsoever.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ J. Andrew Delaney

J. Andrew Delaney, Bar No: 72863

Brett H. Bayne, Bar No: 100018

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

May 8, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S AMENDED ANSWER
	)	AND COUNTERCLAIM
KAREN ROBINSON,	)	
	)	(Jury Trial Demanded)
Defendant.	)	
	)	
	)	

Defendant, Karen Robinson, hereby amends her answer to the Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint unless specifically admitted herein.
2. Defendant is without sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint.
3. Defendant admits the allegations of Paragraph 2 of the Complaint.
4. In response to the allegations of Paragraph 3 of the Complaint, Defendant asserts that the motor vehicle accident that is the subject of this Complaint occurred on June 7, 2017 and not June 7, 2016 as alleged in Paragraph 3 of the Complaint.
5. Defendant asserts the allegations of Paragraph 4 of the Complaint amount to a legal conclusion and, therefore, no response to the same is required.
6. Defendant asserts the allegations of Paragraph 5 of the Complaint amount to a legal conclusion and, therefore, no response to the same is required.

7. Defendant admits the allegations of Paragraph 6 of the Complaint.
8. Defendant admits the allegations of Paragraph 7 of the Complaint.
9. Defendant denies the allegations of Paragraph 8 of the Complaint.
10. Defendant denies the allegations of Paragraph 9 of the Complaint.
11. Defendant denies the allegations of Paragraph 10 of the Complaint.
12. Defendant denies the allegations of Paragraph 11 of the Complaint.
13. Defendant admits the allegations of Paragraph 12 of the Complaint consistent with South Carolina common law. Defendant denies that she caused the accident that is the subject of Plaintiff's Complaint.
14. Defendant denies the allegations of Paragraph 13 of the Complaint including all subparts (a) through (r).
15. Defendant denies the allegations of Paragraph 14 of the Complaint.
16. Defendant denies the allegations of Paragraph 15 of the Complaint including all subparts (a) through (f).
17. Defendant denies the allegations of Paragraph 16 of the Complaint.
18. Defendant denies the allegations of Paragraph 17 of the Complaint.
19. Defendant denies the allegations of Paragraph 18 of the Complaint.
20. Defendant denies the remaining allegations of the Complaint including Plaintiff's prayer for relief.

FOR A SECOND DEFENSE

21. All prior paragraphs are hereby incorporated by reference.

22. Plaintiff is not entitled to an award of punitive damages on the grounds that such an award would be a violation of the Due Process and Equal Protection Clauses of the United States and South Carolina Constitutions.

FOR A THIRD DEFENSE

23. All prior paragraphs are hereby incorporated by reference.

24. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiff were greater than the negligence, if any, which might be established against Defendant and, therefore, Plaintiff is barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiff.

Defendant alleges that the Plaintiff was comparatively negligent in the following respects:

- a. in failing to keep a proper lookout while operating his vehicle;
- b. in failing to maintain control of his vehicle;
- c. in failing to stay in his lane of traffic;
- d. in failing to keep a safe distance from the Defendant;
- e. in failing to use due care;
- f. in failing to properly observe the road traffic conditions;
- g. in failing to observe traffic laws;
- h. in failing to yield the right-of-way;

- i. In negligently, recklessly, and carelessly operating her vehicle in such a manner as to cause her vehicle to strike Defendant and cause personal injuries and/or property damage;
- j. in operating his vehicle without using due care and without regard for the safety and rights of the other motorists;
- k. in driving while distracted;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- m. such other particulars as may be identified in the litigation.

FOR A FOURTH DEFENSE

25. All prior paragraphs are hereby incorporated by reference.

26. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever. Defendant asserts that she had the right-of-way and was properly and lawfully in her lane when the Plaintiff entered her lane of traffic after failing to yield the right-of-law and negligently and recklessly caused the accident. Defendant has not been able to conduct discovery so she does not know whether Plaintiff negligently or willfully entered the Defendant's right-of-way and/or whether the Plaintiff was negligent in some other way such as being distracted, being impaired in some way, or simply in failing to drive as a reasonable and prudent person.

FOR A FIFTH DEFENSE

27. All prior paragraphs are hereby incorporated by reference.

28. Defendant would show that any injuries or damages sustained by the Plaintiff allegedly caused by any act or omission of the Defendant were either caused by an intervening efficient act, omission, or event, or could not be avoided and was an unavoidable accident.

FOR A SIXTH DEFENSE

29. All prior paragraphs are hereby incorporated by reference.

30. Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused by sole and negligent acts or omissions of a third party, over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR A SIXTH DEFENSE

31. All prior paragraphs are hereby incorporated by reference.

32. Defendant alleges that at the time and place alleged in the Complaint, while through no fault of her own, she was placed in an unexpected and sudden emergency, and because of the unexpected emergency and sudden and negligent or intentional acts of another over which she had no control, Defendant was required to act only as appeared to her best under the circumstances, considering the emergency in which she was placed. Defendant acted in all respects in a careful and prudent manner and as any reasonable and prudent person would have acted under similar circumstances, for which reason the Defendant is not liable to Plaintiff in any sum whatsoever.

COUNTERCLAIM

Factual Background

33. Plaintiff Harland Jones was a citizen and resident of Richland County, South Carolina at the time of the collision referenced herein.

34. Defendant Karen Robinson was a citizen and resident of Richland County, South Carolina at the time of the collision referenced herein.

35. The motor vehicle accident described herein occurred in Richland County, South Carolina on or around June 7, 2016.

36. This court has jurisdiction over the parties and venue is proper in Richland County.

37. On or around June 7, 2016, Defendant was travelling westbound on Old Bluff Road in Richland County operating a 2014 Nissan Sedan.

38. Defendant was lawfully operating her motor vehicle at the time of the collision.

39. At the same time and place, Plaintiff was operating a bicycle eastbound on Old Bluff Road.

40. As Defendant approached the location of the accident, Plaintiff suddenly and without warning turned left directly into the path of Defendant's car.

41. At no time did Defendant deviate from her lane of travel.

42. Due to the sudden and unexplained nature of Plaintiff's turn directly into the path of oncoming traffic and into Defendant's lane of travel, a collision occurred between Defendant and Plaintiff.

43. Plaintiff did not have right of way to turn left in front of Defendant.

44. Defendant had no warning of Plaintiff's illegal left turn.

45. At all times material hereto, Plaintiff had a duty to operate his vehicle in a safe and prudent manner to avoid injuring or damaging motorists.

46. Plaintiff failed in his duties to operate his vehicle in a safe and prudent manner.

47. At all times material hereto, Plaintiff had a duty to operate his vehicle in a manner of observing and obeying all traffic rules, laws, and/or signals.

48. Plaintiff failed in his duties to observe and obey all traffic rules, laws, and/or signals.

49. As a result of Plaintiff's disregard for traffic safety laws, Plaintiff caused a collision with Defendant.

50. The collision, resulting injuries and/or damages to Defendant were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent per se, careless, reckless, willful, wanton, and/or unlawful acts and/or omissions of Plaintiff in one or more of the following respects:

- a. in failing to keep a proper lookout while operating his vehicle;
- b. in failing to maintain control of his vehicle;
- c. in failing to stay in his lane of traffic;
- d. in failing to keep a safe distance from the Defendant;
- e. in failing to use due care;
- f. in failing to properly observe the road traffic conditions;
- g. in failing to observe traffic laws;
- h. in failing to yield the right-of-way;
- i. In negligently, recklessly, and carelessly operating her vehicle in such a manner as to cause her vehicle to strike Defendant and cause personal injuries and/or property damage;
- j. in operating his vehicle without using due care and without regard for the safety and rights of the other motorists;

- k. in driving while distracted;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- m. such other particulars as may be identified in the litigation.

FOR A SEVENTH DEFENSE AND FIRST COUNTERCLAIM

- 51. All prior paragraphs are hereby incorporated by reference.
- 52. The collision, resulting injuries and/or damages to Defendant were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent per se, careless, reckless, willful, wanton, and/or unlawful acts and/or omissions of Plaintiff in one or more of the following respects:
 - a. in failing to keep a proper lookout while operating his vehicle;
 - b. in failing to maintain control of his vehicle;
 - c. in failing to stay in his lane of traffic;
 - d. in failing to keep a safe distance from the Defendant;
 - e. in failing to use due care;
 - f. in failing to properly observe the road traffic conditions;
 - g. in failing to observe traffic laws;
 - h. in failing to yield the right-of-way;
 - i. In negligently, recklessly, and carelessly operating her vehicle in such a manner as to cause her vehicle to strike Defendant and cause personal injuries and/or property damage;
 - j. in operating his vehicle without using due care and without regard for the safety and rights of the other motorists;

- k. in driving while distracted;
- l. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- m. such other particulars as may be identified in the litigation.

53. As a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of Plaintiff, as is more fully set forth herein, Defendant was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, other expenses, and/or has otherwise been damaged and injured.

54. As a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of Plaintiff, as is more fully set forth herein, Defendant was jerked, thrown, and/or slammed about the interior of her vehicle by the force of Plaintiff's collision, causing her to sustain serious and painful personal injuries including, but not limited to, pain and suffering and/or other bodily harm as may be proved at trial.

55. As a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of Plaintiff, as is more fully set forth herein, Defendant has been damaged and/or injured in the following respects:

- a. Defendant may be required to expend significant amounts of money for care, treatment, services, and other needs
- b. Upon information and belief, the nature of Defendant's injuries and damages may require her to expend significant sums of money in the future
- c. Defendant may have lost wages, past or future, as a result of Plaintiff's negligence

- d. Upon information and belief, Plaintiff's negligence may deprive Defendant of opportunity and income in the future
- e. The pain and shock of the injuries and/or damages inflicted by Plaintiff has resulted in loss of enjoyment of life and/or changes in personality all to the detriment of her health and/or well-being
- f. Defendant was required to expend significant sums of money to replace and repair property damage caused by Plaintiff in the accident
- g. Other such further damages as will be shown at trial

56. Plaintiff's acts and omissions, as set forth fully herein, show willful misconduct, malice, wantonness, and an entire utter lack of care, raising a presumption of the Plaintiff's conscious indifference to the consequences of his acts or omissions

57. Because of Plaintiff's acts and omissions and the proximate harm resulting to Defendant, Defendant should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize Plaintiff and to deter Plaintiff and others from similar behavior

58. Defendant is entitled to a judgment against Plaintiff for actual, compensatory, and exemplary or punitive damages for his personal injuries and/or property damages as set forth herein in an amount that is fair, just and reasonable under the circumstances, in addition to costs, interest, attorney fees that he may be entitled to as determined by a jury.

FOR AN EIGHTH DEFENSE AND SECOND COUNTERCLAIM

59. All prior paragraphs are hereby incorporated by reference.

60. Defendant brings a counterclaim for costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act codified at S.C. Code Ann. § 15-36-10(A)(4).

61. The South Carolina Frivolous Proceedings Act states that “[a]n attorney...participating in a civil...action...may be sanctioned for:

- (a) filing a frivolous pleading, motion, or document if...
 - (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; [or]
 - (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
 - (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than...adjudication of the claim or defense upon which the proceedings are based;
- (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
- (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

62. S.C. Code Ann. § 15-36-10(B)(2) states that “[i]f...an attorney...has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.”

63. Pursuant to S.C. Code Ann. § 15-36-10(G)(1), sanctions may include “...reasonable costs and attorney’s fees of the prevailing party. Costs shall include but not be limited to the time required...by the frivolous proceeding, and travel expenses, mileage, parking,

costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding.”

64. Plaintiff and/or Plaintiff’s attorney specifically and clearly violated S.C. Code Ann. § 15-36-10(A)(4)(a)(iii) and (iv) and 15-36-10(A)(4)(b).

65. Among other facts to be proved, the facts as set out herein show that Plaintiff turned his vehicle directly into oncoming traffic with no warning or explanation and that Plaintiff was the sole proximate cause of the accident in question. No reasonable attorney could infer from those facts after any reasonable investigation, required by our Rules, that Defendant was negligent or at fault in the accident complained of.

66. Plaintiff has no good faith factual basis for the allegations contained in the Summons and Complaint. A reasonable investigation of Plaintiff’s own actions and conviction in this accident would have revealed this information and, upon so finding, no reasonable attorney would initiate suit against Defendant and/or no reasonable attorney would believe the allegations raised in the Summons and Complaint are reasonably supported by the actual facts.

67. Because of these actions, this court should order Plaintiff and/or Plaintiff’s attorney to pay monetary sanctions equal to Defendant’s costs, fees, and expenses to reply to this Complaint pursuant to S.C. Code Ann. § 15-36-10(G)(1).

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper. Defendant further prays for judgment against Plaintiff for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or equity, as this court may deem just and proper. Finally,

Defendant seeks a finding that Plaintiff's Complaint is in violation of the South Carolina Frivolous Proceedings Act codified at S.C. Code Ann. § 15-36-10(A)(4) and a monetary award equal to the total costs and fees related to the response and defense of the Complaint.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ J. Andrew Delaney

J. Andrew Delaney, Bar No: 72863

Brett H. Bayne, Bar No.: 100018

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

May 22, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

**PLAINTIFF'S ANSWER TO
DEFENDANT'S COUNTERCLAIM
(Jury Trial Demanded)**

TO: DEFENDANT ABOVE-NAMED

Plaintiff, Harland Jones, in answering Defendant, Karen Robinson's ("Defendant"), Counterclaim, respectfully asserts as follows:

FOR A FIRST DEFENSE

1. Plaintiff admits the allegations set forth in Paragraph 33 of Defendant's Counterclaim.

2. Plaintiff admits, upon information and belief, the allegations set forth in Paragraph 34 of Defendant's Counterclaim.

3. Plaintiff denies the allegations set forth in Paragraph 35 of Defendant's Counterclaim, as the subject collision occurred on June 7, 2017.

4. Paragraph 36 calls for a legal conclusion which Plaintiff is not required to admit or deny. To the extent that an admission or denial is required, Plaintiff admits that jurisdiction and venue are proper in the Richland County Court of Common Pleas.

5. Plaintiff denies the allegations set forth in Paragraph 37 of Defendant's Counterclaim, as the subject collision occurred on June 7, 2017.

6. Plaintiff denies the allegations set forth in Paragraph 38 of Defendant's Counterclaim.

7. Plaintiff denies the allegations set forth in Paragraph 39 of Defendant's Counterclaim to the extent that the subject collision occurred on June 7, 2017; however, Plaintiff admits that he was operating a bicycle eastbound on Old Bluff Road on June 7, 2017, at the time of the subject collision.

8. Plaintiff denies the allegations set forth in Paragraph 40 of Defendant's Counterclaim.

9. Plaintiff denies the allegations set forth in Paragraph 41 of Defendant's Counterclaim.

10. Plaintiff denies the allegations set forth in Paragraph 42 of Defendant's Counterclaim.

11. Plaintiff denies the allegations set forth in Paragraph 43 of Defendant's Counterclaim.

12. Plaintiff denies the allegations set forth in Paragraph 44 of Defendant's Counterclaim.

13. Plaintiff admits the allegations set forth in Paragraph 45 of Defendant's Counterclaim; however, Plaintiff denies that he failed to uphold his duty at the time of the subject collision.

14. Plaintiff denies the allegations set forth in Paragraph 46 of Defendant's Counterclaim.

15. Plaintiff admits the allegations set forth in Paragraph 47 of Defendant's Counterclaim; however, Plaintiff denies that he failed to uphold his duty at the time of the subject collision.

16. Plaintiff denies the allegations set forth in Paragraph 48 of Defendant's

Counterclaim.

17. Plaintiff denies the allegations set forth in Paragraph 49 of Defendant's Counterclaim.

18. Plaintiff denies the allegations set forth in Paragraph 50 of Defendant's Counterclaim. Plaintiff denial includes those allegations set forth in Paragraph 50, Subparts "a" through "m."

19. In answering Paragraph 51 of Defendant's Counterclaim, Plaintiff reincorporates all prior admissions or denials in all preceding paragraphs as if fully set forth herein verbatim.

20. Plaintiff denies the allegations set forth in Paragraph 52 of Defendant's Counterclaim. Plaintiff denial includes those allegations set forth in Paragraph 52, Subparts "a" through "m."

21. Plaintiff denies the allegations set forth in Paragraph 53 of Defendant's Counterclaim.

22. Plaintiff denies the allegations set forth in Paragraph 54 of Defendant's Counterclaim.

23. Plaintiff denies the allegations set forth in Paragraph 55 of Defendant's Counterclaim. Plaintiff denial includes those allegations set forth in Paragraph 55, Subparts "a" through "g."

24. Plaintiff denies the allegations set forth in Paragraph 56 of Defendant's Counterclaim.

25. Plaintiff denies the allegations set forth in Paragraph 57 of Defendant's Counterclaim.

26. Plaintiff denies the allegations set forth in Paragraph 58 of Defendant's

Counterclaim.

27. In answering Paragraph 59 of Defendant's Counterclaim, Plaintiff reincorporates all prior admissions or denials in all preceding paragraphs as if fully set forth herein verbatim.

28. Paragraph 60 calls for a legal conclusion which Plaintiff is not required to admit or deny. To the extent that an admission or denial is required, Plaintiff admits that Defendant appears to be bringing a counterclaim for costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act; however, Plaintiff denies that Defendant's Counterclaim is warranted or proper under the laws of this State.

29. Paragraph 61 calls for a legal conclusion which Plaintiff is not required to admit or deny. To the extent that an admission or denial is required, Plaintiff admits that Defendant appears to be bringing a counterclaim for costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act, and that Defendant has quoted portions of the South Carolina Frivolous Proceedings Act; however, Plaintiff denies that Defendant's Counterclaim is warranted or proper under the laws of this State.

30. Paragraph 62 calls for a legal conclusion which Plaintiff is not required to admit or deny. To the extent that an admission or denial is required, Plaintiff admits that Defendant appears to be bringing a counterclaim for costs, fees, and other damages pursuant to the South Carolina Frivolous Proceedings Act, and that Defendant has quoted portions of the South Carolina Frivolous Proceedings Act; however, Plaintiff denies that Defendant's Counterclaim is warranted or proper under the laws of this State.

31. Paragraph 63 calls for a legal conclusion which Plaintiff is not required to admit or deny. To the extent that an admission or denial is required, Plaintiff admits that Defendant appears to be bringing a counterclaim for costs, fees, and other damages pursuant to the South Carolina

Frivolous Proceedings Act, and that Defendant has quoted portions of the South Carolina Frivolous Proceedings Act; however, Plaintiff denies that Defendant's Counterclaim is warranted or proper under the laws of this State.

32. Plaintiff denies the allegations set forth in Paragraph 64 of Defendant's Counterclaim.

33. Plaintiff denies the allegations set forth in Paragraph 65 of Defendant's Counterclaim.

34. Plaintiff denies the allegations set forth in Paragraph 66 of Defendant's Counterclaim.

35. Plaintiff denies the allegations set forth in Paragraph 67 of Defendant's Counterclaim.

36. In answering Defendant's "WHEREFORE" Paragraph, Plaintiff denies that Plaintiff's Complaint should be dismissed, and denies that the relief sought by Defendant in her Counterclaim should be granted. Plaintiff further denies that this Court should find that Plaintiff's Complaint is in violation of the South Carolina Frivolous Proceedings Act, and denies that a monetary award to Defendant or her attorney, as requested by Defendant, is proper.

FOR A SECOND DEFENSE

37. Plaintiff reincorporates all prior admissions or denials in all preceding paragraphs as if fully set forth herein verbatim.

38. Plaintiff hereby moves for an order dismissing Defendant's Counterclaim *in toto* and with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action.

39. Rule 12(f) provides in pertinent part that "the court may order stricken from any

pleading any insufficient defense or any redundant immaterial, impertinent, or scandalous matter.” Rule 12(f), SCRCPP. Given that Rule 12(f) is “neither an authorized nor a proper way to procure dismissal of all or part of a complaint, or a counterclaim, the proper way to dispose of an improper counterclaim is through a motion to dismiss under Rule 12(b)(6). 5A Wright & Miller, Federal Practice and Procedure § 1380 at 644 (1990).

40. Pursuant to the terms of S.C. Code Ann. § 15-36-10(C)(1), relief under the South Carolina Frivolous Proceedings Act must be sought at the conclusion of the trial by way of motion. State v. Sweat, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct.App.2008); Neal v. Brown, 374 S.C. 641, 650, 649 S.E.2d 164, 168 (Ct. App. 2007)

FOR A THIRD DEFENSE

41. Plaintiff reincorporates all prior admissions or denials in all preceding paragraphs as if fully set forth herein verbatim.

42. Plaintiff reincorporates the allegations set forth in his Complaint, which include his allegations that Defendant’s negligence in the subject collision proximately caused Plaintiff to suffer personal injuries and property damage.

43. Plaintiff pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Defendant were greater than the negligence, if any, which might be established against Plaintiff and, therefore, Defendant is barred from any recovery in this action.

44. Plaintiff further alleges any injury and damage sustained by Plaintiff was due to and caused by the negligence and/or willfulness of Defendant, combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Plaintiff and, therefore, any amount of recovery awarded to Defendant for the injuries and damages alleged in the Counterclaim shall be reduced by the Court by the percentage of negligent and/or willfulness

attributed to Defendant.

45. Plaintiff alleges that Defendant was comparatively negligent in the following respects:

- a. In failing to keep a proper lookout while operating her vehicle then and there existing;
- b. In failing to maintain control of her vehicle;
- c. In failing to stay in her lane of traffic;
- d. In failing to slow down to a controllable speed to stay in her lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;
- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use her horn, if she had any;
- j. In failing to properly maintain her vehicle;
- k. In failing to yield the right of way to Plaintiff;
- l. In operating her vehicle without using due care and without regard for safety and rights of Plaintiff;
- m. In operating her vehicle in a negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful manner so as to create a dangerous situation;
- n. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- o. In negligently and carelessly operating her vehicle in such a manner as to cause her vehicle to strike Plaintiff and cause personal injuries and property damage to Plaintiff;
- p. In driving while distracted;
- q. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and

- r. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

FOR A FOURTH DEFENSE

46. Plaintiff reincorporates all prior admissions or denials in all preceding paragraphs as if fully set forth herein verbatim.

47. Plaintiff reincorporates the allegations set forth in his Complaint, which include his allegations that Defendant's negligence in the subject collision proximately caused Plaintiff to suffer personal injuries and property damage.

48. Plaintiff alleges that any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Defendant and, therefore, Plaintiff is not liable to Defendant for any sum whatsoever. Plaintiff asserts that he was travelling eastbound on Old Bluff Road on a bicycle at which time Defendant was travelling westbound on Old Bluff road and unlawfully attempted to pass a vehicle immediately in front of her. Defendant's unlawful attempt to pass the vehicle in front of her connotes Defendant's unlawful traveling into the lane of oncoming traffic, resulting in Plaintiff's injuries and property damage.

49. Defendant, upon information and belief, negligently or willfully entered Plaintiff's right-of-way, thereby failing to act as a reasonable, prudent driver would have acted under the same or similar circumstances.

WHEREFORE, having fully answered, Plaintiff prays that Defendant's Counterclaim be dismissed, that Plaintiff be awarded for the costs of defending the Counterclaim brought by Defendant, and for such further relief in favor of Plaintiff, in law or in equity, as this Court may deem just and proper. Plaintiff further prays for the relief sought in his Complaint.

[signature block on following page]

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Benjamin W. Lee

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Benjamin W. Lee, Esquire

S.C. Bar No.: 103213

32 Ann Street

Charleston, SC 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
June 5, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

**PLAINTIFF’S NOTICE OF MOTION,
MOTION TO DISMISS, AND
MEMORANDUM OF LAW IN
SUPPORT THEREOF**

TO: THIS HONORABLE COURT AND DEFENDANT ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Harland Jones, by and through his undersigned counsel, will move before this Honorable Court ten (10) days after the service of this Notice of Motion to Dismiss, or at such time as counsel may be heard, for an order dismissing Defendant, Karen Robinson’s (“Defendant”), Counterclaim that Plaintiff’s Complaint is in violation of the South Carolina Frivolous Proceedings Act (S.C. Code § 15-36-10(A)(4)). Plaintiff’s Motion to Dismiss is brought pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

COMES NOW Plaintiff, by and through his undersigned counsel, and does move before this Honorable Court to dismiss Defendant’s Counterclaim that Plaintiff’s Complaint is in violation of the South Carolina Frivolous Proceedings Act (S.C. Code § 15-36-10(A)(4)). Plaintiff’s Motion to Dismiss is brought pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, is based upon the following grounds, and may be further supported by subsequent memoranda and arguments of Plaintiff’s counsel.

PROCEDURAL AND FACTUAL BACKGROUND

This cases arises out of a motor vehicle collision that occurred on June 7, 2017, in Richland County. Plaintiff’s Complaint was filed on March 16, 2018, regarding the collision. Defendant’s

Amended Answer and Counterclaim was filed on May 22, 2018. As part of her Counterclaim, Defendant alleges that Plaintiff's Complaint is in violation of the South Carolina Frivolous Proceedings Act (S.C. Code § 15-36-10(A)(4)) (hereinafter the "Act").

On June 7, 2017, Plaintiff was travelling eastbound on Old Bluff Road on a bicycle. At the same time, Defendant was travelling westbound on Old Bluff Road in a 2014 Nissan sedan. As set forth in Plaintiff's Complaint, at the time of the subject collision, Defendant unlawfully attempted to pass a vehicle immediately in front of her. Once Defendant unlawfully and negligently attempted to pass the vehicle in front of her, Defendant crossed over into Plaintiff's lane of travel, thereby causing Plaintiff to strike the front of Defendant's vehicle by unlawfully traveling into the lane of oncoming traffic. The collision, which is reasonably believed to have been caused by the negligent actions of Defendant, resulted in Plaintiff suffering multiple personal injuries and property damage.

LEGAL STANDARD

When deciding a motion to dismiss for failure to state a claim, the question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007); Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 614 S.E.2d 619 (2005), rehearing denied; Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001); Dye v. Gainey, 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995); Benson v. United Guar. Residential Ins. of Iowa, 315 S.C. 504, 445 S.E.2d 647 (Ct. App. 1994), rehearing denied, certiorari denied; Brown v Leverette, 291 SC 364, 353 S.E.2d 697 (1987). The circuit court may dismiss a party's claim when the moving party demonstrates the counterclaimant's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. See Hambrick v.

GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). The question to be considered on a motion to dismiss on the pleadings is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). A motion to dismiss a complaint for failure to state facts sufficient to constitute a cause of action is converted into a motion for summary judgment when the trial court goes outside the face of the complaint to rule on the motion. Brazell v. Windsor, 376 S.C. 83, 655 S.E.2d 736 (Ct. App. 2007), rehearing denied, certiorari granted, reversed 384 S.C. 512, 682 S.E.2d 824.

ARGUMENT

Rule 12(f) provides in pertinent part that “the court may order stricken from any pleading any insufficient defense or any redundant immaterial, impertinent, or scandalous matter.” Rule 12(f), SCRCP. Given that Rule 12(f) is “neither an authorized nor a proper way to procure dismissal of all or part of a complaint, or a counterclaim, the proper way to dispose of an improper counterclaim is through a motion to dismiss under Rule 12(b)(6).” 5A Wright & Miller, Federal Practice and Procedure § 1380 at 644 (1990). The issue presented is whether the Act creates an independent cause of action that may be pled by a party in a pending lawsuit.¹ Several sections of the Act indicate that the procedural mechanism for **triggering** enforcement of the Act is by motion.

In pertinent part, Section 15-36-30 provides:

When the essential elements of this chapter have been established as provided in Section 15-36-10, a person is entitled to recover his attorney’s fees and court costs reasonably incurred in litigating the proceedings. **The entitlement of the aggrieved person must be determined by the trial judge at the conclusion of a trial upon motion of the aggrieved party stating the manner in which the**

¹ The Act, which became law in 1988, creates a “statutory claim that combines elements found in abuse of process and malicious prosecution actions with concepts found in Rule 11” Wall, Righting a Wrong: The South Carolina Frivolous Proceedings Sanctions Act, November/ December South Carolina Lawyer at 36 (1994); see also, 7 S.C. Juris. Costs § 14.

other party is alleged to have acted in violation of this statute.

The court shall base its decision upon a review of the proceedings and affidavits submitted by each person affected.

S.C. Code § 15-36-30 (emphasis added).

The Act establishes an equitable, rather than legal, remedy that must be determined by the court, not a jury. Father v. SCDSS, 353 S.C. 254, 578 S.E.2d 11 (2003). The South Carolina Supreme Court has also held that “the Act does not allow a judge to invoke its provisions *sua sponte*; it clearly requires a proper motion to be made by the aggrieved party.” Pool v. Pool, 329 S.C. 324, 494 S.E.2d 820 (1998). The Pool decision is instructive because, in Pool, the Supreme Court ruled the South Carolina Court of Appeals had erred in finding that a husband was entitled to recover attorney’s fees and costs pursuant to the Act even though the husband had not argued the Act at trial. However, our State’s Supreme Court affirmed the award of attorney’s fees and costs to the husband because the trial court had properly allowed the husband to amend his pleadings to seek an award and, therefore, the issue was properly before the trial court. Implicit in the South Carolina Supreme Court’s decision in Pool is the recognition that attorney’s fees and costs may be **pled as a separate ground of relief in divorce actions**. See S.C. Code §§ 20-3-120 and 130(H).

To be sure, pursuant to the terms of Section 15-36-10(C)(1), relief under the Act **must** be sought at the **conclusion of the trial** by way of motion. The statute is clear and unambiguous that a cause of action or right to relief **does not arise unless and until a party prevails with regard to the claims brought by the opposing party**. Clear and unambiguous statutes require no statutory construction and must be applied according to the literal meaning of their terminology. State v. Sweat, 379 S.C. 367, 375, 665 S.E.2d 645, 650 (Ct. App. 2008); Neal v. Brown, 374 S.C. 641, 650, 649 S.E.2d 164, 168 (Ct. App. 2007).

The South Carolina Court of Appeals reaffirmed that a party must move for relief under the Act no later than 10 days **after the verdict**. In Re Beard, 359 S.C. 351, 597 S.E.2d 835 (2004) (emphasis added). Importantly, the In Re Beard Court rejected the argument that the Act contained a three year statute of limitations like most civil causes of actions. Id. at 357-358.

Here, discovery in this matter is now underway with Defendant's responses to Plaintiff's First Set of Requests for Admission having been received by Plaintiff on May 21, 2018, and Defendant's first set of discovery requests to Plaintiff having been received by Plaintiff on May 10, 2018. Given that discovery is in its infancy, Defendant's assertion that Plaintiff's claim is one of frivolity is unsupported and inappropriate, both in fact and in law. In fact, under the Act and the cases inquiring as to the scope and applicability of same, Defendant's Counterclaim is expressly prohibited under the Act and **must** be sought at the conclusion of the trial by way of motion. This matter is not close to trial; rather, discovery is only now underway. Upon information and belief, discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.

Of course, it is Plaintiff's position that Defendant's Counterclaim under the Act is without merit now, and will remain meritless even through the trial of this case, as the facts revealed thus far support Plaintiff's claim of Defendant's negligence in causing the subject motor vehicle collision. Moreover, it is reasonably believed that discovery and the evidence revealed through discovery will successfully support Plaintiff's claims through trial. Defendant's Counterclaim under the Act is simply premature as a matter of procedure and a matter of law. Consequently,

Defendant's Counterclaim under the Act should be dismissed.

CONCLUSION

For the foregoing reasoning and law, Plaintiff's Motion to Dismiss Defendant's Counterclaim under the Act should be granted.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Benjamin W. Lee

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Benjamin W. Lee, Esquire

S.C. Bar No.: 103213

32 Ann Street

Charleston, SC 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
June 5, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	MOTION TO COMPEL DISCOVERY
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND LANE JEFFERIES, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Karen Robinson, by and through the undersigned attorneys, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel is scheduled to be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling the Plaintiff to respond to discovery requests served on him by Defendant, Karen Robinson, on May 8, 2018. These requests consisted of 38 interrogatories and 12 requests for production, to which Plaintiff has not responded. Defendant, Karen Robinson, request reasonable attorney's fees and costs for bringing this motion.

Defendant's counsel affirms that by letter of July 25, 2018, counsel for Plaintiff was contacted in a good faith effort to resolve this motion.

[Signature page to follow]

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

s/ J. Andrew Delaney

J. Andrew Delaney

Brett H. Bayne

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

August 10, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR RULE TO SHOW
	)	CAUSE
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

Defendant, Karen Robinson, by and through undersigned counsel, pursuant to Rule 37(b) of the South Carolina Rules of Civil Procedure, moves the court for a rule to show cause why Plaintiff should not be held in contempt of the court's order entered on October 3, 2018. In support of this motion, the Defendant shows the following to the court:

1. An Order granting Defendant's Motion to Compel was entered on October 3, 2018, a copy of which is attached as Exhibit A.
2. Plaintiff has not complied with the Order issued on October 3, 2018.
3. An affidavit of Brett H. Bayne, a copy of which is attached as exhibit B, states that Plaintiff has failed to comply with the Order issued on October 3, 2018. See Exhibit B.
4. The Plaintiff's conduct violates the court's October 3, 2018 order.

WHEREFORE, Defendant moves the court to enter an order requiring Plaintiff to appear and show cause as to why Plaintiff should not be held in contempt of court and for such other and further relief in favor of Plaintiff as the court deems just and appropriate including, but not limited to, striking Plaintiff's Complaint with prejudice and sanctions and costs for these proceedings.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

Brett H. Bayne, Bar No.: 100018

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Phone: (803) 779-2300

Email: adelaney@mgclaw.com

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

October 23, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

**PLAINTIFF'S NOTICE OF MOTION,
MOTION AND MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
DISCOVERY RESPONSES**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff(s) above-named by and through their undersigned counsel, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel may be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Defendant's Responses to discovery requests.

COMES NOW Plaintiff(s) by and through undersigned counsel, and does move before this Honorable Court for an Order compelling discovery responses from Defendant Karen Robinson ("Defendant"). This Motion is based on the following grounds:

1. This matter arises out of a collision on June 6, 2017, in which Defendant, driving a 4-door Nissan, struck Plaintiff, who was riding his bicycle.
2. On April 12, 2018, Plaintiff served Defendant with Requests for Production, Standard Interrogatories, and Supplemental Interrogatories. (Exhibit A).
3. On June 29, 2018, Defendant served responses.
4. Defendant's responses are deficient as set forth in detail below.
5. On August 29, 2018, Plaintiff advised Defendant of the deficiencies.

6. Defendants refused and continue to refuse to correct these deficiencies and/or to provide full and complete responses to Plaintiff's requests.

Defendant's responses are deficient in the following respects:

"General Objections." Defendant prefaces her responses to Plaintiff's Interrogatories and Requests for Production with boilerplate non-specific "General Objections." This is improper for multiple reasons, the most obvious of which is that there is no way for Plaintiff (or the Court) to determine which discovery requests the "General Objections" apply to. As a result, they taint every one of Defendant's responses, because there is no way for Plaintiff (or the Court) to determine if Defendant has responded fully to a particular request or is partially hiding behind a "General Objection."

The Rules of Civil Procedure do not provide for such "General Objections," and no court of which Plaintiff is aware endorses them. In contrast, such non-specific boilerplate general objections are often considered prima facie evidence of a Rule 26 violation¹, and the practice of raising them was recently described as "loathesome" by the Chief Administrative Judge for the 9th Judicial Circuit². Plaintiff respectfully requests that this Court order Defendant to withdraw the improper "General Objections" and respond to Plaintiff's requests in accordance with the applicable Rules of Civil Procedure.

Nonspecific boilerplate objections. In responding to Supplement Interrogatory number 12 and 30, and Request for Production number 13, 14, 22, 24, 25, and 30, Defendant stated

¹ Brian Morris, *The 2015 Proposals to the Federal Rules of Civil Procedure: Preparing for the Future of Discovery*, 41 N. Ky. L. Rev. 133, 152 (2014) (citations omitted). See generally Matthew L. Jarvey, *Boilerplate Discovery Objections: How They Are Used, Why They Are Wrong, and What We Can Do About Them*, 61 Drake L. Rev. 913 (2013) (discussing the issue of boilerplate objections in detail).

² The Honorable Roger M. Young, Memorandum dated July 2, 2018 (Exhibit B).

non-specific, boilerplate objections³ claiming that the requests were some combination of **vague, ambiguous, overly broad, and/or unduly** burdensome. The objections are improper, as such boilerplate objections standing alone are meaningless. To have any merit, such objections must be accompanied by an explanation of the specific and particular way in which a given request is vague, overly broad, or unduly burdensome so that the Plaintiff and the court can understand how and to what extent the discovery request is objectionable. See Josephs v. Harris Corp., 677 F.2d 985, 992 (3d Cir. 1982) ("[T]he mere statement by a party that the interrogatory was overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery must show specifically how... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.'" (citation omitted)). Plaintiff respectfully requests that this Court order Defendant to state the objections with the required particularity or withdraw the improper objections and answer fully.

Formulaic objections followed by an answer. In responding to Standard Interrogatory 3, Supplemental Interrogatory 2 and 3, and Request for Production number 4, 9, 13, 14, and 24, Defendant stated formulaic objections followed by answers "subject to the objection" (or similar language). This is improper, as such objections followed by answers — in addition to being contrary to the rules — leave the Plaintiff uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. Plaintiff respectfully requests that this Court order Defendant to articulate how she is applying the objections to limit the information provided, or withdraw the improper objections and answer fully.

³ That is, objections which are "devoid of any individualized factual analysis." Ceroni v. 4Front Engineered Sols., Inc., 793 F. Supp. 2d 1268, 1278 (D. Colo. 2011).

Unexplained claims of irrelevance or inadmissibility. In responding to Interrogatory number 12, 16, 30, and 32, and Request for Production number 13, 14, and 22, Defendant stated boilerplate objections based on irrelevance or inadmissibility. The objections are improper, as they do not contain **any** explanation — let alone a specific one — describing why the requests lack relevance or why the information sought will not reasonably lead to admissible evidence. The rules allow for broad discovery, and the information sought does not necessarily need to be admissible at trial.

“In South Carolina the scope of discovery is very broad and ‘an objection on relevance grounds is likely to limit only the most excessive discovery request.’” Samples v. Mitchell, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (quoting J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed.1996)). Moreover, it is “not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Env’tl. Control, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010); See also Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351-52 (1978). Plaintiff respectfully requests that this Court order Defendant to explain how the information sought is irrelevant and unlikely to lead to admissible evidence, or withdraw the improper objections and answer fully.

Public records. In responding to Interrogatory number 18 and 24, and Request for Production 24 and 25, Defendant stated boilerplate objections based on the information purportedly being in the public record or otherwise readily accessible to Plaintiff. The objections are improper, as the fact that documents or information might be in the public record does not automatically make them as readily available to the Plaintiff as they are to the defendant, nor does it make them immune from discovery.

Unlike Defendant, Plaintiff has no way of knowing where to search among the over 3000 counties, uncountable municipal courts, 94 Federal District Courts, 13 Federal Courts of Appeal, bankruptcy courts, workers compensation commissions, administrative law courts, and various other keepers of public records throughout the country. Plaintiff respectfully requests that this Court order Defendant to withdraw the improper objections and answer fully.

Generalized claims of attorney-client privilege or work product. In responding to Standard Interrogatory 2, Supplemental Interrogatory 2, and 3, and Request for Production number 4, 9, 17, 18, and 19, Defendant stated boilerplate generalized objections asserting the protection of the attorney-client privilege and/or the work product doctrine. The objections are improper, as they are not accompanied by the required privilege log, and do not state the specific nature of the privilege being asserted, or the nature or subject matter of the communication at issue, or even the identity of the sender or receiver of the communication (or their relationship to each other). Moreover, where, as here, a general objection of privilege is made without attaching a proper privilege log, the objection of privilege is likely waived. Plaintiff respectfully requests that this Court order Defendant to produce a proper privilege log, or withdraw the improper objections and answer fully.

In responding to Request for Production 6, Defendant did not provide any substantive response, and instead stated that she would “supplement at a later date.” Plaintiff respectfully requests that this Court order Defendant to respond fully.

In responding to Interrogatory 28, Defendant stated simply “Not Applicable” without any explanation. Plaintiff respectfully requests that this Court order Defendant to respond fully.

In responding to Interrogatory 31, Defendant failed to respond fully. Plaintiff respectfully requests that this Court order Defendant to respond fully.

In responding to Interrogatory 32, Defendant objected and failed to provide her net worth. Plaintiff will submit a supplemental memorandum concerning the discoverability of financial information including net worth. Plaintiff respectfully requests that this Court order Defendant to respond fully.

CONCLUSION

The intent of South Carolina's discovery rules – like that of the federal rules – is to provide information, not to hide information. Indeed, the “entire thrust of the discovery rules involves full and fair disclosure.” Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997). Accordingly, the discovery process “is designed to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” In re Anonymous Member of S.C. Bar, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (internal quotations omitted).

Defendant's improper objections and failure to fully answer thwart the purpose of discovery – they prolong litigation and unnecessarily increase costs to the parties and the Court. They are simply another example of “Rambo style obstructionist discovery tactics...[that] if not stopped dead in their tracks by appropriate sanctions, [will] have a virus like potential...” in this case and only serve “...to corrupt the fairness of our civil justice system.” St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 517 (N.D. Iowa 2000).

WHEREFORE, Plaintiff(s) moves for an Order compelling the Defendant's full and complete responses to Plaintiff's Interrogatories and Requests for Production. This Motion may supported by supplemental memoranda, arguments of counsel, and as otherwise deemed necessary or advisable by this Court.

RULE 11 CERTIFICATION

Plaintiff's counsel affirms that he communicated with Defendant in a good faith effort to resolve the matter prior to the filing of this Motion.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

Lane D. Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

Anastopoulos Law Firm, LLC

32 Ann Street, Unit B

Charleston, SC 29403

(843) 614-8888

Charleston, South Carolina
November 24, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

**PLAINTIFF'S NOTICE OF MOTION,
MOTION AND MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
DISCOVERY RESPONSES**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff(s) above-named by and through their undersigned counsel, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel may be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Defendant's Responses to discovery requests.

COMES NOW Plaintiff(s) by and through undersigned counsel, and does move before this Honorable Court for an Order compelling discovery responses from Karen Robinson ("Defendant"). This Motion is based on the following grounds:

1. On October 12, 2018, Plaintiff served Defendant **with Plaintiff's Second Set of Interrogatories to Defendant.** (Exhibit A).
2. Defendant's responses were due on or about November 12, 2018.
3. Defendant did not respond by November 12, 2018.
4. On November 19, 2018 Plaintiff requested that Defendant respond to the overdue Discovery. (Exhibit B).
5. As of the date of this Motion, Defendant has not responded.

WHEREFORE, Plaintiff(s) moves for an Order compelling the Defendant's responses to Plaintiff's Interrogatories and Requests for Production.

RULE 11 CERTIFICATION

Plaintiff's counsel affirms that he communicated with Defendants in a good faith effort to resolve the matter prior to the filing of this Motion and/or that such communication would be fruitless.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

Lane Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

Anastopoulos Law Firm, LLC

32 Ann Street, Unit B

Charleston, SC 29403

(843) 614-8888

Conway, South Carolina
December 1, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND LANE JEFFERIES, ATTORNEY FOR PLAINTIFF:

The Defendant, Karen Robinson, hereby moves the Court for an Order granting her summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact and that the Defendant, Karen Robinson is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant.

This motion will be based on the South Carolina Rules of Civil Procedure, common and statutory law of South Carolina, affidavits, depositions and any other evidence which may be admissible by the Court.

[Signature page to follow]

McANGUS GOUDELOCK & COURIE, L.L.C.

s/ J. Andrew Delaney

J. Andrew Delaney, Bar No: 72863

Brett H. Bayne, Bar No: 100018

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

*ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON*

March 6, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	MOTION TO COMPEL DISCOVERY
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND COUNSEL FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Karen Robinson, by and through the undersigned attorneys, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel is scheduled to be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling the Plaintiff to respond to discovery requests served on him by on August 14, 2018. These requests consisted of three supplemental interrogatories and one supplemental request for production.

Specifically, on June 5, 2018, Plaintiff's counsel stated in sworn, signed pleadings to this court subject to Rule 11 that he has or believes there to be a witness or witnesses who will testify that:

"...Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

As a result of this allegation, the undersigned sent the subject discovery requests to Plaintiff on August 14, 2018. Specifically, the undersigned sought the following supplemental interrogatory,

among others, "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court:

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to those requests. Thereafter, the undersigned filed a Motion to Compel various outstanding discovery requests. At the hearing on the Motion to Compel, all outstanding issues on discovery were heard by The Honorable DeAndrea G. Benjamin. On October 3, 2018, Judge Benjamin issued an Order which stated "Motion to compel-granted. Remaining records and all supplemental responses should be received in 20 days." Plaintiff did not produce the discovery documents within 20 days of the Order and failed to comply with this Order. The undersigned filed a Motion for Rule to Show Cause on October 23, 2018. The Rule was granted through written Order of Judge Benjamin on October 30, 2018.

Following the Rule being granted by Judge Benjamin, Plaintiff finally responded to the supplemental discovery requests on November 7, 2018 (prior to a scheduled hearing on the Rule was held). In these responses, Plaintiff finally admitted (for the first time) he, in fact, did not have any witnesses as he had represented to the court in the signed June 5, 2018 filings. See, for example:

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

ANSWER: None.

and

1. Provide all documents of any type including, but not limited to, photographs, videos, statements, reports, data, emails, messages, social media, which relate to the responses provided to First Supplemental Interrogatories 1-3.

RESPONSE: None.

Plaintiff's deposition was taken on March 6, 2019 after numerous cancellations due to scheduling issues and other matters in the case. During the deposition, Plaintiff revealed for the very first time that he had a friend named "Alex" who witnessed the accident from Plaintiff's front yard .5-1 mile away from the accident scene. He reported "Alex" took pictures of the scene and sent the pictures to Plaintiff. Plaintiff testified he was in possession of the pictures but admitted he had never produced them. Plaintiff admitted he was aware of Alex from the time immediately following the accident until today but did not disclose the existence of "Alex" to the defense. Plaintiff could not give "Alex's" last name, where Alex lived, a mailing address, a

phone contact, or any way to find or get in touch with Alex. This information clearly contradicts the discovery responses given in response to the Order Granting the Rule to Show Cause.

Defendant, Karen Robinson, requests the court issue a sanction in the form of dismissing Plaintiff's Complaint with prejudice for the late disclosure of "Alex." This case is scheduled for trial the week of March 18, 2019 and Plaintiff admits to knowing about "Alex" since June 2016—over 2.5 years. In the alternative, Defendant requests this Court order Plaintiff to produce "Alex" and all information in possession of Plaintiff related to "Alex" and, in addition, Defendant further requests reasonable attorney's fees and costs for bringing this motion.

Defendant asserts the sanction of dismissal sought above is proper in this situation and in this case and relies on Plaintiff's own filings to support such a request. Specifically, Plaintiff has previously agreed in filings in this very case that sanctions are proper for this exact conduct Plaintiff now engages in. For example, Plaintiff wrote:

"The intent of South Carolina's discovery rules – like that of the federal rules – is to provide information, **not to hide information**. Indeed, the **"entire thrust of the discovery rules involves full and fair disclosure."** Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997). Accordingly, the discovery process "is designed to make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." In re Anonymous Member of S.C. Bar, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) (internal quotations omitted).

Defendant's...**failure to fully answer thwart the purpose of discovery – they prolong litigation and unnecessarily increase costs to the parties and the Court**. They are simply another example of **"Rambo style obstructionist discovery tactics...[that] if not stopped dead in their tracks by appropriate sanctions, [will] have a virus like potential..."** in this case and only serve "...to corrupt the fairness of our civil justice system." St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 517 (N.D. Iowa 2000)."

Pl. Notice of Motion, Motion, and Memorandum in Support of Motion to Compel Discovery Responses filed November 24, 2018 (emphasis added).

Plaintiff readily admits and asserts this very type of intentional failure to hide information and thwart full and fair disclosure "...prolong[s] [the] litigation and unnecessarily increase[s] costs to the parties and the court." Plaintiff further admits and asserts that this exact type of "...Rambo style obstructionist discovery tactic" will have a "virus like potential" if it isn't "stopped dead in [its] tracks by appropriate sanctions." Defendant agrees with Plaintiff. This court *should* impose a heavy and appropriate sanction for Plaintiff's "Rambo style obstructionist discovery tactics."

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

Brett H. Bayne, Bar No.: 100018
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

March 7, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY
KAREN ROBINSON,	)	JUDGMENT
	)	
Defendant.	)	
	)	

This matter comes before this court on Defendant's Motion for Summary Judgment. For the reasons set forth herein, this court should GRANT Defendant's Motion. This case is now more than 14 months old (since Complaint was filed) and 23 months old (since the accident). In that time, Plaintiff has not presented a single piece of evidence or testimony, a single witness, or any other information to support a single allegation in his Complaint. Despite repeatedly telling this court he has witnesses or evidence, Plaintiff continues to refuse to identify any witnesses, present any evidence, or comply with basic discovery requests.

Background

On June 7, 2017, Plaintiff was operating a bicycle on Old Bluff Road in an eastbound direction. Old Bluff Road is a two lane road divided by a double yellow line. As Plaintiff rode his bike down Old Bluff Road he made the inexplicable decision to turn left across the double yellow line and directly into the path of an oncoming car operated by Defendant. Plaintiff's stated reason for this during his deposition was that he simply wanted to ride on the other side of the road. After Plaintiff illegally crossed the double yellow line into the path of Defendant's car, he was immediately struck by Defendant's car. Defendant's car never crossed the double yellow

line, never left its lane of travel, and was left with no time to react to Plaintiff's decision to cross into her lane of travel. Following the impact, Plaintiff's bike and body came to rest directly in front of Defendant's car on the ground and Defendant's car came to rest within her lane of travel. Plaintiff has admitted he does not remember the accident and has admitted he did not see Defendant's car prior to the collision. The only eyewitness—Michelle Murray—was travelling in a car behind Plaintiff and testified Plaintiff suddenly crossed the double yellow line into Defendant's lane of travel. Ms. Murray also testified Defendant never crossed the double yellow line and that Defendant could do nothing to avoid the collision caused by Plaintiff.

Standard of Review

A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCR. Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. Priest v. Brown, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990). It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Main v. Corley, 281 S.C. 525, 316 S.E. 2d 406 (1984). A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." Hedgepath v. AT&T Co., 378 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). Moreover, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRCR.

Discovery Abuses

Prior to discussing the factual reasons why this court should GRANT Defendant's Motion for Summary Judgment, it is important to set out the background of responses to discovery and allegations—or lack thereof—by Plaintiff.

Plaintiff's Complaint consists of specific allegations about the conduct and nature of Defendant's on the roadway on the day of this accident. However, Plaintiff does not remember the accident and has been unable to provide any information about the accident to Defendant. Therefore, Plaintiff's counsel must have learned the facts and details he alleges throughout the Complaint, filings, and discovery from some source other than from Plaintiff's counsel. Rule 11(a) provides as much when it states "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading...to the best of his knowledge, information and belief [has] good ground to support it."

In addition to the very specific allegations in the Complaint, on June 5, 2018, Plaintiff's counsel stated in sworn, signed pleadings to this court subject to Rule 11 that he has or believes there to be a witness or witnesses who will testify that:

"...Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

As a result of this allegation, the undersigned sent discovery requests to Plaintiff on August 14, 2018. Specifically, the undersigned sought the following supplemental interrogatory, among others, "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For

reference, you specifically asserted to the Court:

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to those requests. Thereafter, the undersigned filed a Motion to Compel various outstanding discovery requests. At the hearing on the Motion to Compel, all outstanding issues on discovery were heard by The Honorable DeAndrea G. Benjamin. On October 3, 2018, Judge Benjamin issued an Order which stated "Motion to compel-granted. Remaining records and all supplemental responses should be received in 20 days." Plaintiff did not produce the discovery documents or the witnesses he stated he had within 20 days of the Order and generally failed to comply with the Order. The undersigned filed a Motion for Rule to Show Cause on October 23, 2018. As a result of Plaintiff's failure to comply with Judge Benjamin's Order, the Rule was granted through written Order of Judge Benjamin on October 30, 2018.

Following the Rule being granted by Judge Benjamin, Plaintiff finally responded to the supplemental discovery requests on November 7, 2018 (prior to a scheduled hearing on the Rule was held). In these responses, Plaintiff finally admitted (for the first time) he, in fact, did not have any witnesses as he had represented to the court in the signed June 5, 2018 filings. See, for example:

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

ANSWER: None.

and

1. Provide all documents of any type including, but not limited to, photographs, videos, statements, reports, data, emails, messages, social media, which relate to the responses provided to First Supplemental Interrogatories 1-3.

RESPONSE: None.

Plaintiff's deposition was taken on March 6, 2019 after numerous cancellations due to scheduling issues and other matters in the case. During the deposition, Plaintiff revealed for the very first time that he had a friend named "Alex" who witnessed the accident from Plaintiff's front yard .5-1 mile away from the accident scene. He reported "Alex" took pictures of the scene and sent the pictures to Plaintiff. Plaintiff testified he was in possession of the pictures but admitted he had never produced them. Plaintiff admitted he was aware of Alex from the time immediately following the accident until today but did not disclose the existence of "Alex" to the defense. Plaintiff could not give "Alex's" last name, where Alex lived, a mailing address, a

phone contact, or any way to find or get in touch with Alex. This information clearly contradicts the discovery responses given in response to the Order Granting the Rule to Show Cause.

Since that time—more than 2 months since the deposition, 14 months since the Complaint was filed, and 23 months since the accident—Plaintiff has continued to refuse to produce “Alex”, any information about “Alex”, or whether “Alex” even exists.

Legal Argument for Granting Summary Judgment

For determining whether summary judgment is proper, it is important for the court to understand what has been alleged by Plaintiff to determine whether there is a genuine issue of material fact—let alone any evidence—related to each allegation. Plaintiff alleges, in sum, the following (along with the typical laundry list of negligence subparts):

1. At the time of the subject incident, Defendant unlawfully attempted to pass a vehicle immediately in front of her. (See Pl. Complaint ¶ 8).
2. Once Defendant unlawfully attempted to pass the vehicle in front of her, she crossed over into Plaintiff’s lane of travel. (See. Pl. Complaint ¶ 9).
3. Defendant caused Plaintiff to strike the front of Defendant’s vehicle by unlawfully travelling into the lane of oncoming traffic. (See Pl. Complaint ¶ 10).

None of these allegations are true.

a) Plaintiff’s Testimony and Evidence

We start with Plaintiff’s own testimony as this should be the testimony required to form the Rule 11 foundation of the Complaint and the bare minimum to sustain the allegations of the

Complaint. Plaintiff was deposed on March 6, 2019 and testified as follows:

Q: Do you know what time the accident happened?

A: Well I don't know what time.

Q: Do you know if it was in the morning or the afternoon?

A: I believe it was in the evening¹.

Pl. Depo. Tr. 22:16-21

A: So I put my hand out to turn left in front of the car...so she slowed down and let me know that I could turn in front of her, I proceeded to turn in front of her. The next thing I know, I had a heavenly experience...

Q: ...What car are you referring to? What did it look like?

A: I can't recall what it looked like right now.

Q: ...And you mentioned that there were cars behind this vehicle. Do you recall what any of those cars looked like?

A: No, huh-uh.

Q: Were there any cars in your lane of travel?

A: No, huh-uh.

Q: Do you know, who was the female in the car that you're referring to?

A: ...when my wife was living at that time, she said it was her cousin.

Q: Who is her cousin?

A: The lady in the car.

Q: Who—what is the name of your wife's cousin?

A: I don't know the name right now.

Q: You mentioned the car being driven by a woman who may have

¹ The accident occurred at 9:30 AM. See TR-310 Traffic Form from SCDPS FOIA.

been your wife's cousin, is that the vehicle that hit you?

A: No². That's the vehicle I was going to turn in front of.

Q:...Did [your wife] tell you if she ever talked to her cousin about it?

A: Yeah, I think she did.

Q: She tell you about that conversation?

A: She just told me she wasn't going to testify, that she wasn't getting into it.

Q...So your wife—wife told you that her cousin did not want to testify because she did not want to get involved, is that correct?

A: Yeah³, uh-huh.

Pl. Depo. Tr. 28:10-33:9

A: As I—as I—after—as I proceeded to turn in front of the car, next thing I know, I was in heaven.

Q...Do you know what made contact with you at the accident...do you recall what vehicle hit you?

A: No⁴. I was told what vehicle had hit me.

Q: ...Do you recall seeing any vehicle hit you?

A: No⁵.

Q: ...You mentioned that you saw some pictures from this accident of the actual vehicle that his you. Did you ever see that vehicle or recall ever seeing that vehicle on the day of the accident?

A: No⁶, huh-uh. I didn't see anything.

² Plaintiff alleges he turned in front of is not the vehicle that hit him. As will be seen later, there was only one vehicle on the roadway—not two as stated by Plaintiff.

³ It strains belief and credulity that Plaintiff asserts a family member witnessed the accident but didn't stop, didn't help, and refuses to testify. Further, Plaintiff has refused to identify the family member in discovery yet seeks to rely upon hearsay from his wife about the family member and what they allegedly saw.

⁴ Plaintiff admits he didn't see Defendant's vehicle.

⁵ Plaintiff admits he did not see any vehicle that hit him.

⁶ Plaintiff admits he did not see Defendant's vehicle despite making very specific claims in the Complaint about Defendant's vehicle.

Q: When you were turning, where exactly were you turning into?

A: I was turning on the other side of the road, go to my house...I was going to turn in front of her car and I was going to still on—the left side of the road for about a block or so before I turned to my house.

Q: Why do you turn there to go a block up to your house?

A: Because that's what I felt like doing at the time⁷.

Q: ...So is there any particular reason you would have chose to turn at that precise location?

A: So maybe. I don't know. I mean, I guess that the particular location that I decided to turn at that point in time.

Q: But you're not sure why that—was the location you decided to turn?

A: No, huh-uh.

Q: ...Do you remember at any point there being a vehicle behind you during your bike ride on the day of the accident?

A: ...No⁸, not that I know.

Q: At the time of the collision, did you see anybody change lanes or anything like that?

A: No⁹.

Pl. Depo. Tr. 34:13-40:8

Q: So we're looking at the vehicle from the front. Looking at that vehicle from that direction, does it looks like the vehicle would be travelling in the right lane?

A: Yeah.

⁷ Plaintiff admits he crossed the double yellow line to ride into oncoming traffic because "that's what he felt like doing."

⁸ See Michelle Murray's testimony *infra*. Ms. Murray was following behind Plaintiff and has given the only eyewitness testimony in the case. She testified Plaintiff suddenly turned directly in front of Defendant and caused the accident.

⁹ This directly contradicts Plaintiff's own pleadings and Complaint. See Pl. Complaint ¶ 8-10.

Q: And would the right lane of travel that it's travelling in be the proper lane of travel?

A: Yeah¹⁰, uh-huh.

Q: And your bicycle in that photo, it's also in that same lane, right?

A: Yeah, uh-huh.

Q: Your bicycle is immediately in front of that vehicle?

A: That's what it looks like.

Pl. Depo. Tr. 50:8-21

Q: Now, looking at a picture, is that vehicle in the right lane of travel?

A: It's in the right lane. Yeah. I would say it was—it is.

Q: It is in the right-hand lane

A: Yeah¹¹.

Q: And the right-hand lane is the proper lane for a vehicle to be travelling, right?

A: I would say it is.

Q: So that's a yes?

A: Yes.

Pl. Depo. Tr. 52:15-25

Q: So you remember up and to the point that you were leaning to turn?

A: Yes.

Q: You were leaning to turn in front of a vehicle that was going in

¹⁰ Plaintiff admits Defendant was travelling in the proper lane of travel at the time of the collision and not in Plaintiff's lane as alleged in the Complaint. See also Photos included with Memo.

¹¹ Plaintiff again admits Defendant was travelling in the right-hand lane of travel at the time of the collision and not in Plaintiff's lane as alleged in the Complaint.

the opposite direct; is that right?

A: Correct¹².

Q: And then your plan was then to cross the double yellow lines into the other side of the road; is that right?

A: Correct.

Q: But all you remember is up and to the point where you were about to turn to cross those yellow lines?

A: Correct¹³.

Pl. Depo. Tr. 92:16-93:5

Q: Did you see [the Defendant's vehicle] at—at all prior to the accident? Do you recall ever seeing her vehicle?

A: No.

Q: Do you recall seeing any vehicle attempt to make a pass around another vehicle while you were riding your bike?

A: No^{14 15}.

Pl. Depo. Tr. 97:23-98:5.

Q: Do you know of any witness who saw [Defendant]?

A: No.

Q: So do you have any reason to believe that the defendant attempted to pass a vehicle?

A: No¹⁶, I—I don't have a no reason.

¹² Plaintiff admits he tried to turn across double yellow lines in front of a vehicle in the oncoming lane of traffic.

¹³ Plaintiff again admits he has no personal knowledge for any of the allegations contained in the Complaint. See, for example, ¶8-10 of the Complaint.

¹⁴ Plaintiff admits he did not see Defendant attempt to make a pass around another vehicle, contrary to the allegations of his Complaint. See, for example, Complaint ¶8-10.

¹⁵ At this point of the deposition, Plaintiff was asked why his discovery responses contained information contrary to this testimony. Plaintiff was instructed by counsel not to answer and Plaintiff's counsel asserted attorney-client privilege to the discovery responses. See Pl. Depo. Tr. 98:6-100:14, attached herein.

¹⁶ Plaintiff again admits he has no basis for asserting that Defendant tried to pass another vehicle or crossed the double yellow line.

Q: Did you see the Defendant cross over the yellow line into the opposite lane of travel?

A: I didn't see her do anything.

Q: Do you know of any witness that saw the defendant cross over the yellow line into the opposite lane of travel?

A: I was told.

Q: Who told you that?

A: Alex¹⁷.

Pl. Depo. Tr. 101:1-14

The sum of Plaintiff's testimony is that Plaintiff did not see Defendant prior to the accident, Plaintiff has no basis for any allegation raised in his Complaint, and Plaintiff readily admits Defendant was operating her vehicle on the right side of the road at the time of the collision. Plaintiff cannot testify Defendant ever crossed the double yellow line or tried to pass any car. Plaintiff further admitted he illegally crossed the double yellow line and turned his bicycle directly in front of an oncoming vehicle simply because he wanted to turn where he turned. The only support beyond imagining the allegations Plaintiff has provided is someone named "Alex" who has never been named, produced, or identified and Plaintiff cannot now—23 months post-accident and 14 months post Complaint—survive a Motion for Summary Judgment based on representations that someone named "Alex" will testify a certain way—if "Alex" even exists.

b) Michelle Murray's Testimony

Michelle Murray is the only eyewitness to the accident and has been deposed for trial already. Ms. Murray was travelling on Old Bluff Road behind Plaintiff when Plaintiff suddenly

¹⁷ This raises the issue in the "Discovery Abuse" section of this Memorandum and in the companion Motion to Compel. Plaintiff repeatedly admits he did not see Defendant do anything he has accused Defendant of doing. He now, 23 months after the accident, relies on someone named "Alex" to support his position but refuses to produce Alex and can provide no identifying information about "Alex." Plaintiff cannot rest on hearsay purportedly from

turned left across the double yellow line and in front of Defendant. Ms. Murray testified that she was:

“...travelling down Old Bluff Road...that’s when I observed Mr. Harland Jones riding a bicycle. And we were in the same lane of traffic, so I was immediately behind him...I probably travelled behind him for maybe three, four minutes before he put up a hand signal. And once he put up the hand signal, shortly thereafter, I would say maybe a few seconds, maybe, he made a left turn. He turned into the left lane and that’s when the accident occurred.”

Murray Depo. Tr. 11:17-12:3.

What Ms. Murray saw of Mr. Jones is equally as important as to what Ms. Murray saw of Defendant Karen Robinson. Ms. Murray testified as follows about Defendant:

Q: Did you observe the vehicle that Ms. Robinson was driving before the accident happened?

A: I did.

Q: At any time, did the vehicle Ms. Robinson was driving move into the oncoming lane of traffic?

A: No.

Q: At any time, did the vehicle Ms. Robinson was driving change lanes into your lane of travel¹⁸?

A: No.

Q: At any time, did the vehicle Ms. Robinson was driving move into the lane of travel occupied by the bicycle, which would be your lane of travel as we discussed?

A: No.

Murray Depo. Tr. 13:12-14:2.

Q: ...Is Ms. Robinson’s car, that’s shown on the left side, is it in her lane of travel or is it in what would have been your lane of

someone named “Alex” with nothing more.

¹⁸ As Ms. Murray was travelling in the oncoming lane to Defendant, if Defendant crossed the double yellow line she would have been travelling directly toward Ms. Murray in the wrong lane of travel.

travel?

A: It's in her lane of travel.

Q: And the bicycle that's there, is that in Ms. Robinson's lane of travel or is that what would have been your lane of travel at the time?

A: It's in Ms. Robinson's lane of travel.

Murray Depo. Tr. 19:15-24

Q: And is that bicycle in what would be Ms. Robinson's lane of travel?

A: Yes.

Murray Depo Tr. 21:10-12

Q: Is [Ms. Robinson's] car maintained within her own lane of travel?

A: Yes.

Q: ...does that photograph show where the impact occurred on the roadway?

A: Yes.

Q: Were those cars—was that car or that bicycle moved into that spot after the accident?

A: No.

Murray Depo Tr. 21:20-22:5

Q: Did [Ms. Robinson's] car at any time that day when you saw it cross over that double yellow line that's shown in the photograph?

A: No.

Q: Did [Ms. Robinson's] car at any time that you saw it travel in that left lane we see in this photograph?

A: No.

Murray Depo Tr. 24:1-8

Q: The first allegation is that, at the time of the subject incident, so this accident, the defendant unlawfully attempted to pass a vehicle that was immediately in front of her. Did that happen?

A: No.

Q: At any time that day, did the defendant pass a vehicle that was in front of her that you observed?

A: No.

Q: The second is that once the defendant unlawfully attempted to pass the vehicle in front of her, the defendant crossed into plaintiff's lane of travel. Did the defendant cross into the plaintiff's lane of travel that day?

A: No.

Q: ...Did Ms. Robinson cause Mr. Jones to strike her car by travelling unlawfully in the oncoming lane of travel?

A: No.

Q: ...Did Ms. Robinson at any time to your observation, fail to maintain control of her vehicle?

A: No.

Q: Did Ms. Robinson, at any time to your observation, fail to stay in her lane of traffic?

A: No.

Q: Did Ms. Robinson, in your observation, fail to slow down to a controllable speed to stay in her lane of traffic?

A: No.

Q: ...Did Ms. Robinson, to your observation, do anything in terms of failing to keep a proper distance away from Mr. Jones?

A: No.

Q: Did Ms. Robinson fail to use what is called due care or proper

care in operating her motor vehicle?

A: No, not as far as I could tell.

Q: Another way of putting that is, to your observation, did Ms. Robinson do anything wrong that day?

A: No.

Q: To your observation did Ms. Robinson fail to obey any traffic laws?

A: No.

Q: To your observation, did Ms. Robinson fail to obey any traffic signs or signals on the roadway that day?

A: No.

Q: To your knowledge, was Ms. Robinson driving while distracted?

A: No.

Q: To your knowledge, did Ms. Robinson fail to yield the right-of-way to Mr. Jones?

A: No.

Q: From your observations, what did Ms. Robinson do wrong that day?

A: Nothing.

Q: And from your observations, what did Mr. Jones do wrong that day?

A: Turned into the incoming traffic.

Murray Depo Tr. 26:9-30:17

Ms. Murray conclusively establishes that Defendant did not cross the double yellow line, did not move into the oncoming lane of travel, and did not swerve or try to pass vehicles on the roadway. Ms. Murray is an independent eyewitness who saw everything that happened that day on the road

and testified accordingly.

c) Defendant Karen Robinson Testimony

Defendant Robinson is the only other witness to the collision other than Ms. Murray and Plaintiff. Ms. Robinson was operating her motor vehicle within her lane of travel on Old Bluff Road when Plaintiff inexplicably and suddenly turned left directly in front of her because he “wanted to.” Specifically, Ms. Robinson recalled the accident as follows:

Q: ...From the time you first saw Mr. Jones, how long was it before you struck him with your vehicle?

A: ...about 5-7 seconds.

Q: ...What did he do during those 5-7 seconds? What did Mr. Jones do?...from the first time you first saw him until the time when the front of your car struck the right side of his bicycle?

A: He crossed into the path...he was riding straight, and then he turned in the front of my vehicle...that day Mr. Jones was on his correct side of the path, and he crossed into my path. That’s all.

Q: And when you saw him cross, was it just like this, boom?...

A:...As I was coming up, Mr. Jones was on his side coming east, and I was going west. Mr. Jones crossed over in the front all of a sudden where I didn’t have time to do anything...I mashed on my brakes, applied my brakes...

Def. Depo. Tr. 40:9-43:16.

Defendant establishes her testimony consistent with independent witness Michelle Murray—specifically that Plaintiff suddenly crossed into Defendant’s lane of travel by crossing over a double yellow line and resulting in an emergency situation wherein Defendant had no opportunity to avoid a collision with Plaintiff.

Conclusion

For all of the foregoing reasons, Defendant’s Motion for Summary Judgment must be

GRANTED. As noted above, summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ. Priest v. Brown, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990). Here, there are clear plain, palpable and undisputed facts—Plaintiff admits that Defendant was in her lane of travel and that he illegally crossed the double yellow line into the oncoming path of Defendant immediately prior to the collision. This is corroborated by both Defendant and independent eyewitness Michelle Murray’s testimony.

Further, it is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Main v. Corley, 281 S.C. 525, 316 S.E. 2d 406 (1984). A party opposing a motion for summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” Hedgepath v. AT&T Co., 378 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001). To date, Plaintiff has not even opposed this case with a metaphysical doubt—he has presented no evidence contradicting the clear, unambiguous, plain, palpable, and undisputed facts of the case. Plaintiff admits 1) he crossed the double yellow line into Defendant’s lane of travel and 2) he did not see Defendant passing any cars or crossing the double yellow line. This is supported by independent eyewitness Michelle Murray’s testimony and the testimony of Defendant. All three agree—Plaintiff suddenly crossed the double yellow line into Defendant’s lane of travel.

Finally, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRCP. Plaintiff makes numerous claims in the Complaint

which are inconsistent with Plaintiff's own testimony. The question of where these allegations come from is a mystery. Defendant has sought repeatedly to uncover the genesis of these factually inaccurate allegations and Plaintiff has refused to cooperate in discovery, refused to disclose the source of the information (asserting attorney client privilege in his deposition), and has named only a mysterious friend named "Alex" to support his claims from the Complaint and in written discovery responses. This is woefully insufficient and cannot be considered by the court under prevailing precedent and Rule 56 as Plaintiff is merely left relying solely on the allegations from the pleadings.

Summary judgment is proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Brett H. Bayne

Brett H. Bayne, Bar No.: 100018

J. Andrew Delaney

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Phone: (803) 779-2300

Email: adelaney@mgclaw.com

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

May 6, 2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, HARLAND JONES, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant KAREN ROBINSON's (herein "Defendant") Motion for Summary Judgment.

INTRODUCTION

There is no dispute that Defendant struck Plaintiff while Plaintiff was riding his bicycle.¹ There is no dispute the wreck was serious, that Plaintiff was seriously injured, or that the impact caused significant damage to Defendant's car as shown below.



Instead, the dispute concerns **how** and **why** Defendant struck Plaintiff. There is evidence to support each side's version of events. Because of this conflicting evidence summary judgment must be denied.

¹ Def. Depo, p.11, lines 8 – 12; p. 13 lines 19-24.

DISPUTED FACTS

The parties agree that just prior to the wreck, Plaintiff was riding his bicycle east on Old Bluff Road. At the same time, Defendant was driving her car west, approaching Plaintiff. Each was traveling in the proper lane at that time.² Thereafter, the parties' stories diverge.

I. Defendant's version of events.

Defendant says that she first saw Plaintiff on the below-pictured roadway³ about five to seven seconds before the wreck,⁴ and that she observed him the entire time from then until impact.⁵ Defendant says she was going 40 miles-per-hour at that time.⁶ Defendant says that a black car was also approaching in the oncoming lane from behind the Plaintiff.



² Def. Depo, p.40, lines 14 – 20.

³ Def. Depo, p.51, lines 12 – 19.

⁴ Def. Depo, p.40, lines 8 – 13.

⁵ Def. Depo, p.42, lines 1 – 4.

⁶ Def. Depo, p.46, lines 1 – 5.

Defendant says that immediately prior to impact, Plaintiff made an un-signaled left turn directly in front of her. Specifically, Defendant testified⁷:

9 A. As I was coming up, Mr. Jones was on his
10 side coming east, and I was going west. Mr. Jones
11 crossed over in the front all of a sudden where I
12 didn't have time to do anything.

Defendant says that Plaintiff's left turn was so close in front of her that she had almost no time to react.⁸ Defendant says that she hit the brake, but not enough to leave any skid marks.⁹

Defendant says that there was only enough time to veer over "just an inch."¹⁰ When asked if she did anything else to attempt to avoid the collision Defendant testified¹¹:

20 A. I didn't have time to do anything because
21 Mr. Jones came directly in my path.
22 Q. So you didn't blow the horn.
23 A. Didn't have time to blow no horn. He was
24 directly in my path. It's not like it was a dog or a
25 cat, but he drove right in the front of my path.

Defendant speculated that "I think [Plaintiff] did not see my car. Gray car, gray pavement . . ."¹²

In summary, Defendant's story is that, without signaling, Plaintiff made a hard left turn immediately in front of Defendant's grey car that was going 40 miles-per-hour, and she hit Plaintiff because they were so close to each other that there wasn't time to avoid hitting him.

⁷ Def. Depo, p.43, lines 9 – 12.

⁸ Def. Depo, p.45, lines 15 – 16 ("Mr. Jones didn't give me time to do anything.").

⁹ Def. Depo, p.44, lines 8 – 17.

¹⁰ Def. Depo, p.44, line 18 – p.45, line 11.

¹¹ Def. Depo. P.46, lines 20 – 25.

¹² Def. Depo, p.80, lines 23 – 24.

II. Plaintiff's version of events.

Plaintiff testified to a very different set of facts. Plaintiff testified:

1. That Plaintiff **did** signal before turning left.¹³

12	I put my hand out left to turn in front of the car,
13	letting the car know that I was turning in front of
14	them, I looked over at the car and the lady and let
15	her know that I was turning in front of her, so I
16	put my hand out.

2. That Plaintiff did not turn left immediately in front of **Defendant**, but in front of a different car.¹⁴

1	Q. When you mentioned the car being driven
2	by a woman who may have been your wife's cousin, is
3	that the vehicle that hit you?
4	A. No. That's the vehicle I was going to
5	turn in front of.

3. That the driver Plaintiff turned in front of had seen his signal.¹⁵

17	So it was cars behind her, so she slowed
18	down and let me know that I could turn in front of
19	her. So when she slowed down, let me know that it

4. That the driver Plaintiff turned in front of had signaled him that it was okay to turn.¹⁶

19	her. So when she slowed down, let me know that it
20	was all right for me to turn to front of her, I
21	proceeded to turn in front of her. The next thing I

¹³ Plf. Depo, p.29, lines 12 – 16; p.35, lines 23 – 25. Attached hereto as Exhibit A and incorporated by reference.

¹⁴ Plf. Depo, p.29, lines 17 – 22; p.30, lines 1 – 5; p.115, line 11 – p.116, line 7.

¹⁵ Plf. Depo, p.28, lines 17 – 19.

¹⁶ Plf. Depo, p.28, lines 19 – 21; p.30, lines 16 – 20

16 Q. Did she make any type of hand gesture at
17 you?

18 A. No. She just slowed down. Letting me
19 know it was all right for me to turn in front of her
20 by slowing down.

5. That the car that Plaintiff turned in front of was blue, not grey like Defendant's.¹⁷

16 Q. Do you know what color that car would
17 have been?

18 A. I would hate to guess because I might be
19 wrong because I don't remember right now.

20 Q. So you have no recollection of what
21 color that car might have been?

22 A. Like I say, I would guess that I think I
23 remember; but I might be wrong.

24 Q. Well, that's fine. The guess that you
25 have, what color is that?

1 A. Blue.

6. That the blue car that Plaintiff turned in front of was going very slowly, not 40 miles-per-hour as Defendant claims to have been.¹⁸

3 Q. Did she actually come to a stop?

4 A. No. She just slowed all the way down.

7. That the driver of the car that signaled Plaintiff to turn was **not** Defendant.

1 Q. When you mentioned the car being driven
2 by a woman who may have been your wife's cousin, is
3 that the vehicle that hit you?

4 A. No. That's the vehicle I was going to
5 turn in front of.

¹⁷ Plf. Depo, p.31, line 16 – p.32, line 1.

¹⁸ Plf. Depo, p.31, lines 3 – 4.

8. That there were two cars behind the blue car that signaled Plaintiff to turn.¹⁹

22	Q. You mentioned that there were some cars
23	traveling behind her vehicle. Do you know how many
24	cars you saw?
25	A. At that time, I believe it was two.

Plaintiff personally observed each of the above-stated facts. Each is a material fact in determining this action. And each is in direct conflict with the facts that Defendant says she personally observed, and on which Defendant relies to support her affirmative defenses.

Plaintiff was seriously injured in the wreck, and he does not remember what happened between the time he began turning in front of the blue car that was not Defendant, until he woke up at home after being released from the hospital.²⁰ Plaintiff has been very forthcoming and candid about his inability to remember the exact moment of impact.²¹

Consistent with the above facts, Plaintiff is informed and believes that this wreck occurred as follows: Defendant was traveling west behind the blue car. When the blue car slowed to allow Plaintiff to turn left in front of it, Defendant became impatient and pulled into the oncoming (eastbound) lane to pass. As Defendant passed the blue car, she saw the black car coming directly towards her. To avoid a head-on collision with the oncoming black car, Defendant whipped back into the westbound lane as soon as she was past the blue car, thus striking Plaintiff in midst of his turn across the westbound lane.

¹⁹ Plf. Depo, p.33, lines 22 – 25.

²⁰ Plf. Depo, p.54, line 12 – p.57, line 5; p.91, line 25 – p.93, line 5.

²¹ Id.

LEGAL ANALYSIS

Plaintiff's burden here is to provide a mere scintilla of evidence. Plaintiff has provided far more than that. As enumerated above, Plaintiff has provided numerous pieces of admissible testamentary evidence that, if true, completely negate Defendant's excuse for hitting him.

In deciding this summary judgment motion, Plaintiff is entitled to the presumption that each fact he personally observed is true. Doe v. Howe, 367 S.C. 432, 437, 626 S.E.2d 25, 27 (Ct. App. 2005) ("We assume these facts are true only for the purpose of the summary judgment motion and determine merely whether they, when properly viewed, present triable issues."). Therein lies the genuine issue of material fact that precludes a grant of summary judgment – i.e. if Plaintiff's facts are true, then Defendant's cannot be, and her affirmative defenses collapse.

Summary judgment is an "extreme remedy to be cautiously invoked." Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 723, 729 (1986). Summary judgment is only appropriate where there is no genuine issue of material fact. Rule 56(c), S.C.R.C.P. Furthermore, when the burden of proof is by a preponderance of the evidence a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673, S.E.2d 801, 803 (2009).

Just on the evidence alone, summary judgement must be denied. However, Plaintiff is entitled to **more** than just the evidence described above. In defending this summary judgment motion, Plaintiff is also entitled to "**all** the inferences that can be reasonably drawn from the evidence." Huffman v. Sunshine Recycling, LLC, No. 2016-002080, 2019 WL 1372359, at *3 (S.C. Mar. 27, 2019) (emphasis added). Moreover, Plaintiff is entitled to the evidence and **all** the inferences being "viewed in the light most favorable to Plaintiff." Id.

Many reasonable inferences can be drawn from Plaintiff's evidence. And Plaintiff is entitled to ***all*** of them. However, just two suffice to demonstrate why summary judgment must be denied.

1. Undisputed Fact: The wreck scene is a "no passing" zone.²²
2. Undisputed Fact: Defendant hit plaintiff in the westbound lane.
3. Undisputed Fact: Defendant was driving west.
4. Undisputed Fact: Plaintiff turned left from the eastbound lane into the westbound lane.
5. Fact: The westbound car closest to Plaintiff when he turned ***wasn't*** Defendant. (Presumed to be true when viewed in the light most favorable to Plaintiff).

Reasonable Inference #1: Since the closest westbound car when Plaintiff started his turn wasn't Defendant, and since Defendant was going westbound in the westbound lane when she hit plaintiff, then Defendant necessarily passed that closest car.

Reasonable Inference #2: Since there is no legal way to pass at the wreck scene, Defendant necessarily broke the law when she went around the closest car to hit Plaintiff.

These two inferences are more than just reasonable; they are practically inescapable when just a single disputed fact (#5 above) is viewed in the light move favorable to Plaintiff.

CONCLUSION

Because the evidence and the inferences reasonably drawn therefrom, when viewed in the light most favorable to Plaintiff, show that there are numerous genuine issues of material fact, summary judgment must be denied. Accordingly, Defendant's Motion for Summary Judgment should be denied and this action set for a trial before jury.

[SIGNATURE ON FOLLOWING PAGE]

²² Def. Depo, Exhibit 2.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane Jefferies

Lane Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Conway, South Carolina
May 5, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MOTION FOR
	)	SANCTIONS
KAREN ROBINSON,	)	
	)	(EXPEDITED HEARING
Defendant.	)	REQUESTED)
	)	

Defendant Karen Robinson, by and through her undersigned counsel, hereby moves this court for a hearing and an Order sanctioning Plaintiff and Plaintiff's counsel for violations of ADR Rule 6. Plaintiff failed to participate in mediation as required by Rule 6. Defendant is requesting sanctions pursuant to ADR Rules 6, 8 and 10, and SCRCP Rules 11 and 37. As this case is set for trial the week of July 8, 2019, Defendant requests an expedited hearing with the Administrative Judge for Richland County.

The undersigned attempted to resolve this matter with Plaintiff's counsel on June 21, 2019. As of this filing, Plaintiff's counsel has not responded.

This Motion requires the submission of confidential statements and records consistent with SCADR Rules. Accordingly, this Motion is being filed with the Clerk of Court and the undersigned will submit a Memorandum in Support with Exhibits directly to The Honorable Jocelyn Newman as Administrative Judge for Richland County and will copy all counsel on the same.

SIGNATURE PAGE FOLLOWS

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

Brett H. Bayne, Bar No.: 100018

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Phone: (803) 779-2300

Email: brett.bayne@mgclaw.com

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

June 27, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
KAREN ROBINSON,	)	SANCTIONS
	)	
Defendant.	)	(EXPEDITED HEARING
	)	REQUESTED)
	)	

NOTE: TO PRESERVE THE CONFIDENTIALITY REQUIREMENTS OF THE SCADR RULES, THIS MEMORANDUM WITH ATTACHED EXHIBITS IS BEING SUBMITTED DIRECTLY TO THE COURT AND ALL COUNSEL BUT IS NOT BEING FILED WITHIN THE PUBLIC INDEX

Defendant Karen Robinson, by and through her undersigned counsel, hereby moves this court for a hearing and an Order sanctioning Plaintiff and Plaintiff's counsel for violations of ADR Rule 6. Plaintiff failed to participate in mediation as required by Rule 6. Defendant is requesting sanctions pursuant to ADR Rules 6, 8 and 10, and SCRCR Rules 11 and 37 (all as discussed below). As this case is set for trial the week of July 8, 2019, Defendant requests an expedited hearing with the Administrative Judge for Richland County.

By way of background, this case involves an automobile on bicycle accident on Old Bluff Road in Columbia, South Carolina on June 7, 2017. The accident occurred when Plaintiff, while riding a bicycle on the roadway, turned left across a double yellow line directly into the path of Defendant's vehicle causing an accident. This narrative is corroborated by Defendant, an

independent eyewitness, voluminous photographs taken at the scene, and the police reports from the scene. Plaintiff has testified, for all intents and purposes, that he does not remember the accident beyond choosing to turn left in front of a car. Despite all of this, Plaintiff elected to file this lawsuit against Defendant and has accused Defendant of, among other things 1) driving erratically, 2) speeding, 3) crossing the double yellow line, 4) changing lanes into oncoming traffic, and (most amazingly) 5) striking Plaintiff in Plaintiff's lane of travel—an allegation that is demonstrably false and contradicted by all evidence—including Plaintiff's own testimony.

Plaintiff has further stonewalled discovery and provided contradictory statements both in discovery and to this court¹. By way of example, on May 8, 2018, Defendant served upon Plaintiff the Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. On June 5, 2019, Plaintiff's counsel stated in a sworn, signed memorandum to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. As a result of this assertion to this Court, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production on August 14, 2018. As part of these First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant made the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

¹ This section is lengthy but it provides key background information and context for Plaintiff's actions at mediation and why sanctions are proper at this point related to the mediation (and the discovery abuses).

‘...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.’”

No response was received to this request. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with Judge Benjamin’s Order. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. Plaintiff finally responded on November 7, 2018 and admitted within those responses that he did not have any witnesses he had previously represented to the Court on June 5, 2018.

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who witnessed the motor vehicle accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.” Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced another individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. Plaintiff relied upon this unidentified and unnamed witness in his arguments against summary judgment. According to Plaintiff, this unidentified individual is his wife’s cousin. Plaintiff has

admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff sought to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

Because it had become apparent that Plaintiff failed to fully comply with the discovery requests of Defendant as well as the prior Orders of Judge Benjamin—including a Rule to Show Cause—Defendant filed *another* Motion to Compel and Judge Couch held a hearing on this Motion to Compel related to “Alex” and the as yet unidentified wife’s cousin. This hearing was held on May 8, 2019 and Judge Couch granted Defendant’s Motion from the bench². Judge Couch requested a proposed Order which has been submitted and Judge Couch has indicated is being signed and filed. Judge Couch gave Plaintiff until June 1, 2019 to “fully respond to Defendant’s discovery regarding the identification and contact information of these purported factual witnesses” and specifically ordered if that was not done “the failure of Plaintiff to comply with this Order [by June 1, 2019] shall result in Plaintiff’s inability to use the aforementioned witnesses or any other unidentified witness at trial.” To date, even now (June 27, 2019), Plaintiff has continued to refuse to identify any of the alleged witnesses and all of those witnesses are now barred from trial³.

This brings us to June 21, 2019—the mediation. Plaintiff’s counsel and Plaintiff’s

² Making this the second Motion to Compel granted against Plaintiff for the same set of discovery requests.

³ Judge Couch also made a finding that “should Plaintiff fail to fully respond to the Defendant’s discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant’s attorney’s fees, court costs and expenses.” Defendant now requests these costs, fees, and expenses but will defer to the Court as to whether they need to be sought via Judge Couch or if this Court may award them.

counsel's firm has a long and sordid history of demanding and compelling strict compliance with SCADR Rule 6. Plaintiff's firm routinely demands each and every single person—adjuster, lead attorney, individual party⁴, etc.—appear in person at the mediation and refuses to waive or ease the requirements. *See, for example, Exhibits A and B*⁵. Accordingly, the undersigned took extra care to ensure that both the principal adjuster with full authority and Ms. Karen Robinson were present and participating in the mediation. To everyone's complete surprise, Plaintiff's counsel of record did not appear at the mediation. This happened **despite Plaintiff's lead counsel—Lane Jefferies—own letter admitting he was required by Rule to be present.** *See Exhibit A. Rule 6(b)(3) requires the attendance of “[t]he party's counsel of record.”* And it appears plainly obvious from Plaintiff's counsel's letter at Exhibit A, that Plaintiff's counsel was well aware of this requirement. Plaintiff's lead counsel of record is Lane Jefferies (the lead counsel who has appeared at every hearing, nearly every deposition, and who has authored nearly every filing in this case), Roy Willey (listed counsel who has appeared at one deposition), and Eric Poulin (who has appeared on every filing but has not appeared at any deposition or hearing). Any of these three would satisfy the Rule 6(b)(3) requirements. Instead, Plaintiff was represented by Gus A. Anastopoulo. Mr. Anastopoulo could provide no explanation for why Plaintiff's counsel of record was not present. Mr. Anastopoulo is a 2018 law graduate who was licensed on November

⁴ As this Court is no doubt aware, it is fairly uncommon in basic insurance defense liability cases for the individual defendant to appear in person at the mediation as the authority and resolution of the claim are typically driven by the individual defendant's carrier. However, Plaintiff's firm almost always demands attendance of the individual defendants so that they can, typically, threaten the individual defendants with future bad faith litigation and other matters related to judgments (for example, seizing their homes or savings accounts) they will seek to obtain from the court. The goal is to scare the individual defendant into begging the carrier to pay more money to settle the claim.

⁵ Exhibit A is a letter from Plaintiff's lead counsel Lane Jefferies from this specific case about the mediation acknowledging his personal physical presence was required by Rule. Exhibit B is a collection of letters, emails, and filings from Mr. Jefferies and other members of Plaintiff's counsel's firm related to mediation rules and requirements and extolling the absolute virtue of requiring attendance in person of the parties requires by SCADR Rule 6. There can be no argument from Mr. Jefferies that he was ignorant of Rule 6(b)(3)'s physical attendance requirements.

27, 2018⁶. Mr. Anastopoulos has not appeared on a single pleading in this case, has not filed a Notice of Appearance, has not been on any email or correspondence in this case, has not been present at any deposition, and has not been present at any hearing. It is the undersigned's belief based on the mediation that Mr. Anastopoulos had not met with—or even spoken to—Plaintiff before the day of the mediation. Simply put, Mr. Anastopoulos is not a counsel of record for Plaintiff.

To make matters worse, Mr. Anastopoulos appeared to lack any functional knowledge of the case, the facts, or the status of the prior hearings, rulings, and/or Orders in this case⁷. As mediations typically proceed, the mediator presented a brief opening to each party then deferred to Mr. Anastopoulos to present the Plaintiff's opening statement. Mr. Anastopoulos got several key facts and details wrong about the case. He asserted medical damages that were inaccurate and that have never been produced in discovery. Later, he asserted that there were "several eyewitnesses to the accident who would be called to testify"—something that has been expressly barred by Judge Couch but that Mr. Anastopoulos was completely unaware of. However, the most egregious part of the mediation occurred during Mr. Anastopoulos's opening wherein he openly admitted that Plaintiff had a "1 in 10 chance" of prevailing at trial but that "1 chance out of 10 is going to be costly to Defendant so you should settle." Mr. Anastopoulos openly and candidly admitted the lawsuit filed by Plaintiff had just a 10% chance of success—this is an open and

⁶ While Mr. Anastopoulos's level of experience would not typically be relevant, it gives context to what followed at mediation in terms of the opening statement, the lack of knowledge about the case and prior rulings, and the demands.

⁷ Typically, mediation discussions and disclosures are confidential. However, there are limited exceptions to confidentiality pursuant to ADR Rule 8(c). Rule 8(c)(5) and (6) provide for disclosure of various mediation matters when it is 1) offered to report, prove, or disprove professional misconduct occurring during the mediation and/or 2) in a report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules. The undersigned will be setting out the happenings at the mediation from this point forward pursuant to Rule 8.

brazen violation of SCRCF Rule 11⁸. Shortly after describing Plaintiff's case as a veritable "snowball's chance", Mr. Anastopoulo revised his prediction to a "1 in 6" chance because he decided a better analogy for everyone present was to compare this case to "a game of Russian Roulette" wherein Defendant "may win 5 out of 6 times but that one time there's a bullet in the chamber and we win." After this appalling opening statement, the parties broke to separate rooms and the mediator started with Plaintiff. The mediator returned shortly with a demand of \$500,000. Mr. Anastopoulo, having just moments ago stated his case had a 1 in 10 to 1 in 6 chance of success and having openly compared Plaintiff's case to a game of Russian Roulette sent a demand of \$500,000—20 times the policy limits. The mediation was impass.

The undersigned attempted to resolve this issue with Plaintiff's actual counsel of record—Lane Jefferies—via email on June 21, 2019. *See Exhibit C*. To date, Mr. Jefferies has refused to respond to the email and, like Mr. Anastopoulo, has provided no explanation for his absence at mediation nor has he provided any explanation for the actions of Mr. Anastopoulo.

SCADR Rule 10 and SCRCF Rule 37 provide the framework for this Court to determine the appropriate sanction for Plaintiff's counsel's actions. SCADR Rule 10(b) states:

"If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, **including, but not limited to**, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCF."

SCRCF Rule 37(b) provides several remedies authorized by Rule 10(b) including: "[a]n

⁸ If a claim being made has, at best, a 10% chance of success it is the undersigned's opinion this claim cannot possibly meet the requirements of Rule 11(a)—that "to the best of [the attorney's] knowledge, information and belief there is good ground to support it." This simply cannot be the good ground standard applied to a Complaint filed in a case—that there is a 10% chance of success and a 90% chance of failure. Essentially, by permitting this to happen, it is encouraging people to file lawsuits for the sole purpose of threatening and scaring up money from defendants with no belief or basis in the actual merits of the underlying Complaint. Or worse, to file knowingly meritless and/or frivolous lawsuits with the hope of hitting that "1 in 10" shot.

order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.” SCRCR Rule 37(b)(2)(C).

At this point, given the repeated discovery abuses and violations as found by Judge Benjamin and Judge Couch, and now given the mediation abuses set out herein, the only proper remedy this court can fashion is to strike the Complaint, with prejudice, pursuant to SCADR Rule 10(b) and 37(b)(2)(C). With this decision, this Court should also consider granting the entirety of Defendant’s attorney fees and costs incurred to date or, at the very minimum, all costs and fees incurred in the discovery matters and the mediation, including all mediator’s fees and the costs of this Motion, as well as compensation personally to Ms. Robinson for her attendance at the mediation.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

Brett H. Bayne, Bar No.: 100018

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Phone: (803) 779-2300

Email: brett.bayne@mgclaw.com

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

June 27, 2019

Defendant's Exhibits

Exhibit A

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
LANE@AKIMLAWFIRM.COM

July 23, 2018

J. Andrew Delaney
Brett H. Bayne
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

RE: *Harland Jones v. Karen Robinson*
Case No.: 2018-CP-40-01518

Dear Andy and Brett:

My team just took the helm on the day-to-day work on this case. Our senior attorneys, Roy Willey and Eric Poulin, will continue with executive responsibility. Accordingly, most of your interaction pre-trial will be with my team members, especially associate attorney Kenneth David.

You will deal most often with my direct paralegals Elizabeth Hopkins, Jasmine Belton, Katie French, and Samantha Ewing. Elizabeth and Jasmine will be your primary contacts for scheduling purposes. You may also hear from Jacqueline Skinner, who works primarily with Roy and Eric, or from my law clerks, Ivey Franklin, Gage Montgomery, and Jennifer Ruhling. Their email addresses are listed on the following page.

Whenever you email me, please be *certain* to copy TeamJefferies@GoogleGroups.com. I rely on my team to handle many administrative aspects of litigation, and to bring certain items to my attention when necessary. As a result, if you email me but fail to copy TeamJefferies@GoogleGroups.com then it's highly likely that your email will not receive the attention you had hoped for.

Please be aware that although we are glad to communicate by email, we cannot guarantee that a message sent to us *solely* by email will be received or read. Accordingly, we do not accept service by email. If you need to be certain that a letter, pleading, or other document reaches us, please send it by U.S. Mail to:

Lane D. Jefferies
Anastopoulos Law Firm
32 Ann Street
Charleston, SC 29403
ATTN: Team Jefferies

ANASTOPOULO LAW FIRM

AKIM A. ANASTOPOULOU (SC)

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULOU (SC)*
GARRETT L. BROWN (SC)
KENNETH T. DAVID (SC)
STEFAN B. FRIDLER (SC)(GA)
HERB F. GLASS (SC)
MARLEY N. GRIM (SC)
J. CAMDEN HODGE (SC)
LANE D. JEFFERIES (SC)
THOMAS D. KANDLER, II (NC)
BYRON V. LEARY, II (SC)
BENJAMIN W. LEE (SC)
MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

RECEIVED
JUL 26 2018
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MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601

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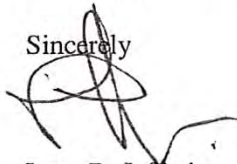
As we begin working together on this matter, I would like to go ahead and set a date for mediation. We have found that it is very difficult to schedule mediation as the deadline gets closer. The rules require that both you and I physically attend the mediation, as well as our clients and your adjuster. This requires finding a date that at least 5 people are free, plus finding a mediator that is also free on that date. The longer we wait, typically, the harder it is to find such a date. As a result, we generally find it easier to schedule the mediation from the outset. This is particularly true for insurance adjusters and corporate representatives, who we understand often have to travel from great distances. Mediations are often delayed (and parties often inadvertently miss mandatory mediation deadlines) because there are no adjusters or corporate representatives available to attend the mediation when the parties wait until the last minute to schedule the same.

Accordingly, I would like to go ahead now and get the mediation scheduled for a date in the future. Please let me know if you or your carrier has a preferred mediator. We are generally flexible in this regard and will consider any mediators that you propose. I understand your schedule may be tight, so we are agreeable to you sending another attorney from your firm if that will help. We are also agreeable to conducting mediation in the evening or on a weekend if that will help get this case mediated as soon as possible.

At this time we are available to mediate on any day during November and December of 2018, as well as January, , 2019. Please let us know within the next fourteen days which of these dates work for you, as well as if you have any preferences as to mediators. Please indicate all dates on which you, your client(s), and insurance adjuster(s) with full authority to settle for the policy limits, are available to begin mediation at 10 a.m. and to continue as long as necessary. Please note that "full authority" means authority to settle for the policy limits without having to check with someone else.

If we are unable find a mutually agreeable mediation date or mediator in the near future, I may find it necessary to seek the Court's assistance in this regard, as I believe we all benefit from getting the mediation conference scheduled in a timely manner. To the extent necessary please allow this to serve as my Rule 11 consultation in that regard. Please ask your office to email TeamJefferies@GoogleGroups.com (subject "Mediation Dates") with the available dates – or suggest a weekend or evening that you might prefer. We look forward to working with you on this matter.

Sincerely



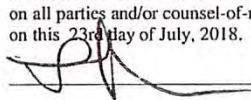
Lane D. Jefferies

Our direct email addresses are:

- Lane@AkimLawFirm.com
- Kenneth@AkimLawFirm.com
- Roy@AkimLawFirm.com
- Eric@AkimLawFirm.com
- Elizabeth@AkimLawFirm.com

CERTIFICATE OF SERVICE

By my signature below I hereby certify that I am an employee of the Anastopoulos Law Firm, LLC, and that I served this document on all parties and/or counsel-of-record on this 23rd day of July, 2018.



- Ewing@AkimLawFirm.com
- Jacqueline@AkimLawFirm.com
- Ivey.AkimLaw@gmail.com
- Gage.AkimLaw@gmail.com
- Jennifer.AkimLaw@gmail.com

Exhibit B

TOLL FREE: 1 (800) 313-2546
FACSIMILE: (843) 494-5536

ANASTOPOULO

LAW FIRM

AKIM A. ANASTOPOULO (SC)

JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
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LANE D. JEFFERIES (SC)
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L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

October 09, 2018

Julie Moose
MGC Insurance Defense
1320 Main Street
10th Floor
Columbia, SC 29201

RE: *Andre Clemmons v. Marco's Pizza*
Case No.: 2018-CP-40-04089

Dear Julie,

On September 11, 2018, we wrote to you and suggested that we go ahead and set a date for mediation, as we have found that it is very difficult to schedule mediation as the deadline gets closer.¹ In our letter, we advised you that we are available to mediate on any day during March, April and May, 2019, and we requested that you provide your available dates by emailing us at TeamJefferies@GoogleGroups.com (subject "Mediation Dates"). Unfortunately, it appears that we have not received any available dates from you. Please write or email us with your available dates. Our mailing address is 32 Ann Street, Charleston, SC 29403. If you email, be sure the subject line includes the words "Mediation Dates".

We remain available during the entirety of March, April and May, 2019. We also remain agreeable to conducting mediation in the evening or on a weekend if that will help get this case mediated as soon as possible. As always, we are flexible regarding your preference as to mediators, and we will consider any mediators that you propose. Likewise, if it helps you to send another attorney from your firm that is also fine.

Please ask your office to email TeamJefferies@GoogleGroups.com this week (subject "Mediation Dates") with the available dates² – or suggest a weekend or evening that you might prefer. If we are unable find a mutually agreeable mediation date or mediator in the near future, I may find it necessary to seek the Court's assistance in this regard, as I believe we all benefit from getting the mediation conference scheduled in a timely manner. To the extent necessary please allow this to serve as my (second) Rule 11 consultation in that regard.

I hope to hear from you soon.

Sincerely,



Lane D. Jefferies

¹The rules require that both you and I physically attend the mediation, as well as our clients and your adjuster. This requires finding a date that at least 5 people are free, plus finding a mediator that is also free on that date. The longer we wait, typically, the harder it is to find such a date. As a result, we generally find it easier to schedule the mediation from the outset. This is particularly true for insurance adjusters and corporate representatives, who we understand often have to travel from great distances. Mediations are often delayed (and parties often inadvertently miss mandatory mediation deadlines) because there are no adjusters or corporate representatives available to attend the mediation when the parties wait until the last minute to schedule the same.

² By "available dates" we mean dates on which you, your client(s), and insurance adjuster(s) with full authority to settle for the policy limits without having to check with someone else, are able to be physically present at mediation beginning at 10 a.m. and continuing as long as necessary.

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REPLY TO ANN STREET OFFICE
CAMDEN@AKIMLAWFIRM.COM

ANASTOPOULO LAW FIRM

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ERIC M. POULIN (SC)(NC)(GA)(CA)
ROY T. WILLEY, IV (SC)

JONATHAN N. ALKIS (SC)
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GUS ANASTOPOULO (SC)
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ALEXIS W. McCUMBER (SC)
MATTHEW L. NALL (SC)(KY)
INDIA D. SHAW (DC)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)(MO)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

December 03, 2018

Brett H. Bayne
McAngus Goudelock & Courie, LLC
P.O. Box 12519, Capitol Station
Columbia, SC 29211

RE: *Andrea Sparks v. Andrew Betis Crowell*
Case No.: 2018-CP-46-02364

Dear Brett:

I hope you are well. We are in receipt of your Answer and look forward to working with you on this case. Though we have been working on this matter for some time, I want to take a moment to introduce you to our team. Although I will be handling all day to day matters associated with this case, Eric Poulin and Roy Willey are also attorneys of record. We would appreciate it if your team would note all three attorneys as attorneys of record on the case. We all work out of the same office. As such, please feel free to send only one copy of any physical document that you mail to our office. You can address the mailing to me. It is not necessary to send a separate copy for each attorney as we will all have access to your physical mailings through our case management software. However, we would ask that you include all attorneys of record on any e-mails that you send pertaining to this case. My e-mail address is camden@akimlawfirm.com. Eric and Roy can be reached at eric@akimlawfirm.com and roy@akimlawfirm.com, respectively.

My direct paralegal for scheduling purposes is Yvette Wideman. Yvette can be reached at yvette@akimlawfirm.com. Please have your staff coordinate with Yvette on any scheduling matters and copy Yvette on any e-mails.

My other paralegal is Alicia Singletary. While Alicia does not handle my scheduling, she will have a good understanding of what is going on in the case and will be able to assist your staff on most matters when myself and Yvette are not available.

Should you wish to send an e-mail to my entire Team at once, you may simply email teamhodge@googlegroups.com, which will go to myself, my paralegals, and Eric and Roy.

I wanted to take a moment to let you know from the outset that we view this as a relatively straightforward case. As such, we will endeavor to have this matter ready for trial within 10 months of the filing date. Once the case hits the 10 month mark, it is our intention to file a motion, pursuant to Rule 40(e).

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Wilmington, NC: Appointment Only

I wanted to make you aware of our intended timeline so that you could prepare your defense accordingly. It has been our experience in past cases (although certainly not with your office) that opposing counsel does very little for the first 6 months of the case, and then requests a Scheduling Order to push the case out for several additional months so that he or she can complete discovery that should have already been completed. It is our general policy to oppose such requests, so I wanted to bring this to your attention on the front end so that you would not be caught off guard by our 40(e) Motion.

In order to keep this case on track, we endeavor to have written discovery completed within 4-5 months of the filing date. We should plan to have all important fact depositions completed within 6-7 months of the filing date, and have any necessary experts retained and disclosed by this time so that we can complete expert discovery prior to the mandatory mediation deadline of 300 days post filing.

We have found that it is very difficult to schedule mediation as the deadline gets closer. The rules require that both you and I physically attend the mediation, as well as our clients and your adjuster. This requires finding a date that at least 5 people are free, plus finding a mediator that is also free on that date. The longer we wait, typically, the harder it is to find such a date.

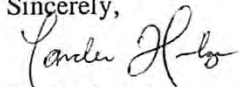
Accordingly, we generally find it easier to schedule the mediation from the outset. This is particularly true for insurance adjusters, who we understand often have to travel from great distances. We also understand many insurance companies assign only a handful of adjusters to handle a large number of mediations. Mediations are often delayed (and parties often inadvertently miss mandatory mediation deadlines) because there are no adjusters available to attend the mediation when the parties wait until the last minute to schedule the same.

As such, I would like to go ahead and get the mediation scheduled for a date in the future near the 300 day mediation deadline, to make sure that we do not inadvertently run afoul of the mandatory mediation deadline later. Yvette will take the lead on getting this scheduled. Please let me know if you or your carrier has a preferred mediator. We are generally flexible in this regard and will consider any mediators that you propose.

If we are unable find a mutually agreeable mediation date or mediator in the near future, I may find it necessary to seek the Court's assistance in this regard, as I believe we all benefit from getting the mediation conference scheduled in a timely manner.

Again, I look forward to working with you on this matter. Please do not hesitate to contact me if there is anything I can do to help move this case along. My staff and I are here to assist you as necessary. If you should have any questions, please do not hesitate to contact us.

Sincerely,



J. Camden Hodge

Brett Bayne

From: Julie Moose
Sent: Thursday, June 27, 2019 10:35 AM
To: Brett Bayne
Subject: FW: Mediation Confirmation, Clemmons vs Clemmons et al

From: Lane Jefferies <lane@akimlawfirm.com>
Sent: Monday, May 20, 2019 9:30 PM
To: John M. Grantland <jgrantland@murphygrantland.com>
Cc: Julie Moose <Julie.Moose@mgclaw.com>; Eric Poulin <eric@akimlawfirm.com>; TeamJefferies <teamjefferies@googlegroups.com>; Stephany Stephenson <stephany.stephenson@mgclaw.com>; Connie Wells <CWells@mgclaw.com>; Lori Keener <Lori.Keener@mgclaw.com>
Subject: Re: Mediation Confirmation, Clemmons vs Clemmons et al

Dear John --

We understand your concern that you not waste your time with litigants who refuse to follow the rules. Accordingly we respectfully request that you encourage Ms. Moose to follow the rules.* Ms. Moose cannot claim ignorance (except as to her ignorance of what the rules require) or surprise. We have been clear about compliance with the ADR rules since at least as early as October 2018. The drafters of the rules put a lot of thought into them — it is not for Ms. Moose to second guess them.

As I have stated multiple times before, plaintiff will appear. We expect that all defendants will also appear as required by the rules. As you know (Ms. Moose's misunderstanding of the rules notwithstanding), among the people who must physically attend the mediation are "All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party." The ADR rules do not provide exceptions for parties who dispute personal jurisdiction or who have other excuses for not wanting to appear. Instead, the rules are unambiguous — all individual parties must attend, and corporate parties must send an "*officer, director or employee* having full authority to settle the claim." (Emphasis added).

Plaintiff believes in mediation. Plaintiff wants mediation to go forward. Plaintiff wants mediation to succeed. Unfortunately, if all defendants do not appear as required by the rules, then it's not a mediation by definition. This is entirely within defendants' control. The rules are clear. If Marcos Franchising refuses to follow the rules by refusing to send "an *officer, director or employee* having full authority to settle the claim" then there is no mediation.

We expect Ms. Moose and her clients to comply with the rules. If we arrive at the appointed place and time only to find that Ms. Moose has not complied with the rules then there can be (by definition) no mediation. Naturally, if this occurs we will move for appropriate relief. As someone much wiser than I am once observed, this issue is controlled by the ADR *Rules*, not by the ADR *Suggestions*.

Again, a lot of thought went into the ADR rules, and we insist on compliance.

Best,
Lane

*Unfortunately, her disdain for the rules is not surprising — she refuses to comply with the rules of ADR, just as her clients refused to comply with the rules of safety. Ms. Moose's disregard for the rules only amplifies Plaintiff's damages.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-04089

ANDRE CLEMMONS,

Plaintiff(s),

v.

MARCUS CLEMMONS, Individually and
as Employee/Agent of Marcos Franchising,
LLC and JH Development, LLC, JH
Paymaster, Inc. and JHD 8319, LLC,
Collectively d/b/a Marco's Pizza; and
MARCOS FRANCHISING, LLC and JH
DEVELOPMENT, LLC, JH
PAYMASTER, INC.; and JHD 8319, LLC,
Collectively d/b/a MARCO'S PIZZA,

Defendant(s).

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT
MARCOS FRANCHISING, LLC'S
MOTION FOR PERMISSION
TO PARTICIPATE IN
MEDIATION BY PHONE**

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD:

COMES NOW the Plaintiff, Andre Clemmons, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant MARCOS FRANCHISING, LLC's (herein "Franchising") Motion for Permission to Participate in Mediation by Phone. This Court should DENY Franchising's motion because (a) mediation is unlikely to be successful without physical attendance of all the required persons, (b) Franchising's purported excuse for non-attendance is without merit, and (c) Franchising has large exposure to a multi-million dollar judgment, making its attendance even more critical than usual.

SYNOPSIS

Plaintiff was a passenger in Defendant Marcus Clemmons' car when Defendant Clemmons made an illegal U-turn and pulled into the path of an oncoming 18-wheeler. The resulting impact was severe. At the time of the wreck, Defendant Marcus was on the clock and delivering pizzas

for the Marco's Defendants, who own and operate pizza restaurants. Defendant Marcos Franchising, LLC ("Franchising"), based in Ohio, is the national franchisor.

As a result of the collision, Plaintiff has thus far accumulated medical bills of approximately \$3 million, and is expected to incur additional treatment and bills in the future. The parties agree that the collision occurred, but they disagree as to whether Franchising shares any liability.

Franchising does not want to attend mediation. It has cancelled mediation on one occasion and failed to appear on another. Each time Franchising has offered a different excuse.

LEGAL ANALYSIS

Mediation is a collaborative process that legally and practically requires physical presence.

The South Carolina Alternative Dispute Resolution Rules ("SCADRR") "favor pretrial dispute resolution in lieu of litigation." *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 63, 744 S.E.2d 547, 550 (2013). Accordingly, the rules must "be construed to secure the just, speedy, inexpensive *and collaborative* resolution in every action to which they apply." Rule 1, SCADRR. To foster collaboration, the rules require that the litigants must "*physically* attend a mediation settlement conference." Rule 6, SCADRR (emphasis added).

The requirement that parties "physically attend" is unique to the SCADRR. According to Westlaw, the phrase does not appear in any other South Carolina statutes, rules, or regulations. In contrast, the word "attend" appears without the adverb "physically" 450 times. The fact that the drafters chose to modify "attend" with the adverb "physically" in just 1 out of 450 instances shows that they did so purposefully. Accordingly, the requirement that parties "physically" attend must be given effect, as the adverb "physically" cannot be disregarded as if it were superfluous. See *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e

must read the statute so ‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous’”); Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (The same canons of construction apply to Rules of Court).

The reason the drafters chose to require physical attendance at mediation is not hard to understand – **some things simply must be done in person if they are to succeed.**¹ One need only consider the likelihood of success of a phoned-in marriage proposal to appreciate the importance of showing up in person. This is so largely because effective communication is mostly nonverbal. Indeed, empirical evidence shows that when we communicate, we use words and other verbal forms about 7% of the time, and nonverbal forms – including facial expressions, posture, and gestures – 93% of the time. People v. Saiz, 32 P.3d 441, 454 (Colo. 2001) (Bender and Martinez, JJ dissenting) (citing Albert Mehrabian, *Communication Without Words*, Psychol. Today, Sept. 1968, at 53).

The importance of nonverbal communication is well known²; so much so that it is reflected in popular culture from Ralph Waldo Emerson (“What you do speaks so loud that I cannot hear what you say”)³ to the popular 90’s television sitcom ‘Seinfeld’.⁴ It is implicitly recognized by our

¹ Prudential Ins. Co. of Am. v. Hawker Beechcraft Glob. Customer Support, LLC, No. 16-2380-DDC, 2017 WL 590260, at *2 (D. Kan. Feb. 14, 2017) (“Prudential argues that ‘[g]iven the structure of the mediation as determined by the mediator (no face to face communication between the parties during the mediation), presence by telephone and physical presence in this case is a distinction without substance.’ The court flatly disagrees.”).

² See State v. Evans, 1993-Ohio-186, 67 Ohio St. 3d 405, 410–11, 618 N.E.2d 162, 167–68 (Ohio 1993). (“According to one expert on communication techniques for trial attorneys, ninety percent of the total meaning of testimony is interpreted through nonverbal behavior, such as voice inflection, hand gestures, and the overall visual demeanor of the witness.”); Thompson v. State, 12 S.W.3d 915, 925 (Tex. App. 2000) (citing Stephen R. Covey, *The Seven Habits of Highly Effective People* 241 (1989) for the proposition that sixty percent of communication is by body language, or other nonverbal communication); State v. Hall, 149 Or. App. 358, 369, 942 P.2d 882, 888 (Oreg. App. 1997) (citing Mark L. Knapp, *Nonverbal Communication in Human Interaction* (1978) for the proposition that “65percent of the social meaning is derived through kinesics, or the nonverbal component of the communication”).

³ People v. Saiz, 32 P.3d 441, 454 (Colo. 2001).

⁴ In which “Kramer says, ‘Ninety-four percent of our communication is nonverbal, Jerry.’” People v. Saiz, 32 P.3d 441, 454 (Colo. 2001) (citing *Seinfeld* (NBC television broadcast, Jan. 29, 1998)).

rules of court in their favoring live testimony at trial over the use of transcripts. Likewise, it is recognized in our standards of appellate review. Cherry v. Thomasson, 276 S.C. 524, 280 S.E.2d 541 (1981) (“the trial judge, who *saw* and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony.”) (emphasis added); McClerin v. McClerin, 310 S.C. 99, 425 S.E.2d 476 (Ct.App.1992) (trial judge “is in better position to judge demeanor and veracity of witnesses”). And physical presence is so important during sentencing hearings that at least one Federal court has opined that

not laying eyes on the prisoner “deprives the judge of the opportunity to evaluate the total person who stands at the bar of justice: to note the physical appearance and demeanor; the tone, temper and rhythm of speech; the facial expressions, the hands, the revealing look into the eyes. In sum, it deprives the judge of those impressions gleaned through the senses in any personal confrontation in which one attempts to assess the credibility or to evaluate the true moral fiber of another.”

Del Piano v. United States, 575 F.2d 1066, 1069 (3d Cir. 1978).

It is with the above-described importance of physical presence in mind that this Court should consider Defendant’s request to be excused from following the ADR Rules that govern every other personal injury litigant in this state.

Fear of waiving its Rule 12(b)(2) defense is not a valid excuse for non-attendance.

Defendant argues that it should be excused from physically attending mediation because it “will not take any actions to negatively impact its position [that the Court lacks personal jurisdiction over Franchising], including appearing for mediation in South Carolina.” Franchising further argues that attorneys, liability carriers, and co-defendants will attend, and those folks can resolve the matter.

As an initial matter, the fact that attorneys, liability carriers, and co-defendants will attend is no reason at all to excuse Franchising from his obligations. Attorneys, liability carriers, and co-defendants appear at virtually *all* properly conducted multi-defendant mediations – because

they are required to attend by Rules 6(b)(2), (3) and (4), just as Franchising is required to attend by Rule 6(b)(2). It would be nonsensical to excuse one mandatory attendee simply because other mandatory attendees promise to appear – the point of mandatory attendance is that they *all* appear. If defendants in South Carolina could avoid attending mediation conferences whenever their counsel, insurer, or co-defendants promised to appear, then it would be rare indeed to see more than one defendant at mediation. Clearly, this is not the intent of Rule 6.

That leaves Franchising's concern about personal jurisdiction as a possible excuse for its non-attendance. This excuse must fail for at least two reasons. First, the excuse is a sham. Indeed, Franchising did not even mention this excuse until *after* it had scheduled mediation once, cancelled it based on a different excuse, and then scheduled mediation a second time. Franchising's bad faith in this regard is set forth in Plaintiff's motion to strike Franchising's answer for willful failure to follow the ADR rules, filed May 24, 2019 and incorporated herein by reference.

There is no serious argument under the facts of this case that Franchising will waive its personal jurisdiction defense by attending mediation. Franchising raised the personal jurisdiction defense early on.⁵ It has mentioned the defense frequently ever since. It has even filled motions about it. Accordingly, there is no serious claim that Franchising has waived or abandoned that argument.⁶ Quite the contrary; Franchising continues to raise the lack-of-personal-jurisdiction argument almost *ad nauseum*. Moreover, Plaintiff has confirmed in writing that even if such a waiver argument could be made under these facts, Plaintiff *will not make it*. Accordingly, there is no colorable concern that attending mediation will damage Franchising's position on lack of personal jurisdiction.

⁵ But, tellingly, did *not* mention early on that it planned to skip mediation. Not even in response to Plaintiff's October 2018 letters reminding Franchising that it must physically attend mediation.

⁶ "By definition, 'A waiver is a *voluntary* and *intentional* abandonment or relinquishment of a known right.'" *Osbey v. State*, 425 S.C. 615, 619, 825 S.E.2d 48, 50 (2019) (emphasis added).

Defendants routinely include lack of personal jurisdiction in their answers; often regardless of whether there is any colorable basis for it. Nonetheless, plaintiff is not aware of any instance – and Franchising has not cited any – in which a South Carolina trial court has excused a defendant from following the ADR rules simply because that defendant pled Rule 12(b)(2) as a defense. Avoiding mediation cannot be that easy.

Defendant does not cite any authority even suggesting, must less holding, that the drafters of the ADR Rules intended for courts to excuse defendants from mediation so easily. Nonetheless, on the basis of no cited authority at all, Defendant invites this Court to be the first to eviscerate mediation by excusing any defendant who pleads a Rule 12(b)(2) defense. Plaintiff respectfully requests that this Court decline the invitation.

The second reason that Franchising's new-found excuse must fail, is that Franchising has significant exposure to an excess verdict under the particular facts of this case. Unlike many other cases, where presence of the defendant might be argued to be a mere formality because the insurance company bears most or all of the financial risk, here that is not the case. Quite the contrary in fact. Here, Franchising could easily have *greater* exposure than the insurance company does.

Plaintiff's damages include approximately \$3 million in medical bills to-date. That amount continues to increase. In contrast, Franchising claims to have no applicable insurance, and has tendered its defense to deeply indebted⁷ co-defendants which have only \$1 million in coverage between them. As a result, if a jury were to award damages only in the amount of the medical bills – and not a single dime for pain and suffering, punitive damages, etc. – then Franchising would still be liable for a million dollars after the insurance company paid its limits.

⁷ According to their counsel, who has promised to provide financial statements but has not yet done so.

As the Court is aware, judgements of two or three times medical bills are routine, and even higher multiples are not uncommon. At three times meds (i.e. \$9 million), Franchising would be liable for \$8 million – eight times the insurance company’s share.

That Franchising may have an indemnification agreement with co-defendants does not help the situation, as Plaintiff will be entitled to collect from Franchising, and Franchising will be left trying to collect from its heavily indebted co-defendants. Moreover, while the insurance company’s exposure is capped by the policy limit, and the local defendants claim to be judgment-proof, Franchising’s exposure is open-ended. And unlike its purportedly judgment-proof co-defendants, Franchising is a prosperous national company with assets – it can and would have to stroke a check for \$8 million. As a result, it is Franchising that has the most to gain – or lose – at mediation. Accordingly, it is Franchising whose physical attendance is most needed.

CONCLUSION

For all the foregoing reasons, Plaintiff would show that (a) mediation is unlikely to be successful without physical attendance of all the required persons, (b) Franchising’s purported excuse for non-attendance is without merit, and (c) Franchising has large exposure to a multi-million dollar judgment, making its attendance even more critical than usual. Accordingly, Franchising’s motion to be excused from physically attending mediation should be DENIED.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane Jefferies

Lane Jefferies, Esquire

SC Bar Number: 101764

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

Charleston, South Carolina
May 24, 2109

ATTORNEYS FOR THE PLAINTIFF

Exhibit C

Brett Bayne

From: Brett Bayne
Sent: Friday, June 21, 2019 1:33 PM
To: lane@akimlawfirm.com
Cc: 'Rogers E. Harrell, III'; Andy Delaney
Subject: Harland Jones v. Karen Robinson

Lane,

As you are no doubt aware by now, mediation today was a complete waste of time. You sent a six month associate who has never worked on this case, never appeared on this case, and who had precisely zero information about the case or any real knowledge of the facts—embarrassingly so. Many of the things he asserted were just factually incorrect even within the constructs of the allegations you have made in the Complaint. He asserted medical damages that were inaccurate (and have never been produced) and asserted that there were “several eyewitnesses to the accident who would be called to testify”—which have never been identified and are now barred from trial by Judge Couch’s ruling.

After all of that, he made a demand of \$500,000 on a case he openly and readily admitted you have a 1 in 10 chance of winning (although he then changed that to 1 in 6 and described this case as a game of Russian Roulette while explaining to all of us and the clients how Russian Roulette works).

Rule 6(b)(3) requires the “party’s counsel of record” to appear at the mediation. Gus is not a counsel of record and does not appear on a single pleading, filing, or any other material in this case. He is not on any emails that I can find relating to this case. He clearly lacked any competent understanding of the file, the issues, or the nature of resolution to this claim. To make matters worse, it appeared your client was also unaware of a majority of the issues that were raised. Therefore, you failed to properly appear and conduct mediation in accordance with Rule 6.

This email serves as our demand that your client pay the entire mediation cost, the legal fees incurred in the preparation for the mediation, and compensate Ms. Robinson for her time taken off work to be at the mediation.

Please confirm your intention to compensate for these fees and costs no later than 5 PM on Monday, June 24 to avoid the necessity of filing a Motion with the court. Once we receive the billing for the mediation, we can settle up the full value.

Brett

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Harland Jones,

Plaintiff,

vs.

Karen Robinson,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2019-CP-40-01518

MEDIATION RESULTS REPORT

(THIS FORM TO BE COMPLETED BY THE MEDIATOR WITHIN 10 DAYS OF CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS REACHED BY THE PARTIES.)

1. Mediated settlement conferences were held before me on June 21, 2019.
2. As a result of this conference, this case should be considered (*please check one*):

Fully Settled (*please check one*):

☐ by Consent Judgment, to be filed by _____ or,

☐ by Voluntary Dismissal, to be filed by _____

(Name of Designee)

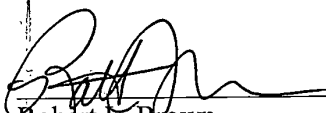
☐ Partially Settled, with agreement of the parties on the following issues:

(*Attach separate sheet, if necessary*) :

☒ At an impasse.

☐ In need of further mediation. (I _____ am/ _____ am not willing to mediate this case further.

☐ Continued (date) _____



Robert L. Brown

Willson Jones Carter & Baxley, P.A.

rlbrown@wjlaw.net

3600 Forest Drive, Suite 204

Columbia, SC 29204

Phone: (803) 509-8071

Fax: (803) 782-2527

Dated: 6-25-19
Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

**MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff HARLAND JONES, by and through undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Court of Common Pleas, within ten (10) days of the date of this Motion, or as soon as counsel may be heard, to alter or amend the Order entered on July 3, 2019.

INTRODUCTION

This matter arises out of a collision between a motor vehicle and a bicyclist on June 7, 2017. There is no dispute that Defendant struck Plaintiff while Plaintiff was riding his bicycle.¹ There is no dispute the wreck was serious, that Plaintiff was seriously injured, or that the impact caused significant damage to Defendant's car as shown below.



¹ Def. Depo, p.11, lines 8 – 12; p. 13 lines 19-24.

On May 7, 2019, this Court heard Defendant's Motion to Compel. This Court entered an Order granting Defendant's Motion on July 3, 2019.

Plaintiff respectfully requests that this Court alter or amend its July 3, 2019 Order ("Order") for at least three reasons. First, the Order purports to require the impossible, i.e. that Plaintiff comply with the Order "on or by June 1, 2019", which is over a month before the Order was entered. Second, the Order invades the purview of the trial judge by purporting to exclude evidence from trial based on Plaintiff's failure to do the impossible. Third, the Order contains numerous purported findings of fact that are not supported by any evidence. Indeed, Defendant did not submit any evidence at all in support of her Motion. Any one of the aforementioned reasons is sufficient on its own to require that the Order be amended.

I. The Order is impossible to comply with as it purports to compel Plaintiff to perform actions in the past.

The Order was entered on July 3, 2019. Accordingly, July 3, 2019 is the date on which the Court's instruction became binding on the parties as an order. See Spartanburg Buddhist Ctr. of S.C. v. Ork, 417 S.C. 601, 607–08, 790 S.E.2d 430, 433–34 (Ct. App. 2016) (Despite "our judiciary's increasing reliance on new technology, our rules concerning final orders have not changed. *See* Rule 58, SCRPC (stating a judgment is not *608 effective until entered in the record); *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) ("The written order is the trial judge's final order and as such constitutes the final judgment of the court. The final written order contains the binding instructions which are to be followed by the parties."); *see also Serowski v. Serowski*, 381 S.C. 306, 315, 672 S.E.2d 589, 594 (Ct. App. 2009) (holding a court's memorandum instructing counsel how to prepare a proposed order was not the final written order and the court retained discretion to change or amend the final order).").

Unfortunately, the Order – which became effective on July 3, 2019 – purports to require Plaintiff to take action over a month in the past, on June 1, 2019. As a result, there was not even a theoretical possibility that Plaintiff could read the Order and then comply with it without the assistance of H.G. Wells.²

II. The Order invades the purview of the trial judge by purporting to exclude evidence.

“The decision to admit or exclude evidence is a matter within the sound discretion of the trial judge.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 287, 607 S.E.2d 711, 717 (Ct. App. 2005); see also Charles v. Texas Co., 192 S.C. 82, 5 S.E.2d 464, 472 (1939) (“All of the matters referred to in the motion to strike and the motion to make more definite and certain will come under the purview of the Judge trying the case and he at that time can determine the competency and the relevancy of the evidence and whether the legal and probative effect of the same is sufficient to submit the cause to the jury, ***but those matters can be better disposed of at the trial of the case.***”) (emphasis added).

Even the trial judge’s pre-trial rulings as to the admissibility of evidence are not final. State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988) (“Trial judges must not be held, conclusively, to preliminary rulings made without benefit of all the pertinent and relevant evidence. We caution Bench and Bar that these pre-trial motions are granted to prevent prejudicial matter from being revealed to the jury, but do not constitute final rulings on the admissibility of evidence.”).

² Aston v. Johnson & Johnson, 248 F. Supp. 3d 43, 51 (D.D.C. 2017) (“Barring some sort of temporal paradox, *see* H.G. Wells, *The Time Machine* 22–23 (1895), there is no way that suppression of an FDA report in 2013 could have caused plaintiffs to be injured in 2012 or earlier.”).

Here, the Order purports to do what even the trial judge cannot do – finally exclude evidence that has not yet been offered. Moreover, it purports to do so based on Plaintiff having failed to perform the impossible feat of traveling back in time.

III. The Order is not based on any evidence.

An order must be based on evidence. See e.g. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 37, 691 S.E.2d 135, 143 (2010) (“An abuse of discretion occurs when the decision of the trial judge is **unsupported by the evidence** or controlled by an error of law.”) (emphasis added). Evidence may be found in the record, or it may be submitted as affidavits, sworn testimony, authenticated documents, discovery responses, or pleadings. The Order dated July 3, 2019 is not based on any of these.

Instead, the purported facts recited in the Order are mere arguments of counsel, which are not evidence. They are not supported by affidavits, testimony, authenticated documents, discovery responses, or pleadings. “Arguments made by counsel are not evidence.” Sulton v. HealthSouth Corp., 400 S.C. 412, 420, 734 S.E.2d 641, 646 (2012). This proposition is neither new, nor is it disputed. See State v. Manning, 418 S.C. 38, 47, 791 S.E.2d 148, 152 (2016) (Pliecones, C.J. dissenting). (“It is axiomatic that arguments of counsel are not evidence.”) (emphasis added); McManus v. City of Greenwood, 171 S.C. 84, 89, 171 S.E.2d 473, 475 (1933) (eighty-five years ago holding statements of fact appearing only in argument of counsel will not be considered as evidence).

Defendant did not submit any affidavits, testimony, authenticated documents, discovery responses, or pleadings to support the following factual findings that appear in the Order:

- “On June 5, 2019, Plaintiff’s counsel stated in sworn, **signed pleadings** to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant’s alleged negligence.” (emphasis added) Note: the public index

reveals that Plaintiff did not file ***any pleadings at all*** on June 5, 2019, regardless of content.

- “No response was received to those [August 14, 2018] requests.”
- “Plaintiff failed to comply with the [October 1, 2019] Order.”
- “Plaintiff responded on November 7, 2018 and admitted within the responses that he did not have any witnesses he had previously represented to the Court on June 5, 2018.”
- “Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who witnessed the motor vehicle accident that is the subject of this lawsuit.”
- “Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense.”
- “Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.””
- “Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident.”
- “According to Plaintiff, this individual is his wife’s cousin.”
- “Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident.”
- “Plaintiff represents he did not disclose this individual because she did not want to be involved in the case.”
- However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.”
- “Plaintiff has introduced evidence of these witnesses and admitted he has known about them for nearly two years.”

CONCLUSION

Because the Order is (a) impossible to comply with, (b) invasive of the purview of the trial judge, and (c) not based on any evidence, Plaintiff respectfully requests that this Court amend the Order as follows:

1. To compel Plaintiff to provided discovery responses within thirty days of the entry of an amended order.
2. To remove any purported exclusion of evidence.
3. To remove any sanction or award of costs, fees, or expenses.

PRAYER

For the reasons set forth above the Plaintiff respectfully requests the Court amend its prior order as described above.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

Lane Jefferies

S.C. Bar Number: 101764

Roy T. Willey, IV

S.C. Bar Number: 101010

Eric M. Poulin

S.C. Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
July 3, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MOTIONS IN LIMINE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

Defendant Karen Robinson, by and through its undersigned counsel, hereby files and alerts this court to the below matters to be taken up prior to trial, which directly affect the course of trial.

I. Motion in Limine to Exclude All Witnesses Not Previously Named in Discovery

Defendant moves to bar the testimony of any witness not previously disclosed in discovery. Upon information and belief, Plaintiff has at least two witnesses who have never been disclosed in discovery or identified in any manner that Plaintiff intends to call at trial. The two witnesses Defendant is aware of is a person named "Alex" and a person who Plaintiff has identified as his "wife's cousin." Plaintiff has refused to produce either of these two individuals or give any information beyond what is stated herein. Plaintiff does not know "Alex's" last name, where "Alex" lives, or how to get in touch with "Alex" (or if he does, he has refused to tell Defendant). Plaintiff further has refused to name his "wife's cousin" stating "she doesn't want to be involved" but has continued to rely on a story of the accident which involved his "wife's cousin" witnessing and being involved in the collision. Defendant is unaware of any

other as yet unnamed witnesses Plaintiff may call, but this Motion similarly relates to any other mystery witnesses not previously disclosed.

For background, May 8, 2018, Defendant served upon the Plaintiff Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. *See Exhibit A*. These discovery requests included the following questions:

- Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from these witnesses, and indicate who has possession of such statements.
- For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness or provide a copy of the written or recorded statements taken from such witness.

Id.

Thereafter, on June 5, 2018, Plaintiff's counsel stated in a sworn, signed pleading to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. *See Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof attached as Exhibit B, Page 5*. Plaintiff failed to respond to the First Discovery Requests in Exhibit A and Defendant accordingly filed a Motion to Compel on August 10, 2018. *See Exhibit C*. Further, as a result of the June 5, 2018 witness assertions by counsel, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production. *See Exhibit D*.

As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested

certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

‘...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.’”

See Exhibit D.

No response was received to the Supplemental Discovery Requests. All outstanding discovery issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with the Order. *See Exhibit E*. Plaintiff refused to comply with this Order and did not submit the required responses to discovery—including refusing to name witnesses. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. *See Exhibit F*. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. *See Exhibit G*. After being ordered by Judge Benjamin on October 3 and being subject to a Rule on October 30, Plaintiff finally responded to the witness discovery on November 7, 2018 and admitted within the responses that he did not have *any of the witnesses* he had previously represented to the Court

on June 5, 2018. *See Exhibit H*. Specifically, Plaintiff responses “None” to the questions related to the June 5, 2018 claimed witnesses. *Id.*

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who witnessed the motor vehicle accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.” *See Exhibit I, Excerpts of Plaintiff’s Deposition Related to “Alex”*.

Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this individual is his “wife’s cousin”. Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date. *See Exhibit J, Excerpts from Plaintiff’s Deposition Related to His “Wife’s Cousin”*.

As a result of these brand new disclosures on March 6, 2019, Defendant filed *another* Motion to Compel on March 7, 2019. *See Exhibit K*. This Motion was heard by The Honorable Roger Couch on May 7, 2019. From the bench, Judge Couch ordered disclosure of the witnesses and gave Plaintiff until June 1, 2019 to name the previously unnamed witnesses. The reason for

this deadline was the looming July 8, 2019 trial date. There was no confusion between either party about the deadline—specifically Plaintiff’s counsel sent an email to the undersigned on May 13, 2019 admitting and acknowledging the June 1, 2019 deadline. See *Exhibit L*. Specifically, Plaintiff’s counsel admitted “What I recall Judge Couch instructing you to put in the order is that Plaintiff must comply with your discovery requests by identifying known fact witnesses on or before June 1, 2019. His Honor further instructed that any known fact witnesses not disclosed on or before June 1, 2019 could not be called by Plaintiff at trial.” *Id.* Judge Couch requested a written order memorializing the ruling from the bench. The undersigned submitted that Order to Judge Couch on May 14, 2019—one week after the hearing. See *Exhibit M*. Given the timeline of the Order and the trial date, the undersigned followed up with Judge Couch on May 28, June 14, June 21, June 24, and July 1, 2019¹. See *Exhibit N*. Judge Couch e-filed the Order on July 3, 2019. See *Exhibit O*. The Order required disclosure of the witnesses, barred the non-disclosed witnesses from trial if not disclosed by June 1, and left the issue of sanctions open should Plaintiff fail to comply (which he has). Following receipt of that filing, just 6 hours later, Plaintiff filed a Motion to Alter or Amend^{2 3} essentially claiming they had no idea they had to

¹ The relevance of this is twofold: 1) Defendant was diligent in trying to obtain the final Order for the upcoming trial and 2) Plaintiff was acutely aware of the Order, the nature of the Order, and the rulings within the Order. Plaintiff was present at the hearing, admitted to knowing the ruling on May 13, and was made aware of the ruling over and over again on numerous occasions via email in May, June, and July. Plaintiff’s argument that they couldn’t have possibly complied rings interminably hollow—and is not supported by record. Further, even absent the ruling and Order of Judge Couch, Plaintiff has had more than 400 days to respond to discovery and still, on the eve of trial, has not.

² The undersigned believes this new motion was filed by Plaintiff in an attempt to continue or delay the trial. If this was the only Order dealing with discovery Plaintiff may have a point. As noted throughout, it was the *third* Order dealing with this exact discovery request and Plaintiff cannot shield himself from trial by ignoring three different orders and hiding behind a newly filed Motion to Alter or Amend. This is especially true where, as here, **the trial judge can independently make a ruling the witnesses are excluded from trial based on Plaintiff’s gross discovery abuses and Plaintiff’s failure to comply with the first two discovery orders in 2018 from Judge Benjamin—which were not appealed.**

³ Additionally, as the undersigned expects some form of continuance request by Plaintiff, Paul Gunter with Richland County Clerk of Court emailed all parties on July 1, 2019 requesting a status update and a ready for trial update. Defendant responded the same day indicating Defendant is ready for trial and outlining the issues for trial. Plaintiff did not respond (and still has not responded). On July 3, 2019, the undersigned submitted to the trial judge a pre-trial brief along with copies of Orders and filings in this case. Plaintiff did not respond (and still has not responded). As

disclose witnesses and they couldn't possibly comply with the Order to name witnesses. Today, 2 days after receiving the formal Order memorializing the May 7 bench ruling, **Plaintiff still has not named witnesses that have been ordered on four occasions—twice by Judge Benjamin (via written Order and by Rule to Show Cause) and twice by Judge Couch (from the bench and via written Order).** It has been more than 400 days since discovery was served and Plaintiff has been ordered twice via Motion to Compel and once via a Rule to Show Cause to identify witnesses. Plaintiff has refused to do so and, instead, has thumbed his nose at this Court and refused to comply with two judges, three orders, one bench ruling, and the South Carolina Rules of Civil Procedure related to discovery.

It is apparent that Plaintiff has failed to fully comply with the discovery requests of Defendant. Specifically, Plaintiff has failed to identify in full persons sought by Defendant in discovery while simultaneously seeking to introduce these unidentified witnesses' statements about the accident.

When determining if a witness should be excluded, the court has articulated two similar sets of factors. The first test was set forth in Jumper v. Hawkins, 348 S.C. 142, 152, 558 S.E.2d 911, 916, (2001), which provides that:

[A] trial judge is required to consider and evaluate the following factors before imposing the sanction of exclusion of a witness:

- (1) the type of witness involved;
- (2) the content of the evidence emanating from the proffered witness;
- (3) the nature of the failure or neglect or refusal to furnish the witness' name;
- (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and
- (5) the prejudice to the opposing party.

of the submission of these Motions, Plaintiff still has never indicated they are not ready for trial or that they intend to seek a continuance or some other form of relief. This is particularly noteworthy when Plaintiff could file a Motion to Alter or Amend 6 hours after receipt of Judge Couch's Order on July 3 but still has not been able to respond to emails from counsel with this court on July 1 or July 3.

Id. The second set of factors was articulated in Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E.2d 128, 133, (2003), wherein, the Court found:

Before so ruling, the trial court should ascertain
 [1] the type of witness involved,
 [2] the content of the evidence,
 [3] the explanation for the failure to name the witness in answer to the interrogatory,
 [4] the importance of the witness' testimony, and
 [5] the degree of surprise to the other party.

Id. Under both set of factors, the testimony of Dr. Ogburu should be excluded.

Applying these tests, the type of witnesses are alleged eyewitnesses who know Plaintiff and have never been identified or disclosed. The content of the testimony is anticipated to cover specific events which occurred on the day of the accident including the accident itself. Plaintiff has not presented any importance in allowing for the testimony of these witnesses nor provided any explanation for the extreme delay in disclosure of these witnesses—which still has not been done even on the eve of trial. Thus, there has been a substantial undue surprise imposed upon Defendant. The resulting prejudice from this delay in disclosure is that Defendant has had no opportunity to conduct written discovery related to these witnesses, has not been given an opportunity to depose these witnesses, and has not been able to vet whatever story these witnesses may tell in open court. Thus, considering all applicable factors, the Court should exclude the testimony of all witnesses not already named in response to Defendant's Interrogatories and Requests for Production.

II. Motion in Limine to Bar Plaintiff from Testifying as to Causation of His Alleged Injuries, Medical Care, and Surgery.

"[E]xpert testimony is not necessary to prove negligence or causation *so long as* lay persons possess the knowledge and skill to determine the matter at issue." F. Patrick Hubbard & Robert L. Felix, The Law of South Carolina Torts 167 (2d ed. 1997). "Expert testimony is not

required to prove proximate cause *if* the common knowledge or experience of a layperson is extensive enough.” O’Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 349, 638 S.E.2d 96, 101, 2006 S.C. App. LEXIS 220, *11-12, *citing* Bramlette v. Charter-Med.-Columbia, 302 S.C. 68, 72-73, 393 S.E.2d 914, 916 (1990). However, the obverse is, obviously, that where the matter at issue is *outside* the knowledge and skill of a lay person (like Plaintiff), expert testimony *is* required to prove causation.

When establishing causation of a medical injury to support negligence, courts have found that expert testimony is required:

“As argued by the defendants, Bryant provides only his own conclusory allegation that his neck pain is proximately caused by the fall on October 22, 2012, and does not support this allegation with any expert medical evidence. *See* Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, 634 (S.C. 1986) (noting that **expert testimony is required** unless the situation is one ‘where the common knowledge or experience of laymen is extensive enough for them to be able to recognize or infer negligence on the part of the [defendant] and also to determine the presence of the required causal link between the [defendant’s] actions and the [plaintiff’s] medical problems’); *see also* Dawkins v. Union Hosp. Dist., 408 S.C. 171, 758 S.E.2d 501, 504 (S.C. 2014) (holding that, while expert testimony is not necessary where the facts can be evaluated by exercising common knowledge, **“medical knowledge is generally outside the realm” of such common knowledge and expert testimony is required to establish whether the defendant’s actions proximately caused the plaintiff’s injury.**)”

Bryant v. Washington, 2014 U.S. Dist. LEXIS 182387, *17-18, 2014 WL 7927121 (emphasis added).

Further, “Expert testimony is required where the claimant is attempting to establish causation of a medically complex situation.” Jones v. Danek Med., Inc., No. 96-3323-12, 1999 WL 1133272 at *4 (D.S.C. Oct. 12, 1999) (granting summary judgment on products liability claim against bone fixation device due to lack of expert testimony regarding causation).

Plaintiff’s alleged injuries in this case are a severe, medically complex injuries which

allegedly necessitated the need for significant hospitalization and care. While Defendant does not contest the initial care and the need for hospitalization following the accident, Defendant does object to testimony by Plaintiff of continuing or ongoing medical issues or future medical needs as related to the accident. For example, Plaintiff's counsel has represented recently that Plaintiff has memory loss issues and comments trending toward claims of brain injury. Plaintiff has not seen any doctors related to this and has not been diagnosed with this. Even if Plaintiff had, or was, there is no testimony from a medical doctor linking causation of brain injury or memory loss to the accident. This similar line of issue sits with all "ongoing" or "continuing" injury claims or future medical claims. Plaintiff has presented no records following his release from the hospital relating to ongoing issues or future care needs. Plaintiff has not identified a life care planner or any future medical care experts. Permitting production and testimony at this time would violate the discovery and production rules.

Therefore, because Plaintiff lacks the expertise required to talk about causation and need for future care to the medically complex nature of his claims, he should be barred from testifying as to both the causation aspect of the physical injury itself and as to the causation aspect as to the need for surgery.

III. Motion in Limine to Exclude Mention of Settlement Negotiations and Insurance Policies

Testimony and/or statements about settlement negotiations are precluded by the South Carolina Rules of Evidence. South Carolina has long held that "evidence of disclosures made by either party to the other, directly or indirectly, in negotiations for a compromise" is inadmissible for purposes of establishing liability or damages. Woodward v. Southern Ry. Co., 88 S.C. 453, 70 S.E. 1060, 1061 (1911). More recently, South Carolina has adopted Rule 408 S.C. R. Evid., which provides:

“Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering to accept, valuable consideration in compromising or attempting to compromise a claim which was disputed as to validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible...”

Rule 408 S.C. R. Evid.

Likewise, testimony and/or statements about policies of insurance or that Defendant has an insurance policy and/or that the undersigned was retained by an insurance company are improper and barred by various case law and Rules of Evidence. In Landry v. Hilton Head Plantation Property Owners Assoc., Inc., 317 S.C. 200, 206, 452 S.E.2d 619, 622 (1995) the Court of Appeal stated: “The Supreme Court has been meticulous in keeping the issue of insurance coverage away from the jury.”

IV. Motion in Limine to Exclude Mention of Denial of Defendant’s Motion for Summary Judgment

Defendant moved for Summary Judgment in this matter. It was denied by The Honorable Roger Couch. Defendant moves to exclude any mention or reference by Plaintiff to the fact that Defendant moved for and was denied Summary Judgment. The basis for this would be to preclude the assertion that a judge has previously made a ruling on the merits of the claim before the jury. It is improper to refer to pre-trial order and denials of summary judgment as a basis for attempting to establish liability or influence the jury to find or rule a certain way during the course of deliberations.

SIGNATURE PAGE FOLLOWS

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

J. ANDREW DELANEY (SC Bar No. 72863)
adelaney@mgclaw.com
BRETT H. BAYNE (SC Bar No. 100018)
brett.bayne@mgclaw.com
Post Office Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211
Telephone: (803) 779-2300
Facsimile: (803) 748-0526

ATTORNEY FOR KAREN ROBINSON

July 5, 2019

Exhibit A

Reply To
J. ANDREW DELANEY
Direct Dial: (803) 227-2313
adelaney@mgclaw.com

May 1, 2018

Benjamin W. Lee, Esquire
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, South Carolina 29403

RE: Harland Jones vs. Karen Robinson
Civil Action No.: 2018-CP-40-01518 (Richland)
Date of Incident: June 7, 2016
Carrier Claim No.: 0459413365
MGC File No.: 20554.18101

Dear Mr. Lee:

Please find enclosed Interrogatories and Requests for Production to Plaintiff, which we hereby serve upon you in the above-captioned case.

With kind regards, I am,

Very truly yours,



J. Andrew Delaney

JAD/tjc
Enclosures

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	INTERROGATORIES TO PLAINTIFF
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND BENJAMIN W. LEE, ATTORNEY FOR PLAINTIFF:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following Interrogatories are to be answered by Plaintiff, separately and fully, in writing, under oath.

INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from these witnesses, and indicate who has possession of such statements.
2. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness or provide a copy of the written or recorded statements taken from such witness.
3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff or counsel that relate to the claim or any defense of this case.

4. Set forth the names and addresses of all physicians and/or other healthcare professionals who have treated the Plaintiff and all hospitals to which Plaintiff has been admitted in connection with the motor vehicle accident in question.

5. Set forth a statement of all medical costs incurred by the Plaintiff, identifying each specific medical provider; the cost associated with said provider; and the date or dates of the charges.

6. Please provide a detailed explanation of the Plaintiff's alleged physical disability (if any) as a result of the incident in question.

7. If you are still suffering from any of the effects of the accident, describe the symptoms, complaints, or disabilities you claim are a result of this accident.

8. If you claim that any of your injuries are permanent in nature, describe each such injury, including its nature and location.

9. If you are no longer suffering any effects of the accident state:

- a. The date on which you ceased to suffer any effects; and
- b. The date on which you felt you had fully recovered.

10. Describe your physical and mental condition at present as compared with your condition immediately preceding the subject accident.

11. State the date on which you last received medical treatment and identify the medical professional who treated you and the medical facility or hospital where you were last treated.

12. If you have an appointment, or intend to make an appointment, to be treated or examined by a medical practitioner or hospital or other medical facility in relation to the injuries sustained in the accident state:

- a. The name and address of each practitioner or hospital; and
- b. The date or dates for each future appointment.

13. State in detail the nature of the injury or injuries you allege that you suffered as a result of the incident referred to in your Complaint. Include the following information in your response:

- a. The location, duration and intensity of the pain;
- b. Any restraint and extent of restraint from normal activities; and
- c. The extent of any disability.

14. State your name, date of birth, and social security number.

15. If you have ever been known by any other name, state:

- a. All other names by which you have been known;
- b. The dates during which you used each name; and
- c. The reason you used each name.

16. Describe your education, special training and experience in relation to your work, business, or profession.

17. If you were employed at the time of the accident and have lost time from your employment as a result of the accident, state:

- a. The name and address of your employer;
- b. The period or periods of time during which you were absent;
- c. The amount of any income you lost through your periods of absence; and
- d. The total number of business or working days during which you were absent from your employment.

18. If you are claiming future lost wages or loss of earning capacity, please set forth the exact amounts of lost income and/or loss of earning capacity which you assert will be lost as a result of the incident which is the subject of this litigation.

19. Please give the name and address of each person or organization by whom you have been employed by during the last ten years, giving the dates of such employment, the position held, and the rate of pay received.

20. Please provide your spouse's name, address, and occupation.

21. Have you filed either state or federal income tax returns during the past five (5) years?

22. If you have ever been convicted of a felony, state:

- a. The nature of the felony or felonies;
- b. The date or dates on which you were convicted; and
- c. The place or places where you were convicted.

23. If you have ever been involved in any other legal action, whether criminal or civil, either as a Plaintiff or Defendant, give the Court, case number, names of the other parties, names of the counsel for the other parties, description of the action, and disposition of them each.

24. Identify all insurance claims made by you in the last five (5) years, including the name of the carrier, the type of policy, the policy number under which the claim was made, the type of claim, and the amount of claim.

25. If you have ever (either before or after the alleged injury which is the basis of this lawsuit) made any type of personal injury claim, including workers' compensation claims, or filed suit against any individual, corporation, or governmental body for bodily or personal injury, give the type of claim, the Court in which the suit was filed with case number and disposition.

26. With regard to any claims you have filed arising any vehicular collisions, please provide the following information:

- a. The dates and locations of the collision(s);
- b. The names and addresses of the parties involved and the witnesses;
- c. The names of all insurance companies that had coverage for the collision(s);
- d. Any injuries and property damage sustained by you in the collision(s);
- e. The names of all healthcare and medical providers who treated you for any injuries sustained in the collision(s); and
- f. The amount of all settlements and/or trial verdicts arising out of the collision(s).

27. If there is a Medicare, Medicaid or insurance lien outstanding, please state the amount of said lien.

28. With regard to the trip you were making at the time of the accident, if it was terminated or interrupted by the accident referred to in the Complaint, state:

- a. The purpose of the trip
- b. The place where the trip commenced;
- c. The time at which the trip commenced; and
- d. Any stops you may have made prior to the occurrence of the accident.

29. State the time at which the accident referred to in the Complaint occurred.

30. Describe how the accident referred to in the Complaint happened in comprehensive, narrative detail, giving all the events in the order which they occurred before, at the time, or after the occurrence, which had any bearing on the cause or manner of this occurrence.

31. Please state what you contend that the Defendant did or did not do that support(s) the allegations in your Complaint and upon what documents or evidence you will rely on at trial to support your contentions. Include in your response a list of every statute, regulation, or standard you contend the Defendant violated as a proximate cause of your injuries.

32. State the speed of your vehicle and the speed of Defendant's vehicle at the time you first observed Defendant's vehicle and at the moment of impact.

33. Describe the points of contact between your vehicle and Defendant's vehicle.

34. Describe the visible damage that was sustained by your vehicle and Defendant's vehicle immediately after the collision.

35. State where you went immediately after the accident.

36. If any itemized bill of actual or estimated cost of repair was prepared or tendered to you by anyone with respect to your vehicle following the accident, identify:

- a. The person or entity, by name and address, who prepared each estimate or itemized bill; and
- b. The person, by name or address, who has present custody of each estimate or itemized bill.

37. If your vehicle was damaged as a result of the accident, describe each part that was damaged, including the nature and extent of the damage and the cost of repair.

38. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

These Interrogatories shall be deemed continuing so as to require Supplemental Answers if the parties or any representative or counsel obtained further information between the time the Answers were served and the time of trial.

MCANGUS GOUDELOCK & COURIE, L.L.C.



J. Andrew Delancy, Bar No: 72863

Brett H. Bayne, Bar No: 100018

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

May 1, 2018

Exhibit D

Reply To
BRETT H. BAYNE
Direct Dial: (803) 227-2281
brett.bayne@mgclaw.com

August 13, 2018

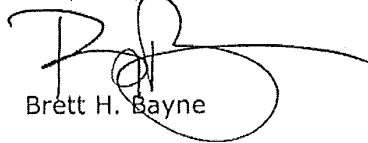
Lane Jefferies, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, South Carolina 29403

RE: Harland Jones vs. Karen Robinson
Civil Action No.: 2018-CP-40-01518 (Richland)
Date of Incident: June 7, 2017
Carrier Claim No.: 0459413365
MGC File No.: 20554.18101

Dear Mr. Jefferies:

Please find enclosed Defendant's First Supplemental Interrogatories and Requests for Production to Plaintiff, which we hereby serve upon you in the above-captioned case.

Very truly yours,



Brett H. Bayne

BHB/tjc
Enclosures
cc: Rogers E. Harrell, III, Esquire, Murphy & Grantland, PA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	FIRST SUPPLEMENTAL
	)	INTERROGATORIES TO PLAINTIFF
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND LANE JEFFERIES, ATTORNEY FOR PLAINTIFF:

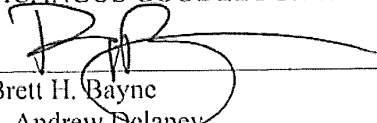
The Defendant, Karen Robinson, by and through its undersigned attorneys, hereby requires the Plaintiff, within thirty (30) days after service hereof, to answer the following Interrogatories hereinafter set forth, in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

2. Provide copies of any and/or all statements taken, recorded, given, written, or other by all witnesses identified in Request 1.
3. Provide detailed statements as to what each witness listed in Request 1 will testify to in this matter.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Brett H. Bayne
J. Andrew Delaney
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

August 14, 2018

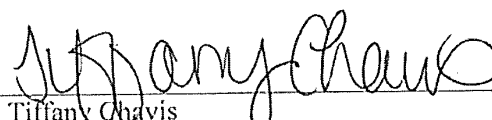
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

I certify that on this date, I have served a copy of Supplemental Interrogatories in this action on counsel of record by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Lane Jefferies, Esquire
 Anastopoulo Law Firm, I.L.C
 32 Ann Street
 Charleston, South Carolina 29403
Attorney for Harland Jones

Rogers E. Harrell, III, Esquire
 Murphy & Grantland, PA
 Post Office Box 6648
 Columbia, South Carolina 29260
Attorney for UIM

August 14, 2018
 Date


 Tiffany Chavis
 Legal Assistant to J. Andrew Delaney

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	FIRST SUPPLEMENTAL REQUESTS
	)	FOR PRODUCTION TO PLAINTIFF
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF AND LANE JEFFERIES, ATTORNEY FOR PLAINTIFF:

The Defendant, Karen Robinson, by and through its undersigned attorneys, hereby requests pursuant to Rule 34 of the South Carolina Rules of Civil Procedure that Plaintiff produce and permit the inspection, copying and/or photographing of the following documents and other items.

As used in this request, the terms "documents" means any written, printed, recorded, typed or graphic matter, however produced or reproduced, including all non-identical copies thereof, and further includes, but is not limited to, any books, ledgers, pamphlets, periodicals, brochures, letters, e-mails or other electronic communications, memoranda, advertisements, proposals, telegrams, e-mails or any other electronic communication, reports, telephone logs, drafts, business records, handwritten notes, bills, checks, invoices, tapes, transcripts, photographs and other data compilation from which information can be obtained which are in the possession, custody or control of the Plaintiff or Plaintiff's counsel.

DOCUMENTS REQUESTED

1. Provide all documents of any type including, but not limited to, photographs, videos, statements, reports, data, emails, messages, social media, which relate to the responses provided to First Supplemental Interrogatories 1-3.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Brett H. Bayne

J. Andrew Delaney

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

ATTORNEYS FOR DEFENDANT, KAREN
ROBINSON

August 14, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

I certify that on this date, I have served a copy of Supplemental Requests for Production in this action on counsel of record by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Lane Jefferies, Esquire
 Anastopoulo Law Firm, LLC
 32 Ann Street
 Charleston, South Carolina 29403
Attorney for Harland Jones

Rogers E. Harrell, III, Esquire
 Murphy & Grantland, PA
 Post Office Box 6648
 Columbia, South Carolina 29260
Attorney for UIM

August 14, 2018
 Date

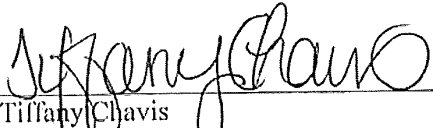

 Tiffany Chavis
 Legal Assistant to J. Andrew Delancy

Exhibit H

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

**PLAINTIFF'S ANSWER TO
DEFENDANT'S SECOND SET OF
INTERROGATORIES**

TO: DEFENDANT AND ALL COUNSEL OF RECORD

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

ANSWER: None.

2. Provide copies of any and/or all statements taken, recorded, given, written, or other by all witnesses identified in Request 1.

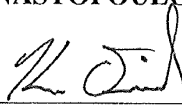
ANSWER: None.

3. Provide detailed statements as to what each witness listed in Request 1 will testify to in this matter.

ANSWER: None.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV, Esq.

S.C. Bar No.: 101010

Eric M. Poulin, Esq.

S.C. Bar No.: 100209

Lane D. Jefferies, Esq.

S.C. Bar No.: 101764

Kenneth T. David, Esq.

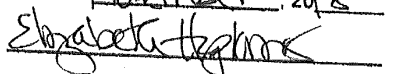
S.C. Bar No.: 103434

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 7th
DAY OF November, 2018


Dated at Charleston, SC

This 7th day of November, 2018

Exhibit L

Brett Bayne

From: Lane Jefferies <lane@akimlawfirm.com>
Sent: Monday, May 13, 2019 9:15 PM
To: Brett Bayne; Andy Delaney; TeamJefferies
Subject: Fwd: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)
Attachments: Proposed Order Granting Motion to Compel.doc

Dear Brett —

The proposed order is far more broad than what Judge Couch instructed, and it includes numerous purported factual findings that the Judge didn't make (and for which there is no evidentiary support in any event).

What I recall Judge Couch instructing you to put in the order is that Plaintiff must comply with your discovery requests by identifying known fact witnesses on or before June 1, 2019. His Honor further instructed that any known fact witnesses not disclosed on or before June 1, 2019 could not be called by Plaintiff at trial. That was the extent of the Court's instruction. I don't necessarily agree with all of it, but that's what the instructions were. The other three and a half pages of purported factual findings were not part of the instructions and should not be included.

Best,
 Lane

Begin forwarded message:

From: Brett Bayne <brett.bayne@mgclaw.com>
Subject: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)
Date: May 10, 2019 at 11:12:40 AM EDT
To: "'teamjefferies@googlegroups.com'" <teamjefferies@googlegroups.com>
Cc: Andy Delaney <ADelaney@mgclaw.com>

Lane,

Attached is the proposed order. Let me know if there are any issues. If not, I will submit it to the Court for filing.

Brett

Exhibit M

Brett Bayne

From: Brett Bayne
Sent: Tuesday, May 14, 2019 4:32 PM
To: 'rcouchj@sccourts.org'
Cc: 'teamjefferies@googlegroups.com'; Andy Delaney
Subject: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)
Attachments: Proposed Order Granting Motion to Compel.doc; 24011767.pdf

Judge Couch,

Attached is the proposed Order you requested on this Motion to Compel on the hearing conducted on May 8. As you will recall, this specific matter dealt with the identification of witnesses in response to discovery requests relating to a bicycle on car accident. This proposed Order encompasses the information set out in the unopposed memorandum filed on March 7 in this case as well as the outcome of the hearing last week.

I have circulated a copy to Mr. Jeffries for review. He objects to portions of the Order as "...far more broad than what Judge Couch instructed, and it includes numerous purported factual findings that the Judge didn't make (and for which there is no evidentiary support in any event)." We disagree with that as each factual assertion is contained in the memorandum or was addressed at the hearing and was not contested by Plaintiff. As we cannot reach a resolution, we are submitting the Order as written subject to his objections.

I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett

Exhibit N

Brett Bayne

From: Brett Bayne
Sent: Tuesday, May 28, 2019 2:57 PM
To: 'rcouchj@sccourts.org'
Cc: 'teamjefferies@googlegroups.com'; Andy Delaney; rharrell@murphygrantland.com
Subject: RE: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)
Attachments: Proposed Order Granting Motion to Compel.doc; 24011767.pdf

Judge Couch,

I am following up on this proposed Order. The ruling from the bench called for a June 1 deadline for Plaintiff to name his previously unidentified witnesses. The proposed Order submitted contains that same deadline. As June 1 is approaching, we just wanted to check in on the filing of the order so that the June 1 deadline is memorialized.

Please let us know if you need any other information.

Brett

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Tuesday, May 14, 2019 4:32 PM
To: 'rcouchj@sccourts.org' <rcouchj@sccourts.org>
Cc: 'teamjefferies@googlegroups.com' <teamjefferies@googlegroups.com>; Andy Delaney <ADelaney@mgclaw.com>
Subject: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

Attached is the proposed Order you requested on this Motion to Compel on the hearing conducted on May 8. As you will recall, this specific matter dealt with the identification of witnesses in response to discovery requests relating to a bicycle on car accident. This proposed Order encompasses the information set out in the unopposed memorandum filed on March 7 in this case as well as the outcome of the hearing last week.

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I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett

Brett Bayne

From: Brett Bayne
Sent: Friday, June 14, 2019 3:27 PM
To: rcouchj@sccourts.org
Cc: teamjefferies@googlegroups.com; Andy Delaney; rharrell@murphygrantland.com
Subject: Re: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

Please let us know if we can submit any other documents or anything related to the proposed order. We are up for trial on July 8 in Richland County and we would need to have the order in place by then as it relates to discovery requests.

Brett H. Bayne
 Attorney
 O: 803-227-2281
 C: 214-405-8175

Sent from my iPad

On May 28, 2019, at 2:56 PM, Brett Bayne <brett.bayne@mgclaw.com> wrote:

Judge Couch,

I am following up on this proposed Order. The ruling from the bench called for a June 1 deadline for Plaintiff to name his previously unidentified witnesses. The proposed Order submitted contains that same deadline. As June 1 is approaching, we just wanted to check in on the filing of the order so that the June 1 deadline is memorialized.

Please let us know if you need any other information.

Brett

From: Brett Bayne <brett.bayne@mgclaw.com>
Sent: Tuesday, May 14, 2019 4:32 PM
To: 'rcouchj@sccourts.org' <rcouchj@sccourts.org>
Cc: 'teamjefferies@googlegroups.com' <teamjefferies@googlegroups.com>; Andy Delaney <ADelaney@mgclaw.com>
Subject: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

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I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett

<Proposed Order Granting Motion to Compel.doc>

<24011767.pdf>

Brett Bayne

From: Brett Bayne
Sent: Friday, June 21, 2019 4:37 PM
To: rcouchj@sccourts.org
Cc: teamjefferies@googlegroups.com; Andy Delaney; rharrell@murphygrantland.com
Subject: RE: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)
Attachments: 24544547.doc

Judge Couch,

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Please let me know if you need anything else from us.

Brett

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Sent: Friday, June 14, 2019 3:27 PM
To: rcouchj@sccourts.org
Cc: teamjefferies@googlegroups.com; Andy Delaney <ADelaney@mgclaw.com>; rharrell@murphygrantland.com
Subject: Re: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

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Brett H. Bayne
 Attorney
 O: 803-227-2281
 C: 214-405-8175

Sent from my iPad

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<Proposed Order Granting Motion to Compel.doc>
<24011767.pdf>

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From: Brett Bayne
Sent: Monday, June 24, 2019 8:30 PM
To: Couch, Roger L.
Cc: teamjefferies@googlegroups.com; Andy Delaney; rharrell@murphygrantland.com
Subject: Re: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Thank you Judge. We submitted the order via Efile this afternoon around 3:45 pm.

On Jun 24, 2019, at 3:34 PM, Couch, Roger L. <rcouchj@sccourts.org> wrote:

I will be happy to sign the proposed Order, please file it in the clerk's que for my electronic signature. R. Couch

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<image001.jpg>

Brett Bayne, Attorney
brett.bayne@mqclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526
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<24011767.pdf>

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ELECTRONICALLY FILED - 2019 JAN 15 11:34 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

**Brett Bayne**

**From:** Brett Bayne  
**Sent:** Monday, July 1, 2019 2:25 PM  
**To:** Couch, Roger L.  
**Cc:** teamjefferies@googlegroups.com; Andy Delaney; rharrell@murphygrantland.com; PAUL GUNTER  
**Subject:** Re: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

The defendant confirmed ready for trial this morning for this case for the week of July 8. I spoke with the clerk and he suggested emailing you about the discovery order and also confirmed it was in your queue for signature. I have added Paul Gunter to this email if any assistance is needed with it.

Please let us know if we can provide anything else and hope you have a great fourth.

Brett H. Bayne  
 McAngus, Goudelock & Courie  
 Attorney  
 O: 803-227-2281  
 C: 214-405-8175

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

TO PLAINTIFF:

The Defendant, Karen Robinson, hereby moves the Court for an Order granting it summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact or law and that the Defendant, Karen Robinson is entitled to judgment as a matter of law as to liability related to Defendant's counterclaim(s) against Plaintiff.

This motion will be based on the South Carolina Rules of Civil Procedure, common and statutory law of South Carolina, affidavits, depositions, memorandum in support, and any other evidence which may be admissible by the Court.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne
J. ANDREW DELANEY (SC Bar No. 72863)
adelaney@mgclaw.com
BRETT H. BAYNE (SC Bar No. 100018)
brett.bayne@mgclaw.com
Post Office Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211
Telephone: (803) 779-2300
Facsimile: (803) 748-0526
ATTORNEY FOR KAREN ROBINSON

July 10, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF'S
KAREN ROBINSON,	)	MOTION TO ALTER OR AMEND
	)	
Defendant.	)	
	)	
	)	

This matter unfortunately comes *back* before this court on Plaintiff's Motion to Alter or Amend this court's Order Granting Defendant's Motion to Compel formally filed on July 3, 2019. Specifically, during a hearing on May 7, 2019, this court ordered from the bench that Plaintiff had until June 1, 2019 to identify previously unidentified witnesses or they would be excluded from trial. There was nothing unclear about this Order to Plaintiff. This order was memorialized in a written Order filed by this court on July 3, 2019. Plaintiff has now contested this Order and asserted—astonishingly—he simply could not comply with this court's May 7, 2019 Order because it was not in writing. In his Motion, Plaintiff takes the functional position that he is free to ignore Orders and instructions of this court if they are not reduced to writing. The undersigned will address each of Plaintiff's issues in the same order they are raised in his Motion. At the conclusion, the undersigned will ask this court enter an order denying Plaintiff's Rule 59 Motion.

I. Plaintiff Asserts This Court's Order Was "Impossible" to Comply With Because it Purported to "Compel Plaintiff to Perform Actions in the Past."

Plaintiff's counsel snidely and sarcastically remarks that he could not possibly comply

with this court's Order "even with the assistance of H.G.Wells." Plaintiff's counsel doesn't need H.G. Wells or any other fiction writer to assist in the disclosure of witnesses—the South Carolina Rules of Civil Procedure will do just fine. Plaintiff's counsel conveniently—and glaringly—overlooks that he was ordered to produce all unnamed witnesses by Order of this court given from the bench on May 7, 2019. There was nothing unclear about this Order:

2 MR. JEFFERIES: Your Honor, I don't know that we can
3 find it. If Your Honor wants to give us 30 days and say
4 that's all you've got, we're comfortable with that.

16 THE COURT: Well, I mean, what I would do is I would
17 bar them from presenting the witness to give you time to
18 be prepared if they don't produce the person by a certain
19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.
22 We're perfectly comfortable not being able to use that
23 witness.

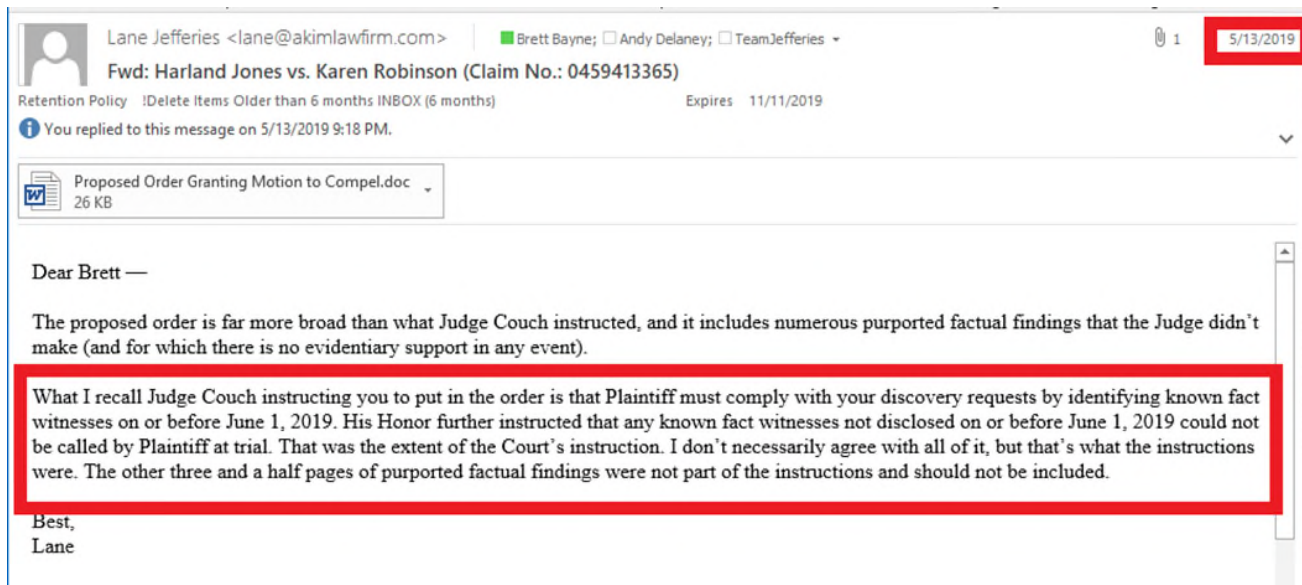
3 THE COURT: Okay. If they don't have it by June 1st
4 if they don't have it, that witness will be prevented from
5 testifying.

6 MR. BAYNE: That will work, Judge.

7 MR. JEFFERIES: Thank you, Your Honor.

Plaintiff's counsel not only was crystal clear about the June 1 deadline based on this court's May 7 Order, but *he even proposed a 30 day time limit and then agreed to the June 1 deadline.*

Plaintiff's counsel not only never objected to the June 1 deadline—he consented to it. He further acknowledged to this court that if he did not name witness he was “perfectly comfortable not being able to use that witness.” Plaintiff's agreement with the June 1 deadline ordered by this court didn't end there, Plaintiff's counsel then re-affirmed his understanding of the June 1 deadline in a May 13, 2019 email to counsel:



Plaintiff's counsel clearly acknowledged this court set a deadline of strict compliance of June 1. For the first time (contrary to what was said to the court at the hearing), Plaintiff's counsel begins to hedge on his agreement to a June 1 deadline. Nevertheless, Plaintiff did not disclose the witnesses as ordered by this court by June 1. Plaintiff further **has never disclosed the witnesses as requested in discovery—even as of this filing.** Plaintiff's counsel, instead, has chosen to argue that he was not required to follow this court's Order from the bench until it was reduced to writing. His position is that no judge in the State of South Carolina can order any party to do anything unless it is in writing. It should also be noted that while Plaintiff's counsel claims ignorance and an impossibility of compliance with this court's written Order—ignoring this court's clear oral Order—Plaintiff has still refused to comply with discovery requests, Judge

Benjamin's October 2018 Orders, and this court's May and July Orders. Even 45 days after the deadline set by this court (and almost 18 months since discovery was first sent), Defendant still has not received the names, information, or summaries of testimony for the mystery witnesses¹.

This court should not only deny Plaintiff's Motion related to the "inability to name witnesses because of the dates", it should sanction Plaintiff for his willful game playing with this court's May 7 Order and intentional and willful disregard of this court's June 1 deadline (and every other deadline in this case).

II. Plaintiff Argues the Order Barring Witnesses Invades the Purview of the Trial Judge

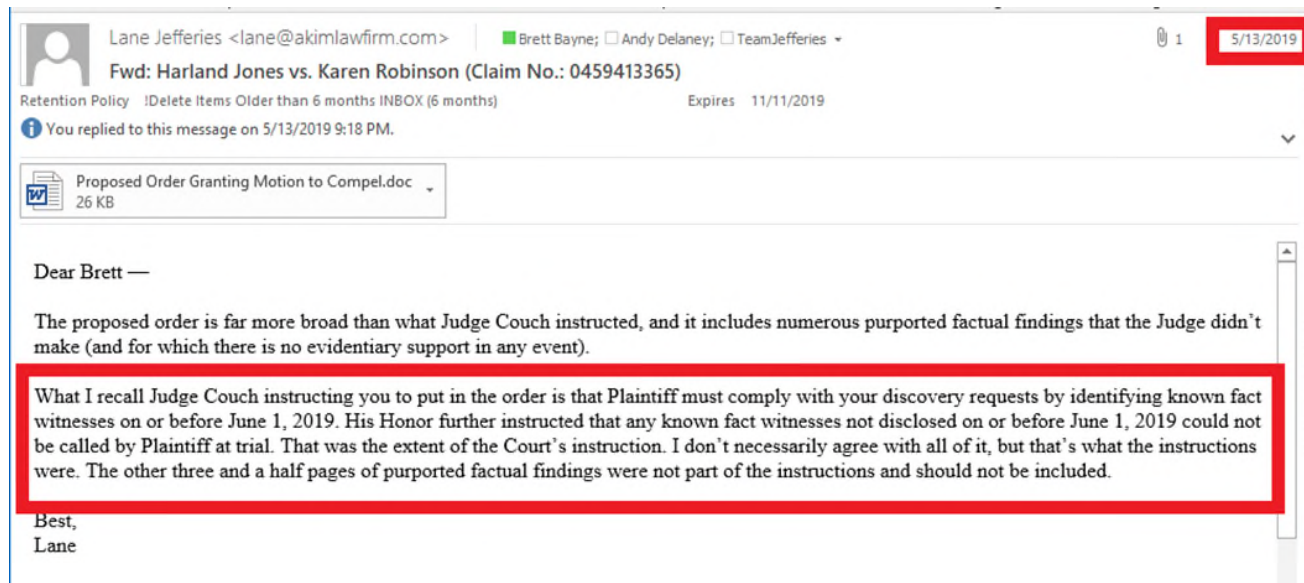
Plaintiff's counsel cites to a myriad of cases dealing with the ultimate decision related to the exclusion of evidence. Plaintiff then argues this court's Order is invalid because it excludes witnesses that haven't yet been offered at trial (and because it is impossible to time travel—See Section I above). What Plaintiff's counsel manages to completely omit from his argument is that Plaintiff consented to the evidence and witness exclusion. Specifically, Plaintiff's counsel stated:

16	THE COURT: Well, I mean, what I would do is I would
17	bar them from presenting the witness to give you time to
18	be prepared if they don't produce the person by a certain
19	point in time.
20	MR. BAYNE: Certainly, Judge.
21	MR. JEFFERIES: And we agree with that, Your Honor.
22	We're perfectly comfortable not being able to use that
23	witness.

¹ On July 5, 2019 at 4:04 PM, Plaintiff—for the first time—identified two individuals. These individuals were woefully late and, upon information and belief, are not the individuals continually referenced by Plaintiff in his filings (and the multiple motions to compel). However, most concerning—the undersigned asked Plaintiff's counsel for information about the witnesses—specifically the contact information and what these individuals would testify too and Plaintiff's counsel refused to provide that information and indicated he would not be providing it to Defendant. This occurred in person immediately following the July 8, 2019 roster meeting for trial in this matter (which was continued). These witnesses would also be barred by this court's clear May 7 and July 3 Orders.

This wasn't a lone decision of this court. Defendant was requesting that the entire Complaint be struck with prejudice. This court chose to give Plaintiff one more chance to follow the Rules of discovery and identify witnesses Defendant had been seeking for almost 16 months (at the time of the hearing). Plaintiff's counsel enthusiastically agreed to the exclusion of any unnamed witnesses as a remedy for his gross discovery abuses (should they continue, which they did). Now Plaintiff complains of the very remedy and Order that he agreed to.

Plaintiff's counsel then re-affirmed his understanding of the June 1 deadline and his tacit agreement to exclude the witnesses in a May 13, 2019 email to the undersigned:



For Plaintiff's counsel to now argue to this court that it lacked the authority to exclude witnesses—when Plaintiff consented and agreed to that very authority—is disingenuous.

This court should not only deny Plaintiff's Motion related to the "impropriety of excluding witnesses", it should sanction Plaintiff for his intentional and willful disregard of this court's June 1 deadline (and every other discovery deadline in this case).

III. Plaintiff Finally Asserts the Order is "Not Based on Any Evidence"

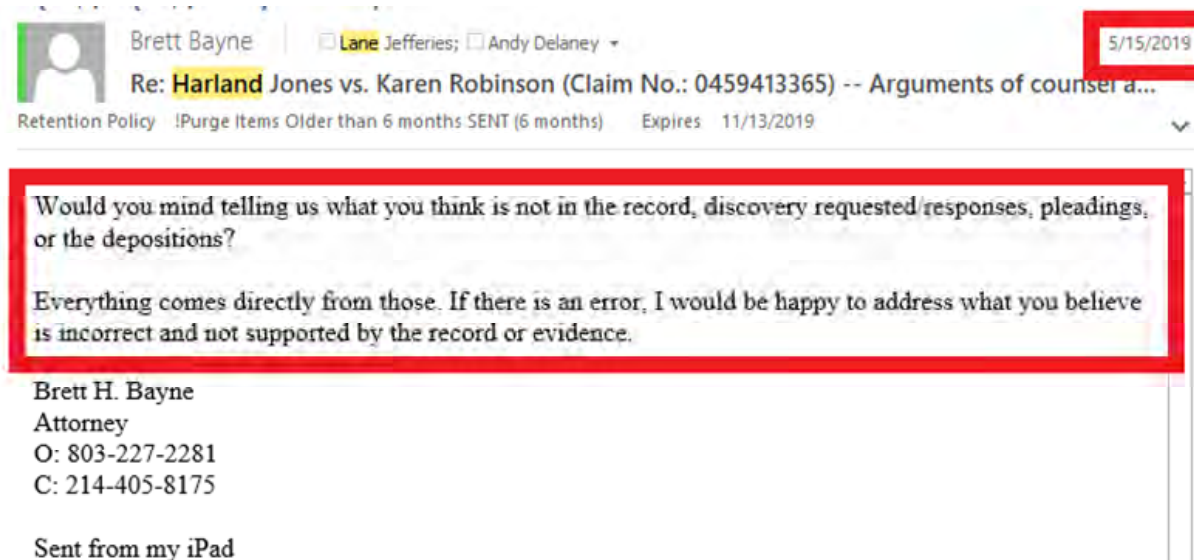
A review of the record and the transcript of the May 7 Hearing (attached herein) reveals

that Plaintiff's counsel did not take any exception with the recitation of facts or the sequence of events that brought us before this court for Defendant's second Motion to Compel. For example:

19 THE COURT: What's -- what's the deal?
 20 MR. JEFFERIES: Your Honor, plaintiff's wife passed
 21 away about six months ago --

When specifically asked by this court why discovery was grossly overdue, Plaintiff's counsel didn't contest the previous several pages of recitation of facts or any of the pleadings, motions, memorandums, etc. He just simply blamed it on Plaintiff's wife's passing. There is not a single objection made to any of the facts as asserted. Each and every fact within the Order comes from somewhere in the record² and Plaintiff's counsel has never contested any of it.

In addition to making no objection at the hearing, in response to Plaintiff's counsel's email to the court about the proposed order, the undersigned specifically asked Plaintiff's counsel on May 15 to identify what he believed to be an error or otherwise not in the record:



² The only exception to this is Plaintiff's first bullet point in his Motion about a June 5, 2019 document. This is a typo. It was a June 5, 2018 document. Plaintiff's knows this but chose to raise it as an issue of material error by the court—rather than a scrivener's error as it would be impossible for the court, on May 7, 2019, to reference a June 5, 2019 document.

Plaintiff's counsel refused to respond to the undersigned and could not identify a single error, omission, or inaccuracy in this court's May 7 or July 3 Orders. It was only after the written Order was filed on July 3 that Plaintiff elected to assert "factual errors" he could not previously identify for this court or Defendant's counsel.

This court should not only deny Plaintiff's Motion related to the alleged "unsupported facts", it should sanction Plaintiff for his intentional and willful disregard of this court's June 1 deadline (and every other discovery deadline in this case). In the alternative to a sanction by this court, this court can refer this matter to the Chief Administrative Judge for Richland County to hear the filed and pending Motion to Sanctions related to the improper mediation and the numerous discovery abuses by Plaintiff.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Brett H. Bayne

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ATTORNEY FOR KAREN ROBINSON

July 15, 2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

HARLAND JONES,

v. Plaintiff(s),

KAREN ROBINSON, Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

**PLAINTIFF'S MOTION FOR
SANCTIONS AND PRELIMINARY
MEMORANDUM IN OPPOSITION TO
DEFENDANT'S (SECOND) MOTION
FOR SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff above-named by and through her undersigned counsel, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel may be heard, for an Order denying Defendants Motion for Summary Judgment, and compelling Defendant to pay reasonable attorney's fees, as well as costs incurred, as a result of Defendant's frivolous motion. COMES NOW Plaintiff by and through undersigned counsel, and does so move.

Defendant's motion must be denied, as this Court has already ruled against Defendant on this precise issue. Defendant did not challenge that ruling, and thus it is the law of the case. Nonetheless, Defendant now makes the same motion again. Defendant's attempt to take a second bite at the apple is frivolous, and Defendant should bear the resulting costs.

There is no dispute that Defendant struck Plaintiff while Plaintiff was riding his bicycle.¹ There is no dispute the wreck was serious, that Plaintiff was seriously injured, or that the impact caused significant damage to Defendant's car as shown below.



Instead, the dispute concerns *how* and *why* Defendant struck Plaintiff.

¹ Def. Depo, p.11, lines 8 – 12; p. 13 lines 19-24.

As a result of the wreck, Plaintiff asserted a claim for negligence against Defendant. In response, Defendant asserted a counterclaim for negligence against Plaintiff. Both claim and counterclaim turn on the same question – whose fault was the wreck? This Court has already ruled that the question of fault is for the jury. Defendant now wants a second bite at the same apple.

Defendant took her first bite at the apple on March 6, 2019 when she filed her first motion for summary judgment. In support, Defendant told this Court “that there exists no genuine issue of material fact and that the Defendant, Karen Robinson is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant.” (Defendant’s First Motion for Summary Judgment filed March 6, 2019, p. 1). This Court disagreed and denied Defendant’s First Motion for Summary Judgment.²

In denying Defendant’s First Motion, this Court rejected Defendant’s assertion that “there is no evidence of any negligence by Defendant.” Instead, this Court found that “there’s enough that’s going to get you past a motion for summary judgment.” (Transcript of May 7, 2019 hearing, page 17, lines 11-12). Specifically, the colloquy went as follows (Transcript of May 7, 2019 hearing, page 17, lines 6-21):

THE COURT: “Anything further?”

DEFENSE COUNSEL: “No, sir, Your Honor. I clearly don’t believe this is any type of material issue of fact. There is just nothing out there. There is no fact to – conjecture and speculation.”

THE COURT: “Well, there’s – there’s enough that’s going to get you past a motion for summary judgment. So I’m going to deny the motion.

² While, as a result of the law of the case doctrine, it matters not whether the Court was *correct* in denying Defendant’s First Motion, it merits mentioning that in reaching its decision to deny Defendant’s First Motion, this Court considered: (a) Defendant’s 19-page memorandum; (b) Defendant’s 6 pages of exhibits; (c) Plaintiff’s 9-page memorandum; (d) A 141-page transcript of Plaintiff’s deposition; and (e) Arguments of counsel presented at the hearing on May 7, 2019 (24-page transcript attached as Exhibit A). It is not too surprising to find a genuine issue of material fact in 199 pages of documents in a “he said, she said” car wreck case.

THE COURT (Cont'd): I'm not, again, weighing the evidence, but in the course of – I don't disagree with you that you have some strong arguments. I'm not weighing that today. I'm just deciding whether or not there are facts for the jury to decide."

PLAINTIFF'S COUNSEL: "Thank you, Your Honor."

THE COURT: "The motion for summary judgment is denied."

Defendant did not appeal this Court's holding that there is genuine issue for the jury as to negligence. As a result, that holding is now the law of the case. First Union Nat. Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (an "unchallenged ruling, right or wrong, is the law of the case"). Plaintiff is not aware of any authority – and Defendant has not cited any – that would give Defendant a second bite at this same apple.

Nonetheless, a second bite is exactly what Defendant now seeks with Defendant's Second Motion for Summary Judgment. Unfortunately, the Second Motion is the same as the First Motion.

Compare Defendant's First Motion for Summary Judgment:

The Defendant, Karen Robinson, hereby moves the Court for an Order granting her summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact and that the Defendant, Karen Robinson is entitled to judgment as a matter of law. Specifically, there is no evidence of any negligence by Defendant.

with Defendant's Second Motion for Summary Judgment:

The Defendant, Karen Robinson, hereby moves the Court for an Order granting it summary judgment in the above-referenced case on the grounds that there exists no genuine issue of material fact or law and that the Defendant, Karen Robinson is entitled to judgment as a matter of law as to liability related to Defendant's counterclaim(s) against Plaintiff.

Defendant merely changed the wording slightly – apparently hoping no one would notice

that the Second Motion was, in fact, the same as the First Motion. The issue has been decided. Plaintiff respectfully requests that this Court not allow Defendant an impermissible second bite at this apple. This Court has already determined that the comparative negligence of the parties presents a jury question. That's the law of the case. Defendant cannot go back and change it now.

WHEREFORE, Plaintiff(s) moves for an Order denying Defendant's Second Motion for Summary Judgment, and compelling Defendant to pay Plaintiff's costs incurred as a result of Defendant's frivolous motion.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esquire
SC Bar Number: 101764
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Eric M. Poulin, Esquire
SC Bar Number: 100209
Anastopoulos Law Firm
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Conway, South Carolina
July 29, 2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

**PLAINTIFF'S NOTICE OF MOTION,
AND MOTION FOR
SANCTIONS FOR ADR ABUSE
INCLUDING
BREACH OF CONFIDENTIALITY**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff above-named by and through their undersigned counsel, will move before the Presiding Judge, ten (10) days after the service of this Notice, or at such time as counsel may be heard, for an Order pursuant to Rule 10, SCADRR and other applicable law, for sanctions against Defendant and her counsel for multiple abuses of the ADR process including but not limited to repeated knowing and intentional violations of Rule 8, SCADRR, (Confidentiality of Mediation).

COMES NOW Plaintiff(s) by and through undersigned counsel, and does so move. As may be described in greater detail in subsequent memoranda and during a hearing on the matter, defense counsel (a) has on multiple occasions knowingly and intentionally breached his duty of confidentiality set forth in Rule 8, SCADRR, (b) has publicly displayed and continues to publicly display contempt for the mediation process and, (c) engaged improper conduct during the mediation conference.

WHEREFORE, Plaintiff moves for an Order for sanctions against Defendant and her counsel including but not limited to striking Defendant's Answer and Counterclaim as well as imposing a fine upon defense counsel of \$1,000.00 for each knowing and intentional breach of

confidentiality.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

Lane D. Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

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Charleston, South Carolina
July 29, 2019

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT

CASE NO: 2019-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

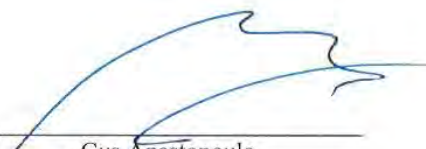
AFFIDAVIT OF GUS ANASTOPOULO

Personally appeared before me who, being duly sworn states and deposes as follows:

1. My name is Gus Anastopoulos.
2. I am an attorney with the Anastopoulos Law Firm.
3. I've been an employee of the Anastopoulos Law Firm since 2015.
4. I was sworn in as a South Carolina licensed attorney on November 27, 2018.
5. I've been actively involved in the subject case throughout, first as a law clerk, and currently as an attorney.
7. I have and continue to consult regularly on this case with fellow attorneys Lane Jefferies, Roy Willey, Eric Poulin, and others in our firm.
8. Specifically, I consulted with the aforementioned attorneys in preparation for mediation in this case, and we reached a consensus as to our mediation strategy.
9. On June 21, 2019 I appeared at mediation, and acted in accordance with our strategy.
10. As to Plaintiff's claims against Defendant, in which Plaintiff had roughly \$244,000 in medical bills among other damages, our initial offer to settle was [REDACTED]
12. In response, the Defendant [REDACTED]
13. With respect to Defendant's counterclaim against Plaintiff, in which Defendant presented no medical bills whatsoever, and property damage only in the amount of \$8,000 (of which Defendant only paid \$100 personally), Defendant demanded roughly [REDACTED]
14. Plaintiff is indigent, and as he was riding a bicycle at the time of the wreck, he did not have any applicable insurance.

15. Brett Bayne, counsel for Defendant, stated that [REDACTED]
16. I considered Mr. Bayne's statements to be an improper threat, and mediation was concluded shortly thereafter with the parties at an impasse.

FURTHER AFFIANT SAYETH NAUGHT.


Gus Anastopoulos

Sworn to before me this 27th day of
September, 2019



Notary Public for South Carolina

My Commission Expires 12/28/2028

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF BRETT H. BAYNE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, the undersigned, Brett H. Bayne, who, after being duly sworn, deposes and states:

1. I am adult of sound mind and body and over the age of 18.
2. I reside in Richland County, South Carolina.
3. I am attorney of record for Defendant, Karen Robinson in the above-referenced matter.
4. This Affidavit is an accounting of all costs interest attorney's fees, recoverable monies, administrative costs, filing costs, and/or other court costs incurred from April 30, 2018 to date October 23, 2019.
5. These costs and fees only relate to the following matters as directed by the court: Motion to Compel (Judge Benjamin); Rule to Show Cause (Judge Benjamin); 2nd Motion to Compel (Judge Couch); Mediation; Trial before Judge Manning; Hearing before Judge Lee; Hearing before Judge Hood; Any actions taken to figure out who the mystery witnesses were; and Costs related to the above actions.
6. During this time, and in accordance with the limited topics enumerated in #5,

Defendant incurred attorney's fees in the amount of \$20,928.50.

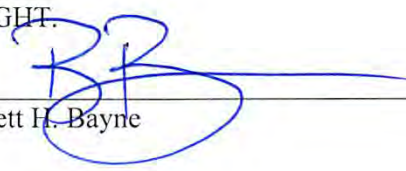
7. These fees reflect an hourly rate of \$125.00 for Attorney Brett Bayne and \$135.00 for Attorney Andy Delaney. No time has been submitted for paralegal or legal assistant work.

8. These fees reflect a total of 170.3 hours worked by Attorneys Brett Bayne and Andy Delaney on the topics referenced in #5.

9. During this time, Defendant incurred filing fees, court costs, and other litigation costs (including hearing and trial transcripts) in the amount of \$2,348.64.

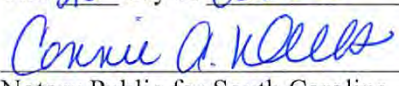
10. Based on the foregoing, Defendant is entitled to a total recovery of \$23,277.14 in the form of a Judgment to be entered against Plaintiff and/or Plaintiff's counsel.

FURTHER, AFFIANT SAYETH NAUGHT.


Brett H. Bayne

SWORN TO AND SUBSCRIBED BEFORE ME

This 23rd day of October, 2019.


Notary Public for South Carolina

My Commission Expires: June 5, 2023

[illegible]

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF BRETT H. BAYNE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

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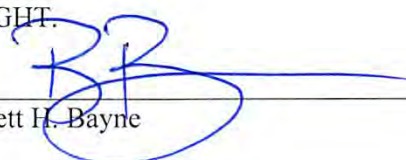
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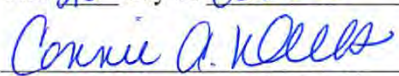
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FURTHER, AFFIANT SAYETH NAUGHT.


Brett H. Bayne

SWORN TO AND SUBSCRIBED BEFORE ME

This 23rd day of October, 2019.


Notary Public for South Carolina

My Commission Expires: June 5, 2023

Date	TKPR Name	Base Rate	Base Hrs	Billed Hrs	Base Amt	Billed Amt	Bill Num	Bill Date	Phase Code	Task Code	Activity Code	Narrative
7/25/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	909821	8/17/2018	L300	L350	A103	Prepare and analyze correspondence to opposing counsel re: Rule 11 attempt to induce voluntary discovery responses
7/26/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	909821	8/17/2018	L100	L110	A104	Receive, read, review, analyze and evaluate correspondence from opposing counsel Lane Jeffers re: desire to set mediation and requirement that claims adjuster with full authority be present
7/26/2018	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	909821	8/17/2018	L100	L120	A104	Read and analyze discovery requests and mediation letter from opposing counsel re: new handling of file and requests for mediation
8/10/2018	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	917692	9/20/2018	L300	L350	A103	Prepare and analyze Motion to Compel Plaintiff's discovery responses
8/13/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	917692	9/20/2018	L300	L350	A104	Receive, read, review, analyze and evaluate filed stamped Motion to Compel and drafting of correspondence to Terry Skipper re: the same
8/29/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	917692	9/20/2018	L300	L350	A108	Email to opposing counsel re: irony of his Rule 11 letter because of his overdue discovery responses
8/29/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	917692	9/20/2018	L300	L350	A108	Email from opposing counsel re: Rule 11 on deficiencies discovery responses
8/30/2018	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	917692	9/20/2018	L300	L350	A106	Email to opposing counsel re: review of discovery responses and no intent to issue amended discovery responses and instructions to file Motion to Compel
9/5/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L160	A108	Email from opposing counsel re: demand to set mediation within next 3 months.
9/5/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	924307	10/18/2018	L100	L160	A107	Read and analyze and respond to email with opposing counsel re: mediation and motions
9/5/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L160	A108	Email to opposing counsel re: still lacking discovery from opposing counsel and not setting mediation until that done
9/20/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L300	L310	A103	Prepare and analyze correspondence to opposing counsel re: Rule 11 to induce voluntary responses SUPPLEMENTAL discovery requests
9/26/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L120	A108	Email to opposing counsel re: response to letter requesting mediation and explanation that we will not set mediation until discovery responded to and hearing on Motion to Compel set for 10/1
9/26/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L160	A104	Email from opposing counsel re: 3rd attempt at setting mediation
9/27/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L120	A108	Email to opposing counsel re: agreement to move forward with Plaintiff's deposition provided discovery responded to in advance
9/27/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	924307	10/18/2018	L100	L120	A108	Email from opposing counsel re: hope to get discovery responses to us by end of day
9/28/2018	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	924307	10/18/2018	L300	L310	A104	Read and analyze written answers to interrogatories and Request for Production of Documents and bills produced therein
9/30/2018	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	924307	10/18/2018	L300	L350	A101	Prepare for hearing on Motion to Compel and Motion to Strike
10/1/2018	Bayne, Brett	\$125.00	1.3	1.3	\$162.50	\$162.50	932652	11/27/2018	L400	L450	A109	Appear (No travel time included) for hearing on Motion to Compel and Motion to Strike (1:30-2:45)
10/3/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	932652	11/27/2018	L200	L250	A104	Receive, read, review, analyze and evaluate filed stamped Form 4 Order on Motion to Compel requiring responses within 20 days and Motion to Dismiss without prejudice from Judge Benjamin
10/3/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A104	Read and analyze Form 4 from court re: Motion to Compel granted
10/23/2018	Bayne, Brett	\$125.00	0.7	0.7	\$87.50	\$87.50	932652	11/27/2018	L300	L350	A103	Prepare Motion for Rule to Show Cause, Order for Rule to Show Cause, and Affidavit of BHB for Rule to Show Cause re: supplemental discovery
10/23/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A104	Read and analyze NEF and filing report from court re: Rule to Show Cause
10/26/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	932652	11/27/2018	L300	L310	A104	Receive, read, review, analyze and evaluate Plaintiff's amended Responses to Defendant's 1st set of Interrogatories
10/30/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A104	Read and analyze NEF from court re rule to show cause
10/30/2018	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	932652	11/27/2018	L300	L310	A104	Receive, read, review, analyze and evaluate Plaintiff's responses to Defendant's requests to admit
10/30/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A108	Prepare and send email to Judge Benjamin re: request for hearing on rule to show cause
10/30/2018	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	932652	11/27/2018	L100	L120	A108	Read and analyze and respond to two emails with Judge Hood re: Rule to Show Cause
10/30/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A104	Read and analyze order from Judge Benjamin re: Rule to Show Cause
10/31/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A108	Prepare and send email to clerk of court re: request for hearing on rule to show cause
10/31/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	932652	11/27/2018	L100	L120	A108	Read and analyze and respond to email with Judge Benjamin re: rule to show cause
11/7/2018	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	938501	12/14/2018	L100	L120	A107	Read and analyze and respond to multiple emails with opposing counsel and review supplemental discovery responses from opposing counsel in matter
11/13/2018	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	938501	12/14/2018	L300	L310	A104	Read and analyze mailed responses to supplemental discovery from opposing counsel
2/11/2019	Bayne, Brett	\$125.00	0.8	0.8	\$100.00	\$100.00	958558	3/18/2019	L400	L450	A101	Prepare for hearing on 3 Motion to Compel and rule to show cause filed against Plaintiff in matter

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2/12/2019	Bayne, Brett	\$125.00	1.5	1.5	\$187.50	\$187.50	958558	3/18/2019	L400	L450	A109	Appear (No travel time included) for and conduct hearings on Motion to Compel and rule to show cause to show cause (9:10-10:40)
3/7/2019	Bayne, Brett	\$125.00	1.4	1.4	\$175.00	\$175.00	965308	4/16/2019	L300	L310	A103	Prepare Motion to Compel discovery (re depo disclosures) (5 pages written), prepare 2nd RTA, prepare 2nd supp RFP for opposing counsel
3/7/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	965308	4/16/2019	L100	L120	A104	Read and analyze NEF from court re: Motion to Compel
3/12/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	965308	4/16/2019	L300	L330	A104	Read and analyze deposition transcript of Plaintiff matter
3/27/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	965308	4/16/2019	L100	L120	A107	Telephone conference with opposing counsel re: discussion of motions and hearings
4/4/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	972549	5/16/2019	L300	L310	A104	Receive, read, review, analyze and evaluate Plaintiff responses to Defendant's 2nd set of requests to admit
4/4/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L300	L310	A108	Email to opposing counsel re: no good faith basis for denials to request to admit and intent to seek costs from him for proving the same
4/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L200	L240	A108	Email from Richland County Clerk of Court re: notice of hearing on Motion for Summary Judgment and Motion to Compel before Judge Couch on 05/08
4/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L300	L310	A103	Prepare and analyze Defendant's 3rd set of requests to admit
4/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L300	L310	A103	Prepare and analyze Defendant's 3rd set of supplemental Interrogatories
4/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L300	L310	A108	Email from UIM counsel re: his review of Plaintiff's responses to requests to admit and thoughts on sufficiency of the same
4/5/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	972549	5/16/2019	L100	L120	A104	Read and analyze discovery responses from opposing counsel, Read and analyze emails with opposing counsel re: discovery, Read and analyze emails with UIM counsel and respond to emails re: discovery responses from Plaintiff
4/25/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze NEF from court re: Motions Roster 5/8/19
4/26/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	972549	5/16/2019	L100	L120	A107	Read and analyze email from opposing counsel re: RTAs
4/26/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	972549	5/16/2019	L300	L310	A104	Receive, read, review, analyze and evaluate Plaintiff responses to Defendant's 3rd requests to admit
4/29/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	972549	5/16/2019	L300	L310	A104	Read and analyze responses to supplemental RTAs from opposing counsel
5/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze NEF from court re: Motion to Compel Cancelled
5/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze NEF from court re: Motion to Compel Reset
5/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Prepare and send and read and analyze emails with court re: scheduling hearings
5/1/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	979927	6/18/2019	L200	L240	A108	Email from Richland County Clerk of Court re: notice of hearing on Motion for Summary Judgment on May 7 before Judge Roger Couch
5/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze four NEF from court re: Motion to Compel and MSJ
5/3/2019	Bayne, Brett	\$125.00	3.3	3.3	\$412.50	\$412.50	979927	6/18/2019	L200	L240	A103	Begin preparation of Memorandum in Support of Motion for Summary Judgment and MTC
5/5/2019	Bayne, Brett	\$125.00	2.1	2.1	\$262.50	\$262.50	979927	6/18/2019	L200	L240	A103	Continue preparation of Memorandum in Support of Motion for Summary Judgment and Motion to Compel
5/6/2019	Delaney, Andy	\$135.00	3.6	3.6	\$486.00	\$486.00	979927	6/18/2019	L200	L240	A104	Read, review, analyze and evaluate deposition transcript of Plaintiff (120 pages) Defendant (89 pages) and eye witness Michelle Murray (80 pages) in planning and preparation for hearing on Motion for Summary Judgment
5/6/2019	Bayne, Brett	\$125.00	5.4	5.4	\$675.00	\$675.00	979927	6/18/2019	L200	L240	A103	Complete preparation of Memorandum in support of Motion for Summary Judgment and Motion to Compel for hearing on merits 5/7 (25 written pages of legal briefing
5/7/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	979927	6/18/2019	L100	L120	A104	Read and analyze filed Memo ISO Motion for Summary Judgment
5/7/2019	Delaney, Andy	\$135.00	3.4	3.4	\$459.00	\$459.00	979927	6/18/2019	L200	L240	A109	Attend (No travel time included) hearing on Motion for Summary Judgment
5/7/2019	Bayne, Brett	\$125.00	2.8	2.8	\$350.00	\$350.00	979927	6/18/2019	L400	L450	A109	Appear (No travel time included) for and conduct hearing on Motion to Compel (1:30-4:15) (including wait for other motions to complete)
5/7/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze NEF from court re: filed Memo ISO Motion for Summary Judgment
5/7/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A104	Read and analyze NEF from court re: Memo In Opp from opposing counsel to MSJ
5/7/2019	Delaney, Andy	\$135.00	1.6	1.6	\$216.00	\$216.00	979927	6/18/2019	L200	L240	A101	Continue to plan and prepare arguments for Motion for Summary Judgment hearing
5/7/2019	Reed, Fiona	\$75.00	0.5	0.5	\$37.50	\$0.00	979927	6/18/2019	L400	L430	A104	Read and analyze Memo ISO Motion for Summary Judgment consisting of 25 pages in preparation for hearing on MGC Motion for Summary Judgment
5/7/2019	Reed, Fiona	\$75.00	3.5	3.5	\$262.50	\$0.00	979927	6/18/2019	L200	L240	A109	Attended hearing on MGC Client Motion for Summary Judgment
5/7/2019	Reed, Fiona	\$75.00	0.2	0.2	\$15.00	\$0.00	979927	6/18/2019	L200	L240	A112	Travel to and from Richland County Courthouse to Attend hearing on MGC Motion for Summary Judgment
5/8/2019	Reed, Fiona	\$75.00	0.1	0.1	\$7.50	\$0.00	979927	6/18/2019	L400	L460	A105	Email communication within firm to BHB/JAD re: proposed order granting MGC Client MTC

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5/8/2019	Reed, Fiona	\$75.00	1.4	1.4	\$105.00	\$0.00	979927	6/18/2019	L400	L460	A103	Prepare and analyze proposed order granting MGC Client Motion to Compel for Judge Couch review and signature
5/10/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	979927	6/18/2019	L400	L450	A103	Prepare amended Order Granting MTC for filing with court per order of Judge Couch
5/10/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L400	L450	A107	Prepare and send email to opposing counsel re: proposed order
5/10/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	979927	6/18/2019	L100	L160	A108	Email from opposing counsel re: agreement to use Samuel Mokeba as mediator
5/13/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	979927	6/18/2019	L100	L160	A108	Email from opposing counsel Wiley re: consent to using Robb Brown as mediator
5/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A106	Read and analyze email from adjuster re: mediation
5/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A107	Read and analyze emails from opposing counsel re: mediation in matter
5/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L400	L460	A107	Read and analyze and respond to email with opposing counsel re: order issues with Motion to Compel
5/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L160	A106	Read and analyze email from client re: pre-mediation report
5/14/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L400	L460	A108	Prepare and send email to court re: proposed order on Motion to Compel
5/15/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L100	L120	A107	Read and analyze email from opposing counsel re: objections to order re: Motion to Compel
5/16/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	979927	6/18/2019	L100	L160	A108	Telephone conference with mediator re: pre-mediation prep on matter
5/16/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	979927	6/18/2019	L100	L160	A104	Read and analyze mediation agreement from mediator in matter
5/16/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	979927	6/18/2019	L100	L160	A104	Receive, read, review, analyze and evaluate correspondence from mediator Robb Brown re: confirmation of mediation set for 06/21 and outline of policies and procedures
5/28/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	979927	6/18/2019	L400	L460	A108	Prepare and send email to court re: requesting status of update on Order
6/3/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	986853	7/17/2019	L100	L160	A103	Prepare Letter to adjuster re: Pre-Mediation Report
6/4/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 7.8.19
6/4/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	986853	7/17/2019	L400	L440	A103	Prepare and analyze correspondence to insured re: appearance of case on trial roster for 07/08, uncertainty of roster, and need to be prepared to move forward then
6/5/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 7.8.19
6/5/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	986853	7/17/2019	L100	L120	A106	Phone call to Terry Skipper re: pre-trial and mediation strategy call
6/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 7.8.19
6/19/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	986853	7/17/2019	L100	L160	A106	Telephone conference with co defendant counsel re: discussion of mediation
6/19/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A106	Read and analyze email from opposing counsel re: mediation
6/20/2019	Bayne, Brett	\$125.00	1.9	1.9	\$237.50	\$237.50	986853	7/17/2019	L100	L160	A101	Prepare for mediation, review medicals and pleadings, prepare outline and presentation for opening and strategy for settlement
6/21/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	986853	7/17/2019	L100	L160	A106	Phone call to Terry skipper re: outcome of mediation
6/21/2019	Reed, Fiona	\$75.00	1	1	\$75.00	\$0.00	986853	7/17/2019	L100	L160	A109	Appear (No travel time included) for mediation in matter (9:45-10:45)
6/21/2019	Bayne, Brett	\$125.00	1	1	\$125.00	\$125.00	986853	7/17/2019	L100	L160	A109	Appear (No travel time included) for mediation in matter (9:45-10:45)
6/21/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	986853	7/17/2019	L100	L160	A108	Telephone conference with mediator re: post-mediation discussion
6/21/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A107	Prepare and send email to opposing counsel re: demand for mediation costs
6/21/2019	Reed, Fiona	\$75.00	0.1	0.1	\$7.50	\$0.00	986853	7/17/2019	L400	L440	A108	Telephone call and message to Judge Couch re: status of proposed order granting Motion to Compel
6/21/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L160	A107	Prepare and send email to opposing counsel re: demand for mediation payment
6/21/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L160	A108	Prepare and send email to court re: request for order on discovery
6/24/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF from court re: proposed order on discovery
6/24/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A108	Read and analyze and respond to email with Judge Couch re: proposed Order
6/27/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF From court re: Motion for Sanctions
6/27/2019	Bayne, Brett	\$125.00	1.8	1.8	\$225.00	\$225.00	986853	7/17/2019	L400	L430	A103	Prepare Written Motion and Memorandum for Sanctions - ADR
6/27/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	986853	7/17/2019	L100	L120	A108	Telephone conference with court re: Motion for Sanctions
6/27/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	986853	7/17/2019	L100	L160	A104	Receive, read, review, analyze and evaluate filed stamped Proof of ADR submitted by mediator Robb Brown
6/27/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF From court re: Jury Trial 7.8.19
6/27/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF From court re: ADR/Mediation Results
6/27/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A106	Read and analyze ADR Report from Mediator
6/28/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	986853	7/17/2019	L100	L120	A104	Read and analyze NEF From court re: NOA of Counsel

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7/1/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A108	Telephone conference with court re: motion and order pending
7/1/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A106	Telephone conference with UIM counsel re: update on trial
7/1/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	995711	8/30/2019	L100	L160	A106	Telephone conference with adjuster re: trial and update on case
7/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A108	Read and analyze and respond to email from court re: trial date
7/1/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L200	L230	A108	Email from Richland County Clerk of Court re: whether case is ready for trial on July 8 as it currently scheduled.
7/2/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze and respond to email with Judge Couch re: order in matter
7/3/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: Filed Order re: MTC
7/3/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A104	Read and analyze Final Order of Court Granting MTC
7/3/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Jury Trial 7.8.19
7/3/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	995711	8/30/2019	L100	L160	A108	Telephone conference with mediator re: further settlement discussion in matter
7/3/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A108	Prepare and send email and case synopsis to Judge Lee in matter
7/3/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	995711	8/30/2019	L200	L210	A104	Read and analyze Plaintiff's filed motion to alter or amend Motion to Compel order
7/3/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Motion to Alter or Amend
7/3/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	995711	8/30/2019	L200	L210	A103	Prepare Pre-Trial Brief for Judge Lee in matter
7/3/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L200	L210	A103	Prepare deposition excerpts and notices for court re: deposition usage
7/3/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L300	L350	A104	Receive, read, review, analyze and evaluate FILED stamped Order Granting Defendant's Motion to Compel
7/3/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	995711	8/30/2019	L300	L350	A104	Receive, read, review, analyze and evaluate FILED Plaintiff's Motion to Alter or Amend order from Judge Couch
7/3/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L100	L120	A108	Email from opposing counsel to Richland County Clerk of Court re: case not ready for trial as Rule 59(e) pending before Judge Couch
7/4/2019	Bayne, Brett	\$125.00	3.8	3.8	\$475.00	\$475.00	995711	8/30/2019	L400	L450	A101	Begin preparation for Trial in matter scheduled for 7.8.19
7/5/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: MIL
7/5/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A107	Read and analyze and respond to 4 emails with opposing counsel and court re: 59 Motion and Trial
7/5/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	995711	8/30/2019	L300	L320	A104	Read and analyze supplemental discovery from opposing counsel, Read and analyze and send email to opposing counsel re: objection to discovery; conduct research on newly named witnesses
7/5/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A108	Read and analyze and respond to four emails with court re: trial date
7/5/2019	Bayne, Brett	\$125.00	4.7	4.7	\$587.50	\$587.50	995711	8/30/2019	L400	L430	A103	Prepare Motions in Limine and All Exhibits for Court in Matter for Filing pursuant to SCRPC
7/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L100	L120	A108	Email from opposing counsel to Judge Lee re: no request for continuance but ruling on Rule 59e motion
7/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L300	L310	A108	Email from opposing counsel re: supplemental responses to Interrogatories naming Plaintiff's step daughter and Lettie Jackson
7/6/2019	Bayne, Brett	\$125.00	6.3	6.3	\$787.50	\$787.50	995711	8/30/2019	L400	L450	A101	Continue preparation for Trial in matter scheduled for 7.8.19
7/7/2019	Bayne, Brett	\$125.00	12.9	12.9	\$1,612.50	\$1,612.50	995711	8/30/2019	L400	L450	A101	Continue preparation for trial in matter (exhibits, examinations, open/closing, and preparation for motions; call with Insured to prepare her for trial)
7/7/2019	Delaney, Andy	\$135.00	3.9	3.9	\$526.50	\$526.50	995711	8/30/2019	L400	L440	A101	Plan and prepare for trial (review of Plaintiff's deposition 89 pages, Defendant's deposition 91 pages) and prepare opening statement
7/8/2019	Bayne, Brett	\$125.00	4	4	\$500.00	\$500.00	995711	8/30/2019	L400	L450	A109	Appear (No travel time included) for day 1 or trial; trial continued after motions (8:00-12:00)
7/8/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L400	L450	A108	Prepare and send email to court re: 59 motion by opposing counsel
7/8/2019	Delaney, Andy	\$135.00	0.9	0.9	\$121.50	\$121.50	995711	8/30/2019	L200	L230	A109	Attend (No travel time included) and participate in roster meeting before Judge Lee
7/8/2019	Delaney, Andy	\$135.00	1.4	1.4	\$189.00	\$189.00	995711	8/30/2019	L400	L450	A109	Attend (No travel time included) and participate in jury qualifications before Judge Hood
7/8/2019	Delaney, Andy	\$135.00	1.3	1.3	\$175.50	\$175.50	995711	8/30/2019	L200	L250	A109	Attend (No travel time included) pre-trial conference with Judge Lee and opposing counsel
7/8/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L200	L250	A104	Receive, read, review, analyze and evaluate Plaintiff's "chronology of Defendant's 48 hr delay"
7/9/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A106	Telephone conference with adjuster re: discussion of hearing issues
7/10/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L400	L430	A103	Prepare Motion for Summary Judgment for Motion for Summary Judgment on Counterclaims filed by Defendant
7/15/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	995711	8/30/2019	L400	L460	A104	Read and analyze hearing transcript from MTC hearing on 5/7/19
7/15/2019	Bayne, Brett	\$125.00	1.4	1.4	\$175.00	\$175.00	995711	8/30/2019	L400	L460	A103	Prepare Memorandum in Opposition of Plaintiff's Rule 59 Motion
7/15/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A108	Prepare and send email to court re: 59 Motion
7/15/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: Trial Roster 8.12.19

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7/15/2019	Delaney, Andy	\$135.00	0.3	0.3	\$40.50	\$40.50	995711	8/30/2019	L300	L350	A104	Brief review, analysis and evaluation of transcript on May 7 Motion to Compel hearing
7/16/2019	Delaney, Andy	\$135.00	0.2	0.2	\$27.00	\$27.00	995711	8/30/2019	L100	L120	A106	Email to Courtney Lowe and Lisa Cutlip re: appearance of case on 08/12 roster, judges set to preside and opposing counsel's contradictory positions
7/16/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Jury Trial 8.12.19
7/16/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Memo in Opp filed
7/18/2019	Bayne, Brett	\$125.00	1.9	1.9	\$237.50	\$237.50	995711	8/30/2019	L400	L460	A103	Prepare proposed Order Denying 59 requested by Court
7/18/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L400	L460	A108	Read and analyze email from court re: instructions for order
7/19/2019	Bayne, Brett	\$125.00	0.7	0.7	\$87.50	\$87.50	995711	8/30/2019	L400	L460	A103	Prepare further edits and changes to Order denying 59 per court
7/19/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 8.12.19
7/22/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A106	Prepare and send email to clients re: update on orders from court
7/24/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A108	Prepare and send email and attachments to Judge re: Denial of 59
7/24/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A108	Prepare analysis and email to Judge Newman re: Denial of 59, Motion for Sanctions, and MSI for Trial
7/24/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A108	Read and analyze email from court re: filed order
7/24/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: Order Denying 59
7/25/2019	Bayne, Brett	\$125.00	0.2	0.2	\$25.00	\$25.00	995711	8/30/2019	L100	L120	A108	Read and analyze email and respond to two emails from court and opposing counsel hearing on sanctions
7/25/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L200	L250	A104	Receive, read, review, analyze and evaluate FILED stamped Order from Judge Couch Denying Plaintiff's Rule 59 Motion to Alter or Amend.
7/25/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 8.12.19
7/29/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L200	L240	A104	Receive, read, review, analyze and evaluate Plaintiff's motion for sanctions for Defendant's filing a 2nd Motion for Summary Judgment
7/29/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	995711	8/30/2019	L100	L160	A104	FILED Plaintiff's Motion for Sanctions for ADR Abuse including Breach of Confidentiality
7/29/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Motion for Sanctions re: ADR
7/29/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A104	Read and analyze NEF From court re: Resp to MSI
7/29/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	995711	8/30/2019	L100	L120	A104	Read and analyze Motion for Sanctions re: ADR by DC
7/29/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	995711	8/30/2019	L100	L120	A104	Read and analyze Respo to Motion for Summary Judgment filed by opposing counsel in matter
7/29/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	995711	8/30/2019	L100	L120	A107	Prepare and send email to opposing counsel re: withdraw motion
8/1/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze NEF from court re: Jury Trial 8.12.19
8/5/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A106	Read and analyze And respond to 3 emails from court and opposing counsel re: Trial
8/5/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	1001736	9/17/2019	L200	L230	A106	Email from Richland County Clerk of Court Paul Gunter re: appearance of case on trial roster the week of 08/12 and inquiry into whether it is ready for trial
8/6/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	1001736	9/17/2019	L100	L120	A108	Conference with court re: Discussion of trial issues
8/7/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze Email from court re: Trial
8/8/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze NEF From court re: Jury Trial 8.12.19
8/8/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L160	A107	Prepare and send email to opposing counsel re: request for payment of mediation invoice
8/8/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	1001736	9/17/2019	L400	L410	A103	Finalize and execute subpoena for attendance at trial of independent eye witness Michelle Murray
8/9/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	1001736	9/17/2019	L400	L450	A104	Read and analyze Pre-Trial Brief and MIL filed by opposing counsel
8/9/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	1001736	9/17/2019	L400	L450	A108	Telephone conference with Trooper re: testimony
8/9/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	1001736	9/17/2019	L400	L450	A106	Pre-Trial prep Telephone conference with client
8/9/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	1001736	9/17/2019	L400	L450	A108	Telephone conference with Michelle Murray re: discussion of trial testimony
8/11/2019	Bayne, Brett	\$125.00	4.8	4.8	\$600.00	\$600.00	1001736	9/17/2019	L400	L450	A101	Preparation for trial, editing video deposition, preparation of exhibits for trial, and outlining of MIL and issues for court and opening/closing statements and witness examinations
8/11/2019	Delaney, Andy	\$135.00	3.6	3.6	\$486.00	\$486.00	1001736	9/17/2019	L400	L440	A101	Plan and prepare for trial (review deposition of Plaintiff and prepare opening statement
8/12/2019	Bayne, Brett	\$125.00	2.7	2.7	\$337.50	\$337.50	1001736	9/17/2019	L400	L450	A109	Appear (No travel time included) for jury selection, roster meeting, court conference and motions (8:50-11:30)
8/12/2019	Delaney, Andy	\$135.00	0.5	0.5	\$67.50	\$67.50	1001736	9/17/2019	L200	L230	A109	Attend (No travel time included) roster meeting before Judge Newman
8/12/2019	Delaney, Andy	\$135.00	2.1	2.1	\$283.50	\$283.50	1001736	9/17/2019	L400	L450	A109	Attend (No travel time included) jury qualifications
8/12/2019	Delaney, Andy	\$135.00	2.6	2.6	\$351.00	\$351.00	1001736	9/17/2019	L400	L440	A101	Continue trial preparation (edit opening statement and direct examination of Karen Robinson)
8/13/2019	Delaney, Andy	\$135.00	7.9	7.9	\$1,066.50	\$1,066.50	1001736	9/17/2019	L400	L450	A109	Day 1 of Trial
8/13/2019	Bayne, Brett	\$125.00	7.9	7.9	\$987.50	\$987.50	1001736	9/17/2019	L400	L450	A109	Appear (No travel time included) (No travel time included) for Trial Day 2 jury selection, motions, openings; and witnesses

8/13/2019	Bayne, Brett	\$125.00	3.4	3.4	\$425.00	\$425.00	1001736	9/17/2019	L400	L450	A101	Prepare for closing argument and Day 2 trial; Telephone conference With adjuster re: Discussion case; Telephone conference With Murray re: Depo and appearance at trial
8/13/2019	Delaney, Andy	\$135.00	2.4	2.4	\$324.00	\$324.00	1001736	9/17/2019	L400	L440	A101	Continue preparations for day 2 of trial
8/14/2019	Delaney, Andy	\$135.00	6.2	6.2	\$837.00	\$837.00	1001736	9/17/2019	L400	L450	A109	day 2 of trial
8/14/2019	Bayne, Brett	\$125.00	6.2	6.2	\$775.00	\$775.00	1001736	9/17/2019	L400	L450	A109	Appear (No travel time included) (No travel time included) (No travel time included) for Trial Day 3 including two witnesses, closings, and deliberation
8/14/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	1001736	9/17/2019	L100	L120	A108	Telephone conference with all parties re: discussion of new trial
8/15/2019	Bayne, Brett	\$125.00	0.7	0.7	\$87.50	\$87.50	1001736	9/17/2019	L100	L120	A108	Telephone conference With counsel re: Discussion of trial, re-Trial, and discovery issues
8/16/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze Email from opposing counsel re: Depo of Tracy Randolph
8/16/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze email from opposing counsel re: depositions
8/21/2019	Bayne, Brett	\$125.00	0.5	0.5	\$62.50	\$62.50	1001736	9/17/2019	L100	L120	A103	Prepare Motion to Quash depositions in matter
8/21/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze NEF from court re: Motion to Quash
8/22/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A107	Prepare and send filed motion to opposing counsel re: cancelled deposition
8/22/2019	Delaney, Andy	\$135.00	0.1	0.1	\$13.50	\$13.50	1001736	9/17/2019	L200	L250	A104	Receive, read, review, analyze and evaluate filed stamped Motion to Quash Plaintiff's Notice of Deposition of Tracy Randolph
8/22/2019	Bayne, Brett	\$125.00	0.4	0.4	\$50.00	\$50.00	1001736	9/17/2019	L100	L120	A103	Prepare Motion for Protective Order, 2 Exhibits, and Proposed Order re: Protective Order
8/22/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1001736	9/17/2019	L100	L120	A104	Read and analyze NEF from court re Protective Order
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L110	A104	Read and analyze NEF from court re: Motion for Sanction by D
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF from court re: Motion for Sanctions by P
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF from court re: Motion for Protective Order
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L110	A104	Read and analyze NEF from court re: Motion to Quash/Strike
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF from court re: Motion for Summary Judgment
9/13/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF from court re: Memo in Support of Motion Sanctions
9/18/2019	Delaney, Andy	\$135.00	0.3	0.3	\$40.50	\$40.50	1008111	10/9/2019	L300	L330	A104	Receive, read, review, analyze and evaluate deposition transcript of Treacy Randolph (20 pages)
9/18/2019	Bayne, Brett	\$125.00	0.6	0.6	\$75.00	\$75.00	1008111	10/9/2019	L300	L330	A104	Read and analyze deposition transcript of Treacy Randolph taken by opposing counsel
9/24/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	1008111	10/9/2019	L100	L120	A107	Read and analyze and respond to three emails from court; prepare and send summary and motion and memo to court re: sanctions issue
9/25/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF From court re: Hearing on Sanctions
9/25/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze Form 4 from court re: Hearing
9/26/2019	Bayne, Brett	\$125.00	0.8	0.8	\$100.00	\$100.00	1008111	10/9/2019	L400	L450	A101	Begin preparation for multiple hearings on motions, sanctions, and dismissal in matter
9/27/2019	Bayne, Brett	\$125.00	2.3	2.3	\$287.50	\$287.50	1008111	10/9/2019	L400	L450	A101	Complete preparation for multiple hearings on motions, sanctions, and dismissal in matter, prepare materials for judge
9/27/2019	Delaney, Andy	\$135.00	1.7	1.7	\$229.50	\$229.50	1008111	10/9/2019	L200	L250	A109	Appear (No travel time included) and participate in Defendant's Motion for Sanctions
9/27/2019	Bayne, Brett	\$125.00	1.8	1.8	\$225.00	\$225.00	1008111	10/9/2019	L400	L450	A109	Appear (No travel time included) For hearing one matter re: Sanctions (11:15-1:05)
9/27/2019	Bayne, Brett	\$125.00	0.3	0.3	\$37.50	\$37.50	1008111	10/9/2019	L100	L120	A108	Read and analyze and respond to emails with court and meet with court re: hearings on motions
9/27/2019	Bayne, Brett	\$125.00	0.1	0.1	\$12.50	\$12.50	1008111	10/9/2019	L100	L120	A104	Read and analyze NEF from court re: Memo Filing
				170.3		\$20,928.50						

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Date	Bill Num	Chk Num	Cost Code	Base Qty	Base Amt	Tobill Amt	Billed Amt	Narrative
8/10/2018	917692	289176	FILING	1	\$31.74	\$31.74	\$31.74	Richland County E-Filing - Card Services
10/23/2018	938501	296508	FILING	1	\$31.74	\$31.74	\$31.74	Richland County E-Filing - Card Services
3/6/2019	965308	304714	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas E-Filing- Card Services
3/7/2019	965308	304714	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas E-Filing- Card Services
6/24/2019	986853	312716	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas- E-Filing Credit Card- T.Chavis
6/27/2019	995711	312716	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas- E-Filing Credit Card- T.Chavis
7/5/2019	995711	312716	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas- E-Filing Credit Card- T.Chavis
7/10/2019	995711	312716	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas- E-Filing Credit Card- T.Chavis
7/15/2019	995711	312410	DEPOTR	1	\$120.00	\$120.00	\$120.00	VENDOR: Karen Ambroziak; INVOICE#: 20554.18101; DATE: 7/15/2019 - Court Reporting/Jones/Deposition Transcript/Brett Bayne Approved
8/19/2019	1001736	314847	TRIALT	1	\$1,836.00	\$1,836.00	\$1,836.00	PAYEE: Hollie Jenkins; REQUEST#: 846490; DATE: 8/19/2019. - 20554.18101/Tiffany Chavis/Court Reporting/Inv#1069/Jones/Trial Transcript/Brett Bayne and Courtney Lowe approved
8/19/2019	1001736	314890	WITNFE	1	\$43.50	\$43.50	\$43.50	VENDOR: Michelle Murray; INVOICE#: 20554.18101-2 DATE: 8/19/2019 - Tiffany Chavis/witness Fee/Jones/WF for Trial
8/21/2019	1001736	316969	FILING	1	\$31.74	\$31.74	\$31.74	Richland Common Pleas Filing Fee- SC E-Filing Credit Card- T.Chavis
8/22/2019	1001736	316969	FILING	1	\$31.74	\$31.74	\$31.74	Richland Common Pleas Filing Fee- SC E-Filing Credit Card- T.Chavis
8/30/2019	1001736	316969	FILING	1	\$31.74	\$31.74	\$31.74	Richland County Common Pleas- SC E-Filing Credit Card- L.Davison
							\$2,348.64	

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR SANCTIONS
REGARDING FRAUDULENT
MISREPRESENTATIONS TO THE
COURT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff will move before the presiding judge within 10 days of the date of this motion, or as soon as he may be heard, for an Order of sanctions as outlined below.

Attorney Brett Bayne made intentional, knowing, and repeated false statements to the Court. Mr. Bayne made these false statements not only during oral argument, but also in written motions and in proposed orders. Mr. Bayne made these false statements to at least five different Circuit Judges on at least twenty different occasions over the course of at least five months. Mr. Bayne then used his false statements to the court to secure an order sanctioning Plaintiff's counsel. Brett Bayne's conduct violates the Rules of Professional Conduct, especially Rule 3.3.

As described below, Mr. Bayne's false statements to the court are clear and unequivocal. They are not subject to reasonable interpretation. They relate to material facts, and they have operated to severely prejudice Plaintiff, his attorneys, the Court, and the administration of justice.

Not only has Mr. Bayne made these false statements in filed memoranda and during oral argument, he has included them in proposed orders, secured judicial endorsement thereof, and therefore cast at least two Circuit Court judges in a potentially negative light.

1. Mr. Bayne’s first falsehood – that Plaintiff misled the court about eyewitnesses in order to defeat summary judgment.

Mr. Bayne repeatedly told this Court that Plaintiff’s counsel relied on “unidentified and unnamed” eyewitnesses to defeat summary judgment. Mr. Bayne’s claim is false. Moreover, it is *unquestionably and demonstrably* false, as the record unmistakably shows. Despite knowing that his claim was false, Mr. Bayne nonetheless persuaded this Court that it was true, and relied upon it to secure an order severely sanctioning Plaintiff’s counsel, and dismissing Plaintiff’s Complaint.

Plaintiff argued against summary judgment by way of a Memorandum in Opposition to Summary Judgment dated May 7, 2019 (**Exhibit W**) and orally before Judge Couch (**Exhibit R**). At no time did Plaintiff’s counsel rely on any unidentified or unnamed eyewitness to defeat summary judgment.

Plaintiff’s May 7, 2019 Memorandum in Opposition to Summary Judgment is short and to the point – and it relies *exclusively* on the conflict between Defendant’s testimony and Plaintiff’s testimony. **Exhibit W**. There is absolutely no mention of what any other witness might say. Indeed, Plaintiff’s memorandum specifically states on page six (**Exhibit W**, excerpt below) that Plaintiff’s argument rests entirely on Plaintiff’s and Defendant’s differing personal observations recounted in their depositions.

Plaintiff personally observed each of the above-stated facts. Each is a material fact in determining this action. And each is in direct conflict with the facts that Defendant says she personally observed, and on which Defendant relies to support her affirmative defenses.

May 07 11:28 AM -

Before reading further, Counsel invites the Court to review Plaintiff’s May 7 Memorandum (**Exhibit W**) and search for any reference at all to unidentified or unnamed witness testimony. Such a review will make the magnitude of Mr. Bayne’s false statement shockingly clear.

The transcript of the summary judgment hearing is equally unequivocal. It too shows that Plaintiff's counsel did not even mention these "unidentified and unnamed" eyewitnesses in his arguments against summary judgment, let alone rely upon them. Instead, the transcript definitively shows that Plaintiff's counsel relied entirely and solely upon Plaintiff's own sworn deposition testimony to support Plaintiff's version of events. Plaintiff's counsel specifically states this at page 8, line 23: "It's not about weighing evidence. They have two witnesses [Defendant and Michelle Murray]. We have one [Plaintiff]. If it were about weighing the evidence, we'd lose. It's not about that. It's about the existence of evidence." **Exhibit R**, p.8 ln. 23 – p. 9 ln. 1.

During his argument Plaintiff's counsel refers exclusively to the testimony of Plaintiff, Defendant, and Michelle Murray to support Plaintiff's argument. Judge Couch denies Mr. Bayne's motion for summary judgment at page 17, line 20 of the transcript. In **no** place prior to that denial does Plaintiff's counsel **ever** even mention, much less rely upon, the potential testimony from any witness other than Plaintiff, Defendant, and Michelle Murray.

The transcript of the hearing is a part of the record. It is attached here for the Court's review. **Exhibit R**. The summary judgment argument occurs between page 3, line 1 and page 17, line 21. A review of the transcript reveals that there is absolutely no amount of interpretation, reading-between-the-lines, or light-most-favorable treatment that could make Mr. Bayne's false statement true.

Knowing his statement to be untrue, Mr. Bayne nonetheless continued to repeat it – at least 7 times to 4 different judges.

1. On June 27, 2019, Mr. Bayne makes the untrue statement on page 3 of his June 27, 2019 **Defendant's Memorandum in Support of Motion for Sanctions** which he emailed to Judge Newman. **Exhibit A**.

Plaintiff relied upon this unidentified and unnamed witness in his arguments against summary judgment. According to Plaintiff, this unidentified individual is his wife's cousin. Plaintiff has

2. On July 3, 2019, Mr. Bayne makes the same untrue statement again, this time to Judge Lee, by emailing the same memo containing the falsehood. **Exhibit B.**

Plaintiff relied upon this unidentified and unnamed witness in his arguments against summary judgment. According to Plaintiff, this unidentified individual is his wife's cousin. Plaintiff has

3. On July 8, 2019, Mr. Bayne makes the same untrue statement a third time in open court to Judge Lee. **Exhibit C**, p. 19, ln. 2-9. As noted above, nowhere during the summary judgment argument did Mr. Jefferies refer to "Alex wife's cousin" or any other unnamed eyewitness.

5 chronologically first. In that motion for summary
6 judgement, Mr. Jeffries stood up and said, "Alex wife's
7 cousin" -- made this same argument, this same sequence of
8 facts to the Court, in an argument to deny summary
9 judgement.

4. On September 24, 2019, Mr. Bayne makes the same untrue statement for the fourth time, by emailing the June 27 memo to Judge Hood. **Exhibit D (page 3 at bottom).**

Plaintiff relied upon this unidentified and unnamed witness in his arguments against summary judgment. According to Plaintiff, this unidentified individual is his wife's cousin. Plaintiff has

5. On September 27, 2019, Mr. Bayne makes the same untrue statement for the fifth time in open court to Judge Hood. **Exhibit E, p. 16, ln. 23 – p. 17, ln. 6.**

23 In the motion for summary judgment if Your Honor
24 reviews it, what is essentially argued at that time is
25 there is an issue of material fact because there are these

17

1 witnesses who are going to testify to these things.
2 Witnesses have never been named at this time.
3 Witnesses -- we don't know who they are. We don't have
4 their names beyond wife's cousin and Alex in the woods.
5 So Judge Couch denies the motion for summary
6 judgment. He -- based on that, he hears the motion to

6. On October 10, 2019, Mr. Bayne incorporates the same false statement into a proposed order which he emails to Judge Hood. This is the sixth time that Mr. Bayne made this same knowing misrepresentation to the court. **Exhibit F, page 7.**

Plaintiff relied upon the unidentified and unnamed eyewitness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to

7. On October 25, 31, and again on 31, 2019, Mr. Bayne uploads a proposed order containing the same false statement, as shown by the e-filing system. **Exhibit V.**

Harland Jones	NEF(10-31-2019 11:40:55 AM) Proposed Order/Other	Filing	10-31-2019	11:41:06 AM
Karen Robinson	Order/Order Coversheet No Fee	Filing	10-31-2019	11:40:55 AM
Karen Robinson	NEF(10-31-2019 09:06:12 AM) Proposed Order/Other	Filing	10-31-2019	09:06:31 AM
Harland Jones	Affidavit of Brett Bayne	Filing	10-31-2019	09:06:12 AM
Harland Jones	Affidavit of Brett Bayne-EX_1	Filing	10-31-2019	09:06:12 AM
Harland Jones	Affidavit of Brett Bayne-EX_2	Filing	10-31-2019	09:06:12 AM
Harland Jones	NEF(10-25-2019 11:31:34 AM) Proposed Order/Other	Filing	10-25-2019	11:31:48 AM

8. On October 31, 2019, this Court enters the order containing Mr. Bayne's false statement. **Exhibit G, page 7.**

VI. Judge Couch's Ruling and Order

Judge Couch heard Defendant's Motion for Summary Judgment and Defendant's second Motion to Compel on March 7, 2019. Judge Couch heard the Motion for Summary Judgment first. Plaintiff relied upon the unidentified and unnamed eyewitness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to Compel. Following a hearing on the second Motion to Compel, Judge Couch discussed the

PLEAS - CASE#2018CP4001518

Mr. Bayne's false statements were no mere slip of the tongue. Instead, he repeated the same falsehood over and over to three different judges orally and in writing over a period of four months. Finally, Mr. Bayne reiterated this untruth in his proposed order to Judge Hood, which he persuaded Judge Hood to sign. As a result of Mr. Bayne's dishonesty, the order entered by Judge Hood on October 31, 2019 contains a demonstrably false statement of fact.

Brett Bayne's conduct reveals a complete disregard for the truth and for the integrity of the legal system.

2. Mr. Bayne's second falsehood – that he was forced to file a motion to compel after having received no answer to his August 14, 2018 supplemental interrogatory.

Once again, Mr. Bayne provided false information to the Court. In this case, the misrepresentation is material because Mr. Bayne used his false statement to argue that Plaintiff had been uncooperative in discovery – in particular with respect to the same allegedly unnamed witnesses that were the subject of Mr. Bayne's falsehoods described above. As a result of Mr. Bayne's false statements, he managed to obtain two orders from two different judges, including an order awarding serious sanctions against Plaintiff and his counsel. Unfortunately, both orders are based on falsehoods put forth by Mr. Bayne.

Mr. Bayne propounded a "Supplemental Interrogatory" in this case which he served upon Plaintiff on August 14, 2018 requesting eyewitness information. **Exhibit H.** Since that time, Mr. Bayne has repeatedly represented to numerous tribunals that he was forced to "thereafter" file a motion to compel that heard by Judge Benjamin because Plaintiff did not answer this Supplemental Interrogatory. These representations are demonstrably false as the following timeline shows.

- **August 10, 2018** – Mr. Bayne files a Motion to Compel regarding initial discovery requests. **Exhibit I.**
- **August 14, 2018** – Mr. Bayne serves the Supplemental Interrogatory at issue. **Exhibit H.**
- No motions are filed between August 10, 2018 and October 1, 2018 as shown in the Public Index. **Exhibit K.**
- **October 1, 2018** – Judge Benjamin hears the August 10, 2018 Motion to Compel. **Exhibit T.**

It is crystal clear from the above timeline and the public index that Mr. Bayne did not file any motion to compel regarding the Supplemental Interrogatory prior to October 1, 2018. But this is not what Mr. Bayne tells the Court time and again.

Instead, the untruth that Mr. Bayne tells the court is that he served the Supplemental Interrogatory on August 14, did not get a response, had to file a motion to compel, and Judge Benjamin heard the motion on October 1. Mr. Bayne's statement simply is not true.

As the Public Index shows (**Exhibit K**), Mr. Bayne did not file any motion at all between the time he served the August 14 Supplemental Interrogatory and the hearing on another discovery matter before Judge Benjamin on October 1, 2019. In short, Mr. Bayne told this court time and again that he had filed a motion that *he knew at the time he had not filed*. Mr. Bayne used his intentional, knowing, and repeated falsehood to secure an order sanctioning Plaintiff and his counsel.

Mr. Bayne repeats this second untruth again and again.

1. On May 7, 2019, Mr. Bayne makes the false statement to Judge Couch, as shown in the transcript at page 18, ln. 19 through page 19, ln. 3. **Exhibit R** (excerpt on following page).

19	Upon receiving that on August 14th, 2018, we
20	delivered an interrogatory which I believe Your Honor has
21	in front of you.
22	THE COURT: I think I've seen that.
23	MR. BAYNE: Saying you have stated this. Tell us who
24	that person is.
25	THE COURT: The answers are to those interrogatories.

	19
1	MR. BAYNE: Correct. We didn't get them initially.
2	We had to file a motion to compel. We came to court.
3	Judge Benjamin gave them 20 days to produce it.

2. On May 14, 2019, Mr. Bayne includes the false statement in a proposed order (pages 1-2) which he sends to Judge Couch. **Exhibit L** (excerpt below, highlighting added).¹

issues relating Defendant's alleged negligence. As a result of this assertion, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production.

As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was

In as much as Mr. Bayne quoted the Supplemental Interrogatory, he obviously had the document in front of him, so he cannot claim that he did not know its date. Nonetheless, Mr. Bayne stated that he “*thereafter* filed a motion to compel,” (emphasis added) which was heard by Judge Benjamin. There can be no doubt that Mr. Bayne knowingly intended to perpetuate a false finding of fact – that being that the motion to compel was filed after and as a result of the Supplemental Interrogatory when, in fact, that is demonstrably false.

¹ It is also worth noting that Mr. Bayne's proposed order differs dramatically and materially from the oral instructions issued by Judge Couch, and Plaintiff objected to such. This issue is discussed in more detail in Plaintiff's contemporaneously filed Rule 59 motion, which Plaintiff incorporates by reference herein in its totality including all exhibits.

3. On May 28, 2019, Mr. Bayne makes the false statement a third time when he again emails a proposed order containing it to Judge Couch. **Exhibit M, p. 1-2.**

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was

4. On June 21, 2019, Mr. Bayne makes the false statement a fourth time when he again emails a proposed order containing the misrepresentation to Judge Couch. **Exhibit N, p. 1-2.**

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was

5. On June 24, 2019, Mr. Bayne makes the false statement a fifth time when he e-files the proposed order containing the misrepresentation. Judge Couch then signs the proposed order containing Mr. Bayne's false statement. **Exhibit O, p. 1-2.**

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was

6. On June 27, 2019, Mr. Bayne makes the untrue statement on pages 2 and 3 of his June 27, 2019 **Defendant's Memorandum in Support of Motion for Sanctions** which he emails to Judge Newman. **Exhibit A.** This marks the eighth time that Mr. Bayne has told this same untruth to the Court.

result of this assertion to this Court, Defendants served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production on August 14, 2018. As part of these First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of any and all witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant made the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

¹ This section is lengthy but it provides key background information and context for Plaintiff's actions at mediation and why sanctions are proper at this point related to the mediation (and the discovery abuses).

2

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to this request. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by

7. On July 3, 2019, Mr. Bayne makes the same untrue statement again (#9), this time to Judge Lee, by emailing the same memo containing the falsehood along with Judge Couch's order containing the falsehood. **Exhibit B.**

result of this assertion to this Court, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production on August 14, 2018. As part of these First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant made the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

¹ This section is lengthy but it provides key background information and context for Plaintiff's actions at mediation and why sanctions are proper at this point related to the mediation (and the discovery abuses).

2

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to this request. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by

8. On August 11 and 12, 2019, Mr. Bayne makes the same untrue statement again (#10), this time to Judge Manning, by emailing Judge Couch's order containing the falsehood. **Exhibits P & Q.**

result of this assertion to this Court, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production on August 14, 2018. As part of these First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant made the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

¹ This section is lengthy but it provides key background information and context for Plaintiff's actions at mediation and why sanctions are proper at this point related to the mediation (and the discovery abuses).

2

"...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

No response was received to this request. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by

9. On September 24, 2019, Mr. Bayne makes the same untrue statement for the eleventh time, by email of his false memo to Judge Hood. **Exhibit D, p. 2-3.**

result of this assertion to this Court, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production on August 14, 2018. As part of these First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant made the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

¹ This section is lengthy but it provides key background information and context for Plaintiff's actions at mediation and why sanctions are proper at this point related to the mediation (and the discovery abuses).

2

'...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'"

No response was received to this request. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by

10. On September 27, 2019, Mr. Bayne makes the false statement for the twelfth time, this time in open court to Judge Hood at page 11 of the transcript. **Exhibit E.**

13 Then we ask, obviously, any statements and anything
14 like that. So we sent that out. That is August 14th,
15 2018, and there is no response to it. So we have to -- at
16 that time, we then have to file a motion to compel
17 discovery responses, and that motion to compel is heard in
18 October 2018 with Judge Benjamin who issues a Form 4 order
19 which is located on tab number eight.

11. On October 10, 2019, Mr. Bayne incorporates the same false statement into a proposed order which he emails to Judge Hood. **Exhibit F, page 4.** This marks the thirteenth time that Mr. Bayne made this same knowing misrepresentation to the court.

Plaintiff did not respond to the supplemental discovery requests which specifically sought the identity of the alleged eye witnesses referenced in the June 5, 2018 Memorandum. As a result, Defendant filed a Motion to Compel for various outstanding discovery requests. On September 28,

12. On October 25, 31, and again on 31, 2019, Mr. Bayne uploads proposed orders containing the same false statement according to the e-filing system. **Exhibit V.**

Harland Jones	NEF(10-31-2019 11:40:55 AM) Proposed Order/Other	Filing	10-31-2019	11:41:06 AM
Karen Robinson	Order/Order Coversheet No Fee	Filing	10-31-2019	11:40:55 AM
Karen Robinson	NEF(10-31-2019 09:06:12 AM) Proposed Order/Other	Filing	10-31-2019	09:06:31 AM
Harland Jones	Affidavit of Brett Bayne	Filing	10-31-2019	09:06:12 AM
Harland Jones	Affidavit of Brett Bayne-EX_1	Filing	10-31-2019	09:06:12 AM
Harland Jones	Affidavit of Brett Bayne-EX_2	Filing	10-31-2019	09:06:12 AM
Harland Jones	NEF(10-25-2019 11:31:34 AM) Proposed Order/Other	Filing	10-25-2019	11:31:48 AM

13. On October 31, 2019, this Court enters the order containing Mr. Bayne's false statement at pages 3 and 4. **Exhibit G.**

Plaintiff did not respond to the supplemental discovery requests which specifically sought the identity of the alleged eye witnesses referenced in the June 5, 2018 Memorandum. As a result, Defendant filed a Motion to Compel for various outstanding discovery requests. On September 28,

Mr. Bayne made the same false statement both orally and in writing at least thirteen times to five different judges, over the course of five months.² Mr. Bayne used his repeated false statements to the Court to portray garden-variety discovery lateness by both sides³ as one-sided discovery abuse by Plaintiff. Brett Bayne used his false statements to portray Plaintiff as concealing information about eyewitnesses (especially "Alex") and then using the allegedly

² Brett Bayne made other false statements to the Court as well which are less obvious, and those false statements are described in Plaintiff's Rule 59 Motion filed on November 8, 2019, and incorporated herin by reference including exhibits.

³ See e.g., Plaintiff's Rule 11 letter dated November 18, 2018. **Exhibit S.**

concealed eyewitnesses to defeat summary judgment. As the transcripts clearly show, neither of these things occurred. Instead, Mr. Bayne's statements were false, and his portrayal false.

It is shockingly brazen that Mr. Bayne would continue to make these misrepresentations to the court when his statements are flatly contradicted by comparing the date on the motion to compel with the date on the first Supplemental Interrogatory. These false representations were willful, continuous, and evidence a complete disregard for the integrity of the legal system and must result in the most severe sanctions available.

Severe sanctions are especially warranted where, as here, Mr. Bayne used his false statements to secure an order sanctioning another attorney, and dismissing Plaintiff's Complaint.

3. Mr. Bayne's additional improper conduct prejudicial to the administration of justice.

It appears, unfortunately, that Mr. Bayne's pattern to stating falsehoods to the court is part of a larger pattern of conduct that is prejudicial to the administration of justice which must necessarily be brought to the Court's attention.

Mr. Bayne has repeatedly characterized this lawsuit as frivolous⁴, and has on multiple occasions threatened to sue the Anastopoulo Law Firm for bringing it. One of these threats was made in open Court to Judge Benjamin. **Exhibit T.** On page 17 of the transcript, Mr. Bayne suggests that the case is frivolous and suggests that his client will file a new different lawsuit, not only against the Plaintiff, but against Plaintiff's law firm:⁵

⁴ By definition, the lawsuit is not frivolous, as Plaintiff has **twice** defeated summary judgment before two different judges, and Plaintiff has defeated Mr. Bayne's directed verdict motion at trial. Most tellingly, Plaintiff won a directed verdict of his own as to Defendant's negligence per se. Had Mr. Bayne not mis-tried the case by referring to purported facts not in evidence during his closing, the matter would be over now.

⁵ There would not appear to be any existing law under which Defendant would have good grounds to institute such a lawsuit.

16 MR. BAYNE: Yes, Your Honor, there is. And
17 just by brief background, Ms. Robinson, once this
18 case has reached a defense verdict, which is where
19 this is heading, the Plaintiffs file a lawsuit
20 against Mr. Jones and against the Anastopoulo law
21 firm. She has expressed that. So this
22 counterclaim is simply attempting to preserve that
23 right to make sure we don't do anything to
24 eventually waive it down the line.

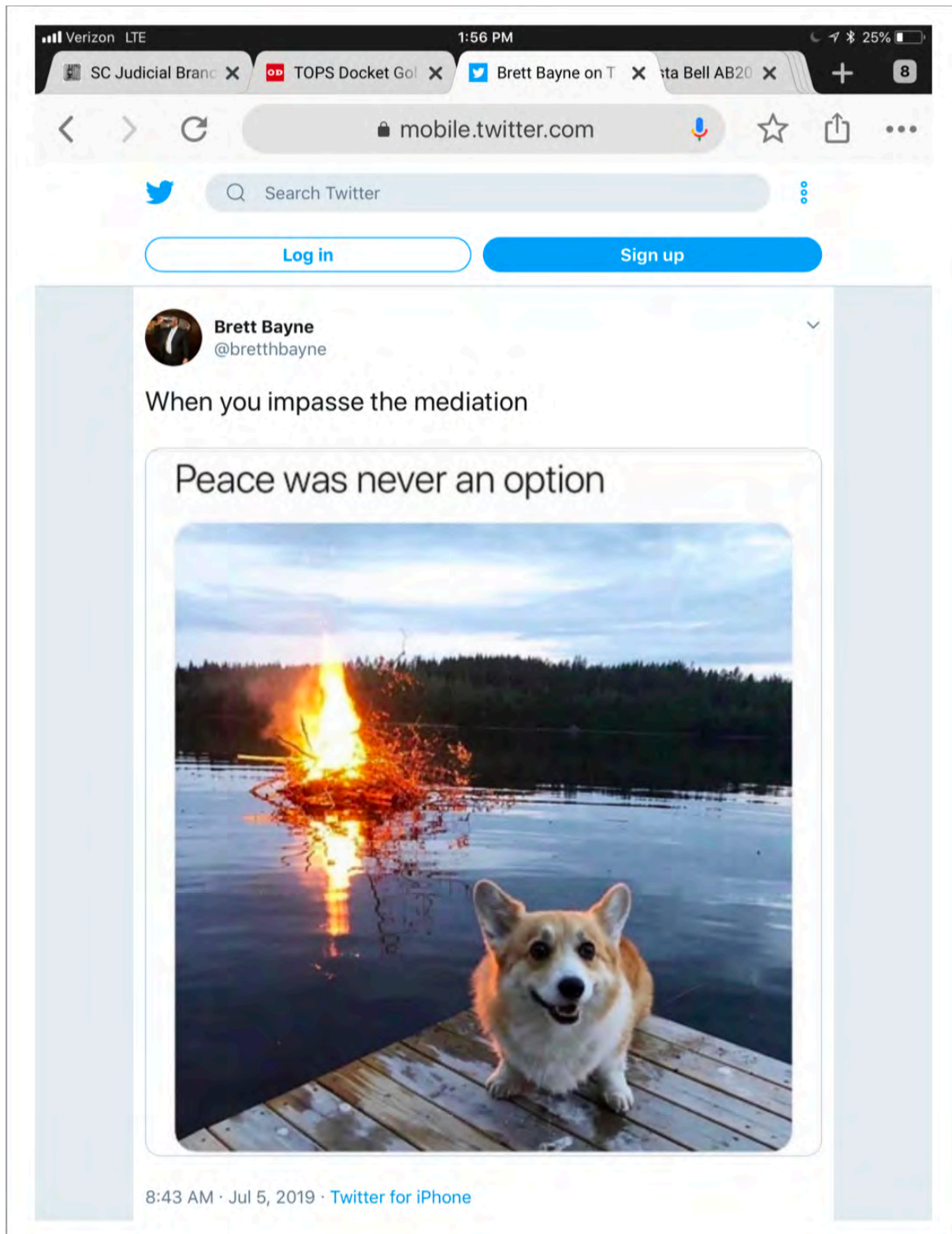
Mr. Bayne made this same threat again during the mediation conference. **Aff. Of Gus Anastopoulo [Exhibit U]. Unredacted version sent directly to Chief Administrative Judge Newman.**

In addition to improper threats, Mr. Bayne has publicly disparaged plaintiff attorneys generally as shown on the following page. **Exhibit J.**

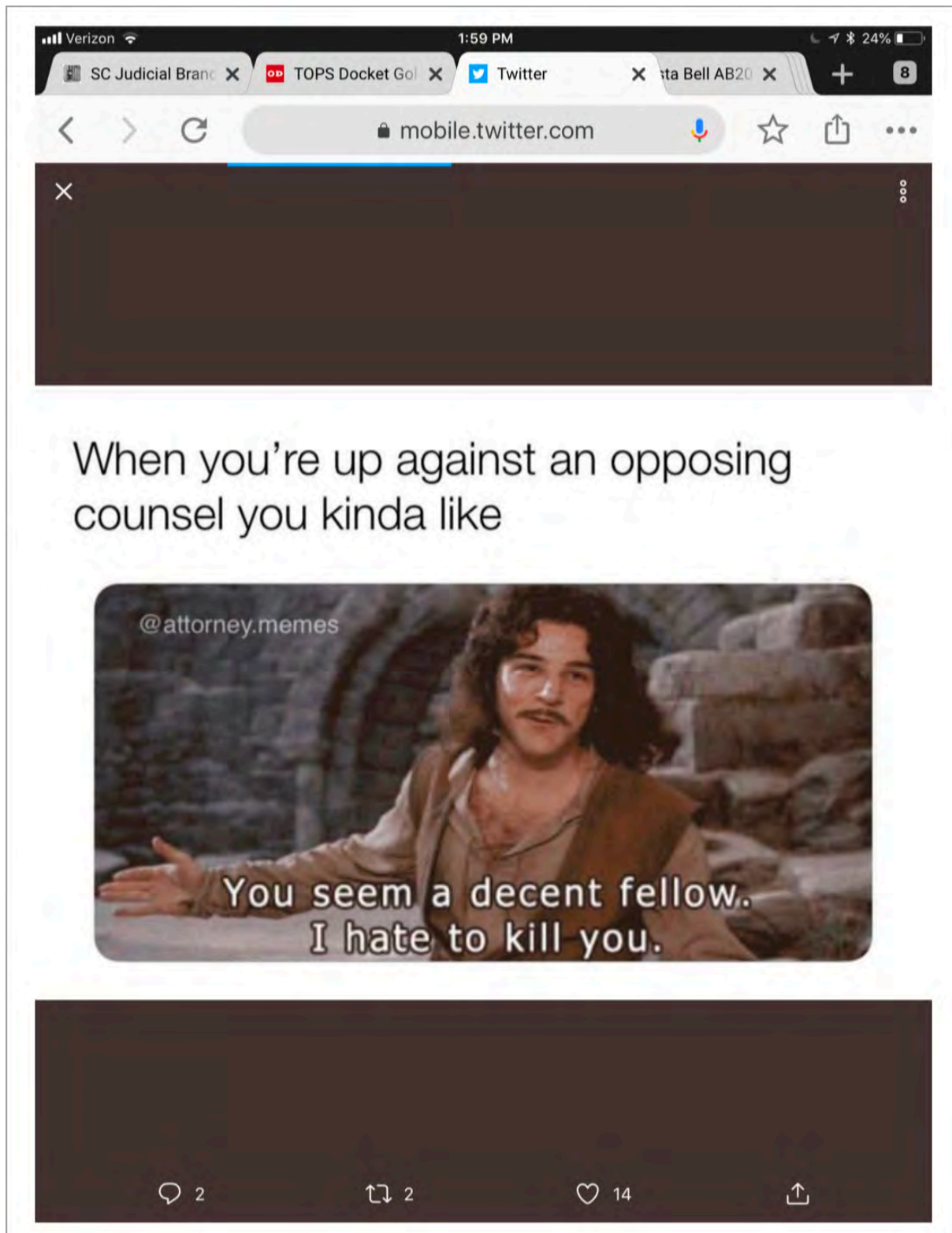


Exhibit J

Mr. Bayne has publicly disparaged the mediation process on social media. **Exhibit J.**



Mr. Bayne has posted on the Internet about killing opposing counsel. **Exhibit J.**



CONCLUSION

Mr. Bayne has publicly disparaged the legal profession. Mr. Bayne has repeatedly made false representations to the Court and used the false representations to maliciously malign Plaintiff and Plaintiff's counsel. In doing so, Mr. Bayne has collaterally maligned the reputation of two distinguished circuit court judges by fraudulently inducing them to sign his proposed orders that, as is now demonstrably evident, contain false representations. This conduct is detrimental to the administration of justice and puts our entire legal system at risk. Mr. Bayne must be sanctioned for this conduct, and each of the above-referenced orders containing materially false information must be stricken and set aside in as much as they were procured by Brett Bayne's fraud.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

Lane D. Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

Charleston, South Carolina
November 8, 2019

ATTORNEYS FOR THE PLAINTIFF

Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

From: Brett Bayne brett.bayne@mgclaw.com 
Subject: Harland Jones v. Karen Robinson
Date: June 27, 2019 at 11:54 AM
To: jnewmanj@sccourts.org, jnewmanlc@sccourts.org, jnewmansc@sccourts.org
Cc: Rogers E. Harrell, III rharrell@murphygrantland.com, Andy Delaney ADelaney@mgclaw.com, lane@akimlawfirm.com

BB

Judge Newman,

Earlier today I filed a Motion for Sanctions related to the Mediation in this case. That filed Motion is attached. As the discussion of the Motion contains communications made during the mediation, in an abundance of caution and to ensure compliance with SCADR Rule 8, I did not submit the Memorandum or Exhibits to the Public Index with the Motion. I am sending those directly to you to avoid them being publicly posted.

We are on the trial roster for the week of July 8 and are prepared to go forward with trial at that time. We have requested an expedited hearing date to have the mediation sanction issue resolved in advance of trial as one of the possible sanctions we have sought is to strike the Complaint. We can be available tomorrow or anytime next week (although, with the Fourth of July that may not be possible) if the court instructs.

Please let me know if you need anything else or have any questions.

Brett



Brett Bayne, Attorney
brett.bayne@mgclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526
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Exhibit B

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

From: Brett Bayne brett.bayne@mgclaw.com 
Subject: Harland Jones v. Karen Robinson
Date: July 3, 2019 at 2:45 PM
To: aleej@sccourts.org
Cc: aleelc@sccourts.org, aleesc@sccourts.org, Andy Delaney ADelaney@mgclaw.com, rharrell@murphygrantland.com, lane@akimlawfirm.com, PAUL GUNTER GUNTER.PAUL@richlandcountysc.gov

BB

Judge Lee,

This case is on the trial roster for Monday and Defendant is ready for trial. Paul Gunter emailed all parties on Monday requesting a status and we have not yet heard from Plaintiff about any issues with moving forward with trial so we are preparing to try this case next week.

We expect the trial will take about 1.5 days on the long end and asked Paul to block 2 days for trial to be safe. It is our expectation that there will be three witnesses called to testify (one may be by video deposition). I have attached the excerpts for the video deposition pursuant to Rule 32(a)(5). I have also included a very short pre-trial brief outlining the case for your review.

Also attached to this email is the Order of Judge Couch barring witnesses from trial and a Motion for Sanctions filed last week with the court. Judge Newman indicated the Motion for Sanctions would be heard by the trial judge prior to trial. The Motion requests a dismissal with prejudice based on discovery abuses and failure to comply with the mediation rules. The Memorandum supporting the Motion is attached. It has not been filed because it contains confidential statements from the mediation and out of an abundance of caution, we did not want to file them publicly.

We look forward to seeing you on Monday and I hope you have a good Fourth of July.

Brett



Brett Bayne, Attorney
brett.bayne@mgclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526
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25076181.pdf

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
Plaintiff,	)	
v.	)	NOTICE OF VIDEO DEPOSITION
KAREN ROBINSON,	)	EXCERPTS TO BE PLAYED AT
Defendant.	)	TRIAL

Pursuant to SCRCP Rule 32(a)(5), the undersigned counsel for Defendant hereby gives the court and all counsel notice of intent to play the publish the following excerpts from the deposition of Michelle Murray at trial:

Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

From: Brett Bayne brett.bayne@mgclaw.com
Subject: RE: Motions: Harland Jones v. Karen Robinson
Date: September 24, 2019 at 10:52 AM
To: Hood, Robert E. Law Clerk (Dana Maurizio) rhoodlc@sccourts.org, teamjefferies@googlegroups.com

BB

Dana,

I know you asked below for Plaintiff's memorandum from Mr. Jefferies but I wanted to send you and Judge Hood the Defendant's Memorandum which was served under seal in July on Judge Newman as the Admin Judge. It is not in the Public Index and I am not sure if you have a copy so I am including it here. The other two Defendant's motions for protective order and to quash have no additions other than what has been previously filed.

Please let me know if you have any other questions.

Brett



Brett Bayne, Attorney
brett.bayne@mgclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526
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Please consider the environment before printing this email.

From: Hood, Robert E. Law Clerk (Dana Maurizio) <rhoodlc@sccourts.org>
Sent: Tuesday, September 24, 2019 10:39 AM
To: teamjefferies@googlegroups.com
Cc: Brett Bayne <brett.bayne@mgclaw.com>
Subject: Motions: Harland Jones v. Karen Robinson

Mr. Jefferies,

Can you please provide the court with the missing factual details that are mentioned in PLAINTIFF'S NOTICE OF MOTION, AND MOTION FOR SANCTIONS FOR ADR ABUSE INCLUDING BREACH OF CONFIDENTIALITY? In the second paragraph, it states the violations may be "described in greater detail in subsequent memoranda and during a hearing", if you may please provide this additional information to the court before this afternoon, that would be greatly appreciated.

Thank you,

Dana

Dana E. Maurizio
Law Clerk to the
Honorable Robert E. Hood
Circuit Court Judge
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Post Office Box 192
Columbia, SC 29202-0192

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To view this discussion on the web visit <https://groups.google.com/d/msgid/teamjefferies/FC488312FA6E0045B0F50FFD46FEB092021CFAD2F4%40mail2.internalmgc.com>.



FILED Motion 2019-09-27 11:4

FILED Motion 2019\_06\_27\_11\_4  
for San...DR.pdf 4\_19.pdf

# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

BB

**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** Proposed Order Granting Sanctions - Jones v. Robinson  
**Date:** October 10, 2019 at 5:53 PM  
**To:** rhodlc@sccourts.org  
**Cc:** Andy Delaney ADeLaney@mgclaw.com, Rogers E. Harrell rharrell@murphygrantland.com, teamjefferies teamjefferies@googlegroups.com

Dana,

Attached is the order requested by Judge Hood. The email order stated "granted in full" and our request in the motion was for dismissal and costs and fees. So I included that in this order with the affidavit. However, if that was not the intent to award costs and fees, I am happy to edit the order or have that part removed.

Please let me know if you cannot open this, if you need anything else, or if you need me to e-file it.

Brett Bayne, Attorney  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
MGC Law Insurance Defense  
1320 Main Street, 10th Floor  
Columbia, SC 29201 US  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526

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To unsubscribe from this group and stop receiving emails from it, send an email to [teamjefferies+unsubscribe@googlegroups.com](mailto:teamjefferies+unsubscribe@googlegroups.com).  
To view this discussion on the web visit <https://groups.google.com/d/msgid/teamjefferies/C625D624-7FF1-429C-8CB4-2AF2842EC05A%40mgclaw.com>.



Proposed Order  
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3\_06.pdf

Brett H. Bayne  
Attorney  
O: 803-227-2281  
C: 214-405-8175

Sent from my iPad



|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
|                         | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
|                         | ) | <b>MOTION FOR SANCTIONS</b>       |
| KAREN ROBINSON,         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

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This matter comes before this court on Defendant's Motion for Sanctions. Defendant filed this Motion on June 27, 2019 and served a Memorandum in Support on Chief Administrative Judge Jocelyn Newman on the same date. Defendant's Motion sought sanctions pursuant to SCRCR Rules 11 and 37, ADR Rules 6, 8, and 10, and for "repeated discovery abuses and violations" as outlined in the Motion, Memorandum, prior Orders of this court, and exhibits presented at the hearing. A hearing in this matter was held before the undersigned on September 27, 2019. Present at the hearing were Lane Jefferies, counsel for Plaintiff and Brett Bayne and Andy Delaney, counsel for Defendant. Based on the reasons set out herein—including repeated discovery violations, mediation violations, and disobedience with court orders—Defendant's Motion is GRANTED in full. Plaintiff's Complaint is dismissed with prejudice and costs and fees sought in the Motion are awarded.

### **I. Factual Background**

This case involves an automobile on bicycle accident on Old Bluff Road in Columbia, South Carolina on June 7, 2017. Plaintiff has accused Defendant of, among other things 1) driving erratically, 2) speeding, 3) crossing the double yellow line, 4) changing lanes into oncoming traffic,

and 5) striking Plaintiff in Plaintiff's lane of travel. Defendant has asserted the accident occurred when Plaintiff, while riding a bicycle on the roadway, turned left across a double yellow line directly into the path of Defendant's vehicle causing an accident.

## II. Legal Standard

The decision of whether or not to award sanctions is generally entrusted to the discretion of the trial court. See Fields v. Regional Med. Ctr. Orangeburg, 354 S.C. 445, 581 S.E.2d 489 (Ct. App. 2003) (decision of what kind and whether to impose discovery sanctions is left to sound discretion of (Circuit Court); Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997) (noting that imposition of sanctions is generally entrusted to sound discretion of Circuit Court).

When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193 at 198, 511 S.E.2d 716 at 718 (Ct. App. 1999) (citing Rule 37(b)(2)(c), SCRCP); see also Karppi, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198, 511 S.E.2d at 719; Karppi, 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 334 S.C. at 198-99, 511 S.E.2d at

719.

### III. Plaintiff Makes Claims About Eyewitnesses

In response to the Complaint, Defendant filed an Answer with various affirmative defenses and a claim pursuant to the South Carolina Frivolous Claims Act<sup>1</sup>. In response, Plaintiff filed a “Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof” on June 5, 2018. Within this signed filing, Plaintiff claimed to have eyewitnesses to the accident who would testify and stated:

“...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.”

See June 5, 2018 Memorandum, Page 5<sup>2</sup>

In response to Plaintiff's claims, Defendant served “Defendant's First Supplemental Interrogatories and Requests for Production” on Plaintiff on August 14, 2018.<sup>3</sup> As part of these discovery requests, Defendant requested information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant asked: “State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of ‘Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.’ For reference, you specifically asserted to the Court:

‘...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that

<sup>1</sup> Defendant's Answer filed May 22, 2018.

<sup>2</sup> As will be outlined within this Order, Plaintiff later admitted in discovery responses there actually were no eyewitnesses as Plaintiff claimed in the June 5, 2018 filing.

<sup>3</sup> Defendant's Tab 5 from September 27, 2019 Hearing

Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.”

Plaintiff did not respond to the supplemental discovery requests which specifically sought the identify of the alleged eye witnesses identified in the June 5, 2018 Memorandum. As a result, Defendant filed a Motion to Compel various outstanding discovery requests. On September 28, 2018, Plaintiff served responses to the first set of discovery but did not name any eye witnesses as alleged in the June 5, 2018 Memorandum<sup>4</sup>. While Plaintiff responded to the first set of discovery requests, Plaintiff still did not respond to the supplemental requests for the alleged eyewitnesses.

#### **IV. The Judge Benjamin Order and Rule to Show Cause**

All outstanding discovery issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, Defendant’s Motion to Compel was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Specifically, Judge Benjamin stated “Motion to compel-granted. Remaining records and all supplemental responses should be received in 20 days.”<sup>5</sup>

Despite being given a 20 day deadline to respond to discovery and identify the alleged eyewitnesses from the June 5, 2018 Memorandum, Plaintiff failed to comply with Judge Benjamin’s Order and failed to provide discovery responses. On October 23, 2018, Defendant was forced to file a Motion for Rule to Show Cause. The Rule to Show Cause was granted through written Order of Judge Benjamin on October 30, 2018. After issuance of the Rule by Judge Benjamin, Plaintiff finally responded to discovery on November 7, 2018 and admitted within those responses that he did not have *any witnesses* he had previously represented to the Court on June 5,

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<sup>4</sup> Defendant’s Tab 6 from September 27, 2019 Hearing

<sup>5</sup> See Judge Benjamin’s Form 4 Order filed October 3, 2018.

2018<sup>6</sup>. Specifically, Plaintiff gave only a one word response to the discovery requests seeking the identify of the alleged eyewitnesses from the June 5, 2018 Memorandum—“None.” Despite claiming the existence of eyewitnesses, refusing to provide discovery responses, and causing Defendant to file a Motion to Compel and a Rule to Show Cause, Plaintiff ultimately never identified the claimed eyewitnesses.

#### **V. The Ongoing Discovery Violations**

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named “Alex” who Plaintiff claimed witnessed the motor vehicle accident that is the subject of this lawsuit. As outlined in Defendant’s March 7, 2019 Motion to Compel and Judge Couch’s July 3, 2019 Order, Plaintiff admitted he was aware of “Alex” from the time immediately following the accident but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.” Additionally, Plaintiff consistently referenced another individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this unidentified individual is his wife’s cousin. Plaintiff admitted he had spoken to this individual and this individual came to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff sought to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

As a result of these new disclosures by Plaintiff during his deposition on March 6, 2019—

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<sup>6</sup> Defendant’s Tab 10 from September 27, 2019 Hearing.

which directly contradicted the November 7, 2018 discovery responses—Defendant was required to file a second Motion to Compel. The second Motion to Compel, filed on March 7, 2019, outlined in detail the prior discovery abuses from 2018 and the prior non-compliance with Judge Benjamin’s Order and Rule to Show Cause. The March 7, 2019 Motion to Compel included a request for sanctions against Plaintiff for the late disclosures and prior discovery abuses. Defendant’s March 7, 2019 Motion quoted prior filings by Plaintiff where Plaintiff agreed that significant sanctions were appropriate for discovery abuses. For example, Plaintiff previously stated the following related to discovery:

“The intent of South Carolina’s discovery rules...is to provide information, not to hide information. Indeed, the ‘entire thrust of the discovery rules involves full and fair disclosure.’ Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E.2d 213, 217 (Ct. App. 1997).”

“...failure to fully answer thwart [sic] the purpose of discovery—they prolong litigation and unnecessarily increase costs to the parties and the Court. They are simply another example of ‘Rambo style obstructionist discovery tactics...[that] if not stopped dead in their tracks by appropriate sanctions, [will] have a virus like potential...’ in this case and only serve ‘...to corrupt the fairness of our civil justice system.’ St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 517 (N.D. Iowa 2000).”

After filing the March 7, 2019 Motion to Compel, Defendant attempted to continue discovery related to the alleged eyewitnesses and served a Second and Third Set of Requests for Admission. On April 4, 2019 Plaintiff answered the Second Set of Requests for Admission. Plaintiff provided the following answer:

“After conducting written discovery and depositions, it appears that Defendant was no longer traveling in the lane of oncoming traffic when she wrongfully struck Plaintiff. Nevertheless, it was Defendant’s illegal passing maneuver, in which she unlawfully travelled in the lane of oncoming traffic, which caused her to strike Plaintiff immediately after she returned to the westbound lane of travel.”<sup>7</sup>

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<sup>7</sup> Defendant’s Tab 12 from September 27, 2019 Hearing

This answer was given following the March 6, 2019 deposition in which Plaintiff admitted he did not witness the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged eyewitnesses from the June 5, 2018 Memorandum. This answer to the Second Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

As a result of this response, Defendant served the Third Requests for Admission on Plaintiff. Plaintiff answered the Third Requests for Admission on April 26, 2019<sup>8</sup>. Defendant asked only one question:

“Admit that there is no deposition testimony, witness, or any other material to support the allegation asserted in Plaintiff’s Responses to Defendant’s Second Set of Requests for Admission that state ‘it was Defendant’s illegal passing maneuver, in which she was unlawfully traveling in the lane of oncoming traffic, which caused her strike Plaintiff immediately after she returned to the westbound lane of travel.’”

Plaintiff responded only with “Denied.” This answer was given despite Plaintiff’s March 6, 2019 testimony where he admitted he did not see the accident. Further, at this time, Plaintiff still had never disclosed any of the alleged eyewitnesses from the June 5, 2018 Memorandum. This answer to the Third Set of Interrogatories clearly lacked any good faith basis in fact at the time it was made.

## **VI. The Judge Couch Ruling and Order**

Judge Couch heard Defendant’s Motion for Summary Judgment and Defendant’s second Motion to Compel on March 7, 2019. Judge Couch heard the Motion for Summary Judgment first. Plaintiff relied upon the unidentified and unnamed eyewitness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to Compel. Following a hearing on the second Motion to Compel, Judge Couch discussed the

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<sup>8</sup> Defendant’s Tab 13 from September 27, 2019 Hearing.

possible penalties and sanctions he was considering for Plaintiff. Specifically, the following exchanges occurred between Judge Couch and counsel:

2       MR. JEFFERIES: Your Honor, I don't know that we can  
3       find it. If Your Honor wants to give us 30 days and say  
4       that's all you've got, we're comfortable with that.

16       THE COURT: Well, I mean, what I would do is I would  
17       bar them from presenting the witness to give you time to  
18       be prepared if they don't produce the person by a certain  
19       point in time.

20       MR. BAYNE: Certainly, Judge.

21       MR. JEFFERIES: And we agree with that, Your Honor.  
22       We're perfectly comfortable not being able to use that  
23       witness.

3       THE COURT: Okay. If they don't have it by June 1st  
4       if they don't have it, that witness will be prevented from  
5       testifying.

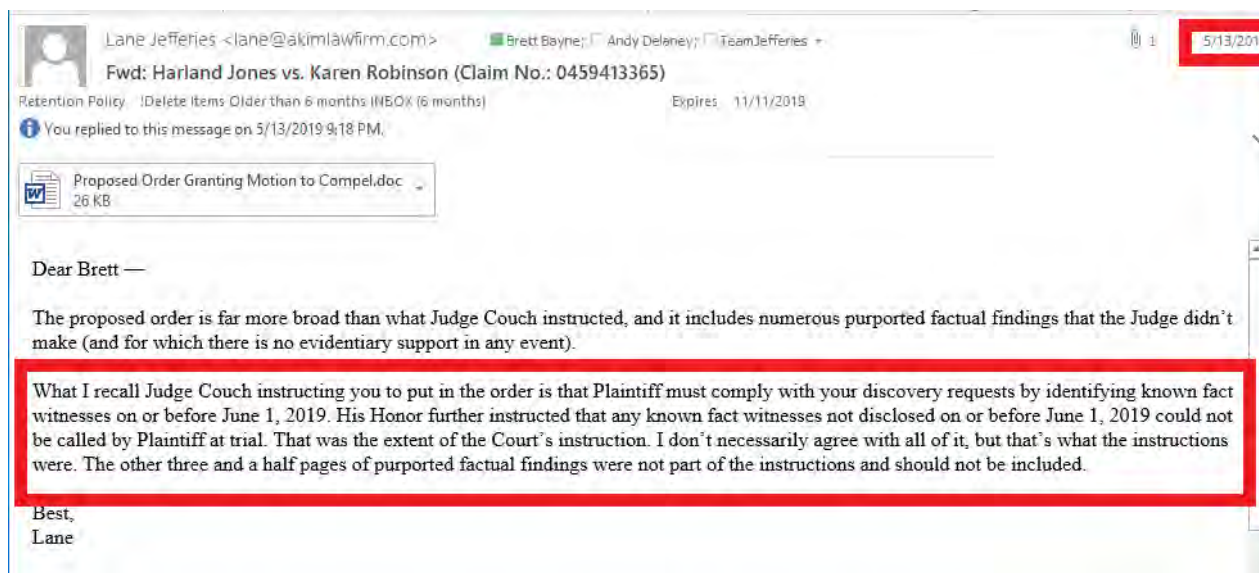
6       MR. BAYNE: That will work, Judge.

7       MR. JEFFERIES: Thank you, Your Honor.

Plaintiff's counsel not only was clear about the June 1 deadline but he even proposed a 30 day time limit and then agreed to the June 1 deadline. Plaintiff's counsel not only never objected to the June 1 deadline—he consented to it. He further acknowledged to Judge Couch that if he did not name witness he was “perfectly comfortable not being able to use that witness.” Plaintiff's



agreement with the June 1 deadline ordered by this court didn't end there, Plaintiff's counsel then re-affirmed his understanding of the June 1 deadline in a May 13, 2019 email to counsel:



Judge Couch issued this bench ruling on May 7, 2019 and instructed Defendant's counsel to prepare a written order. As discussed herein, Judge Couch's formal written Order was not filed until July 3, 2019 but there can be no doubt Plaintiff was both aware of the June 1, 2019 deadline and that Plaintiff agreed to the June 1, 2019 deadline.

Nevertheless, Plaintiff again refused to identify the alleged eyewitnesses from the June 5, 2018 Memorandum and failed to disclose the alleged witnesses (and any other unnamed witnesses) as ordered by Judge Couch by June 1, 2019.

When the formal Order was filed by Judge Couch on July 3, 2019, Plaintiff filed a Rule 59 motion for reconsideration within a matter of hours. Plaintiff raised three bases for reconsideration of Judge Couch's May 7 ruling and July 3 Order: 1) the Order was "impossible" to comply with because it purported to "compel plaintiff to perform actions in the past"; 2) the Order barring witnesses invades the purview of the trial judge; 3) the Order is "not based on any evidence". Essentially, Plaintiff has taken the position that he was not required to follow Judge Couch's ruling

from the bench until it was reduced to writing. Plaintiff's position is that no judge in the State of South Carolina can order any party to do anything unless it is in writing. It should also be noted that while Plaintiff's counsel claimed ignorance and an impossibility of compliance with Judge Couch's written Order—ignoring the clear oral Order—Plaintiff still refused to comply with discovery requests, Judge Benjamin's October 2018 Order and Rule, and Judge Couch's May 7 Ruling and July 3 Order.

## **VII. The Mediation**

In the middle of Defendant's repeated and ongoing attempts to acquire discovery, and Plaintiff's continued willful failure to comply with orders of this court, the parties met for a mediation on June 21, 2019.

Plaintiff's counsel and Plaintiff's counsel's firm has history of demanding and compelling strict compliance with SCADR Rule 6 by defendants. Plaintiff's firm routinely demands each and every single person—adjuster, lead attorney, individual party, etc.—appear in person at the mediation and refuses to waive or ease the requirements<sup>9</sup>. Despite Plaintiff's own counsel—Lane Jefferies—own letter admitting he was required by rule to be present (Exhibit A above), Mr. Jefferies did not appear at the mediation.

Rule 6(b)(3) requires the attendance of “[t]he party’s counsel of record.” Plaintiff's lead counsel of record is Lane Jefferies (the lead counsel who has appeared at every hearing, nearly every deposition, and who has authored nearly every filing in this case), Roy Willey (listed counsel who has appeared at one deposition), and Eric Poulin (who has appeared on every filing but has

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<sup>9</sup> See, Exhibit A and B to Defendant's Memorandum in Support of Sanctions. Exhibit A is a letter from Plaintiff's lead counsel Lane Jefferies from this specific case about the mediation acknowledging his personal physical presence was required by Rule. Exhibit B is a collection of letters, emails, and filings from Mr. Jefferies and other members of Plaintiff's counsel's firm related to mediation rules and requirements and extolling the absolute virtue of requiring attendance in person of the parties required by SCADR Rule 6. There can be no argument from Mr. Jefferies that he was ignorant of Rule 6(b)(3)'s physical attendance requirements.

not appeared at any deposition or hearing). Any of these three would satisfy the Rule 6(b)(3) requirements. And it appears from Lane Jefferies's letter at Exhibit A, that Mr. Jefferies was well aware of this rule and further Mr. Jefferies interpreted the rule to require his own presence.

Instead, Plaintiff was represented at the mediation by Gus A. Anastopoulo. Mr. Anastopoulo could provide no explanation for why Plaintiff's counsel of record was not present. Mr. Anastopoulo is a 2018 law graduate who was licensed on November 27, 2018<sup>10</sup>. Mr. Anastopoulo has not appeared on a single pleading in this case, has not filed a Notice of Appearance, has not been on any email or correspondence in this case, has not been present at any deposition, and has not been present at any hearing. Defendant's counsel asserted his belief based on the course of the mediation that Mr. Anastopoulo had not met with—or even spoken to—Plaintiff before the day of the mediation. Simply put, Mr. Anastopoulo is not a counsel of record for Plaintiff<sup>11</sup>.

To make matters worse, Mr. Anastopoulo appeared to lack any functional knowledge of the case, the facts, or the status of the prior hearings, rulings (for example, that witnesses were barred by Judge Couch), and/or Orders in this case<sup>12</sup>. As mediations typically proceed, the mediator presented a brief opening to each party then deferred to Mr. Anastopoulo to present the Plaintiff's opening statement. Mr. Anastopoulo got several key facts and details wrong about the

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<sup>10</sup> While Mr. Anastopoulo's level of experience would not typically be relevant, it gives context to what followed at mediation in terms of the opening statement, the lack of knowledge about the case and prior rulings, and the demands.

<sup>11</sup> This finding is not intended to conclude that merely failing to be listed on a pleading means that an attorney is not a counsel of record pursuant to Rule 6(b)(3). Indeed, plenty of attorneys appear for mediation and conduct successful and proper mediations despite not being listed on a pleading. But, rather, it is the totality of the circumstances, conduct, and the numerous issues with Mr. Anastopoulo's appearance at the mediation which necessitate the determination that, while Mr. Anastopoulo is in the same firm as Mr. Jefferies, he was not a counsel of record for Plaintiff.

<sup>12</sup> Typically, mediation discussions and disclosures are confidential. However, there are limited exceptions to confidentiality pursuant to ADR Rule 8(c). Rule 8(c)(5) and (6) provide for disclosure of various mediation matters when it is 1) offered to report, prove, or disprove professional misconduct occurring during the mediation and/or 2) in a report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules.

case. He asserted medical damages that were inaccurate and that have never been produced in discovery. Later, he asserted that there were “several eyewitnesses to the accident who would be called to testify”—something that has been expressly barred by Judge Couch but that Mr. Anastopoulo was completely unaware of. However, the most egregious part of the mediation occurred during Mr. Anastopoulo’s opening wherein he openly admitted that Plaintiff had a “1 in 10 chance” of prevailing at trial but that “1 chance out of 10 is going to be costly to Defendant so you should settle.” Mr. Anastopoulo openly and candidly admitted the lawsuit filed by Plaintiff had just a 10% chance of success—an open and brazen violation of SCRCR Rule 11<sup>13</sup>. Shortly after describing Plaintiff’s case as a veritable “snowball’s chance”, Mr. Anastopoulo revised his prediction to a “1 in 6” chance compared his case to “a game of Russian Roulette” wherein Defendant “may win 5 out of 6 times but that one time there’s a bullet in the chamber and we [Plaintiff] win.” After this appalling opening statement, the parties broke to separate rooms and the mediator started with Plaintiff. The mediator returned shortly with a demand of \$500,000. Mr. Anastopoulo, having just moments ago stated his case had a 1 in 10 chance of success and having openly compared Plaintiff’s case to a game of Russian Roulette sent a demand of \$500,000—20 times the insurance policy limits and, when the demand was rejected, left the mediation<sup>14</sup>.

Defendant’s counsel Brett Bayne attempted to resolve these mediation issues with

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<sup>13</sup> If a claim being made has, at best, a 10% chance of success it is the undersigned’s opinion this claim cannot possibly meet the requirements of Rule 11(a)—that “to the best of [the attorney’s] knowledge, information and belief there is good ground to support it.” This simply is not the good ground standard applied to a Complaint filed in a case—that there is a 10% chance of success and a 90% chance of failure.

<sup>14</sup> Plaintiff did not file a counter memorandum or memorandum in opposition to Defendant’s Motion for Sanctions outlining the mediation behavior. Plaintiff similarly did not file any affidavits related to the mediation until *after* the September 27, 2019 hearing. At the hearing, Plaintiff did hand up a copy of an affidavit signed by Gus Anastopoulo on the same day as the hearing proceeded—September 27, 2019. Accordingly, I have reviewed Mr. Gus Anastopoulo’s affidavit which was handed up at the hearing for the first time and filed after the hearing, Rule 6(d) requires opposing affidavits to be served “not later than two days before the hearing.” The undersigned requested any supporting materials, which would include affidavits, from Plaintiff by email on September 24, 2019 and September 26, 2019. Plaintiff did not supply any evidence, materials, or affidavits in response to the undersigned’s emails.

Plaintiff's actual counsel of record—Lane Jefferies—via email on June 21, 2019<sup>15</sup>. Mr. Jefferies failed to respond to the email. The undersigned notes Mr. Jefferies' current email signature bars defendant's attorneys and other opposing counsel from contacting him in any manner other than by telephone between 4:00 PM and 4:30 PM and allocates only five (5) minutes to each opposing attorney. Specifically, the email signature states<sup>16</sup>:

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**Lane D. Jefferies**

**Division Chair and Trial Lawyer**

**Commercial and Construction Liability Division**

Anastopoulos Law Firm, LLC

32 Ann Street | Charleston, SC 29403

Tel: 843-614-8888\* | Fax: 843-494-5536

[www.akimlawfirm.com](http://www.akimlawfirm.com) | [TeamJefferies@GoogleGroups.com](mailto:TeamJefferies@GoogleGroups.com)

Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville | Myrtle Beach  
| Raleigh, NC

By Appointment Only: Wilmington, NC

\*There are two ways for opposing attorneys to reach me by phone:

(1) **Call my cell any day between 4:00 p.m. and 4:30 p.m.** If I am not already on the phone with another opposing counsel, I will answer and spend up to five minutes on the phone with you. At the end of our five-minute talk, I may instruct my staff to schedule a longer meeting with you if you satisfy the criteria set forth in #2 below. Please note that I spend just five minutes on each call, so if I don't answer when you call, wait a few minutes and try again. My cell is 843.814.7719. Call only between 4:00 p.m. and 4:30 p.m., as I spend the rest of my day focused solely on achieving my clients' goals.

OR,

(2) **Schedule a longer meeting.** Begin by providing my office with a *specific* agenda of items you would like to discuss ([email TeamJefferies@GoogleGroups.com](mailto:TeamJefferies@GoogleGroups.com)). Be sure to identify the tangible outcomes to be achieved as to each item, and persuasively describe how these outcomes, if achieved, would promote the greatest recovery for my client in the least amount of time and for the least expense. If you believe that a statute or rule of procedure requires us to speak by phone, then please specifically identify it. If your email persuades my staff that using my time to meet with you is legally required or is likely to be a worthy investment *from the perspective of my client*, then they will schedule such a meeting (probably a meeting by phone initially). On the other hand, if you do not persuade my staff that scheduling a meeting is consistent with my promise to my clients not to try to do 1000 things at once that won't contribute much, if anything, to the results we are trying to achieve, then no meeting will be scheduled (though you will remain free to call any afternoon as described in #1 above). Fair warning: generalized requests to "discuss the case" or "talk about the status" or the like will be considered conclusive evidence of a request to waste time, and no meeting will be scheduled.

We have instituted the above procedure in order to accommodate your desire to speak with me by phone in a manner that does not interfere with my ethical obligation to devote my time and attention to the pursuit of justice for my clients as quickly and economically as possible.

Naturally, the above procedure does not apply to Judges, judicial staff, clerks of court, my wife, or my children — they are all welcome to call or text me anytime.

<sup>15</sup> See Exhibit C to Defendant's Memorandum in Support of Sanctions

<sup>16</sup> This email was sent to the undersigned on September 24, 2019 at 4:16 PM.

During the sanctions hearing, Defendant's counsel candidly admitted he did not call Mr. Jefferies between 4:00 and 4:30 PM to discuss the mediation but, rather, believed the email sent contemporaneous to the mediation was sufficient. The undersigned agrees. Contrary to Mr. Jefferies email signature, opposing counsel was not required to contact Mr. Jefferies only between 4:00 and 4:30 PM for a period of time not to exceed five (5) minutes.

Further, Mr. Jefferies provided no satisfactory explanation for his absence at mediation nor did he provided any satisfactory explanation for the actions of Mr. Anastopoulo. During the September 27, 2019 hearing, Mr. Jefferies asserted that Mr. Anastopoulo was "acting at his direction" and that "Mr. Anastopoulo appeared in the case by appearing at the mediation."

SCADR Rule 10 and SCRCP Rule 37 provide the framework for this Court to determine the appropriate sanction for Plaintiff's counsel's actions related to the mediation. SCADR Rule 10(b) states:

"If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, **including, but not limited to**, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP."

SCRCP Rule 37(b) provides several remedies authorized by Rule 10(b) including: "[a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party." SCRCP Rule 37(b)(2)(C).

### **VIII. The Judge Lee Hearing**

Following the mediation, this matter was scheduled for trial in Richland County the week of July 8, 2019. Plaintiff argued the trial could not go forward because of the pending Rule 59 for



Judge Couch's July 3 Order. Judge Lee conducted a full pre-trial hearing to evaluate the claims and issues prior to ruling on whether the case could go forward or had to be continued until Judge Couch could issue a rule on the Rule 59. However, of particular concern are statements made about the discovery abuses and Judge Couch's May 7 Ruling and July 3 Order. Judge Lee asked:

15           And I wasn't at the hearing. I don't know how  
 16       certain, how forceful, how convinced Judge Couch was that  
 17       this was what his ruling was and that's what he wanted it  
 18       to be. What part -- what portion of that oral argument or  
 19       oral ruling did you disagree with? I mean, was -- I --  
 20       I'm just trying to understand that.  
 21           MR. JEFFRIES: Several portions, Your Honor, and --  
 22       and this was, of course, laid out in our Rule 59 memo.

In response to this question by Judge Lee about whether Plaintiff disagreed with Judge Couch's ruling, Plaintiff's counsel answered

8           The second piece is barring every witness who wasn't  
 9       disclosed by the arbitrary deadline of June 1 from trial.  
 10       At that point trial hadn't even been set as I recall. I  
 11       could be wrong, but I'm 99 percent sure trial was not set  
 12       as of June 1. If I -- if I'm wrong, please correct me.  
 13           In any event, barring all those witnesses, I didn't  
 14       think 30 day -- well, No. 1, I didn't think barring was  
 15       proper at all. I didn't think 30 days was a sufficient  
 16       time frame or to the June 1 deadline was a sufficient time  
 17       frame.

As is evident, Plaintiff took the position with Judge Lee on July 8 that he opposed the June 1 deadline and that he opposed the remedy of exclusion of witnesses. However, as already discussed

herein, during the Judge Couch hearing on May 7, 2019, Plaintiff actually 1) proposed the exclusion of witnesses with a time limitation and 2) agreed with Judge Couch at the hearing on this decision:

2       MR. JEFFERIES: Your Honor, I don't know that we can  
3       find it. If Your Honor wants to give us 30 days and say  
4       that's all you've got, we're comfortable with that.

16       THE COURT: Well, I mean, what I would do is I would  
17       bar them from presenting the witness to give you time to  
18       be prepared if they don't produce the person by a certain  
19       point in time.

20       MR. BAYNE: Certainly, Judge.

21       MR. JEFFERIES: And we agree with that, Your Honor.  
22       We're perfectly comfortable not being able to use that  
23       witness.

3       THE COURT: Okay. If they don't have it by June 1st  
4       if they don't have it, that witness will be prevented from  
5       testifying.

6       MR. BAYNE: That will work, Judge.

7       MR. JEFFERIES: Thank you, Your Honor.

The representations made by Plaintiff's counsel to Judge Lee on July 8, 2019 regarding the exclusion of witnesses were not consistent with Plaintiff's agreement and representations made to Judge Couch on May 7, 2019.



## **IX. The Judge Couch Rule 59 Order**

Following Judge Couch's July 3, 2019 Order, Plaintiff filed a Rule 59 Motion to reconsider it alter the July 3 Order and May 7 Ruling. This is the same Motion that was pending during the July 8, 2019 Judge Lee hearing. Judge Couch issued an order denying Plaintiff's Rule 59 Motion on July 24, 2019. Judge Couch made a number of specific findings related to the multitude of discovery abuses, reiterated his sanction of exclusion of all unnamed witnesses, and determined additional sanctions may be awarded at a later date.

First, Judge Couch noted that the motions before him were "...the second time Defendant has had to file a Motion to Compel over the same witness issue" and noted "[o]n October 3, 2018 Judge Benjamin granted Defendant's first Motion to Compel this information. Judge Benjamin then issued a Rule to Show Cause to Plaintiff on October 30, 2018, over non-compliance with October 3rd Order. Following the issuance of the Rule to Show Cause, Plaintiff submitted discovery responses to Defendant on November 7, 2018, and stated there were no witnesses to disclose. Plaintiff then disclosed the purported existence of these same witnesses at his deposition on March 6, 2019—which caused this second Motion to Compel to be filed."

Next, Judge Couch reiterated his ruling based on the submissions, record, and facts of the case: "[b]ased on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, I determined there was just cause for granting the Motion. I issued a ruling from the bench on May 7, 2019 ordering Plaintiff to identify any unnamed the witnesses by June 1, 2019. I further ordered that if the witnesses were not identified by June 1, 2019, they would be barred from trial." Judge Couch then noted "Plaintiff agreed with both the June 1, 2019 deadline and to the exclusion of unnamed witnesses as a penalty for failure to meet the deadline." This is both consistent with the Judge Couch hearing transcript and inconsistent with Plaintiff's statements

made to Judge Lee on July 8, 2019.

Judge Couch then addressed Plaintiff's "impossibility" argument—that Plaintiff could not and did not have to comply with Judge Couch's May 7 Order because it was not reduced to writing. Plaintiff made the same argument before the undersigned, taking the position that Plaintiff was not required to follow orders or rulings of this court if not reduced to writing. Judge Couch stated: "Plaintiff now takes the position that he was not required to comply with my May 7 ruling to produce witnesses by June 1, 2019 until he received a filed written order. It is clear from the record that Plaintiff then failed to identify any previously unnamed witnesses by the June 1, 2019 deadline. I note with particularity that Plaintiff took no issue with the June 1, 2019 deadline and has not disputed that he fully understood the nature of the deadline. For example, during the May 7, 2019 hearing, Plaintiff's counsel acknowledges the deadline...Plaintiff's counsel was fully aware of the June 1, 2019 deadline both at the May 7 hearing and on May 13, 2019...Plaintiff had approximately 16 months to identify witnesses and failed to do so. Plaintiff was given several more weeks to name witnesses at the May 7, 2019 hearing and failed to do so. Plaintiff then had another month after the June 1 deadline where he could have named witnesses and failed to do so. Based on representations of the parties, Plaintiff still—as of this Order—has failed to comply with the South Carolina Rules of Civil Procedure, Judge Benjamin's two October 2018 Orders, this court's May 7 ruling, and this court's July 3 Order."

Following a recitation of the case, Judge Couch re-issued his ruling as follows:

**"IT IS HEREBY ORDERED THAT** compliance with my prior ruling and Order was required by June 1, 2019, and

**IT IS FURTHER ORDERED THAT** the record reflects Plaintiff agreed to the June 1, 2019 deadline and agreed to the discovery penalty of exclusion of unnamed witnesses for failure

to comply with the June 1, 2019 deadline, and

**IT IS FURTHER ORDERED THAT** Plaintiff has failed to fully respond to Defendant's discovery requests regarding the identification, contact information, and summary of testimony of any unnamed factual witnesses by June 1, 2019, and

**IT IS FURTHER ORDERED THAT** Plaintiff has failed to comply with my May 7, 2019 ruling and my July 3, 2019 written Order, and

**IT IS FURTHER ORDERED THAT** the failure of Plaintiff to comply with my May 7, 2019 ruling and July 3, 2019 written Order results in Plaintiff's inability to use any witness that was unidentified as of June 1, 2019 at trial—as further agreed to by Plaintiff at the May 7 hearing, and

**IT IS FURTHER ORDERED THAT**, as a result of Plaintiff's failure to comply with my ruling and Order, Plaintiff may be sanctioned in any manner accordance with South Carolina Rules of Civil Procedure 37. The determination of sanctions, if any, as set out herein shall be referred to the Chief Administrative Judge for Richland County for a determination of sanctions, if any, based on this Order and for a determination on Defendant's pending Motion for Sanctions filed in Richland County."

Plaintiff did not appeal this Order and it is now final, including the findings therein.

#### **X. The Judge Manning Hearing**

Finally, this matter came before Judge Casey Manning for trial on August 12, 2019. Prior to the trial beginning, Judge Manning conducted pretrial hearings on motions in limine and other pretrial matters. A review of the hearing transcript reveals that Judge Manning deferred hearing and ruling on this underlying Motion for Sanctions until the conclusion of the trial. The trial ended in a mistrial and Judge Manning ultimately did not hear the Motion for Sanctions or rule on the

same. However, Judge Manning did conduct a pretrial conference related to Defendant's Motion in Limine to exclude witnesses based on the Judge Couch May 7 Ruling and July 3 Order. Plaintiff appeared for trial and purported to identify new witnesses not named before June 1, 2019 and attempted to call those witnesses to testify. Judge Manning reviewed Judge Couch's July 3 Order and questioned Plaintiff about his compliance with the June 1, 2019 deadline to name witnesses.

First, Judge Manning sought clarification from Plaintiff's counsel with a very simple question:

|    |                                                      |
|----|------------------------------------------------------|
| 21 | THE COURT: I -- I'm going to ask you this, did you   |
| 22 | comply with the terms of Judge Couch's order?        |
| 23 | MR. JEFFERIES: Yes, Your Honor --                    |
| 24 | THE COURT: Did you fail to comply? Look, I can read  |
| 25 | this myself. I'm asking for a straight answer on the |

|   |                                                          |
|---|----------------------------------------------------------|
| 1 | record, did you -- did you comply or not? "Yes" or "no"? |
| 2 | MR. JEFFERIES: Yes, Your Honor.                          |

This court has painstakingly spelled out above how Plaintiff did not comply with the terms of Judge Couch's May 7 Ruling and July 3 Order. That Order, referenced herein, required disclosure of all unnamed witnesses by June 1, 2019 or they would be barred from trial. Plaintiff, unquestionably, did not name various witnesses by June 1, 2019. Despite this unquestioned fact of this case—that the witnesses, in fact, were not disclosed by June 1, 2019—when asked specifically and directly if he had complied with the Order “did you comply or not? ‘Yes’ or ‘No’?”, Plaintiff's counsel stated “Yes, Your Honor.”

Later in the same pretrial hearing, Judge Manning probed further into the issue with

Plaintiff counsel:

4 THE COURT: Well, did Judge Couch exclude any  
5 additional witnesses after a certain date? Yes or no?  
6 MR. JEFFERIES: Yes, he did.  
7 THE COURT: Well, they're excluded then, aren't they?  
8 MR. JEFFERIES: He --  
9 THE COURT: Wait. Let me finish. He said they were  
10 to be provided -- they were not disclosed prior to --  
11 prior to Judge Couch's order; is that true?  
12 MR. JEFFERIES: If I may correct what Mr. Bayne said.  
13 First off, we did not refuse to identify them. We  
14 identified them on July --  
15 THE COURT: Did you meet the deadline imposed by  
16 Judge Couch? Yes or no?  
17 MR. JEFFERIES: Yes, Your Honor.

Judge Manning again establishes Judge Couch's May 7 Ruling and July 3 Order bars witnesses after June 1, 2019. Plaintiff's counsel acknowledges this Order. Judge Manning again asks "[d]id you meet the deadline imposed by Judge Couch? Yes or No?" And again, despite clear evidence to the contrary, Plaintiff's counsel states "Yes" and asserts compliance with the Order.

Finally, Judge Manning inquired one final time about compliance with the Ruling and Order:

14 But my question to you is simple, did you disclose  
15 these names before Judge Couch's order or not? Yes or no?  
16 MR. JEFFERIES: Yes, Your Honor. We disclosed them  
17 on -- pardon me --  
18 THE COURT: All right. Stop --

Again, Plaintiff's counsel asserts he did comply with the Order and did disclose the witnesses by June 1, 2019—a fact which is not true.

## **XI. Sanctions**

Defendant has sought full sanctions for Plaintiff's repeated discovery abuses, repeated failures to comply with Rulings and Orders of this court, and ADR violations. This Court agrees that, based on the totality of the circumstances, Plaintiff's repeated discovery violations, Plaintiff's repeated disobedience with orders and rulings of this court, Plaintiff's lack of candor related to the discovery issues with numerous judges, and Plaintiff's counsel of record failing to appear at mediation, sanctions pursuant to Rule 37 for violations of SCADR Rules, SCRCP Rule 11, and SCRCP Discovery Rules are warranted.

More specifically, Defendant has spent more than a year chasing eyewitnesses Plaintiff told this court existed in June 2018 that now, appear, to not exist. Despite two Orders from Judge Benjamin, a Ruling from Judge Couch, an Order from Judge Couch, and pre-trial and trial rulings by Judge Manning, Plaintiff continues to violate discovery rules and willfully ignore the prior orders of this court. Plaintiff has acted in bad faith, with willful disobedience of numerous court orders and rulings, and with gross indifference toward the court and counsel through the candor issues highlighted herein.

At this point, given the repeated discovery abuses and violations as found by Judge Benjamin and Judge Couch, the candor issues exhibits with Judge Lee and Judge Manning, and now given the mediation abuses set out herein, the only proper remedy this court can fashion is to strike the Complaint, with prejudice, pursuant to SCADR Rule 10(b) and 37(b)(2)(C). With this decision, this Court grants the entirety of Defendant's attorney fees and costs incurred to date.

Accordingly, Plaintiff's Complaint is hereby dismissed with prejudice. Plaintiff's response

to Defendant's counterclaim is not dismissed and this matter shall proceed to trial on Defendant's counterclaims.

Plaintiff's counsel is ordered to pay Defendant's attorneys costs and fees incurred to date. Based on the affidavit of Defendant's counsel submitted, costs and fees in the amount of \$38,650.45 are hereby awarded.

IT IS SO ORDERED!

*(Judge's Electronic Signature Page to Follow)*







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@bretthbayne

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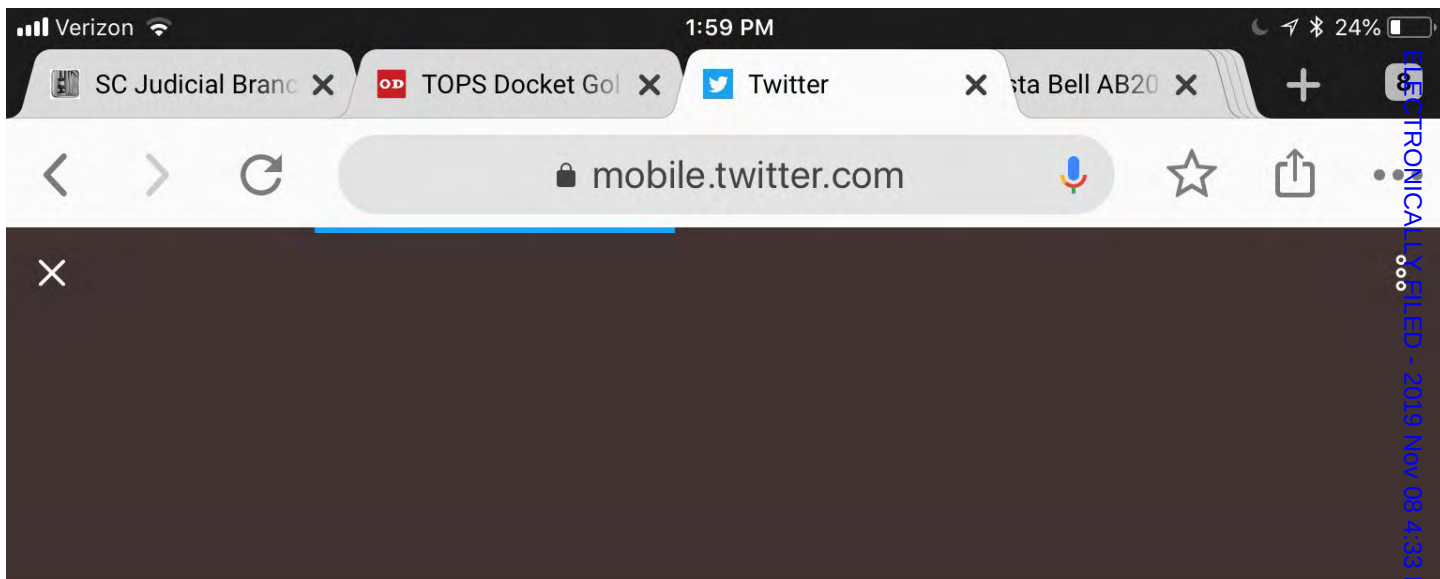


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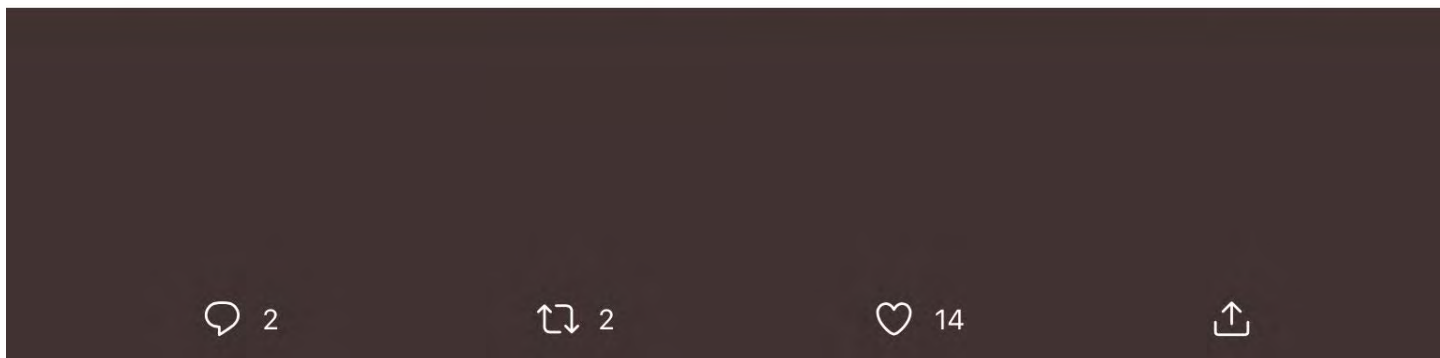
Defense Attorney: Why don't you  
give me a demand and we'll see if  
we can get the case resolved.  
Every Plaintiff's Attorney:







When you're up against an opposing counsel you kinda like



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**UofSC School of Law** @UofSCLaw · Mar 19

2011 #UofSCLaw alumnus, attorney @MGCLaw, and @USCLawMockTrial coach @bretthbayne has been named 2019 Lawyer of the Year by @SCLawyersWeekly. Congratulations, Brett! 🎉



6 14



**Brett Bayne** @bretthbayne · Mar 15

I'm rarely speechless. Tonight I was. Honored to be named @SCLawyersWeekly Lawyer of the Year. It speaks to all those who've mentored and encouraged me throughout my career and to Laura who hasn't stabbed me yet over the longhours with @USCLawMockTrial





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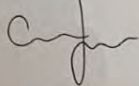
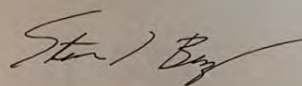
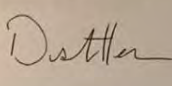
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**Brett Bayne** @bretthbayne · Oct 6, 2018

"Cross examination is about domination of the spirit." - Abraham H. Parnassus



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**Brett Bayne** @bretthbayne · Jul 5

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**Brett Bayne** @bretthbayne · Jul 4

Costco and Sams ran out of briskets yesterday, so we're improvising





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When you're up against an opposing counsel you kinda like



2



2



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**Brett Bayne** @bretthbayne · May 12

It spits hot fire







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Ribeye Caps



2



14

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For those located in SC, he also got in trouble during Army Air Corps flight training when he decided for fun he should fly his plane under the original Cooper River Bridge around in 1942.



4



8

[Show this thread](#)**Brett Bayne** @bretthbayne · May 26

My grandfather was in command of a base in England outside London from '63-64. A 15-16 year old kid by the name of Prince Charles would come by the airfield weekly begging to go up in an American plane. So he finally took him up in a B-29. Just strapped him in and went up.

**Amanda Deibert** 🇺🇸🇧🇪 @amandadeibert · May 24

What's a cool bit of family history you know? Can be family of origin of





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**Brett Bayne** @bretthbayne · Jun 7

New @Arteflame grill insert for the @WeberGrills kettle.



3

**Brett Bayne** @bretthbayne · Jun 1

cc @JosephPBias @JDickey1914

**UofSC Law Library** @UofSCLawLib · May 31

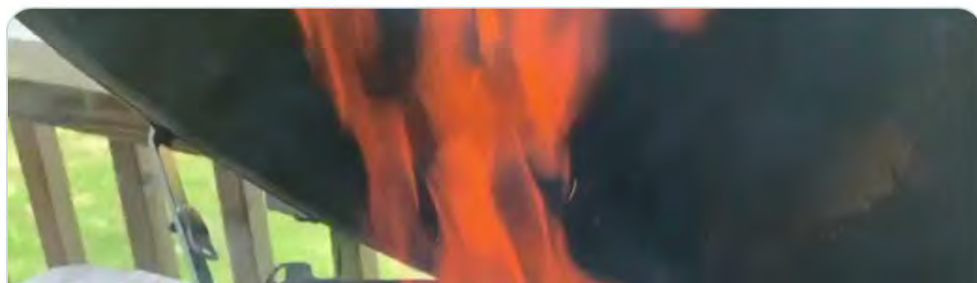
And a visiting @uofsc law prof: @deathntaxesprof

Did we miss anyone else?

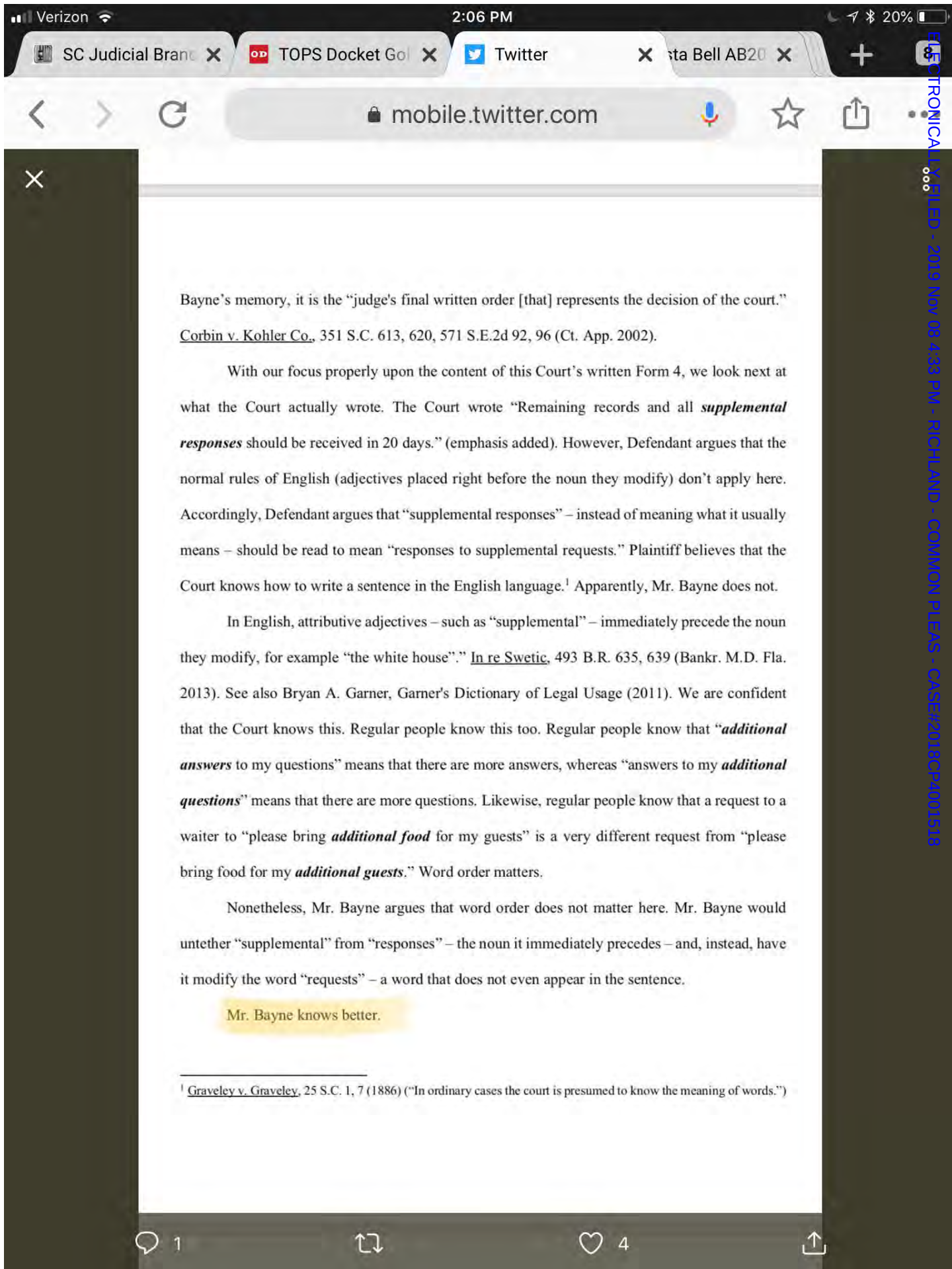
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2

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**Brett Bayne** @bretthbayne · May 27





Bayne's memory, it is the "judge's final written order [that] represents the decision of the court." Corbin v. Kohler Co., 351 S.C. 613, 620, 571 S.E.2d 92, 96 (Ct. App. 2002).

With our focus properly upon the content of this Court's written Form 4, we look next at what the Court actually wrote. The Court wrote "Remaining records and all *supplemental responses* should be received in 20 days." (emphasis added). However, Defendant argues that the normal rules of English (adjectives placed right before the noun they modify) don't apply here. Accordingly, Defendant argues that "supplemental responses" – instead of meaning what it usually means – should be read to mean "responses to supplemental requests." Plaintiff believes that the Court knows how to write a sentence in the English language.<sup>1</sup> Apparently, Mr. Bayne does not.

In English, attributive adjectives – such as "supplemental" – immediately precede the noun they modify, for example "the white house." In re Swetic, 493 B.R. 635, 639 (Bankr. M.D. Fla. 2013). See also Bryan A. Garner, *Garner's Dictionary of Legal Usage* (2011). We are confident that the Court knows this. Regular people know this too. Regular people know that "*additional answers* to my questions" means that there are more answers, whereas "answers to my *additional questions*" means that there are more questions. Likewise, regular people know that a request to a waiter to "please bring *additional food* for my guests" is a very different request from "please bring food for my *additional guests*." Word order matters.

Nonetheless, Mr. Bayne argues that word order does not matter here. Mr. Bayne would untether "supplemental" from "responses" – the noun it immediately precedes – and, instead, have it modify the word "requests" – a word that does not even appear in the sentence.

Mr. Bayne knows better.

<sup>1</sup> Graveley v. Graveley, 25 S.C. 1, 7 (1886) ("In ordinary cases the court is presumed to know the meaning of words.")



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**South Carolina Bar** @SCBAR · Jan 10

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**Ryan Knapp** @RyanJamesKnapp · Jan 10Proud to welcome 2x National Champ [@renfrowhunter](#) to the MGC Sports Family! [#ALLIN](#) [#GoTigers](#) [@ClemsonFB](#)**2019 SIGNEE****WR HUNTER RENFROW****CLEMSON  
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# Exhibit

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BB

**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** Harland Jones vs. Karen Robinson (Claim No.: 0459413365)  
**Date:** May 14, 2019 at 4:32 PM  
**To:** rcouchj@sccourts.org  
**Cc:** teamjefferies@googlegroups.com, Andy Delaney ADelaney@mgclaw.com

Judge Couch,

Attached is the proposed Order you requested on this Motion to Compel on the hearing conducted on May 8. As you will recall, this specific matter dealt with the identification of witnesses in response to discovery requests relating to a bicycle on car accident. This proposed Order encompasses the information set out in the unopposed memorandum filed on March 7 in this case as well as the outcome of the hearing last week.

I have circulated a copy to Mr. Jeffries for review. He objects to portions of the Order as "...far more broad than what Judge Couch instructed, and it includes numerous purported factual findings that the Judge didn't make (and for which there is no evidentiary support in any event)." We disagree with that as each factual assertion is contained in the memorandum or was addressed at the hearing and was not contested by Plaintiff. As we cannot reach a resolution, we are submitting the Order as written subject to his objections.

I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett



**Brett Bayne, Attorney**  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
1320 Main Street, 10th Floor  
Columbia, SC 29201  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
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Proposed Order 24011767.pdf  
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|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
|                         | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
|                         | ) | <b>MOTION TO COMPEL</b>           |
| KAREN ROBINSON,         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

---

This matter came before the Court on May 7, 2019 on Defendant's Motion to Compel Plaintiff to disclose the identities of various fact witnesses Plaintiff contends have information regarding this litigation. Based on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, it appears to this Court that there is just cause for granting the Motion. It is therefore **ORDERED** that the Motion to Compel is **GRANTED**.

This matter arises out of a motor vehicle accident that occurred on June 7, 2017 in Columbia, Richland County, South Carolina. Plaintiff filed his Complaint on March 16, 2018 in the Court of Common Pleas for Richland County, and alleges a cause of action for negligence against Defendant. On May 8, 2018, Defendant served upon the Plaintiff Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. On June 5, 2019, Plaintiff's counsel stated in sworn, signed pleadings to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. As a result of this assertion, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production.



As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

'...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'"

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with the Order. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. Plaintiff responded on November 7, 2018 and admitted within the responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named "Alex" who witnessed the motor vehicle

accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.”

Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this individual is his wife’s cousin. Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

It is apparent that Plaintiff has failed to fully comply with the discovery requests of Defendant. Specifically, Plaintiff has failed to identify in full persons sought by Defendant in discovery while simultaneously seeking to introduce these unidentified witnesses’ statements about the accident.

This action has been pending since March 16, 2018. This matter is currently scheduled to be heard at trial the week of July 8, 2019. Plaintiff has introduced evidence of these witnesses and admitted he has known about them for nearly two years. Because this information is clearly relevant and is the proper subject of written discovery within our State’s rules, Plaintiff is ordered to respond to discovery and identify and produce these alleged witnesses.

**IT IS HEREBY ORDERED THAT** Plaintiff shall fully respond to Defendant’s

discovery regarding the identification and contact information of these purported factual witnesses, and it is further

**ORDERED THAT** compliance with this Order shall be had on or by **June 1, 2019**, and it is further

**ORDERED THAT** the failure of Plaintiff to comply with this Order shall result in Plaintiff's inability to use the aforementioned witnesses or any other unidentified witness at trial, and it is further

**ORDERED THAT**, should Plaintiff fail to fully respond to the Defendant's discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant's attorney's fees, court costs and expenses.

**IT IS SO ORDERED!**

---

Roger L. Couch, Judge

May 10, 2019

# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

**From:** Brett Bayne [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
**Subject:** RE: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)  
**Date:** May 28, 2019 at 2:57 PM  
**To:** [rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)  
**Cc:** [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com), Andy Delaney [ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com), [rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)

BB

Judge Couch,

I am following up on this proposed Order. The ruling from the bench called for a June 1 deadline for Plaintiff to name his previously unidentified witnesses. The proposed Order submitted contains that same deadline. As June 1 is approaching, we just wanted to check in on the filing of the order so that the June 1 deadline is memorialized.

Please let us know if you need any other information.

Brett



**Brett Bayne, Attorney**  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
1320 Main Street, 10th Floor  
Columbia, SC 29201  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
VCARD | BIO

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Please consider the environment before printing this email.

**From:** Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)>  
**Sent:** Tuesday, May 14, 2019 4:32 PM  
**To:** '[rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)' <[rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)>  
**Cc:** '[teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com)' <[teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com)>; Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)>  
**Subject:** Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

Attached is the proposed Order you requested on this Motion to Compel on the hearing conducted on May 8. As you will recall, this specific matter dealt with the identification of witnesses in response to discovery requests relating to a bicycle on car accident. This proposed Order encompasses the information set out in the unopposed memorandum filed on March 7 in this case as well as the outcome of the hearing last week.

I have circulated a copy to Mr. Jeffries for review. He objects to portions of the Order as "...far more broad than what Judge Couch instructed, and it includes numerous purported factual findings that the Judge didn't make (and for which there is no evidentiary support in any event)." We disagree with that as each factual assertion is contained in the memorandum or was addressed at the hearing and was not contested by Plaintiff. As we cannot reach a resolution, we are submitting the Order as written subject to his objections.

I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett

--  
You received this message because you are subscribed to the Google Groups "TeamJeffries" group.  
To unsubscribe from this group and stop receiving emails from it, send an email to [teamjefferies+unsubscribe@googlegroups.com](mailto:teamjefferies+unsubscribe@googlegroups.com).  
To post to this group, send email to [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com).  
To view this discussion on the web visit <https://groups.google.com/d/msgid/teamjefferies/FC488312FA6E0045B0F50FFD46FEB092020F7B2225%40mail3.internalmgc.com>.  
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Proposed Order 24011767.pdf  
Grantin...pel.doc

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
|                         | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
|                         | ) | <b>MOTION TO COMPEL</b>           |
| KAREN ROBINSON,         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

---

This matter came before the Court on May 7, 2019 on Defendant's Motion to Compel Plaintiff to disclose the identities of various fact witnesses Plaintiff contends have information regarding this litigation. Based on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, it appears to this Court that there is just cause for granting the Motion. It is therefore **ORDERED** that the Motion to Compel is **GRANTED**.

This matter arises out of a motor vehicle accident that occurred on June 7, 2017 in Columbia, Richland County, South Carolina. Plaintiff filed his Complaint on March 16, 2018 in the Court of Common Pleas for Richland County, and alleges a cause of action for negligence against Defendant. On May 8, 2018, Defendant served upon the Plaintiff Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. On June 5, 2019, Plaintiff's counsel stated in sworn, signed pleadings to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. As a result of this assertion, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production.

As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

'...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'"

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with the Order. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. Plaintiff responded on November 7, 2018 and admitted within the responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named "Alex" who witnessed the motor vehicle

accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.”

Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this individual is his wife’s cousin. Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

It is apparent that Plaintiff has failed to fully comply with the discovery requests of Defendant. Specifically, Plaintiff has failed to identify in full persons sought by Defendant in discovery while simultaneously seeking to introduce these unidentified witnesses’ statements about the accident.

This action has been pending since March 16, 2018. This matter is currently scheduled to be heard at trial the week of July 8, 2019. Plaintiff has introduced evidence of these witnesses and admitted he has known about them for nearly two years. Because this information is clearly relevant and is the proper subject of written discovery within our State’s rules, Plaintiff is ordered to respond to discovery and identify and produce these alleged witnesses.

**IT IS HEREBY ORDERED THAT** Plaintiff shall fully respond to Defendant’s



discovery regarding the identification and contact information of these purported factual witnesses, and it is further

**ORDERED THAT** compliance with this Order shall be had on or by **June 1, 2019**, and it is further

**ORDERED THAT** the failure of Plaintiff to comply with this Order shall result in Plaintiff's inability to use the aforementioned witnesses or any other unidentified witness at trial, and it is further

**ORDERED THAT**, should Plaintiff fail to fully respond to the Defendant's discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant's attorney's fees, court costs and expenses.

**IT IS SO ORDERED!**

---

Roger L. Couch, Judge

May 10, 2019

# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

BB

**From:** Brett Bayne [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
**Subject:** RE: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)  
**Date:** June 21, 2019 at 4:36 PM  
**To:** [rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)  
**Cc:** [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com), Andy Delaney [ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com), [rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)

Judge Couch,

Happy Friday. At the risk of annoyance, which I sincerely apologize in advance for, I am following up again on this proposed order. We were unsuccessful at mediation today and this case will be tried on July 8. Your ruling on the Motion to Compel and the discovery violations relates directly to the ability to call witnesses at trial. As you will recall, you provided Plaintiff until June 1 to identify any other witnesses. As of today, June 21, there still has never been any supplemental discovery or identification of witnesses. We just want to make sure this Order is in place for the trial judge for the week of July 8.

Please let me know if you need anything else from us.

Brett

---

**From:** Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)>  
**Sent:** Friday, June 14, 2019 3:27 PM  
**To:** [rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)  
**Cc:** [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com); Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)>; [rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)  
**Subject:** Re: Harland Jones vs. Karen Robinson (Claim No.: 0459413365)

Judge Couch,

Please let us know if we can submit any other documents or anything related to the proposed order. We are up for trial on July 8 in Richland County and we would need to have the order in place by then as it relates to discovery requests.

Brett H. Bayne  
Attorney  
O: 803-227-2281  
C: 214-405-8175

Sent from my iPad

On May 28, 2019, at 2:56 PM, Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)> wrote:

Judge Couch,

I am following up on this proposed Order. The ruling from the bench called for a June 1 deadline for Plaintiff to name his previously unidentified witnesses. The proposed Order submitted contains that same deadline. As June 1 is approaching, we just wanted to check in on the filing of the order so that the June 1 deadline is memorialized.

Please let us know if you need any other information.

Brett

---

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**Sent:** Tuesday, May 14, 2019 4:32 PM  
**To:** '[rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)' <[rcouchj@sccourts.org](mailto:rcouchj@sccourts.org)>  
**Cc:** '[teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com)' <[teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com)>; Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)>  
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Brett



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<Proposed Order Granting Motion to Compel.doc>

<24011767.pdf>

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For more options, visit <https://groups.google.com/d/optout>.



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|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
|                         | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
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|                         | ) | <b>MOTION TO COMPEL</b>           |
| KAREN ROBINSON,         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

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discovery regarding the identification and contact information of these purported factual witnesses, and it is further

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**ORDERED THAT**, should Plaintiff fail to fully respond to the Defendant's discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant's attorney's fees, court costs and expenses.

**IT IS SO ORDERED!**

---

Roger L. Couch, Judge

May 10, 2019



**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** Harland Jones v. Karen Robinson  
**Date:** August 11, 2019 at 8:29 PM  
**To:** cmanningsc@sccourts.org, Manning, L. Casey Law Clerk (Carmen Jackson) CManningLC@sccourts.org, cmanningj@sccourts.org  
**Cc:** lane@akimlawfirm.com, gus@akimlawfirm.com, Andy Delaney ADelaney@mgclaw.com, Rogers E. Harrell, III rharrell@murphygrantland.com



Judge Manning,

Attached for your review is Defendant's proposed voir dire, Defendant's pre-trial brief, Defendant's motions in limine, Defendant's notice of deposition excerpts, and a copy of Judge Couch's Order barring Plaintiff's witnesses.

We look forward to seeing you tomorrow.

Brett



**Brett Bayne, Attorney**  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
 1320 Main Street, 10th Floor  
 Columbia, SC 29201  
 Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
| Plaintiff,              | ) |                                   |
| v.                      | ) | <b>NOTICE OF VIDEO DEPOSITION</b> |
| KAREN ROBINSON,         | ) | <b>EXCERPTS TO BE PLAYED AT</b>   |
| Defendant.              | ) | <b>TRIAL</b>                      |

Pursuant to SCRCF Rule 32(a)(5), the undersigned counsel for Defendant hereby gives the court and all counsel notice of intent to play the publish the following excerpts from the deposition of Michelle Murray at trial:

1. Page 4, Line 1 through Page 31, Line 3
2. Page 69, Line 6 through Page 74, Line 20
3. Page 77, Line 19-23

Defendant may further utilize Exhibits 1-5 entered and used during the deposition.

MCANGUS GOUELOCK & COURIE, L.L.C.

s/ Brett H. Bayne  
 Brett H. Bayne, Bar No.: 100018  
 Post Office Box 12519  
 1320 Main Street, 10th Floor (29201)  
 Columbia, South Carolina 29211  
 Phone: (803) 779-2300  
 Email: [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)

ATTORNEYS FOR DEFENDANT, KAREN  
 ROBINSON

July 3, 2019



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# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 4:33 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** FW: Harland Jones v. Karen Robinson  
**Date:** August 12, 2019 at 9:35 PM  
**To:** cmanningj@sccourts.org, cmanningsc@sccourts.org, Manning, L. Casey Law Clerk (Carmen Jackson) CManningLC@sccourts.org  
**Cc:** lane@akimlawfirm.com, gus@akimlawfirm.com, Andy Delaney ADelaney@mgclaw.com, Rogers E. Harrell, III rharrell@murphygrantland.com

BB

Judge Manning,

Attached for your review is our updated trial materials which include Defendant's proposed voir dire, Defendant's pre-trial brief, Defendant's motions in limine, Defendant's notice of deposition excerpts, and a copy of Judge Couch's Order barring Plaintiff's witnesses. I have also attached our Memorandum in Support of Summary Judgment which was previously sent to Judge Newman.

We look forward to seeing you tomorrow.

Brett



**Brett Bayne, Attorney**  
brett.bayne@mgclaw.com  
1320 Main Street, 10th Floor  
Columbia, SC 29201  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
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**From:** Brett Bayne  
**Sent:** Sunday, August 11, 2019 8:28 PM  
**To:** cmanningsc@sccourts.org; Manning, L. Casey Law Clerk (Carmen Jackson) <CManningLC@sccourts.org>; 'cmanningj@sccourts.org' <cmanningj@sccourts.org>  
**Cc:** 'lane@akimlawfirm.com' <lane@akimlawfirm.com>; 'gus@akimlawfirm.com' <gus@akimlawfirm.com>; Andy Delaney <ADelaney@mgclaw.com>; Rogers E. Harrell, III <rharrell@murphygrantland.com>  
**Subject:** Harland Jones v. Karen Robinson

Judge Manning,

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We look forward to seeing you tomorrow.

Brett



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Dire.pdf



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MSJ.pdf

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-40-01518

NOTICE OF VIDEO DEPOSITION  
EXCERPTS TO BE PLAYED AT  
TRIAL

TOLL FREE: 1 (800) 313-2546  
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KENNETH@AKIMILAWFIRM.COM

# ANASTOPOULO LAW FIRM

# Exhibit

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P. HEATH WARD (SC)  
DANNY LEE WILLARD, JR. (SC)  
ROY T. WILLEY, IV (SC)  
L. CRAYTON WILLIAMS (SC)

\*OF COUNSEL

November 19, 2018

**Sent Via Email Only**

John Andrew Delaney  
McAngus Goudelock & Courie, LLC  
P.O. Box 12519  
Columbia, SC 29211

RE: *Harland Jones v. Karen Robinson*  
*Case No.: 2018-CP-40-01518*

Dear Andy:

I hope this letter finds you well. As you know, I previously served you with Interrogatories on October 12, 2018. A review of my file shows that you have not yet provided responses to the same. Therefore, I would appreciate your forwarding these responses within 7 days of the date of this letter so that I may avoid the necessity of filing a Motion to Compel.

If you should have any questions, or if you require additional time to respond, please do not hesitate to contact us.

Sincerely,



Kenneth T. David, Esq.

**MAILING: 32 Ann Street, Charleston, South Carolina 29403**

**North Charleston:** 2170 Ashley Phosphate Road, 3<sup>rd</sup> Floor, North Charleston, South Carolina 29406 \* **Greenville:** 418 River Street, Greenville, SC 29601  
**Florence:** 150 W. Evans Street, Florence, South Carolina 29501 \* **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577  
**Columbia:** 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 \* **Raleigh, NC:** 8801 Fast Park Drive, Suite 301, Raleigh, NC 27617  
**Wilmington, NC:** Appointment Only

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE 5TH JUDICIAL CIRCUIT  
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff(s),

v.

KAREN ROBINSON,

Defendant(s).

**PLAINTIFF'S MOTION TO ALTER,  
AMEND, AND/OR RECONSIDER**

**TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD**

PLEASE TAKE NOTICE that Plaintiff HARLAND JONES, by and through undersigned counsel and pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, will move before the Honorable Robert E. Hood, within ten (10) days of the date of this Motion, or as soon as counsel may be heard, to alter and/or amend and/or reconsider the Order of October 31, 2019.

Plaintiff would show that the subject Order fails to make certain legal and factual findings, contains impertinent and immaterial dicta, contains erroneous factual findings, and is predicated upon errors of law.

**I. The Order Fails to Establish Jurisdiction**

As a threshold matter, the Court must have jurisdiction to take action in order to take such action. Where lack of jurisdiction is raised by a party, the Court must rule on the issue of jurisdiction before taking further action. Plaintiff has argued that Defendant's Motion for Sanctions was not properly before this Court. The subject Order does not address this argument.

Defendant's Motion for sanctions was filed on June 27, 2019. This motion sought an "order sanctioning Plaintiff and Plaintiff's counsel for violations of ADR Rule 6." **Exhibit A.** After filing the motion, Defendant contacted the Chief Administrative Judge and requested that the hearing be expedited. **Exhibit A.** Specifically, Defendant insisted that it was necessary for the

sanctions motion to be resolved prior to the start of trial. **Exhibit A.** This matter was originally scheduled to be tried the week of July 8, 2019. Because a hearing could not be scheduled in such short order, Defendant agreed that he would “address the issues during the pretrial with the trial judge.” **Exhibit X.**

The July 8, 2019 trial was continued. The trial was rescheduled to the week of August 12, 2019. Following the continuance, Defendant again contacted the Administrative Judge with a request to have the sanctions hearing scheduled. **Exhibit Y.** Judge Jocelyn Newman replied that the parties should appear at the roster meeting on August 12, 2019 and “be prepared to argue all outstanding motions.” **Exhibit Z.**

Judge Casey Manning is assigned to try the case and takes up pre-trial motions on August 13, 2019. Judge Manning hears and denies Defendant’s second motion for summary judgment. **Exhibit AA.** The Defendant’s attorney then begins to make his motion for sanctions. During the arguments, Defendant’s counsel makes numerous allegations related to perceived discovery abuses, but never addresses the motion for ADR sanctions. Judge Manning takes other motions under advisement and asks if the parties are ready to begin the trial. Defendant’s counsel says they are ready to begin and the trial begins. **Id.**

Judge Manning hears additional motions at the close of Plaintiff’s case. Defendant does not renew any motion for sanctions related to discovery abuses and does not raise the motion for ADR sanctions. **Id.** Judge Manning hears additional motions at the close of Defendant’s case. Defendant does not renew any motions for discovery sanctions and again does not raise the motion for ADR sanctions. Instead, Judge Manning does grant a directed verdict in Plaintiff’s favor against the Defendant on the issue of Defendant’s negligence *per se* for not wearing her required eyeglasses. **Id.** Ultimately, the trial ends in a mistrial which was precipitated by Defense counsel’s

improper remarks to the jury during closing arguments.<sup>1</sup> Once again, upon dismissal of the jury, Defendant does not renew any motions for discovery sanctions and does not raise the motion for ADR sanctions. **Id.**

Subsequently, Defendant's motion for ADR sanctions was scheduled before Judge Hood for September 25, 2019. Plaintiff's counsel had a Rule 601 conflict on this date because he was in the middle of a jury trial with Judge Paul Burch in Horry County. Instead of continuing the matter to the next term as is typical, Judge Hood instructed the parties to appear that Friday, September 27, 2019.

During arguments, Defendant continued to raise the numerous unsubstantiated allegations of perceived discovery abuses, even though these had already been presented to Judge Manning. **Exhibit E** (see also Plaintiff's Motion for Sanctions filed November 8, 2019 and incorporated herein by reference including exhibits). Defendant, also, and for the first time, presented oral argument as to Plaintiff's alleged violation of the ADR rules.

Plaintiff argued that (1) Defendant's motion for discovery sanctions was pending before Judge Manning, if it was pending at all; and (2) Defendant's motion for ADR sanctions had been waived when it was not presented to Judge Manning as required by the Chief Administrative Judge. **Exhibit Z.** Moreover, it was inappropriate for Defendant to seek the sanction of dismissal, and inappropriate for the Court to Order this sanction, where Defendant specifically represented to Judge Manning, "[a]nd all we're asking for, Judge, is – is to submit an affidavit to recover our costs and fees related to discovery motions." **Exhibit AA, p. 16 ln. 18-20.**

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<sup>1</sup> Mr. Bayne told the jury "The Judge is going to be very clear with you that what has been paid is not the measure of damages. If that were the case, Mr. Jones would have zero dollars in damages because he hasn't paid those bills." Exhibit AA 294:19-23.

The subject Order fails to address Plaintiff's arguments as to jurisdiction. "A party *must* file such a (Rule 59) motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24 (2004) (emphasis in original). Plaintiff respectfully requests a ruling from the Court on this issue.

The subject Order contains another fatal jurisdictional flaw: it seeks to accomplish an outcome for which the Court has no power to effect. Judge Manning has already entered a directed verdict in Plaintiff's favor on his claim against Defendant for Defendant's negligence *per se*. While the Rules of Civil Procedure and the ADR rules (together with the inherent authority of a court sitting in proper jurisdiction) vest the Circuit Court with powers to sanction (up to and including the most severe sanction of dismissing a *pending* action), there does not appear to be any vested power through which the Circuit Court can, as a discovery or ADR sanction, *vacate* a judgment *that has already been entered* (unless the judgment was secured through some fraud on the court – which is not the case here). Because Plaintiff has already secured a judgment as to part of his claim, this Court has no authority to dismiss his entire action with prejudice.

Moreover, even if the Circuit Court had the power to issue such a sanction, the practical effect in this instance is that of one Circuit Judge overruling another, which is not a proper exercise of jurisdiction. See, e.g., Enoree Baptist Church v. Fletcher, 340 287 S.C. 602 (1986).

Finally, to the extent this Court did have any jurisdiction, the Court failed to exercise it in a timely manner. The record reflects that, following the mistrial, the case was scheduled to be re-tried during the October 28, 2019 term of Court. **Exhibit AB**. Although Judge Hood entertained arguments on the sanctions motion on September 27, took the matter under advisement, and indicated via email of September 30 that he intended to grant the motion. He did not grant the motion until an order was filed October 31, 2019 – after the case was scheduled to be re-called for



trial. The record reflects that Defendant's attorney emailed the Clerk's office on October 22, 2019 and had the case removed from the trial roster, even though no order of continuance or dismissal had been entered. **Exhibit AC.**

Because Judge Hood had not issued a final order dismissing the case as of the call of the October 28, 2019 roster, and because the case was not continued from that roster by the Chief Administrative Judge, the trial should have proceeded in due course. Nothing about the Court's email of September 30, 2019 could have divested the trial judge of jurisdiction to call and proceed with the trial on October 28, 2019. See, e.g., Serowski v. Serowski, 381 S.C. 306, 315 (Ct. App. 2009) (holding Court's memorandum instructing counsel how to prepare a proposed order was not the final written order and the court retained discretion to change or amend the final order).

## **II. The Order Lacks Specific Findings of Fact, and/or Includes Incorrect Facts and/or Relies Upon Facts Not in the Record**

While Plaintiff is required to file this motion to seek a ruling on the heretofore un-ruled upon issue of jurisdiction, "[a] party **may** wish to file such a (Rule 59) motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam, 361 S.C. at 24 (emphasis in original). Jurisdiction notwithstanding, the subject Order lacks required and specific findings and conclusions, and appears to be based, at least in part, on the Court's misunderstanding of certain key issues.

The subject Order is a hodgepodge of various events that allegedly occurred throughout the course of this litigation. The subject Order references certain discovery requests and responses, together with other orders and arguments. These various events are not recounted in a clear chronological order, are not addressed in the context of how they relate to each other, and in many

instances, are not supported by any evidence on the record. Moreover, the subject Order contains impertinent dicta and, indeed, contains certain factual statements that are demonstrably incorrect.

After recounting these various and sometimes inaccurate events, the Order concludes with a blanket finding that:

Defendant has sought full sanctions for Plaintiff's repeated discovery abuses, failures to comply with Rulings and Orders of this court, and ADR violations. This Court agrees that, based on the totality of the circumstances, sanctions pursuant to Rule 37 for violations of SCADR Rules, SCRCP Rule 11, and SCRCP Discovery Rules are warranted.

Despite two Orders from Judge Benjamin, a Ruling from Judge Couch, an Order from Judge Couch, and pre-trial and trial rulings by Judge Manning, Plaintiff continues to violate discovery rules and willfully ignore the prior orders of this court. Plaintiff has acted in bad faith, with willful disobedience of numerous court orders and rulings, and with gross indifference toward the court and counsel highlighted herein. **Exhibit G.**

However, the Order fails to articulate how the purported facts, as recited, support the blanket conclusion that Plaintiff violated any rulings or orders, that Plaintiff acted in bad faith, or that Plaintiff "continues" to violate discovery rules. The Order does not specifically contain any findings of fact or properly supported conclusions of law which identify 1) repeated or continued discovery violations; 2) any orders or rulings that were willfully disobeyed; or 3) bad faith conduct.

#### **A. Background**

The Defendant has insisted on trying this case through motions practice and threats of sanctions and lawsuits from the outset. Defendant's very Answer – their first appearance in the matter – contained a counterclaim labeling Plaintiff's complaint as frivolous. During the hearing on Plaintiff's motion to dismiss this improper counterclaim, Defendant admitted that the counterclaim was improper (**Exhibit T, p. 18 ln. 18-25**) and thereafter declared in open court that Plaintiff would simply file a subsequent and collateral lawsuit directly against the Plaintiff's attorney at the conclusion of this case. **Exhibit T, p. 17.**

16 MR. BAYNE: Yes, Your Honor, there is. And  
17 just by brief background, Ms. Robinson, once this  
18 case has reached a defense verdict, which is where  
19 this is heading, the Plaintiffs file a lawsuit  
20 against Mr. Jones and against the Anastopoulo law  
21 firm. She has expressed that. So this  
22 counterclaim is simply attempting to preserve that  
23 right to make sure we don't do anything to  
24 eventually waive it down the line.

Defense counsel persisted throughout the litigation with similar improper and baseless threats to gain leverage.

### **B. Distinguishing Witnesses**

Initially, Defendant has created a great deal of confusion with respect to the witnesses in this case. Defendant, in her various motions and arguments, has repeatedly attempted to conflate the issues in order to support a position that conflicts with the facts.

There are three different witnesses (or potential witnesses) who are the subject of Defendant's various ruminations throughout the course of this action. These witnesses are not interchangeable. Certain orders and arguments pertain to certain of these witnesses and other orders and arguments pertain to other witnesses. Defendant's attempts to conflate the witnesses has created confusion, which is manifested in the subject Order.

Primarily at issue are two potential eyewitnesses (the "eyewitnesses") to the collision. Plaintiff believes there were two potential eyewitness to the collision. One is a man known simply as "Alex" and the other is a relative of Plaintiff's deceased wife. Despite diligent efforts, nobody has

been able to positively identify or locate either of these eyewitnesses. To this date, neither Plaintiff nor his counsel have any information regarding their whereabouts.

Secondarily at issue is a proposed damages witness (the “damages witness”) named Treacy Randolph. Ms. Randolph did not witness the collision. Rather, she helped care for the Plaintiff following the collision, and was proposed to testify as to his injuries and recovery, after Plaintiff’s initially disclosed damages witness (his wife) passed away. Ms. Randolph was disclosed as a witness on July 5, 2019.

### C. Timeline

Defendant is correct, and the subject Order accurately reflects, that Plaintiff’s counsel initially believed there to be two eyewitnesses to the collision. During that time, early in the case, Plaintiff was actively attempting to locate these witnesses. During that time, both parties were also engaged in the early stages of discovery, having each served a first set of Interrogatories and a first set of Requests for Production.

On August 14, 2018, Defense counsel served a second set of Interrogatories (the “Supplemental Interrogatories”, **Exhibit H**), asking:

#### INTERROGATORIES

- I. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of “Plaintiff’s Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof.” For reference, you specifically asserted to the Court: “...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant’s vehicle.”

Defense counsel continually cites to a motion to compel and Rule to Show cause before Judge Benjamin. Defense counsel included these arguments in the proposed subject Order and they were adopted by the Court. However, Defense counsel misled the Court in suggesting that Defendant was forced to file that motion because Plaintiff had failed to respond to the Supplemental Interrogatory. Defendant did not file the motion for that reason, and **could not** have. Instead, as the record reflects, the Motion to Compel was filed on August 10, 2018, some four days before the Supplemental Interrogatory was even served. This is a subject of Plaintiff's Motion for Sanctions filed contemporaneously herewith and incorporated herein together with all exhibits thereto.

When it became apparent after an exhaustive search that Plaintiff was not going to be able to locate the eyewitnesses, Plaintiff responded to the Supplemental Interrogatory above conceding that the witnesses could not be located or disclosed by replying "none" to the Supplemental Interrogatory. Plaintiff made this concession in November of 2018. **Exhibit AD**. This should have put an end to the issue. In conceding that the eyewitnesses could not be located, Plaintiff understood that they could not be relied upon in advancing his case, and that they would not be available to testify at trial. As discussed below, Plaintiff completely abandoned any intention to rely upon the missing eyewitnesses from that point forward. The issue should have been dead.

Instead, it was the Defendant who revived the issue of the eyewitnesses. During his deposition in March of 2019, Defense counsel<sup>2</sup> asked Plaintiff whether he was aware of any witnesses. In response, Plaintiff truthfully stated that he believed there were two eyewitnesses to the collision. However, he was never able to provide their locations to Plaintiff's counsel at that time, and has not been able to since. In any event, by the time of this deposition, Plaintiff's counsel had already conceded that the eyewitnesses could not be located. The eyewitnesses could not be

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<sup>2</sup> Who was not an attorney of record on the case at that time or at any time thereafter as of the date of this motion.

made available to Defendant for deposition and, therefore, it is axiomatic that they could not be called at trial. And indeed, Plaintiff's counsel did not attempt to call these eyewitnesses at trial. The issue should have remained dead.

Instead, Defendant continued to push the issue. Defendant filed another motion to compel seeking to force Plaintiff to do something that could not be done: provide full name, address, and contact information for the two eyewitnesses who could not be found.

It was this motion that ended up before Judge Couch. **Exhibit R.** During the hearing on this motion, Plaintiff's counsel again conceded what had been conceded since November of 2018, namely that the two potential eyewitnesses could not be located, and that Plaintiff did not intend to call them at trial if these eyewitnesses were not located by June 1. Understanding that Plaintiff could not be compelled to disclose information that was not available to him to disclose, Judge Couch simply memorialized Plaintiff's concession: that being that if the 2 eyewitnesses were not found and disclosed by June 1, 2019, they could not be called at trial. **Id.** As the transcript shows, Judge Couch's oral instructions related ***solely*** to particular eyewitnesses, and not to witnesses generally. **Id.**

Once again, that should have put an end to the entire eyewitness saga. Unfortunately, rather than submit a simple proposed order memorializing Judge Couch's instructions from the bench, Defendant proposed a sweeping order going beyond anything that had been discussed in the hearing, thus keeping the dispute alive. **Exhibit L.** Judge Couch's Order is addressed more fully below.

Around this time, Defendant's strategy evolves to conflate the eyewitnesses with the damages witness, who was disclosed on July 5, 2019. Defendant attempts (and apparently succeeds) to convince Judge Manning and later Judge Hood that the issues are one in the same. In Plaintiff's

naming of Ms. Randolph as a potential damages-only witness, Defendant sought (and continues to seek) to weave these unrelated issues into a false yarn of repeated discovery abuses.

Stated differently, Defendant uses the naming of the damages witness to suggest that Plaintiff was abusive of the discovery process throughout the preceding time period. However, this damages witness was not the subject of the Supplemental Interrogatory which was aimed specifically at the issue of potential eyewitnesses. Nor was this damages witness the subject of any argument before Judge Couch which, again, was focused on the possible **eyewitnesses**. Nor was this damages witness the subject of Judge Couch's oral instructions on May 7, 2019. **Exhibit R.**

In naming this new damages witness (because Plaintiff's previously disclosed damages witness, Linda Jones, had passed away), Plaintiff did not seek to revive the long dead issues related to the **eyewitnesses**. Nor did this naming of a new damages witness change Plaintiff's concession, which had been made since answering the Supplemental Interrogatory back in November 2018, that he could not locate or call to trial any unidentified **eyewitnesses**.

The naming of the damages witness was completely unrelated to the long (and unnecessary) saga that was the Supplemental Interrogatory and subsequent motions practice before Judge Couch related to the eyewitnesses. The two cannot be conflated as one continuing issue.

#### **D. Court Orders**

It is axiomatic what is not known cannot be disclosed. Accordingly, the whereabouts of a witness who cannot be located cannot be disclosed. Defendant's counsel has continuously sought to have Plaintiff do what simply cannot be done, and defense counsel has brandished Plaintiff's inability to do what cannot be done as a weapon.

There has never been any allegation in this case that Plaintiff or his counsel know where to locate the eyewitnesses. There is no evidence that Plaintiff's counsel concealed this eyewitness. The subject Order makes no findings of fact in this regard. Instead, the subject Order details the party's efforts to locate the missing eyewitnesses, and then summarily concludes that Plaintiff has violated numerous orders requiring him to do something he cannot do - disclose an unknown.

Plaintiff concedes, as he has since November of 2018, that never-disclosed eyewitness cannot be relied upon in presenting his case. That is the appropriate remedy in this unfortunate situation. And Plaintiff has not attempted to use the eyewitness. Plaintiff has not relied on the potential of finding these eyewitness since his motion to dismiss at the very beginning of the case and, even then, the existence or non-existence of the witnesses was ultimately immaterial to the outcome of that motion, as that motion was resolved on purely legal, not factual, grounds. **Exhibit AE.**

Given the above, the subject Order fails to set forth any findings of fact to substantiate an ultimate conclusion that Plaintiff violated any court order regarding the eyewitnesses, much less multiple court orders, and certainly not in a willful or bad faith fashion. Indeed, there are only two orders at issue in this case that require Plaintiff to do anything at all: Judge Benjamin's Order granting motion to compel, and Judge Couch's Order granting motion to compel. Only Judge Couch's Order was aimed specifically to the subject of the potential eyewitness and, as demonstrated herein, was complied with to the fullest extent possible under the circumstances where, in any event, no prejudice came to Defendant since no eyewitness were proposed to be called or ever attempted to be called at the trial.

The entirety of the argument before Judge Couch is contained on the 24 page transcript that is a part of the record. **Exhibit R.** The arguments on Defendant's motion for summary judgment consume the first 17 pages. Defendant's Motion to compel completes the hearing. The entirety



of the motion to compel was focused on the identity of the two potential eyewitnesses, and specifically, the eyewitness known only as “Alex.”

Once again, as he had since November of 2018, Plaintiff conceded that the eyewitnesses could not be located after diligent effort. Likewise, Plaintiff conceded that it would not be proper for the witnesses to be called at trial if they were later discovered. This was the crux of the following exchange that is quoted within the subject Order:

2       MR. JEFFERIES: Your Honor, I don't know that we can  
3 find it. If Your Honor wants to give us 30 days and say  
4 that's all you've got, we're comfortable with that.

-Page 22

16       THE COURT: Well, I mean, what I would do is I would  
17 bar them from presenting the witness to give you time to  
18 be prepared if they don't produce the person by a certain  
19 point in time.

20       MR. BAYNE: Certainly, Judge.

21       MR. JEFFERIES: And we agree with that, Your Honor.  
22 We're perfectly comfortable not being able to use that  
23 witness.

-Page 22

Never, during the above-quoted hearing, were any witnesses other than the two **eyewitnesses** discussed. However, defense counsel submitted a proposed order that differed substantially from Judge Couch’s oral instructions in many respects, including by apply to **all** witnesses. Some 57 days following the conclusion of the hearing, Judge Couch signed the proposed order which stated (contrary to his oral instructions) “Plaintiff shall fully respond to Defendant’s discovery regarding the identification and contact information of these purported

factual witnesses . . . compliance with this Order shall be had on or by June 1, 2019...failure of Plaintiff to comply with this Order shall result in Plaintiff's inability to use the aforementioned witnesses ***or any other unidentified witness at trial...*** *Emphasis added.* The first mention of June 1 deadline for disclosure of any witnesses other than the aforementioned **eyewitness** occurred over a month after the deadline had passed when Judge Couch signed the proposed Order that was far broader than his oral instructions.

In as much as this Order purported to exclude *all* witnesses not identified by June 1, as opposed to just the two eyewitnesses which were the subject of Defendant's motion, the subject of the arguments on said motion, and the subject of the factual recitations within the motion, it exceeded the scope of the understanding that Plaintiff had of the outcome of the hearing. This, specifically, was the reason for Plaintiff's Rule 59 motion, in as much as it effectively excluded Plaintiff's proposed damages witness, Ms. Randolph.

Therefore, contrary to Defendant's contention that Plaintiff agreed to a blanket June 1 deadline, the record reflects that this understanding was consistent with the Judge Couch's oral instructions which were limited to the two eyewitnesses who had been the subject of the hearing. When Plaintiff was presented with a July 3 order that purported to exclude *all* witnesses not disclosed by June 1 – a date that had already passed – he was forced to file his Rule 59 motion to address that inconsistency.

Also contrary to Defendant's contention, during the hearing, Judge Couch specifically declined to sanction Plaintiff for the mere act of failing to disclose the identity of unknown witnesses, no doubt recognizing that Plaintiff could not do something that could not be done:

11 MR. BAYNE: And our motion that we filed calls to  
 12 produce that -- or we would ask the case be dismissed as a  
 13 sanction at this point for failing to disclose whatever  
 14 time Your Honor deems proper. Obviously, we would abide  
 15 by it.

16 THE COURT: Well, I mean, what I would do is I would  
 17 bar them from presenting the witness to give you time to  
 18 be prepared if they don't produce the person by a certain  
 19 point in time.

20 MR. BAYNE: Certainly, Judge.

21 MR. JEFFERIES: And we agree with that, Your Honor.  
 22 We're perfectly comfortable not being able to use that  
 23 witness.

-Page 22

Judge Couch properly instructed that if the **eyewitnesses** were not timely disclosed, they could not be called at trial. Plaintiff conceded as early as November of 2018 that the eyewitnesses could not be disclosed. Plaintiff concedes that the eyewitnesses could not be disclosed by June 1, 2019. Plaintiff concedes that, as such, the eyewitnesses were not able to testify at trial. Plaintiff still does not know the identity of the eyewitnesses, has never been able to disclose them (late or otherwise), did not attempt to call them at trial, did not rely on them during the trial (or at anytime since at least as long ago as November of 2018), and does not intend to call them or rely upon them at any future trial of this action or in any other way.

Thus, there is no evidence on the record to support the position that Plaintiff in any way violated Judge Couch's Order. As a result, this cannot be grounds for any sanction.

#### **E. Reliance on Witnesses**

The subject Order goes on to suggest that, notwithstanding Plaintiff's inability to locate the potential eyewitnesses, Plaintiff continued to rely upon their supposed testimony in representations to the Court and to Defendants. If true, this might certainly be grounds for some sanction.

However, this is demonstrably false – as is addressed in great detail in Plaintiff’s **Motion for Sanctions** [against Brett Bayne] **for Fraudulent Misrepresentations to the Court**. In this regard, the subject Order contains unsupported findings of fact in two ways.

**i. The Summary Judgment Motion**

During the hearing before Judge Hood, Defendant represented as follows (**Exhibit E**):

23 In the motion for summary judgment if Your Honor  
24 reviews it, what is essentially argued at that time is  
25 there is an issue of material fact because there are these

17

1 witnesses who are going to testify to these things.  
2 Witnesses have never been named at this time.  
3 Witnesses -- we don't know who they are. We don't have  
4 their names beyond wife's cousin and Alex in the woods.

Unfortunately, Mr. Bayne misrepresented the facts to the Court. Based upon Mr. Bayne’s misrepresentation, the Court signed Defendant’s proposed subject Order that contains the same false finding of fact:

**VI. Judge Couch’s Ruling and Order**

Judge Couch heard Defendant’s Motion for Summary Judgment and Defendant’s second Motion to Compel on March 7, 2019. Judge Couch heard the Motion for Summary Judgment first. Plaintiff relied upon the unidentified and unnamed eyewitness in his arguments against summary judgment and summary judgment was denied. Judge Couch then heard the second Motion to

This finding by the Hood Court, based upon Mr. Bayne’s misrepresentation, is demonstrably false.

Plaintiff argued against summary judgment by way of a Memorandum in Opposition to Summary Judgment dated May 7, 2019 (**Exhibit W**) and orally before Judge Couch (**Exhibit R**). At no time did Plaintiff's counsel rely on any unidentified or unnamed eyewitness to defeat summary judgment.

Plaintiff's May 7, 2019 Memorandum in Opposition to Summary Judgment is short and to the point – and it relies *exclusively* on the conflict between Defendant's testimony and Plaintiff's testimony. **Exhibit W**. There is absolutely no mention of what any other witness might say. Indeed, Plaintiff's memorandum specifically states on page six (**Exhibit W**, excerpt below) that Plaintiff's argument rests entirely on Plaintiff's and Defendant's differing personal observations recounted in their depositions.

Plaintiff personally observed each of the above-stated facts. Each is a material fact in determining this action. And each is in direct conflict with the facts that Defendant says she personally observed, and on which Defendant relies to support her affirmative defenses.

May 07 11:28 AM -

Before reading further, Counsel invites the Court to review Plaintiff's May 7 Memorandum (**Exhibit W**) and search for any reference at all to unidentified or unnamed witness testimony. Such a review will make the magnitude of Mr. Bayne's false statement shockingly clear.

Likewise, the transcript on this issue speaks for itself. **Exhibit R**. Judge Couch denies the motion for summary judgment on line 20, page 17 of the transcript. **Id.** In **no** place prior to that denial does Plaintiff **ever** even mention, much less rely upon, the potential testimony from any witness other than Plaintiff Jones. In fact, Plaintiff specifically informs Judge Couch "It's not about weighing evidence. They have two witnesses (Defendant and Michelle Murray). We have one (Plaintiff's own sworn deposition testimony). If it were about weighing the evidence, we'd lose. It's not about that. It's about the existence of evidence." **Id.** p. 8 ln. 23 – p. 9 ln. 1. Plaintiff's

counsel then goes on to explain Plaintiff's sworn deposition testimony (never mentioning either of the two unlocatable witnesses) and Judge Couch denies the summary judgment motion on those grounds and those grounds alone – the Plaintiff's sworn deposition testimony.

The Defendant misrepresented this material fact to the Court and the subject Order contains a clear factual misrepresentation which requires amendment. This cannot be grounds for any sanction against Plaintiff.

**ii. Plaintiff's Response to Requests to Admit**

Defendant next urges the Court to consider Plaintiff's response to three requests for admission:

1. You have alleged "...Defendant caused Plaintiff to strike the front of Defendant's vehicle by unlawfully travelling into the lane of oncoming traffic." Admit this allegation from your Complaint is not true.

**ANSWER: Denied. After conducting written discovery and depositions, it appears that Defendant was no longer travelling in the lane of oncoming traffic when she wrongfully struck Plaintiff. Nonetheless, it was Defendant's illegal passing maneuver, in which she unlawfully travelled in the lane of oncoming traffic, which caused her to strike Plaintiff immediately after she returned to the westbound lane of travel.**

2. You have alleged "...Defendant crossed over into Plaintiff's lane of travel, thereby causing Plaintiff to strike the front of Defendant's vehicle by unlawfully traveling into the lane of oncoming traffic. Admit this allegation from your June 5, 2018 Motion is not true.

**ANSWER: Denied. After conducting written discovery and depositions, it appears that Defendant was no longer travelling in the lane of oncoming traffic when she wrongfully struck Plaintiff. Nonetheless, it was Defendant's illegal passing maneuver, in which she unlawfully travelled in the lane of oncoming traffic, which caused her to strike Plaintiff immediately after she returned to the westbound lane of travel.**

3. Admit that there is no deposition testimony, witness, or any other material to support the allegation asserted in Plaintiff's Responses to Defendant's Second Set of Requests for Admission that state "it was Defendant's illegal passing maneuver, in which she was unlawfully travelling in the lane of oncoming traffic, which caused her strike Plaintiff immediately after she returned to the westbound lane of travel".

**ANSWER: Denied**

Defendant suggests, and the subject Order concludes, that absent Plaintiff's locating and disclosing the aforementioned possible eyewitnesses, these responses were improper. This is incorrect. These responses were propounded in April of 2019 and were **not** based in any way upon any reliance on the potential testimony of the unidentified eyewitnesses (which Plaintiff had conceded could not testify since at least November of 2018). Instead, these requests were denied based upon the sworn deposition testimony that Plaintiff had given on March 6, 2019.

Defendant was driving a gray car at the time of the collision. **Exhibit AG, p.80, lines 23 – 24.** She does not deny that a collision took place between her gray car and the Plaintiff. Instead, she has defended this case on the theory that Plaintiff (who was traveling in the opposite direction to her on a two lane road) made a left turn in front of her. **Exhibit AG, p.43, lines 9 – 12.**

Plaintiff testified otherwise in his sworn deposition. Plaintiff testified that, as he was preparing to make his left turn, the car coming from the opposite direction was a blue car. **Exhibit AF, p. 31 ln 16 – p. 32 ln. 1.** This blue car had other cars behind it. **Exhibit AF p. 28 ln. 17 - 19 ; p. 33 ln. 22-25.** Plaintiff made a hand signal to indicate his intention to turn left, and the blue car slowed down, allowing him to complete the turn. **Exhibit AF, p. 29 ln 12-16 ; p. 31 ln. 16-20.** Plaintiff began to complete the turn and that's the last thing he remembers. **Exhibit AF.** Plaintiff testified

that the car that struck him was not the blue car that had slowed and waived him through his turn.

**Exhibit AF, p. 30 ln 1-5.**

Consistent with the above facts, Plaintiff is informed and believes that this wreck occurred as follows: Defendant was traveling west behind the blue car. When the blue car slowed to allow Plaintiff to turn left in front of it, Defendant became impatient and pulled into the oncoming (eastbound) lane to pass. As Defendant passed the blue car, she saw the black car coming directly towards her. To avoid a head-on collision with the oncoming black car, Defendant whipped back into the westbound lane as soon as she was past the blue car, thus striking Plaintiff in midst of his turn across the westbound lane. All this was clearly set forth in Plaintiff's Memorandum in Opposition to Summary Judgment filed May 7, 2019. **Exhibit W.**

Based upon Plaintiff's testimony of the events he personally observed and remembered, the following reasonable inferences can be drawn: 1) Since the closest westbound car when Plaintiff started his turn wasn't Defendant, and since Defendant was going westbound in the westbound lane when she hit plaintiff, then Defendant necessarily passed that closest car and 2) Since there is no legal way to pass at the wreck scene, Defendant necessarily broke the law when she went around the closest car to hit Plaintiff. **Exhibit W.**

Therefore, Plaintiff properly denied the above-referenced requests to admit. Indeed, since those denials, two different judges on three different occasions have agreed with the Plaintiff. Defendant moved for summary judgment before Judge Couch essentially on the grounds that "there is no...testimony, witness, or any other material to support the allegation...it was Defendant's illegal passing maneuver, in which she was unlawfully travelling in the lane of oncoming traffic, which caused her strike Plaintiff immediately after she returned to the westbound lane of travel." Judge Couch denied the motion based solely on Plaintiff's sworn deposition



testimony as addressed above. Defendant moved for summary judgment before Judge Manning on essentially the same grounds. Judge Manning denied the motion. Defendant moved for directed verdict on essentially the same grounds. Judge Manning denied that motion as well, based solely on Plaintiff's sworn trial testimony, which was consistent with his sworn deposition testimony.

If indeed it were true that Plaintiff could present "no testimony, witness, or other material to support his allegations" Plaintiff's case would have been ended by summary judgment or directed verdict. It was not ended, because Plaintiff offered testimony, as a witness, under oath, both in deposition and consistently at trial, to support his allegations.

Accordingly, Plaintiff's responses to these requests to admit were neither based on the existence of the potential eyewitnesses (an issue that had been dead since November of 2018) nor improper. Denial was based on Plaintiff's own personal observations to which he testified.

Therefore, the finding in the subject Order that these denials "clearly lacked any good faith basis..." is not supported by any factual findings. This finding also represents a clear error of law, which is addressed more fully below.

#### **F. Statements to the Court**

Finally, Defendant suggests, and the Subject Order concludes, that Plaintiff's counsel made misleading statements to Judge Lee and Judge Manning.

##### **i. Judge Lee**

Defendant suggests that it was misleading for Plaintiff's counsel to inform Judge Lee that he did not agree with Judge Couch's written order excluding *all* witnesses after June 1 when, according to Defendant, Plaintiff's counsel did agree to that. Once again, this is a result of Defendant's successful efforts to misconstrue the facts by suggesting the scope of Judge Couch's oral ruling was broader than it was, and by continually attempting to blur the distinction between

the eyewitnesses and the damages witness. An unbiased review of the record demonstrates that Judge Couch's written order was broader than the agreement Plaintiff's counsel conceded on the record during that hearing. This is addressed more fully above. This cannot be grounds for any sanction.

ii. **Judge Manning**

Defendant next suggests that Plaintiff's counsel misled Judge Manning during the following exchange (which takes place on pages 17 and 18 of the transcript):

|    |                                                          |
|----|----------------------------------------------------------|
| 21 | THE COURT: I -- I'm going to ask you this, did you       |
| 22 | comply with the terms of Judge Couch's order?            |
| 23 | MR. JEFFERIES: Yes, Your Honor --                        |
| 24 | THE COURT: Did you fail to comply? Look, I can read      |
| 25 | this myself. I'm asking for a straight answer on the     |
| 1  | record, did you -- did you comply or not? "Yes" or "no"? |
| 2  | MR. JEFFERIES: Yes, Your Honor.                          |

Defendant suggests that Judge Couch's Order required disclosure of all witnesses by June 1 and that Plaintiff disclosed the damages witness on July 5. Thus, according to Mr. Bayne, Plaintiff did not comply with Judge Couch's Order with respect to the damages witness and the preceding exchange contained a misrepresentation by Mr. Jefferies. That suggestion might be accurate, if the preceding exchange were about the damages witness. However, it was not. Instead, Mr. Bayne took this exchange out of context to make it appear as though it was something it was not.

In actuality, Mr. Jefferies and Judge Manning were discussing “Alex” the unknown potential eyewitness that Plaintiff had conceded since November of 2018 could not be located and would not be called at trial. Putting this exchange in context requires only rewinding the exchange by **nine** lines, and including the precursor to Judge Manning’s question which Defendant curiously left out in his proposed Order to this Court. The full exchange, starting on line 12 of page 17 (rather than line 21) went as follows:

|    |                                                          |
|----|----------------------------------------------------------|
| 12 | The two witnesses Alex -- Mr. Jones testified in his     |
| 13 | deposition that Alex was a witness to the wreck.         |
| 14 | Mr. Jones, also, testified that Alex lived in a shack in |
| 15 | the woods near Winnsboro. He did not know an address. He |
| 16 | did not know a phone number. We attempted to find Alex.  |
| 17 | We would love to have a witness. We did not find Alex.   |
| 18 | No Alex. We found some shacks in the woods, but we did   |
| 19 | not find Alex.                                           |
| 20 | So all we know about Alex is --                          |
| 21 | THE COURT: I -- I'm going to ask you this, did you       |
| 22 | comply with the terms of Judge Couch's order?            |
| 23 | MR. JEFFERIES: Yes, Your Honor --                        |
| 24 | THE COURT: Did you fail to comply? Look, I can read      |
| 25 | this myself. I'm asking for a straight answer on the     |

record, did you -- did you comply or not? "Yes" or "no"?

MR. JEFFERIES: Yes, Your Honor.

It is abundantly clear here that Mr. Jefferies and Judge Manning are discussing “Alex.” Mr. Bayne cut nine lines off his quotation to make it appear otherwise. Once put in context – that the discussion concerned only “Alex” – it is clear that Plaintiff’s counsel made no misrepresentation at all. Plaintiff did not violate Judge Couch’s Order with respect to “Alex.” The Order required all witnesses to be disclosed by June 1 or they would be barred from appearing at trial. Plaintiff could not locate “Alex” prior to June 1, therefore could not disclose “Alex” prior to June 1, and at no time ever attempted to offer “Alex” as a witness at the trial of the action. All of which was consistent with Judge Couch’s order. “Alex” was not on Plaintiff’s proposed witness list. “Alex” was not under subpoena. Indeed, “Alex” was still (and remains) unlocated. The Order did not require Plaintiff to locate “Alex” (a requirement that would have been impossible). It merely barred “Alex” from appearing at trial if he could not be timely located and disclosed. In every respect, Plaintiff complied with this directive as Alex was not offered as a witness at trial.

Plaintiff’s counsel and Judge Manning do not begin discussing the damages witness until roughly page 78 of the transcript (roughly 61 pages later). Here, Plaintiff’s counsel openly admitted that Ms. Randolph was disclosed on July 5. See, for example, pages 80 and 81:

|    |                                                        |
|----|--------------------------------------------------------|
| 23 | MR. BAYNE: Judge, Judge Couch issued his ruling from   |
| 24 | the bench on May 7th to disclose by June 1st. They did |
| 25 | not do that. He issued a written --                    |

|   |                                    |
|---|------------------------------------|
| 1 | THE COURT: Wait. Stop right there. |
| 2 | Is that so?                        |
| 3 | MR. JEFFERIES: That is correct.    |

See also from page 81:

12           And Mr. Jefferies agreed with that at the hearing.  
 13           It's in -- it's in the order by Judge Couch. So there  
 14           were no witnesses -- these witnesses that they're seeking  
 15           to call were not identified by the June 1st deadline as  
 16           contained in a bench ruling and two orders from Judge  
 17           Couch.  
 18           THE COURT: All right. Yes, sir.  
 19           MR. JEFFERIES: That is correct. The order was  
 20           memorialized on July 3rd. We disclosed the witnesses on  
 21           July 5th, and not just the name, but the name and address  
 22           of Treacy Randolph, which is what we had at the time.

Here, Plaintiff's counsel was quite candid with Judge Manning that the damages witness was disclosed on July 5. This was not an intentional misrepresentation, or any misrepresentation at all to the Court. It was a completely candid and truthful response.

#### **G. The ADR Conference**

Finally, the subject Order makes findings of fact that are wholly unsupported by the record with regard to the ADR conference. As far as can be discerned, Defendant has never submitted any affidavits from any of the attendees at the ADR conference. The only affidavit concerning what occurred at mediation was the affidavit of Gus Anastopoulo which was submitted by the Plaintiff. In as much as the subject Order relies upon Mr. Bayne's unsupported allegations of things that allegedly occurred during the mediation conference, any such purported occurrences not contained in the Anastopoulo affidavit are not supported factually on the record and should be stricken.

The subject Order also fails to make any findings of fact whatsoever with respect to ADR

Rule 6. ADR Rule 6(b) states (*emphasis added*) that:

The following persons shall physically attend a mediation settlement conference *unless otherwise agreed to by the mediator and all parties* or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

- (1) The mediator;
- (2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;
- (3) The party's counsel of record, if any; and
- (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

There is no indication from the record that either the Defendant or the mediator made any objection to Mr. Anastopoulos's appearance at the mediation conference until after its conclusion. The record indicates that the parties convened, gave opening statements, separated, made a demand and counter demand, and then declared an impasse. There is no indication that Defendant objected to the conference commencing after realizing that Mr. Jefferies would not be in attendance. There is no indication that the mediator suspended the mediation for the purposes of securing Mr. Jefferies' attendance. In submitting his report to the Court, the mediator takes no note of any such objection by either himself or the Defendant, certifies that the case is not in need of further mediation, certifies that the mediation has not been continued to a later date, and declares an impasse. **Exhibit AH.**

1. Mediated settlement conferences were held before me on June 21, 2019.

By proceeding without objection, the participants “otherwise agreed” as permitted by Rule 6(b), SCADR.

The record suggests that Defense counsel lodged an objection only after the mediation had already been impassé and the parties had left. Therefore, the only facts on the record with respect to the mediation conference are as follows:

Mr. Anastopoulo appeared on behalf of the Plaintiff. **Exhibit U**. He had been actively involved in the case since its inception, first as a law clerk and then as an attorney. **Id.** Nobody contemporaneously objected to his appearance. **Id.** Plaintiff made a reasonable opening demand of roughly double the medical bills. **Id.** Mr. Bayne refused to offer any money at all to settle Plaintiff’s claim. **Id.** Not even one dollar. **Id.**

Instead, Defendant demanded that Plaintiff pay her more than \$40,000.00 (**Id.**), despite presenting no medical bills whatsoever (**Id.**), and when her actual out-of-pocket expense for her dented hood was only one-hundred dollars. Defendant’s counsel thereafter threatened to sue Plaintiff’s counsel directly. **Id.** The mediation ended in an impasse. **Id.**

Given the only facts on the record before the Court, the subject Order errs in summarily concluding that Plaintiff violated the rules of ADR.

#### **H. Other Facts Not In Evidence**

The subject Order also references numerous other facts which are either not in the record, or not clearly identified. The subject Order repeatedly cites to “Defendant’s Tabs” from the September 27, 2019 hearing. **Exhibit G** (on at least pages 3, 4, 6 and 7). However, no documents were offered by the Defendant during that hearing as is evident from the transcript, although opposing counsel does repeatedly reference his “tabs.” **Exhibit E**.

No documents that have been filed with the Clerk contain “tabs.” The confidential memorandum presented to Judge Newman did not contain “tabs.” If Defendant’s counsel organized his own exhibits into a tabulated notebook, he did not provide similarly tabulated copies to Plaintiff’s counsel at any time and, presumably therefore, did not provide tabulated copies to the Court. Unless Brett Bayne or Andy Delaney provided documents to the Court *ex parte*, it is not clear what “tabs” the Order is referring to.

There is no indication that the Court ever had tabulated copies of anything to review. If it did, no copies of such tabulated documents were ever contemporaneously provided to Plaintiff. In any event, no such tabulated copies were made a record to the proceeding, such that reference to various “tabs” in the subject Order makes appellate review difficult, if not impossible.

### **III. The Order Contains Errors of Law**

In addition to the lack of factual and/or legal findings addressed above, and the inclusion of incorrect or unsupported facts, the subject Order contains at least two glaring errors of law.

First, in footnote 13 to page 11, the Court concludes:

---

<sup>13</sup> If a claim being made has, at best, a 10% chance of success it is the undersigned’s opinion this claim cannot possibly meet the requirements of Rule 11(a)—that “to the best of [the attorney’s] knowledge, information and belief there is good ground to support it.” This simply is not the good ground standard applied to a Complaint filed in a case—that there is a 10% chance of success and a 90% chance of failure.

---

This simply is not the law in South Carolina. An attorney in South Carolina has good grounds to support an action where:

“a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law...; a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.” S.C. Code Ann. § 15-36-10.



The instant case cannot meet this definition where two Circuit Judges have denied Defendant's motions for summary judgment, Defendant's motions for directed verdict have been denied, and Plaintiff has secured himself a partial directed verdict on the issue of Defendant's negligence per se. Plaintiff instituted this action for the sole purpose of "adjudicating his claim" for damages against the Defendant. But for Defense counsel's improper closing argument, that claim would have been adjudicated by a jury months ago.

Secondly, as noted above, the Court makes an error of law in holding that Plaintiff had no good faith basis for denying Defendant's requests for admission. Two different Circuit Court Judges have already ruled that Plaintiff does have sufficient witness testimony and other material to support his claims that Defendant was negligent by attempting an illegal passing maneuver that proximately caused Plaintiff's injuries. One Circuit Court Judge does not have the authority to set aside the order of another. See, e.g., Fletcher, 287 S.C. at 604. Because this conclusion contradicts the prior Circuit Court orders, it constitutes an error of law.

#### **IV. No Sanctions are Warranted, and the Order Fails to Appropriately Weigh the Proportionality of the Sanctions Issued.**

Defendant has, to date, been successful in weaving together an illusion of misconduct by referencing any number of unrelated events, exaggerating facts, and, in at least two instances, outright misleading this Court. While this action has been unnecessarily delayed and expensive, the same is the result, primarily, of Defendant's strategy (apparently from day one) to defend this action through motions practice and multiple, recurring threats and requests for sanctions and litigation against Plaintiff's counsel, rather than on the merits.

Indeed, when this case finally was positioned to be decided on the merits, and finally put to bed, Defendant's counsel caused a mistrial. The long-tortured history of this case is a result of Defendant's refusal to accept what should have been a good fortune to her: that Plaintiff believed

there to be two eyewitnesses who would support his account, but was unable to identify them. Nobody would have benefited more by locating these witnesses than Plaintiff, but they could not be located. So Plaintiff moved on and Defendant would not.

Plaintiff agrees to this day, as he has since November 2018, that these **eyewitnesses** cannot be called at trial. These **eyewitnesses** cannot be located and therefore cannot be disclosed to or deposed by the Defendant. Plaintiff has agreed with this fundamental tenant of fairness since November 2018. Plaintiff did not rely upon the possibility of finding these **eyewitnesses** as a basis for responding to Defendant's requests for admission. Plaintiff did not rely upon the possibility of finding these **eyewitnesses** as a basis for defending summary judgment. Plaintiff did not attempt to present these **eyewitnesses** for testimony at trial. These potential **eyewitnesses** have not been relied upon by Plaintiff in any way for purposes of prosecuting his case since it became apparent in 2018 that they could not be located after an exhaustive effort. Thus, any money expended by Defense counsel in perpetuating this wild goose chase was a result of their own action, and not owing to anything Plaintiff or his counsel did or had the power even to do.

When the amalgamation of Defendant's complaints, and the various (often inaccurate) recitations in the subject Order are distilled down, there remains one issue: Plaintiff was represented at the mediation in this action by an attorney who was not listed by the Clerk of Court as an official attorney of record. This is possibly a violation (however technical) of ADR Rule 6 and could support a proportional sanction were there evidence of a contemporaneous objection to the ADR conference.

"When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly" Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc., 334 S.C. 193, 198 (Ct.App. 1999)(citing

Orlando v. Boyd, 320 S.C. 509 (1996)). “In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice” Id. at 199 (citing Laney v. Hefley, 262 S.C. 54 (1974)). “[T]he sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” Id. at 198 (citing Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152 (Ct.App.1990)).

The Subject Order fails to weigh the proportionality of the sanction in light of the actual conduct for which sanctions might be imposed. The record indicates that Gus Anastopoulo (Plaintiff’s counsel who attended the mediation) was intimately involved with the case prior to the mediation conference, even if he had not filed an official notice of appearance. Indeed, when it came to his attention that Defendant had issue with his status, Mr. Anastopoulo filed a formal notice of appearance just seven days following the mediation, and personally participated in the trial of the action.

The record further indicates that the mediation conference did not fail as a result of Mr. Anastopoulo’s attendance (as opposed to a technical attorney of record). Defendant conceded that the case likely would not have settled at mediation no matter who appeared on behalf of the Plaintiff. **Exhibit E, p. 27 ln. 17-18.** In fact, it is quite apparent that the Defendant herself never intended to conduct the mediation in good faith, in as much as she demanded that Plaintiff pay her to settle the matter, and her counsel thereafter posted a meme to social media titled “When you impasse the mediation” and containing the message “Peace was never an option” accompanied by an explosion. **Exhibit J.**

Setting aside Defendant’s and her counsel’s bad acts (which in and of themselves are sanctionable), the appropriate sanction, if any, for Plaintiff’s technical violation of Rule 6 would

be to order Plaintiff to pay the entire cost of the failed mediation or to order the parties to re-mediate the case with Plaintiff covering the costs of the second mediation.

Not only does the subject Order fail to properly weigh the appropriateness of lesser sanctions, the sanctions it does impose go well beyond even the (often inaccurate) findings and conclusions that are contained in the subject Order. For example, the monetary sanctions include payment for Defense Counsel's time and costs in attending the trial. However, as detailed in Section I, Defendant had the opportunity (and had been instructed by the Chief Administrative Judge) to raise this motion prior to the trial. That Defendant had the opportunity to raise this motion prior to trial, but refused to do so, belies the notion that Defendant was aggrieved by having to move forward with the trial in the first instance. Most shockingly, the only reason there is even a case left for the subject Order to dismiss is that the case did not resolve at the trial on account of Defendant's improper conduct necessitating a mistrial, after Plaintiff secured a finding on the merits in the form of a directed verdict against Defendant on the issue of negligence *per se*.

### **CONCLUSION**

For these reasons, and those set forth in Plaintiff's Motion for Sanctions, the Court should strike the subject Order, deny whatever of Defendant's motions (if any) as are still pending in the matter, grant Plaintiff's motion(s) for sanctions, and place this case on the next available roster for a final resolution as to Plaintiff's damages.

**[SIGNATURE ON FOLLOWING PAGE]**

Respectfully Submitted,

**ANASTOPOULO LAW FIRM, LLC**

/s/ Lane D. Jefferies

Lane D. Jefferies, Esquire

SC Bar Number: 101764

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Eric M. Poulin, Esquire

SC Bar Number: 100209

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

**ATTORNEYS FOR THE PLAINTIFF**

Charleston, South Carolina  
November 8, 2019

# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 8:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

BB

**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** Harland Jones vs. Karen Robinson (Claim No.: 0459413365)  
**Date:** May 14, 2019 at 4:32 PM  
**To:** rcouchj@sccourts.org  
**Cc:** teamjefferies@googlegroups.com, Andy Delaney ADelaney@mgclaw.com

Judge Couch,

Attached is the proposed Order you requested on this Motion to Compel on the hearing conducted on May 8. As you will recall, this specific matter dealt with the identification of witnesses in response to discovery requests relating to a bicycle on car accident. This proposed Order encompasses the information set out in the unopposed memorandum filed on March 7 in this case as well as the outcome of the hearing last week.

I have circulated a copy to Mr. Jeffries for review. He objects to portions of the Order as "...far more broad than what Judge Couch instructed, and it includes numerous purported factual findings that the Judge didn't make (and for which there is no evidentiary support in any event)." We disagree with that as each factual assertion is contained in the memorandum or was addressed at the hearing and was not contested by Plaintiff. As we cannot reach a resolution, we are submitting the Order as written subject to his objections.

I have attached a copy of the unopposed filed memorandum that is referenced in the Order as well for your review, should you need it.

Please let me know if you have any questions or if I can provide anything else.

Brett



**Brett Bayne, Attorney**  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
1320 Main Street, 10th Floor  
Columbia, SC 29201  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
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|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF RICHLAND      | ) |                                   |
|                         | ) |                                   |
| HARLAND JONES,          | ) | Civil Action No. 2018-CP-40-01518 |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| v.                      | ) | <b>ORDER GRANTING DEFENDANT'S</b> |
|                         | ) | <b>MOTION TO COMPEL</b>           |
| KAREN ROBINSON,         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
|                         | ) |                                   |

---

This matter came before the Court on May 7, 2019 on Defendant's Motion to Compel Plaintiff to disclose the identities of various fact witnesses Plaintiff contends have information regarding this litigation. Based on the filings, memoranda, and oral arguments of counsel for Plaintiff and Defendant, it appears to this Court that there is just cause for granting the Motion. It is therefore **ORDERED** that the Motion to Compel is **GRANTED**.

This matter arises out of a motor vehicle accident that occurred on June 7, 2017 in Columbia, Richland County, South Carolina. Plaintiff filed his Complaint on March 16, 2018 in the Court of Common Pleas for Richland County, and alleges a cause of action for negligence against Defendant. On May 8, 2018, Defendant served upon the Plaintiff Defendant's First Set of Interrogatories and Requests for Production pursuant to Rule 26(a) of the South Carolina Rules of Civil Procedure. On June 5, 2019, Plaintiff's counsel stated in sworn, signed pleadings to this Court that he has or believes there to be a witness or witnesses who will testify on pertinent issues relating Defendant's alleged negligence. As a result of this assertion, on August 14, 2018, Defendant served on the Plaintiff Defendant's First Supplemental Set of Interrogatories and Requests for Production.

As part of Defendant's First Supplemental Set of Interrogatories, Defendant requested certain information regarding the identity and existence of *any and all* witnesses who would have knowledge of the events giving rise to the subject motor vehicle accident. Specifically, Defendant sought the following supplemental interrogatory: "State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of 'Plaintiffs Notice of Motion, Motion to Dismiss, and Memorandum of Law in Support Thereof.' For reference, you specifically asserted to the Court:

'...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'"

No response was received to those requests. Defendants thereafter filed a Motion to Compel various outstanding discovery requests. All outstanding issues were heard by The Honorable DeAndrea G. Benjamin on October 1, 2018. On October 3, 2018, the Motion was granted by Judge Benjamin and Plaintiff was ordered to produce any supplemental discovery information within twenty (20) days. Plaintiff failed to comply with the Order. On October 23, 2018, Defendant filed a Motion for Rule to Show Cause. The Rule was granted through written Order of Judge Benjamin on October 30, 2018. Plaintiff responded on November 7, 2018 and admitted within the responses that he did not have *any witnesses* he had previously represented to the Court on June 5, 2018.

Thereafter, on March 6, 2019, Plaintiff, while giving his sworn deposition testimony, revealed for the first time that he had a friend named "Alex" who witnessed the motor vehicle



accident that is the subject of this lawsuit. Plaintiff admitted he was aware of “Alex” from the time immediately following the accident until today but did not disclose the existence of “Alex” to the defense. Plaintiff could not give “Alex’s” last name, where “Alex” lived, a mailing address, a phone contact, or any way to find or get in touch with “Alex.”

Additionally, Plaintiff, through his filings, depositions, memoranda, and oral arguments, has consistently referenced an individual who remains unidentified, yet, according to Plaintiff, witnessed the accident. According to Plaintiff, this individual is his wife’s cousin. Plaintiff has admitted he has spoken to this individual and this individual has come to his house after the accident. Plaintiff represents he did not disclose this individual because she did not want to be involved in the case. However, Plaintiff seeks to rely on testimony or inferences arising from this individual, as they allegedly were operating the vehicle in front of Defendant immediately prior to the accident, according to Plaintiff they observed the accident, and according to Plaintiff they spoke with Plaintiff about the accident at a later date.

It is apparent that Plaintiff has failed to fully comply with the discovery requests of Defendant. Specifically, Plaintiff has failed to identify in full persons sought by Defendant in discovery while simultaneously seeking to introduce these unidentified witnesses’ statements about the accident.

This action has been pending since March 16, 2018. This matter is currently scheduled to be heard at trial the week of July 8, 2019. Plaintiff has introduced evidence of these witnesses and admitted he has known about them for nearly two years. Because this information is clearly relevant and is the proper subject of written discovery within our State’s rules, Plaintiff is ordered to respond to discovery and identify and produce these alleged witnesses.

**IT IS HEREBY ORDERED THAT** Plaintiff shall fully respond to Defendant’s

discovery regarding the identification and contact information of these purported factual witnesses, and it is further

**ORDERED THAT** compliance with this Order shall be had on or by **June 1, 2019**, and it is further

**ORDERED THAT** the failure of Plaintiff to comply with this Order shall result in Plaintiff's inability to use the aforementioned witnesses or any other unidentified witness at trial, and it is further

**ORDERED THAT**, should Plaintiff fail to fully respond to the Defendant's discovery requests regarding this Motion to Compel, Plaintiff may be sanctioned in accordance with South Carolina Rules of Civil Procedure 37, including but not limited to Defendant's attorney's fees, court costs and expenses.

**IT IS SO ORDERED!**

---

Roger L. Couch, Judge

May 10, 2019

# Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 8:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

BB

**From:** Brett Bayne brett.bayne@mgclaw.com  
**Subject:** Re: Harland Jones v. Karen Robinson  
**Date:** June 27, 2019 at 3:16 PM  
**To:** Newman, Jocelyn jnewmanj@sccourts.org  
**Cc:** Newman, Jocelyn Secretary (Ebony Martin) jnewmansc@sccourts.org, Rogers E. Harrell, III rharrell@murphygrantland.com, Andy Delaney ADeLaney@mgclaw.com, lane@akimlawfirm.com

Judge Newman,

Sounds good. Thank you for your assistance with attempting to set it. We will address the issues during pretrial with the trial judge.

Brett H. Bayne  
McAngus, Goudelock & Courie  
Attorney  
O: 803-227-2281<tel:803-227-2281>  
C: 214-405-8175<tel:214-405-8175>

Sent from my iPhone

Brett Bayne, Attorney  
brett.bayne@mgclaw.com  
MGC Law Insurance Defense  
1320 Main Street, 10th Floor  
Columbia, SC 29201 US  
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
On Jun 27, 2019, at 3:13 PM, Newman, Jocelyn <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org>> wrote:

I offered tomorrow because you represented on the face of the motion that an expedited hearing was needed. If it can wait until after trial, so be it. It will not be heard by Judge Nettles tomorrow; instead, it will be heard at the time of trial.

Thanks,

Jocelyn Newman  
Circuit Court Judge

-----Original Message-----

From: Brett Bayne [mailto:brett.bayne@mgclaw.com]  
Sent: Thursday, June 27, 2019 3:09 PM  
To: Newman, Jocelyn <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org>>  
Cc: Newman, Jocelyn Secretary (Ebony Martin) <jnewmansc@sccourts.org<mailto:jnewmansc@sccourts.org>>; Rogers E. Harrell, III <rharrell@murphygrantland.com<mailto:rharrell@murphygrantland.com>>; Andy Delaney <ADelaney@mgclaw.com<mailto:ADelaney@mgclaw.com>>; lane@akimlawfirm.com<mailto:lane@akimlawfirm.com>  
Subject: Re: Harland Jones v. Karen Robinson

Judge Newman,

Thank you for updating us. I am perfectly amenable with Judge Nettles hearing it tomorrow morning. But we can also have it heard either pre or post trial by Judge Lee or another judge later, if necessary.

Brett H. Bayne  
McAngus, Goudelock & Courie  
Attorney  
O: 803-227-2281<tel:803-227-2281>  
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Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526 On Jun 27, 2019, at 2:15 PM, Newman, Jocelyn <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org>> wrote:

Folks,

I am not scheduled to have court again until July 15, at which time I'll be in Kershaw. I will not have court again in Richland until July 22. If you believe this to be urgent, I can ask Judge Nettles if he will hear the motion tomorrow morning at 9:30. Otherwise, no one will be available to hear it until at least July 8 (when Judge Lee will be here for a CP term). Please advise.

Thanks,

Jocelyn Newman  
Circuit Court Judge

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Sent: Thursday, June 27, 2019 11:53 AM  
To: Newman, Jocelyn <jnewmanj@sccourts.org<mailto:jnewmanj@sccourts.org><mailto:jnewmanj@sccourts.org>>; Newman, Jocelyn Law Clerk () <jnewmanlc@sccourts.org<mailto:jnewmanlc@sccourts.org><mailto:jnewmanlc@sccourts.org>>; Newman, Jocelyn Secretary (Ebony Martin) <jnewmansc@sccourts.org<mailto:jnewmansc@sccourts.org><mailto:jnewmansc@sccourts.org>>  
Cc: 'Rogers E. Harrell, III' <rharrell@murphygrantland.com<mailto:rharrell@murphygrantland.com><mailto:rharrell@murphygrantland.com>>; Andy Delaney <ADelaney@mgclaw.com<mailto:ADelaney@mgclaw.com><mailto:ADelaney@mgclaw.com>>; lane@akimlawfirm.com<mailto:lane@akimlawfirm.com><mailto:lane@akimlawfirm.com>>  
Subject: Harland Jones v. Karen Robinson

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Judge Newman,

Earlier today I filed a Motion for Sanctions related to the Mediation in this case. That filed Motion is attached. As the discussion of the Motion contains communications made during the mediation, in an abundance of caution and to ensure compliance with SCADR Rule 8, I did not submit the Memorandum or Exhibits to the Public Index with the Motion. I am sending those directly to you to avoid them being publicly posted.

We are on the trial roster for the week of July 8 and are prepared to go forward with trial at that time. We have requested an expedited hearing date to have the mediation sanction issue resolved in advance of trial as one of the possible sanctions we have sought is to strike the Complaint. We can be available tomorrow or anytime next week (although, with the Fourth of July that may not be possible) if the court instructs.

Please let me know if you need anything else or have any questions.

Brett

<image001.jpg>

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brett.bayne@mgclaw.com<mailto:brett.bayne@mgclaw.com><mailto:brett.bayne@mgclaw.com>  
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From: Brett Bayne brett.bayne@mgclaw.com
Subject: RE: Harland Jones v. Karen Robinson
Date: July 25, 2019 at 2:10 PM
To: Newman, Jocelyn jnewmanj@sccourts.org
Cc: Newman, Jocelyn Secretary (Ebony Martin) jnewmansc@sccourts.org, Rogers E. Harrell, III rharrell@murphygrantland.com, Andy Delaney ADelaney@mgclaw.com, lane@akimlawfirm.com

Judge Newman,

I apologize for my confusion the first time around. The nature of the urgency the first time was that we were facing the July 4th week with court closed and then trial set to start July 8. I believe I poorly tried to convey flexibility with the scheduling options to accommodate the compressed window and the limited availability of judges in Richland during that time and it came across as a withdrawal of the request. I certainly did not mean to indicate we had changed our mind and we certainly did not intend to waste your time with scheduling it.

To avoid any other special setting or extra time out of the court's schedule, if you would permit, would it be possible to be placed on the CPNJ Motions Roster for July 29 or 31 or on the CPNJ Motions Roster for August 12 (it does not appear there are any CPNJ Motions the week of August 5). The trial is currently set for August 12, but that would give flexibility of another date.

Brett



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Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526
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Please consider the environment before printing this email.

From: Newman, Jocelyn jnewmanj@sccourts.org
Sent: Thursday, July 25, 2019 1:43 PM
To: Brett Bayne brett.bayne@mgclaw.com
Cc: Newman, Jocelyn Secretary (Ebony Martin) jnewmansc@sccourts.org; Rogers E. Harrell, III rharrell@murphygrantland.com; Andy Delaney ADelaney@mgclaw.com; lane@akimlawfirm.com
Subject: RE: Harland Jones v. Karen Robinson

Brett,

Are these not the motions that I went out of the way to schedule, only to be told "never mind"? If so, I'm not particularly inclined to create a special time for their hearing. Please let me know whether you actually want a hearing date and time this go 'round.

Thanks,

Jocelyn Newman
Circuit Court Judge

From: Brett Bayne [<mailto:brett.bayne@mgclaw.com>]
Sent: Wednesday, July 24, 2019 5:06 PM
To: Newman, Jocelyn jnewmanj@sccourts.org
Cc: Newman, Jocelyn Secretary (Ebony Martin) jnewmansc@sccourts.org; Rogers E. Harrell, III rharrell@murphygrantland.com; Andy Delaney ADelaney@mgclaw.com; lane@akimlawfirm.com
Subject: RE: Harland Jones v. Karen Robinson

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Judge Newman,

I am following back up on this matter Judge Lee's continuance of trial on July 8 based on the pending Rule 59 motion filed by Plaintiff. Earlier today Judge Couch filed an Order denying the Rule 59 Motion. I have attached a copy if you need it.

This matter has actually already been reset onto a roster for August 12. However, we still have a Motion for Sanctions and a Motion for Summary Judgment which need to be heard. I have attached both. Further, on page 7 of Judge Couch's Order filed earlier today, the determination of sanctions for the discovery violations is referred to the Chief Administrative Judge for Richland County. If possible, we would ask to have a hearing set with Your Honor prior to the August 12 trial date where we can address that issue, our separate Motion for Sanctions, and our Motion for Summary Judgment.

If you need anything further from us on this matter, please let me know.

Brett



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Cc: Newman, Jocelyn Secretary (Ebony Martin) <jnewmansc@sccourts.org>; Rogers E. Harrell, III <rharrell@murphygrantland.com>; Andy Delaney <ADelaney@mgclaw.com>; lane@akimlawfirm.com
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 Attorney
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 C: [214-405-8175](tel:214-405-8175)

Sent from my iPhone

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Circuit Court Judge

From: Brett Bayne [<mailto:brett.bayne@mgclaw.com>]

Sent: Thursday, June 27, 2019 11:53 AM

To: Newman, Jocelyn <jnewmanj@sccourts.org> <<mailto:jnewmanj@sccourts.org>>>; Newman, Jocelyn Law Clerk ()

<jnewmanlc@sccourts.org> <<mailto:jnewmanlc@sccourts.org>>>; Newman, Jocelyn Secretary (Ebony Martin)

<jnewmansc@sccourts.org> <<mailto:jnewmansc@sccourts.org>>>

Cc: 'Rogers E. Harrell, III' <rharrell@murphygrantland.com> <<mailto:rharrell@murphygrantland.com>>>; Andy Delaney

<ADelaney@mgclaw.com> <<mailto:ADelaney@mgclaw.com>>>;

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Please let me know if you need anything else or have any questions.

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<image001.jpg>

Brett Bayne, Attorney

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**From:** Newman, Jocelyn [jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)  
**Subject:** RE: Harland Jones v. Karen Robinson  
**Date:** August 7, 2019 at 12:59 PM  
**To:** Lane Jefferies [lane@akimlawfirm.com](mailto:lane@akimlawfirm.com), Brett Bayne [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
**Cc:** Newman, Jocelyn Secretary (Ebony Martin) [jnewmansc@sccourts.org](mailto:jnewmansc@sccourts.org), Rogers E. Harrell, III [rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com), Andy Delaney [ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com), TeamJefferies [teamjefferies@googlegroups.com](mailto:teamjefferies@googlegroups.com), teamrem@[googlegroups.com](mailto:googlegroups.com), PAUL GUNTER [GUNTER.PAUL@richlandcountysc.gov](mailto:GUNTER.PAUL@richlandcountysc.gov)

Counsel, please be here on Monday morning at 9:00 for the roster meeting. You should be prepared to argue all outstanding motions. If the motions for summary judgment are denied, you should be prepared to begin trial immediately following the motions hearing. I'll see you then.

Thanks,

Jocelyn Newman  
Circuit Court Judge

---

**From:** Lane Jefferies [<mailto:lane@akimlawfirm.com>]  
**Sent:** Thursday, July 25, 2019 3:09 PM  
**To:** Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)>  
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**Subject:** Re: Harland Jones v. Karen Robinson

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Dear Judge Newman —

Unfortunately, both the 29th and 31st are less than a week away. In addition, plaintiffs counsel is scheduled to travel on the 29th to West Virginia in preparation for morning depositions in a federal case on the 30th, and already on a motions roster in Charleston on the 31st and then headed to a CLE in Hilton head immediately thereafter for the remainder of the week. Plaintiff would respectfully request that the hearings be set in the usual course of the Court's business.

Best,  
Lane

Sent from my iPhone  
Dictated, not read

On Jul 25, 2019, at 14:10, Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)> wrote:

Judge Newman,

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<119072514105101699.jpg>

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Brett

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Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526  
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<image002.png>

**From:** Brett Bayne <[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)>

**Sent:** Thursday, June 27, 2019 3:16 PM

**To:** Newman, Jocelyn <[jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)>

**Cc:** Newman, Jocelyn Secretary (Ebony Martin) <[jnewmansc@sccourts.org](mailto:jnewmansc@sccourts.org)>; Rogers E. Harrell, III

CC: Newman, Jocelyn Secretary (Ebony Martin) <[jnewmansc@sccourts.org](mailto:jnewmansc@sccourts.org)>, Rogers E. Harrell, III <[rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)>; Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)>; [lane@akimlawfirm.com](mailto:lane@akimlawfirm.com)  
**Subject:** Re: Harland Jones v. Karen Robinson

Judge Newman,

Sounds good. Thank you for your assistance with attempting to set it. We will address the issues during pretrial with the trial judge.

Brett H. Bayne  
 McAngus, Goudelock & Courie  
 Attorney  
 O: [803-227-2281](tel:803-227-2281)  
 C: [214-405-8175](tel:214-405-8175)

Sent from my iPhone

On Jun 27, 2019, at 3:13 PM, Newman, Jocelyn <[jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)> wrote:

I offered tomorrow because you represented on the face of the motion that an expedited hearing was needed. If it can wait until after trial, so be it. It will not be heard by Judge Nettles tomorrow; instead, it will be heard at the time of trial.

Thanks,

Jocelyn Newman  
 Circuit Court Judge

-----Original Message-----

From: Brett Bayne [<mailto:brett.bayne@mgclaw.com>]  
 Sent: Thursday, June 27, 2019 3:09 PM  
 To: Newman, Jocelyn <[jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)>  
 Cc: Newman, Jocelyn Secretary (Ebony Martin) <[jnewmansc@sccourts.org](mailto:jnewmansc@sccourts.org)>; Rogers E. Harrell, III <[rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)>; Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)>; [lane@akimlawfirm.com](mailto:lane@akimlawfirm.com)  
 Subject: Re: Harland Jones v. Karen Robinson

Judge Newman,

Thank you for updating us. I am perfectly amenable with Judge Nettles hearing it tomorrow morning. But we can also have it heard either pre or post trial by Judge Lee or another judge later, if necessary.

Brett H. Bayne  
 McAngus, Goudelock & Courie  
 Attorney  
 O: 803-227-2281 <<tel:803-227-2281>>  
 C: 214-405-8175 <<tel:214-405-8175>>

Sent from my iPhone

Brett Bayne, Attorney  
[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)  
 MGC Law Insurance Defense  
 1320 Main Street, 10th Floor  
 Columbia, SC 29201 US  
 Main: 803-779-2300 | Direct: 803-227-2281 | Fax: 803-748-0526 On Jun 27, 2019, at 2:15 PM, Newman, Jocelyn <[jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)> <<mailto:jnewmanj@sccourts.org>>> wrote:

Folks,

I am not scheduled to have court again until July 15, at which time I'll be in Kershaw. I will not have court again in Richland until July 22. If you believe this to be urgent, I can ask Judge Nettles if he will hear the motion tomorrow morning at 9:30. Otherwise, no one will be available to hear it until at least July 8 (when Judge Lee will be here for a CP term). Please advise.

Thanks,

Jocelyn Newman  
 Circuit Court Judge

From: Brett Bayne [<mailto:brett.bayne@mgclaw.com>]

Sent: Thursday, June 27, 2019 11:53 AM

To: Newman, Jocelyn <[jnewmanj@sccourts.org](mailto:jnewmanj@sccourts.org)><<mailto:jnewmanj@sccourts.org>>; Newman, Jocelyn Law Clerk () <[jnewmanlc@sccourts.org](mailto:jnewmanlc@sccourts.org)><<mailto:jnewmanlc@sccourts.org>>; Newman, Jocelyn Secretary (Ebony Martin) <[jnewmansc@sccourts.org](mailto:jnewmansc@sccourts.org)><<mailto:jnewmansc@sccourts.org>>

Cc: 'Rogers E. Harrell, III' <[rharrell@murphygrantland.com](mailto:rharrell@murphygrantland.com)><<mailto:rharrell@murphygrantland.com>>; Andy Delaney <[ADelaney@mgclaw.com](mailto:ADelaney@mgclaw.com)><<mailto:ADelaney@mgclaw.com>>; [lane@akimlawfirm.com](mailto:lane@akimlawfirm.com)<<mailto:lane@akimlawfirm.com>>

Subject: Harland Jones v. Karen Robinson

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Judge Newman,

Earlier today I filed a Motion for Sanctions related to the Mediation in this case. That filed Motion is attached. As the discussion of the Motion contains communications made during the mediation, in an abundance of caution and to ensure compliance with SCADR Rule 8, I did not submit the Memorandum or Exhibits to the Public Index with the Motion. I am sending those directly to you to avoid them being publicly posted.

We are on the trial roster for the week of July 8 and are prepared to go forward with trial at that time. We have requested an expedited hearing date to have the mediation sanction issue resolved in advance of trial as one of the possible sanctions we have sought is to strike the Complaint. We can be available tomorrow or anytime next week (although, with the Fourth of July that may not be possible) if the court instructs.

Please let me know if you need anything else or have any questions.

Brett

<image001.jpg>

Brett Bayne, Attorney

[brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)<<mailto:brett.bayne@mgclaw.com>>

1320 Main Street, 10th Floor

Columbia, SC 29201

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# Exhibit

**From:** Courtmail40\_DoNotReply@sccourts.org  
**Subject:** Case 2018CP4001518-Harland Jones vs Karen Robinson , defendant, et al added to Court Roster for period 2019-10-28 through 2019-11-01.  
**Date:** September 30, 2019 at 12:37 PM  
**To:** teamjefferies@googlegroups.com  
**Cc:** gunterp@rcgov.us



A Roster Meeting will be held on Monday October 28, 2019 at 9:00 A.M.in Courtroom 2-C for the October 28, 2019, 2019 Jury Trial term. ATTENDANCE IS MANDATORY. If your case is not reached during the term of court it will carry over to the next term of court unless continued by the Chief Administrative Judge. All requests for a Continuance, Status Conferences and Proposed Scheduling Orders must be filed with the Judge along with the required filing fee no later than Wednesday October 23, 2019. If a Status Conference is necessary or would be helpful, please contact my office by email [JNewmanLC@sccourts.org](mailto:JNewmanLC@sccourts.org) and [Gunter.Paul@richlandcountysc.gov](mailto:Gunter.Paul@richlandcountysc.gov) immediately.

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ELECTRONICALLY FILED - 2019 Nov 08 8:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

Exhibit

ELECTRONICALLY FILED - 2019 Nov 08 8:29 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001518

From: Andy Delaney ADelaney@mgclaw.com
Subject: RE: Case 2018CP4001518-Harland Jones vs Karen Robinson , defendant, et al added to Court Roster for period 2019-10-28 through 2019-11-01.
Date: October 22, 2019 at 12:13 PM
To: PAUL GUNTER GUNTER.PAUL@richlandcountysc.gov, Tiffany Chavis Tiffany.Chavis@mgclaw.com, Brett Bayne brett.bayne@mgclaw.com, gus@akimlawfirm.com, efile.akimlaw@gmail.com, teamjefferies@googlegroups.com, kdavidlits@gmail.com, efile.akimlaw@gmail.com, bblair@murphygrantland.com, rharrell@murphygrantland.com, bblair@murphygrantland.com, rharrell@murphygrantland.com, Tiffany Chavis Tiffany.Chavis@mgclaw.com, efile.akimlaw@gmail.com, roy@akimlawfirm.com, efile.akimlaw@gmail.com, eric@akimlawfirm.com, mcclose@ylitigators.com, blee@ylitigators.com

AD

Paul,
Judge Hood granted the Defendant's motion for sanctions and dismissed the complaint with prejudice. I have attached his email with that ruling. A proposed order on the same has been submitted to Judge Hood for his consideration. To my knowledge, it has not yet been signed.

Andy



Andy Delaney, Attorney
adelaney@mgclaw.com
1320 Main Street, 10th Floor
Columbia, SC 29201
Main: 803-779-2300 | Direct: 803-227-2313 | Fax: 803-748-0526
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From: PAUL GUNTER <GUNTER.PAUL@richlandcountysc.gov>
Sent: Tuesday, October 22, 2019 9:27 AM
To: Tiffany Chavis <Tiffany.Chavis@mgclaw.com>; Brett Bayne <brett.bayne@mgclaw.com>; 'gus@akimlawfirm.com' <gus@akimlawfirm.com>; 'efile.akimlaw@gmail.com' <efile.akimlaw@gmail.com>; 'teamjefferies@googlegroups.com' <teamjefferies@googlegroups.com>; 'kdavidlits@gmail.com' <kdavidlits@gmail.com>; 'efile.akimlaw@gmail.com' <efile.akimlaw@gmail.com>; 'bblair@murphygrantland.com' <bblair@murphygrantland.com>; 'rharrell@murphygrantland.com' <rharrell@murphygrantland.com>; 'bblair@murphygrantland.com' <bblair@murphygrantland.com>; 'rharrell@murphygrantland.com' <rharrell@murphygrantland.com>; Tiffany Chavis <Tiffany.Chavis@mgclaw.com>; Andy Delaney <ADelaney@mgclaw.com>; 'efile.akimlaw@gmail.com' <efile.akimlaw@gmail.com>; 'roy@akimlawfirm.com' <roy@akimlawfirm.com>; 'efile.akimlaw@gmail.com' <efile.akimlaw@gmail.com>; 'eric@akimlawfirm.com' <eric@akimlawfirm.com>; 'mcclose@ylitigators.com' <mcclose@ylitigators.com>; 'blee@ylitigators.com' <blee@ylitigators.com>
Subject: Case 2018CP4001518-Harland Jones vs Karen Robinson , defendant, et al added to Court Roster for period 2019-10-28 through 2019-11-01.

Good Morning,

This is a reminder the above listed case is on the Roster Meeting Docket for Monday October 28, 2019 in Courtroom 2C at 9:00 a.m. before Judge Jocelyn Newman. Please let our office know if there will be any issues with moving forward with the case that day. If the matter is ready for trial, please let me know how long you anticipate the trial to last. All status conference request, proposed scheduling orders and proposed orders for continuance are due no later than Wednesday October 23, 2019 at 12pm.

Thank you,

[Paul J. Gunter](#)
Common Pleas Court Coordinator
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29201
Gunter.paul@richlandcountysc.gov

P 803-576-1932 F 803-576-1785




2020 Hampton St.
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JONATHAN N. ALKIS (SC)
CONSTANCE ANASTOPOULO (SC)*
GARRETT L. BROWN (SC)
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MATTHEW L. NALL (SC)
ERIC M. POULIN (SC)(NC)(GA)(CA)
SAMANTHA SUTTON (SC)(NC)
CASEY VAN VALKENBURGH (SC)(IL)
P. HEATH WARD (SC)
DANNY LEE WILLARD, JR. (SC)
ROY T. WILLEY, IV (SC)
L. CRAYTON WILLIAMS (SC)

*OF COUNSEL

November 7, 2018

Sent Via U.S. Mail and E-mail

J. Andrew Delaney
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

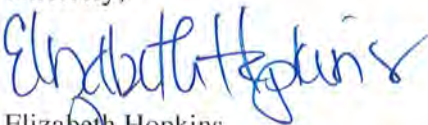
RE: *Harland Jones v. Karen Robinson*
Case No.: 2018-CP-40-01518

Dear Andy:

Enclosed for service upon you, please find Plaintiff's Answers to Defendant's Second Set of Interrogatories and Plaintiff's Responses to Defendant's Second Set of Requests for Production.

If you should have any questions, please do not hesitate to contact us.

Sincerely,



Elizabeth Hopkins

Enclosures as stated

MAILING: 32 Ann Street, Charleston, South Carolina 29403

North Charleston: 2170 Ashley Phosphate Road, 3rd Floor, North Charleston, South Carolina 29406 * **Greenville:** 418 River Street, Greenville, SC 29601
Florence: 150 W. Evans Street, Florence, South Carolina 29501 * **Myrtle Beach:** 2411 N. Oak Street, Suite 407, Myrtle Beach, South Carolina 29577
Columbia: 1201 Main Street, Suite 1100, Columbia, South Carolina 29201 * **Raleigh, NC:** 8801 East Park Drive, Suite 301, Raleigh, NC 27617
Wilmington, NC: Appointment Only

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

**PLAINTIFF'S ANSWER TO
DEFENDANT'S SECOND SET OF
INTERROGATORIES**

TO: DEFENDANT AND ALL COUNSEL OF RECORD

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

ANSWER: None.

2. Provide copies of any and/or all statements taken, recorded, given, written, or other by all witnesses identified in Request 1.

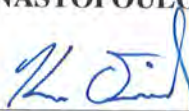
ANSWER: None.

3. Provide detailed statements as to what each witness listed in Request 1 will testify to in this matter.

ANSWER: None.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV, Esq.

S.C. Bar No.: 101010

Eric M. Poulin, Esq.

S.C. Bar No.: 100209

Lane D. Jefferies, Esq.

S.C. Bar No.: 101764

Kenneth T. David, Esq.

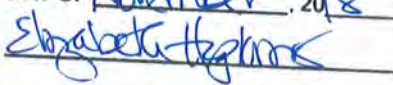
S.C. Bar No.: 103434

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 7th
DAY OF November, 2018


Dated at Charleston, SC

This 7th day of November, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE 5TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-40-01518

HARLAND JONES,

Plaintiff,

v.

KAREN ROBINSON,

Defendant.

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S SECOND SET OF
REQUESTS FOR PRODUCTION**

TO: DEFENDANT AND ALL COUNSEL OF RECORD

- I. Provide all documents of any type including, but not limited to, photographs, videos, statements, reports, data, emails, messages, social media, which relate to the responses provided to First Supplemental Interrogatories 1-3.

RESPONSE: None.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Roy T. Willey, IV, Esq.

S.C. Bar No.: 101010

Eric M. Poulin, Esq.

S.C. Bar No.: 100209

Lane D. Jefferies, Esq.

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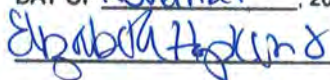
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ALL COUNSEL OF RECORD THIS 7th
DAY OF November, 2018



Dated at Charleston, SC

This 7th day of November, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
HARLAND JONES,	)	Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANT'S REPLIES TO
KAREN ROBINSON,	)	PLAINTIFF'S MOTION TO ALTER,
	)	AMEND, AND/OR RECONSIDER AND
Defendant.	)	PLAINTIFF'S SECOND MOTION FOR
	)	SANCTIONS
	)	

Following the issuance of Judge Hood's October 31, 2019 Order dismissing the underlying Complaint and sanctioning Plaintiff for his conduct throughout the case, his numerous discovery violations, his lack of candor with and misrepresentations to the court, and his ADR violations, Plaintiff responded by filing two motions—one for reconsideration pursuant to Rule 59 and a second motion for sanctions in apparent retaliation for the underlying July 27 Motion for Sanctions filed by Defendant. In the prayer for relief on the Motion to Alter, Amend, and/or Reconsider, Plaintiff asks Judge Hood to hear both that Motion and the second Motion for Sanctions¹. Defendant consents to Plaintiff's request for Judge Hood to hear both motions. Therefore, this Reply will address both Plaintiff's Motion to Alter, Amend, and/or Reconsider as well as Plaintiff's second Motion for Sanctions.

Plaintiff's Motion to Alter, Amend, and/or Reconsider

I. Judge Hood Had Jurisdiction to Hear the Motion

Plaintiff first argues this court lacked jurisdiction to hear the underlying Motion for

¹ "For these reasons, and those set forth in Plaintiff's Motion for Sanctions, the Court should strike the subject Order, deny whatever of Defendant's motions (if any) as [sic] are still pending in the matter, grant Plaintiff's motion(s) for sanctions, and place this case on the next available roster for final resolution as to Plaintiff's damages. See Plaintiff's Motion to Alter, Amend, and/or Reconsider p. 32 (emphasis added).

Sanctions. Plaintiff's argument centers on the trial before Judge Manning—specifically that Judge Manning would take up the matters at the conclusion of the trial. Judge Manning stated “I will take this matter up later, not pre-trial. At the conclusion of this case, I’ll make a decision on this argument.” See August 13 Trial Transcript 18:5-7. Ultimately, the trial never reached its conclusion as Plaintiff's motion for a mistrial was granted prior to the conclusion of the trial. As a result of the mistrial, Judge Manning was never able to take up the sanctions matters at the conclusion of the case. It is well settled that a mistrial leaves the parties in the position they were prior to trial, with no binding adjudications having occurred. Keels v. Powell, et al., 213 S.C. 570, 50 S.E.2d 704 (1948); Floyd v. Page, 124 S.C. 400, 117 S.E. 409 (1923). A mistrial is the equivalent of no trial, and the status of the parties and the litigation became the same as if no trial had taken place. Grooms v. Zander, 246 S.C. 512, 144 S.E.2d 909 (1965). Therefore, as a result of the mistrial, there were no binding adjudications and the parties were placed back into the same position as if no trial had taken place—e.g. Defendant's Motion for Sanctions was never heard or ruled upon and was returned to the Clerk of Court.

Thereafter, on September 13, 2019, the Clerk of Court placed Defendant's Motion for Sanctions on the Richland County Motions Roster because it was still outstanding and had never been ruled on. The Clerk of Court set the Motion for Sanctions for a hearing for September 25, 2019 in front of Judge Hood. Due to Plaintiff's counsel's scheduling conflicts, the hearing was moved to September 27, 2019. Plaintiff has not raised any matter of fact or law which would show Judge Hood was without jurisdiction to hear the Motion for Sanctions. This argument is without merit.

Plaintiff similarly argues Judge Hood lacked jurisdiction because of evidentiary and legal rulings made by Judge Manning during the course of trial and subsequent mistrial. These

findings and rulings, evidentiary and otherwise, are null and void as a result of the mistrial. A mistrial leaves the parties in the position they were prior to trial, with no binding adjudications having occurred. Keels v. Powell, et al., 213 S.C. 570, 50 S.E.2d 704 (1948); Floyd v. Page, 124 S.C. 400, 117 S.E. 409 (1923). A mistrial is the equivalent of no trial, and the status of the parties and the litigation became the same as if no trial had taken place. Grooms v. Zander, 246 S.C. 512, 144 S.E.2d 909 (1965). This argument is without merit.

II. Plaintiff Continues to Misrepresent Material Matters to This Court

Plaintiff's myriad of grounds for reconsideration contained within the second section of the Motion to Alter, Amend, and/or Reconsider—and the misrepresentations to this Court contained therein, will be discussed below.

a. The Two “Unidentified Witnesses” Barred by Judge Couch’s Order—“Alex” and Plaintiff’s “Wife’s Cousin”

Plaintiff first seeks reconsideration based on an allegation of confusion of facts, misrepresentation of matters, and conflation of issues. Plaintiff readily acknowledges that there were at least two “unidentified” eyewitnesses to this matter—a man named “Alex” and Plaintiff’s “wife’s cousin.” See Plaintiff’s Motion p. 7. This is where Plaintiff again begins to intentionally and willfully mislead this Court. Plaintiff makes the following assertions and statements throughout the Motion to Alter, Amend, and/or Reconsider:

- “Despite diligent efforts, **nobody has been able to** positively identify or **locate** either of these eyewitnesses.” See Plaintiff’s Motion p. 7-8.
- “To this date, **neither Plaintiff nor his counsel have any information regarding their whereabouts.**” See Plaintiff’s Motion p. 8.
- “[Plaintiff] was never able to provide [the eyewitnesses] location to Plaintiff’s counsel at that time, **and has not been able to since.**” See Plaintiff’s Motion

p. 9.

- “Defendant filed another motion to compel seeking to force Plaintiff to **do something that could not be done**: provide full name, address, and contact information for the two eyewitnesses who could not be found.” See Plaintiff’s Motion p. 9.
- “There has never been any allegation in this case that Plaintiff or his counsel know where to locate the eyewitnesses.” See Plaintiff’s Motion p. 12.
- “**There is no evidence that Plaintiff’s counsel concealed this eyewitness.**” See Plaintiff’s Motion p. 12.
- “**Plaintiff still does not know the identity of the eyewitnesses,** has never been able to disclose them (late or otherwise). . . .” See Plaintiff’s Motion p. 15
- “Indeed, **‘Alex’ was still (and remains) unlocated.**” See Plaintiff’s Motion p. 24.
- “The Order did not require Plaintiff to locate ‘Alex’ (**a requirement that would have been impossible**).” See Plaintiff’s Motion p. 24.
- “Nobody would have benefitted more by locating these witnesses than Plaintiff, **but they could not be located.**” See Plaintiff’s Motion p. 30.
- “**These eyewitnesses cannot be located** and therefore cannot be disclosed to or deposed by the Defendant.” See Plaintiff’s Motion p. 30.

Each and every single one of these statements made by Plaintiff’s counsel in his Motion to this court—that the witnesses could not, and never were found—is willfully and intentionally false².

The record reveals that Plaintiff **did**, in fact, locate “Alex” and both Plaintiff and Plaintiff’s

² This specific issue was not raised by the undersigned previously because the undersigned did not believe Plaintiff’s counsel would continue to misrepresent to this court that the witnesses could never be found.

counsel were aware of this fact. The record is further clear that Plaintiff and Plaintiff's counsel concealed this fact until the middle of trial even from the trial judge—Judge Manning. For example, Plaintiff's counsel told Judge Manning in pre-trial at page 17, lines 14-19:

14 Mr. Jones, also, testified that Alex lived in a shack in
15 the woods near Winnsboro. He did not know an address. He
16 did not know a phone number. We attempted to find Alex.
17 We would love to have a witness. We did not find Alex.
18 No Alex. We found some shacks in the woods, but we did
19 not find Alex.

This statement to Judge Manning during pretrial, like the statements made by Plaintiff in this Motion, was not true. Specifically, the following exchange occurred during the middle of trial as a result of questions suborned by Plaintiff's counsel in the trial transcript at page 169, lines 4-17:

4 BY MR. JEFFERIES:
5 Q Was it Alex that was with you that day you got hit
6 that came over to the house? Or do you remember?
7 A Yes, it was him.
8 Q Okay. Did you try to find Alex after that so he
9 could come testify?
10 A Yes. But he said --
11 Q Did you find him?
12 A Yeah, yeah. But he said he didn't see anything.
13 Q Okay. So it was no good for him to come here and
14 testify if he didn't see anything?
15 A Yes.
16 MR. JEFFERIES: That's all the questions I have,
17 Mr. Jones.

Plaintiff's counsel specifically asks Plaintiff about "Alex" and Plaintiff admits—for the very first time during trial—that they did, in fact, locate "Alex." The record demonstrates that Plaintiff's counsel was acutely aware of this information both 1) by the fact he asked these questions of

Plaintiff in the first place and 2) by the nature of the question contained at lines 13-14—“[s]o it was no good for him to come here and testify if he didn’t see anything?” Plaintiff’s counsel was not surprised by these answers. Plaintiff’s counsel specifically averred through questioning that it was “no good for [Alex] to come here” as the basis for not calling “Alex.” This creates further issues—namely that Plaintiff was well aware of “Alex”, spoke to “Alex”, knew where to find “Alex”, but never named him in discovery. But the bigger issue is this—Plaintiff’s Motion relies extensively on the repeated false assertion to this court—as well as to Judges Couch, Lee, and Manning—that “Alex” was *never* and/or *could not* found. For example, Plaintiff boldly proclaims “Alex was still (and remains) unlocated.” See Plaintiff’s Motion p. 24. This is patently false and contradicted by Plaintiff’s own testimony solicited at trial by Plaintiff’s counsel.

The “Alex” misrepresentation is particularly troubling because of the breadth and scope of the misrepresentation. Plaintiff’s counsel has made this knowing misrepresentation to at least two (Judges Hood and Manning) and as many as four (Judges Hood, Manning, Couch, and Lee) since May 7, 2019. During his deposition in March 2019, Plaintiff testified that “Alex” saw the accident and that “Alex” was an eyewitness to the events. Specifically, Plaintiff stated at Page 101, lines 6-10 and Page 104, lines 2-13 of his deposition:

6	Q. Did you see the defendant cross over the
7	yellow line into the opposite lane of travel?
8	A. I didn't see her do anything.
9	Q. Do you know of any witness that saw the
10	defendant cross over the yellow line into the
11	opposite lane of travel?
12	A. I was told.
13	Q. Who told you that?
14	A. Alex.
15	Q. Where was Alex at the time of the
16	accident?
17	A. He was looking down the street at me.
18	Q. So you are saying that Alex witnessed
19	this accident from your house?
20	A. Yes.

2 Q. When you say they told you, who are you
 3 referring to?
 4 A. From what Alex told me.
 5 Q. Can you tell me precisely what Alex told
 6 you about what he saw?
 7 A. He told me that he saw the car when it
 8 came across the line when I was turning. That when
 9 I was turning, the car came, the car hit me cause it
 10 came past the double line to pass the other cars,
 11 speed up to get in front of the other cars. Then he
 12 said, when I went to go make my turn, the car had
 13 hit me. That's all I can remember him telling me.

At this point in March 2019, Plaintiff was claiming that his friend “Alex” actually witnessed the accident because “Alex” told Plaintiff he witnessed the accident. This assertion is not ambiguous or unclear—Plaintiff testified under oath that “Alex” told Plaintiff specific details about the accident and that he witnessed the accident. This claim changed at trial. As noted above, at trial, Plaintiff testified he did, in fact, locate “Alex” and that “Alex” now stated he never saw the accident. When compared side by side, we know from the deposition exchange that as of March 6, 2019, Plaintiff and Plaintiff’s counsel had not yet located “Alex.” And we know from trial testimony on August 13, 2019 that Plaintiff and Plaintiff’s counsel *did* find “Alex” because “Alex” told Plaintiff he never saw the accident. Simple logic would then dictate that Plaintiff and Plaintiff’s counsel had to find “Alex” between Plaintiff’s deposition—March 6, 2019—and the reveal at trial—August 13, 2019.

The only thing we do not know—because Plaintiff has never disclosed this information—is when between March 6, 2019 and August 13, 2019 Plaintiff and Plaintiff’s counsel actually found “Alex”. Plaintiff’s counsel never disclosed in the May 7 Judge Couch Hearing or the July 8 Judge Lee Hearing that “Alex” had been located. Admittedly, it is possible “Alex” had not

been located by the time those hearings took place and “Alex” was instead located by Plaintiff and Plaintiff’s counsel between July 8 and August 13. But we do know, without question, that Plaintiff and Plaintiff’s counsel had located “Alex” and spoken to “Alex” by the August 13 trial. And we know, without question, that Plaintiff’s counsel misled Judge Manning when he told Judge Manning at Page 17, lines 14-19:

14	Mr. Jones, also, testified that Alex lived in a shack in
15	the woods near Winnsboro. He did not know an address. He
16	did not know a phone number. We attempted to find Alex.
17	We would love to have a witness. We did not find Alex.
18	No Alex. We found some shacks in the woods, but we did
19	not find Alex.

As noted above, this statement to Judge Manning during pretrial, like the statements made by Plaintiff in this Motion, was not true. We know this because, as noted above, the following exchange occurred during the middle of trial as a result of questions suborned by Plaintiff’s counsel in the trial transcript at page 169, lines 4-17:

4	BY MR. JEFFERIES:
5	Q Was it Alex that was with you that day you got hit
6	that came over to the house? Or do you remember?
7	A Yes, it was him.
8	Q Okay. Did you try to find Alex after that so he
9	could come testify?
10	A Yes. But he said --
11	Q Did you find him?
12	A Yeah, yeah. But he said he didn't see anything.
13	Q Okay. So it was no good for him to come here and
14	testify if he didn't see anything?
15	A Yes.
16	MR. JEFFERIES: That's all the questions I have,
17	Mr. Jones.

Plaintiff's counsel then echoed the same knowingly false position to Judge Hood in his Motion to Alter, Amend, and/or Reconsider as set out above in page 3 and 4 of this Reply. The repeated false assertion that Plaintiff and Plaintiff's counsel could not and/or never found "Alex" is demonstrably false as shown by Plaintiff's own sworn testimony suborned by Plaintiff's counsel at trial.

The second "unidentified" witness—the "wife's cousin"—was "identified" immediately before trial originally set to begin³. At 4:04 PM on July 5, 2019 the Friday before trial was originally set to begin with Judge Lee—and well after the June 1 deadline for identifying witnesses, Plaintiff submitted supplemental responses to discovery via email. *See* Exhibit A. In this discovery, for the first time, Plaintiff listed someone named "Lettie Jackson":

b. Lettie Jackson will testify as to Lettie's knowledge of the relevant facts and circumstances. No written or recorded statements have been taken from this witness.

No additional information was given about Ms. Jackson—no address, no phone number, no contact information. The undersigned emailed Plaintiff's counsel at 4:08 PM—four minutes after receiving the information—seeking clarification on who "Lettie Jackson" was. *See* Exhibit B. No response was received. It was not until trial with Judge Manning on August 13—over a month later—that "Lettie Jackson" was, for the first time, revealed to be the "wife's cousin" witness. Specifically, Plaintiff's counsel asked Plaintiff the following at page 136, lines 5-14:

³ Although, as set out below, the undersigned could not know the witness being identified was also the mystery "wife's cousin." This was not learned until the middle of trial in August 2019.

5 Q Now, that lady driving that car that slowed down that
 6 you turned in front of, was that the Defendant,
 7 Ms. Robinson?
 8 A No.
 9 Q Who was it?
 10 A They said she was my wife's cousin.
 11 Q Do you know her name?
 12 A Lettie Jackson.
 13 Q Lettie Jackson?
 14 A Uh-huh. That's what they said her name was.

During Plaintiff's deposition, he was asked many times about the "wife's cousin" and stated he did not know who she was. For example, Plaintiff testified in his deposition at Page 29, lines 17-25 as follows:

17 Q. Do you know, who was the female in the
 18 car that you're referring to?
 19 A. No. My -- when my wife was living at
 20 that time, she said it was her cousin.
 21 Q. Who is her cousin?
 22 A. The lady in the car.
 23 Q. Who -- what is the name of your wife's
 24 cousin?
 25 A. I don't know the name right now.

However, by July 5, 2019, Plaintiff *did* know the identity of the "wife's cousin" as "Lettie Jackson." The evidence reveals that as of July 5, 2019 at 4:04 PM Plaintiff and Plaintiff's counsel both knew who the "wife's cousin" was and had located the "wife's cousin"—otherwise she would not have been 1) identified by name and 2) listed in supplemental discovery the Friday before trial was originally set to begin with Judge Lee. Despite having located the "wife's cousin" between the March 6, 2019 Deposition and the July 5, 2019 email listing her in discovery responses (well past Judge Couch's June 1 deadline), Plaintiff never gave Defendant any further information about this person.

Plaintiff further had the opportunity on July 8, 2019 before Judge Lee to connect “Lettie Jackson” with the “wife’s cousin” and failed to do so. In fact, Plaintiff’s counsel misled Judge Lee at the hearing and claimed he still didn’t know who the “wife’s cousin” was or how to get in touch with her. Specifically, Plaintiff’s counsel stated during the July 8 Judge Lee Hearing at Page 35, line 23 through Page 36, line 1:

23 Mr. Jones's wife's cousin, the one in the hospital,
 24 Jones isn't close to her. His wife passed earlier this
 25 year, so his ability to say to her, "Hey, how do I get in
 1 touch," that went away when the wife passed.

It is clear by naming “Lettie Jackson” on July 5, 2019 (and testifying on August 13, 2019 that “Lettie Jackson” is the “wife’s cousin”) that Plaintiff knew on July 5, 2019 that “Lettie Jackson” and the “wife’s cousin” were one and the same. However, even when argument before Judge Lee about “Lettie Jackson” occurred (see, for example, Judge Lee Hearing Transcript p. 25, line 4 through p. 26, line 8, attached as Exhibit C), Plaintiff still made assertions that the “wife’s cousin” could not be and/or had not been identified.

The trial record demonstrates that both Plaintiff and Plaintiff’s counsel were acutely aware of the location and identity of the second eyewitness—the “wife’s cousin”—both 1) by the fact Plaintiff’s counsel asked these questions of Plaintiff in the first place and 2) by the nature of Plaintiff’s counsel’s questions. Given both the naming of “Lettie Jackson” in July 5 responses and then admitting “Lettie Jackson” is the mystery “wife’s cousin” for the first time at trial on August 13, it is clear Plaintiff was aware of the identity and location as early as July 5, 2019 but continued to maintain to Judges Lee and Hood that she could not be located. The bigger issue is this—Plaintiff’s Motion to Alter, Amend, and/or Reconsider, as set out above in detail in Pages

3-4 of this Reply, relies extensively on the repeated false assertion to this court that the “wife’s cousin” could never be found. For example in the Motion, Plaintiff’s counsel stated: “Plaintiff still does not know the identity of the eyewitnesses, has never been able to disclose them (late or otherwise)....” See Plaintiff’s Motion p. 15. Plaintiff clearly did know the identity of the eyewitnesses as he testified about them at trial. Any assertion to the contrary by Plaintiff’s counsel is patently false.

b. All Remaining Witnesses Barred by Judge Couch’s Order⁴

Plaintiff next attempts to argue some version of “the discovery violations are a manufactured ruse by Defendant’s counsel” by attempting to re-litigate Judge Couch’s Order through the assertion that Judge Couch’s Order only related to “eyewitnesses” and not to all unnamed or unidentified witnesses. A plain review of the Order—and Plaintiff’s counsel’s own words—shows this argument is without merit.

Plaintiff goes through a long diatribe parsing witness v. eyewitness v. damages witness and, in doing so, asks this court to reconsider Judge Couch’s clear Order which states:

ORDERED THAT the failure of Plaintiff to comply with this Order shall result in Plaintiff’s inability to use the aforementioned witnesses or any other unidentified witness at trial, and it is further

The Order is unequivocal—Judge Couch ordered the identification of all unidentified witnesses by June 1. Despite this language, Plaintiff now challenges the nature and contents of the order⁵.

⁴ This section relates to a large portion of the Motion to Alter, Amend, and/or Reconsider. Plaintiff now claims his misrepresentations to Judges Lee, Manning, and Hood were not actually misrepresentations. He now attempts to re-litigate Judge Couch’s Order. Simply put, as addressed herein, Judge Couch’s Order required the naming of *all* witnesses by June 1—something Plaintiff both agreed to and acknowledged. Now, some 6 months later, Plaintiff seeks to reform Judge Couch’s Order in an effort to fix his misrepresentations to Judges Lee, Manning, and Hood.

⁵ Plaintiff filed a Rule 59 motion related to this Order but never raised this issue related to “eyewitnesses” v. “all fact witnesses” before Judge Couch or in the Rule 59 Motion decided by Judge Couch. The time to raise the issue related

However, this court only need to look at Plaintiff's counsel's *own* statements and understanding about Judge Couch's ruling and Order:



Plaintiff's counsel admits on May 13, 2019—just 6 days after the hearing—that the intention of Judge Couch's bench ruling (which was later memorialized into the July 3 Order) was for Plaintiff to identify "known fact witnesses on or before June 1, 2019." Plaintiff's counsel goes on to state "any known fact witnesses not disclosed on or before June 1, 2019 could not be called by Plaintiff at trial" (emphasis added). Plaintiff has sought to re-litigate the May 7 hearing and July 3 Order through his Motion to Alter, Amend, and/or Reconsideration by parsing the words from that hearing and Order. This court need only look at the actual language of Judge Couch's Order and Plaintiff's counsel's own admitted interpretation of that hearing that Plaintiff was required to disclose all witnesses by June 1—something Plaintiff admits he failed to do.

It should also be noted that Plaintiff never raised this issue (that the Judge Couch Order was in error related to *all* witnesses) at any time prior to the filing of his Motion to Alter, Amend, and/or Reconsider. This argument is new. It does not appear during the Judge Couch

to interpretation and scope of the Order was during the Rule 59 Motion. Plaintiff failed to raise this issue with Judge Couch or in his Rule 59 Motion and cannot now argue for a reformation of Judge Couch's Order.

Hearing, in Judge Couch's Order, in Plaintiff's Rule 59 Motion on Judge Couch's Order (which was the proper time to raise this issue), in Judge Couch's Order on the Rule 59 Motion, in the Judge Lee Hearing, in the Judge Manning Hearing and Trial, or in the Judge Hood Hearing^{6 7}. This Motion to Alter, Amend, and/or Reconsider is the very first time Plaintiff has now sought to claim Judge Couch's Order related only to *eyewitnesses* (which it did not).

c. The Judge Couch Motion for Summary Judgment

Plaintiff, somewhat unbelievably, now asserts that he did not rely upon the unidentified or unnamed witnesses in his argument against summary judgment. Plaintiff goes so far as to accuse the undersigned of misrepresenting this to the court. As shown below, Plaintiff *did* rely upon an unidentified and unnamed witness—the “wife’s cousin”—and *did* reference his friend “Alex.”⁸ For Plaintiff to now claim that this never happened is directly contradicted by the hearing transcript and the memorandum in opposition filed by Plaintiff’s counsel.

Plaintiff’s counsel filed and submitted a Memorandum in Opposition to Summary Judgment. This Memorandum is also a part of the argument against summary judgment. In this Memorandum, Plaintiff specifically references the unidentified and unnamed witnesses as part of his argument against summary judgment. Specifically, the Memorandum states at pages 4 and 5:

⁶ Of particular interest, Judge Hood directly asked Plaintiff’s counsel about the Judge Couch Order and Plaintiff’s counsel never once made the new “eyewitness” argument. Rather, Plaintiff’s counsel argued he did not comply with Judge Couch’s Ruling/Order because it was not memorialized to a written order until July 3. An assertion Plaintiff’s counsel was rebuked for. See Judge Hood Hearing Transcript p. 55, line 6 through p. 56, line 13, attached as Exhibit D.

⁷ The only time the word “eyewitness” is uttered in the hearing before Judge Hood was by the undersigned in reference to arguments made at mediation by Gus Anastopoulo. See Judge Hood Hearing Transcript p. 22, lines 18-22, attached as Exhibit E.

⁸ Plaintiff also admits in his Motion to Alter, Amend, and/or Reconsider that his reliance on these unidentified witnesses is a grounds for sanction. Specifically, Plaintiff states “...Plaintiff continued to rely upon their supposed testimony in representations to the Court and to Defendants. If true, this might certainly be grounds for some sanction.” See Plaintiff’s Memorandum to Alter, Amend, and/or Reconsider at p. 15. This statement is demonstrably true as painstakingly set out herein and in numerous other filings this court has reviewed. Plaintiff, therefore, concedes that sanctions were proper for his conduct.

2. That Plaintiff did not turn left immediately in front of *Defendant*, but in front of a different car.¹⁴

1 Q. When you mentioned the car being driven
2 by a woman who may have been your wife's cousin, is
3 that the vehicle that hit you?

4 A. No. That's the vehicle I was going to
5 turn in front of.

3. That the driver Plaintiff turned in front of had seen his signal.¹⁵

17 So it was cars behind her, so she slowed
18 down and let me know that I could turn in front of
19 her. So when she slowed down, let me know that it

4. That the driver Plaintiff turned in front of had signaled him that it was okay to turn.¹⁶

19 her. So when she slowed down, let me know that it
20 was all right for me to turn to front of her, I
21 proceeded to turn in front of her. The next thing I

7. That the driver of the car that signaled Plaintiff to turn was *not* Defendant.

1 Q. When you mentioned the car being driven
2 by a woman who may have been your wife's cousin, is
3 that the vehicle that hit you?

4 A. No. That's the vehicle I was going to
5 turn in front of.

As noted at the outset of this Reply, Plaintiff admits the two “unknown” and “unidentified” witnesses are a man named “Alex” and Plaintiff’s “wife’s cousin.” See Plaintiff’s Motion p. 7. This entire set of excerpts from Plaintiff’s Memorandum in Opposition to Summary Judgment, which is the “evidence” relied upon to defeat summary judgment, is a recounting of Plaintiff

claiming he observed his “wife’s cousin”, was signaled to turn by his “wife’s cousin”, turned in front of his “wife’s cousin”, and was not struck his “wife’s cousin” (but rather by Defendant).

However, beyond just relying on it in the Memorandum to the court, Plaintiff’s counsel actually submitted and relied upon the entirety of Plaintiff’s deposition transcript taken on March 6, 2019⁹. This was attached as Exhibit A to the Memorandum and filed with the Memorandum. As already discussed herein, during that deposition, Plaintiff relies on the alleged eyewitness statements of “Alex” as well as comments on his “wife’s cousin” having witnessed the accident. For example, Plaintiff’s counsel, during the May 7 hearing on summary judgment, specifically referred Judge Couch to the testimony about the “wife’s cousin” and made the following comment at Page 13, lines 12-20:

12 This in his deposition page 14 -- pardon me, page 29,
13 lines 17 through 22. The question was: "When you
14 mentioned the car being driven by a woman who may have
15 been your wife's cousin, is that the vehicle that hit
16 you?"
17 "No," he says. "That's the vehicle I was going to
18 turn in front of."
19 So there's a dispute there. The question -- again,
20 defendant denies --

A further review of the deposition itself—which was included as an exhibit to the Memorandum in Opposition and relied upon by Plaintiff’s counsel to defeat summary judgment—shows Plaintiff further stated at Page 101, lines 6-10 and Page 104, lines 2-13 of his deposition:

⁹ Plaintiff’s counsel asks the court to review the deposition transcript on multiple occasions during the Motion for Summary Judgment Hearing with Judge Couch. *See, for example*, p. 10, lines 3-14, p. 12, lines 20-24, p. 13, lines 12-20.

6 Q. Did you see the defendant cross over the
 7 yellow line into the opposite lane of travel?
 8 A. I didn't see her do anything.
 9 Q. Do you know of any witness that saw the
 10 defendant cross over the yellow line into the
 11 opposite lane of travel?
 12 A. I was told.
 13 Q. Who told you that?
 14 A. Alex.
 15 Q. Where was Alex at the time of the
 16 accident?
 17 A. He was looking down the street at me.
 18 Q. So you are saying that Alex witnessed
 19 this accident from your house?
 20 A. Yes.

2 Q. When you say they told you, who are you
 3 referring to?
 4 A. From what Alex told me.
 5 Q. Can you tell me precisely what Alex told
 6 you about what he saw?
 7 A. He told me that he saw the car when it
 8 came across the line when I was turning. That when
 9 I was turning, the car came, the car hit me cause it
 10 came past the double line to pass the other cars,
 11 speed up to get in front of the other cars. Then he
 12 said, when I went to go make my turn, the car had
 13 hit me. That's all I can remember him telling me.

Plaintiff's newfound, bizarre, and inexplicable argument that he never asserted, relied upon, or discussed the "unidentified" or "unnamed" witnesses during the summary judgment hearing is directly contradicted by the Memorandum in Opposition submitted by Plaintiff, the Exhibits to the Memorandum submitted by Plaintiff (including Plaintiff's deposition transcript), and the actual hearing transcript in front of Judge Couch. To have openly relied upon these unidentified witnesses in opposition to summary judgment, and now deny ever having done so is completely baffling. However to now deny having relied upon those statements at the summary judgment hearing and to accuse the undersigned of misrepresenting that fact to this court (and others) is

beyond the pale.

d. The Judge Benjamin Motion to Compel and Rule to Show Cause

Plaintiff's final argument related to "misstatements" centers on the October 2018 Judge Benjamin Motion to Compel and Rule to Show Cause. Specifically, Plaintiff claims that the undersigned misrepresented that the Motion to Compel heard by Judge Benjamin in October 2018 resulting in an Order and a Rule to Show Cause related to the "unidentified" witnesses—e.g. "Alex" and the "wife's cousin." This is demonstrably false.

The timeline is this: Defendant served initial discovery requests on or about May 8, 2018. These discovery requests included the following request:

INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from these witnesses, and indicate who has possession of such statements.
2. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness or provide a copy of the written or recorded statements taken from such witness.

These two Interrogatories serve to cover the identification of *all* witnesses (including the unidentified "Alex" and the "wife's cousin"). When no response was received to these basic Interrogatories, a Motion to Compel was filed. The first Motion to Compel was filed on August 10, 2018. At this point, on August 10, 2018, Plaintiff's failure to identify the "unidentified" witnesses named in his June 5, 2018 memorandum¹⁰ necessitated the filing of the first Motion to

¹⁰ "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the

Compel (along with numerous other deficiencies). This Motion to Compel directly related to these above Interrogatories (and numerous other Interrogatories and Requests for Production).

On August 14, 2018, a First Supplemental Interrogatories were served which asked a more specific question about witnesses identified in the June 5, 2018 memorandum filed by Plaintiff:

INTERROGATORIES

1. **State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."**

Prior to the expiration of the time to answer this Supplemental Interrogatory (which was August 5, 2018), the Richland County Clerk of Court set the August 10, 2018 Motion to Compel for a hearing. Specifically, this Motion was set on August 31, 2018 for October 1, 2018:

time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.'" See June 5, 2018 Memorandum at Page 5, Paragraph 2.

Richland County Fifth Judicial Circuit - Roster Details MOTION ROSTER OCTOBER 1, 2018 COURTROOM 2E											
Court Agency		Richland County Common Pleas			Judge		Benjamin		Roster Id		
Roster Type		Motions Non Jury Roster			Roster Begin Date		10/01/2018		Roster End Date		
Number of motions = 40											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
21	10/01/2018	9:30 AM	0:30	Motion/Stay	Galco Indemnity Company-OTH	05/04/2018	2017CP4006209 Melinda K Boots vs Grasso Kennedy Boots	Motor Veh Accid 320	E. Hood Temple (843) 662-5000	II (903) 406-8222 James Thomas McLachlin (903) 799- 3074	
22	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	05/04/2018	2018CP4001416 Courtney M Harrison vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227- 4295	
23	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	05/04/2018	2018CP4001416 Keely Elliott vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227- 4295	
24	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	05/04/2018	2018CP4001416 Keely Elliott - plaintiff, et al vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227- 4295	
25	10/01/2018	9:30 AM	0:15	Motion/Summary Judgment	Palmetto Health- PLT	05/04/2018	2018CP4001714 Palmetto Health vs Lucius Simmons	Debt Collection 110	S. Nelson Weston Jr. (803) 771-4400		
26	10/01/2018	9:30 AM	0:30	Motion/Summary Judgment		05/05/2018	2017CP4004924 Michael D Hughes - plaintiff, et al vs Richland County defendant, et al	Wrongful Death 360	Steven Dean Murdaugh (842) 549-9544	Karl Stephen Brehmer (803) 771- 5600 William H. Davidson II (903) 406-8222 Office Of The City Attorney (803) 737- 4242 Dana M. Thye (803) 737-4242	
27	10/01/2018	9:30 AM	0:15	Motion/Compel	Richland County School District Two- DEF	06/05/2018	2017CP4004995 Rachael Stroupe - plaintiff, et al vs Richland County School District Two	Motor Veh Accid 320	Eddie L. Lane (803) 400-1181	Jasmine Rogers Drain (803) 254- 4035 Sheneka Shante Lodenquai (803) 254-4035	Completed:08/31/2018
28	10/01/2018	9:30 AM	0:15	Motion/Compel	Richland County School District Two- DEF	06/05/2018	2017CP4004995 Rachael Stroupe - plaintiff, et al vs Richland County School District Two	Motor Veh Accid 320	Eddie L. Lane (803) 400-1181	Jasmine Rogers Drain (803) 254- 4035 Sheneka Shante Lodenquai (803) 254-4035	

Page: 3
9/21/2018 3:21 PM

Rather than file a second Motion to Compel, the undersigned waited for the October 1 hearing and asked that both sets of discovery be heard during the October 1 hearing with Judge Benjamin. Judge Benjamin effectively consolidated both sets of Defendant's discovery requests (May 8 and August 14) into the August 10 Motion to Compel. This was not objected to by Plaintiff. Specifically, the following exchanges occurred during the hearing with Judge Benjamin on October 1, 2018 wherein both the May 8 and August 14 discovery requests were referenced in relation to the Motion to Compel hearing:

9 What we have not yet received in this case is
10 a response to the supplemental interrogatories from
11 August.

12 In the second motion that will be heard here
13 today, there is an assertion that is made to the
14 Court by the attorney for the Plaintiff that
15 states: Discovery in this case is expected to
16 reveal witnesses to the events giving rise to the
17 subject motor vehicle collision who believe that
18 the Defendant was speeding, the Defendant was not
19 paying attention to the roadway at the time of the
20 subject collision, and/or that the Defendant
21 unlawfully attempted to pass a vehicle immediately
22 in front of her at the time she unlawfully caused
23 the Plaintiff to strike the Defendant's vehicle.

24 That clause is contained in the motion and
25 memorandum filed by the Plaintiff for the second

1 motion here today.

2 Obviously, that is information that affects
3 the case, and given that every witness and every
4 eyewitness has said the exact opposite of that, we
5 naturally asked to identify these people: Who have
6 you represented to the Court is an eyewitness that
7 can say those things?

8 That has not been answered. That -- in the
9 initial discovery responses, they listed the same
10 witnesses that we have listed: The eyewitness, the
11 Plaintiff, the Defendant, the police officer who
12 came along after, and then the medical providers.
13 And then the supplemental discovery has not been
14 answered to state who was represented to the Court
15 in the filings that was an eyewitness that was
16 going to say the Defendant was speeding, swerving,
17 and was in oncoming traffic at the time of the
18 collision.

19 So it is our position that we are entitled to
20 an answer to that question specifically. And then

The undersigned clearly sets out that the Motion to Compel should be considered as to both the

May 8 and August 14 discovery requests. The rationale is that the May 8 Interrogatories specifically called for *all* witnesses. The failure to answer necessitated the August 10 Motion to Compel. The August 14 Supplemental Interrogatories more specifically spelled out the later referenced “unidentified” witnesses. Following this recitation, Judge Benjamin granted the Motion to Compel related for both set of discovery—including the “unidentified” witnesses:

24	THE COURT: All right. The motion to compel
25	will be granted. If you can get him the remaining
1	records within 20 days. I think the
2	supplemental -- you have got -- well, you don't
3	know what you have, you just got it. But within 20
4	days the supplemental responses?
5	MR. BAYNE: Your Honor, the only one that we
6	know for sure has not been answered is the
7	supplemental request for the identification of the
8	witnesses that have been represented to have seen
9	this accident.
10	THE COURT: All right. Okay, thank you.
11	MR. JEFFERIES: And we will provide that, Your
12	Honor, certainly.

Most interestingly, despite assertions in this underlying Motion by Plaintiff’s counsel, at the Judge Benjamin hearing on October 1, Plaintiff’s counsel consented to the Motion to Compel related to both the May 8 Interrogatories and the August 14 Supplemental Interrogatories. Specifically, Plaintiff’s counsel stated “[a]nd we will provide that. Your Honor, certainly” (lines 11-12 above) directly in response to the undersigned stating “...the only one that we know for sure has not been answered is the supplemental request for the identification of the witnesses that

have been represented to have seen this accident.” (lines 5-9 above). Following the hearing, Judge Benjamin issued a Form 4 on October 3, 2018 consistent with her ruling above. Plaintiff’s counsel refused to comply with her October 1, 2018 Ruling and October 3, 2018 Order which required production of the witnesses sought in the May 8 Interrogatories and August 14 Supplemental Interrogatories. Following this refusal, Judge Benjamin issued a Rule to Show Cause on October 30, 2018 for Plaintiff’s failure to comply with the October 1 Ruling and October 3 Order to name the witnesses sought in the May 8 Interrogatories and August 14 Supplemental Interrogatories.

It should be noted that Plaintiff’s counsel correctly points out that the undersigned mistakenly noted the August 10 Motion to Compel was filed as a result of the August 14 Supplemental Interrogatories. This is obviously not possible given the difference in date. This was in error. The correct statement is: “the Motion to Compel was *held* as a result of the lack of responses both the May 8 Interrogatories and the August 14 Supplemental Interrogatories.” Of course, this is a distinction without a difference and is merely an attempt by Plaintiff’s counsel at deflection. As noted above, Judge Benjamin, on October 1, held the hearing on the Motion to Compel and ordered responses to both the May 8 and August 14 Interrogatories as a result of the August 10 Motion to Compel (and Plaintiff’s counsel agreed).

Plaintiff hangs his hat on one date discrepancy related to one Motion and ignores that the August 10 Motion to Compel *also* related to the May 8 request for *all* witnesses. Plaintiff’s counsel also omits the subsequent March 8, 2019 Motion to Compel filed directly related to both the May 8 Interrogatories and August 14 Supplemental Interrogatories.

III. Conclusion

For all the foregoing reasons (and the reasons set out below related to Plaintiff’s second

Motion for Sanctions), this court should deny Plaintiff's Motion to Alter, Amend, and/or Reconsider.

Plaintiff's (Second) Motion for Sanctions

Plaintiff (second) Motion for Sanctions makes three allegations: 1) The undersigned misled the court into believing Plaintiff relied on unnamed or unidentified witness at summary judgment; 2) The undersigned misled the court related to the Judge Benjamin Motion to Compel; and 3) the undersigned's Twitter account. For the reasons set out below, not only are Plaintiff's claims without merit, but Plaintiff continues to make intentionally and knowingly false assertions to this court—the same conduct which already necessitated sanctions. At this point, it is clear whatever message was intended to be sent by the original sanctions was not received by Plaintiff's counsel. This court should consider additional sanctions against Plaintiff's counsel Lane Jefferies as well as sanctions against the co-signers on the newest sanctions motion—Roy Willey and Eric Poulin. Given this new, abhorrent conduct by all of Plaintiff's attorneys, this court should consider heavy sanctions which are magnitudes more severe than those already meted out.

I. The Judge Couch Motion for Summary Judgment

This same argument is raised by Plaintiff as a ground for the Motion to Alter, Amend, and/or Reconsider. This is addressed above in Section II(c) but is repeated here to fully address both motions. As noted above, Plaintiff, somewhat unbelievably, has now asserted that he did not rely upon any unidentified or unnamed witnesses in his argument against summary judgment. Plaintiff's second Motion for Sanctions accuses the undersigned of misrepresenting the hearing on the motion for summary judgment to the court. As shown below, Plaintiff *did* rely upon an

unidentified and unnamed witness—the “wife’s cousin”—and *did* reference his friend “Alex.”¹¹ For Plaintiff to now claim that this never happened is directly contradicted by the hearing transcript and the memorandum in opposition filed by Plaintiff’s counsel.

Plaintiff’s counsel filed and submitted a Memorandum in Opposition to Summary Judgment. This Memorandum is also a part of the argument against summary judgment. In this Memorandum, Plaintiff specifically references the unidentified and unnamed witnesses as part of his argument against summary judgment. Specifically, the Memorandum states at pages 4 and 5:

2. That Plaintiff did not turn left immediately in front of ***Defendant***, but in front of a different car.¹⁴

1 Q. When you mentioned the car being driven
2 by a woman who may have been your wife's cousin, is
3 that the vehicle that hit you?

4 A. No. That's the vehicle I was going to
5 turn in front of.

3. That the driver Plaintiff turned in front of had seen his signal.¹⁵

17 So it was cars behind her, so she slowed
18 down and let me know that I could turn in front of
19 her. So when she slowed down, let me know that it

4. That the driver Plaintiff turned in front of had signaled him that it was okay to turn.¹⁶

19 her. So when she slowed down, let me know that it
20 was all right for me to turn to front of her, I
21 proceeded to turn in front of her. The next thing I

¹¹ Plaintiff also admits in his Motion to Alter, Amend, and/or Reconsider that his reliance on these unidentified witnesses is a grounds for sanction. Specifically, Plaintiff states “...Plaintiff continued to rely upon their supposed testimony in representations to the Court and to Defendants. If true, this might certainly be grounds for some sanction.” See Plaintiff’s Memorandum to Alter, Amend, and/or Reconsider at p. 15. This statement is demonstrably true as painstakingly set out herein and in numerous other filings this court has reviewed. Plaintiff, therefore, concedes that sanctions were proper for his conduct.

7. That the driver of the car that signaled Plaintiff to turn was *not* Defendant.

1 Q. When you mentioned the car being driven
2 by a woman who may have been your wife's cousin, is
3 that the vehicle that hit you?

4 A. No. That's the vehicle I was going to
5 turn in front of.

As noted at the outset of this Reply, Plaintiff admits the two “unknown” and “unidentified” witnesses are a man named “Alex” and Plaintiff’s “wife’s cousin.” See Plaintiff’s Motion p. 7. This entire set of excerpts from Plaintiff’s Memorandum in Opposition to Summary Judgment, which is the “evidence” relied upon to defeat summary judgment, is a recounting of Plaintiff claiming he observed his “wife’s cousin”, was signaled to turn by his “wife’s cousin”, turned in front of his “wife’s cousin”, and was not struck his “wife’s cousin” (but rather by Defendant).

However, beyond just relying on it in the Memorandum to the court, Plaintiff’s counsel actually submitted and relied upon the entirety of Plaintiff’s deposition transcript taken on March 6, 2019¹². This was attached as Exhibit A to the Memorandum and filed with the Memorandum. As already discussed herein, during that deposition, Plaintiff relies on the alleged eyewitness statements of “Alex” as well as comments on his “wife’s cousin” having witnessed the accident. For example, Plaintiff’s counsel, during the May 7 hearing on summary judgment, specifically referred Judge Couch to the testimony about the “wife’s cousin” and made the following comment at Page 13, lines 12-20:

¹² Plaintiff’s counsel asks the court to review the deposition transcript on multiple occasions during the Motion for Summary Judgment Hearing with Judge Couch. *See, for example*, p. 10, lines 3-14, p. 12, lines 20-24, p. 13, lines 12-20.

12 This in his deposition page 14 -- pardon me, page 29,
 13 lines 17 through 22. The question was: "When you
 14 mentioned the car being driven by a woman who may have
 15 been your wife's cousin, is that the vehicle that hit
 16 you?"

17 "No," he says. "That's the vehicle I was going to
 18 turn in front of."

19 So there's a dispute there. The question -- again,
 20 defendant denies --

A further review of the deposition itself—which was included as an exhibit to the Memorandum in Opposition and relied upon by Plaintiff's counsel to defeat summary judgment—shows Plaintiff further stated at Page 101, lines 6-10 and Page 104, lines 2-13 of his deposition:

6 Q. Did you see the defendant cross over the
 7 yellow line into the opposite lane of travel?
 8 A. I didn't see her do anything.
 9 Q. Do you know of any witness that saw the
 10 defendant cross over the yellow line into the
 11 opposite lane of travel?
 12 A. I was told.
 13 Q. Who told you that?
 14 A. Alex.
 15 Q. Where was Alex at the time of the
 16 accident?
 17 A. He was looking down the street at me.
 18 Q. So you are saying that Alex witnessed
 19 this accident from your house?
 20 A. Yes.

2 Q. When you say they told you, who are you
 3 referring to?
 4 A. From what Alex told me.
 5 Q. Can you tell me precisely what Alex told
 6 you about what he saw?
 7 A. He told me that he saw the car when it
 8 came across the line when I was turning. That when
 9 I was turning, the car came, the car hit me cause it
 10 came past the double line to pass the other cars,
 11 speed up to get in front of the other cars. Then he
 12 said, when I went to go make my turn, the car had
 13 hit me. That's all I can remember him telling me.

Plaintiff's newfound, bizarre, and inexplicable argument that he never asserted, relied upon, or discussed the "unidentified" or "unnamed" witnesses during the summary judgment hearing is directly contradicted by the Memorandum in Opposition submitted by Plaintiff, the Exhibits to the Memorandum submitted by Plaintiff (including Plaintiff's deposition transcript), and the actual hearing transcript in front of Judge Couch. To have openly relied upon these unidentified witnesses in opposition to summary judgment, and now deny ever having done so is completely baffling. However to now deny having relied upon those statements at the summary judgment hearing and to accuse the undersigned of misrepresenting that fact to this court (and others) is beyond the pale.

Additional sanctions are warranted for Plaintiff's continued misrepresentations to this court.

II. Defendant's First Motion to Compel and Judge Benjamin's Hearing, Order, and Rule to Show Cause

Plaintiff's second argument in his second Motion for Sanctions centers on the October 2018 Judge Benjamin Motion to Compel and Rule to Show Cause. Specifically, Plaintiff claims that the undersigned misrepresented that the Motion to Compel heard by Judge Benjamin in October 2018 resulting in an Order and a Rule to Show Cause related to the "unidentified"

witnesses—e.g. “Alex” and the “wife’s cousin.” This is demonstrably false.

The timeline is this: Defendant served initial discovery requests on or about May 8, 2018. These discovery requests included the following request:

INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from these witnesses, and indicate who has possession of such statements.
2. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness or provide a copy of the written or recorded statements taken from such witness.

These two Interrogatories serve to cover the identification of *all* witnesses (including the unidentified “Alex” and the “wife’s cousin”). When no response was received to these basic Interrogatories, a Motion to Compel was filed. The first Motion to Compel was filed on August 10, 2018. At this point, on August 10, 2018, Plaintiff’s failure to identify the “unidentified” witnesses named in his June 5, 2018 memorandum¹³ necessitated the filing of the first Motion to Compel (along with numerous other deficiencies). This Motion to Compel directly related to these above Interrogatories (and numerous other Interrogatories and Requests for Production).

On August 14, 2018, a First Supplemental Interrogatories were served which asked a more specific question about witnesses identified in the June 5, 2018 memorandum filed by Plaintiff:

¹³ ‘...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle.’” See June 5, 2018 Memorandum at Page 5, Paragraph 2.

INTERROGATORIES

1. State the full name, address, and contact information (including telephone number and email address) of the witness and/or witnesses referenced in Paragraph 2, Page 5 of "Plaintiff's Notice of Motion, Motion to Dismiss, and Memorandum of Law In Support Thereof." For reference, you specifically asserted to the Court: "...discovery in this case is expected to reveal witnesses to the events giving rise to the subject motor vehicle collision who believe that Defendant was speeding, that Defendant was not paying attention to the roadway at the time of the subject collision, and/or that Defendant unlawfully attempted to unlawfully pass a vehicle immediately in front of her at the time she (Defendant) unlawfully caused Plaintiff to strike Defendant's vehicle."

Prior to the expiration of the time to answer this Supplemental Interrogatory (which was August 5, 2018), the Richland County Clerk of Court set the August 10, 2018 Motion to Compel for a hearing. Specifically, this Motion was set on August 31, 2018 for October 1, 2018:

Richland County Fifth Judicial Circuit - Roster Details											
MOTION ROSTER OCTOBER 1, 2018 COURTROOM 2E											
Court Agency		Richland County Common Pleas		Judge		Benjamin		Roster Id		1304	
Roster Type		Motions Non Jury Roster		Roster Begin Date		10/01/2018		Roster End Date		10/01/2018	
Number of motions = 40											
#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
										II (803) 806-8222 James Thomas McLaren (803) 790-3814	
21	10/01/2018	9:30 AM	0:30	Motion/Stay	Geico Indemnity Company-OTH	06/04/2018	2017CP4006209 Melinda K Boots vs Grease Kennedy Boots	Motor Veh Accid 320	E. Hood Temple (843) 662-5000	Margaret Fanning Horn (843) 762-4567 G. Murrell Smith Jr. (803) 778-2471 2234	
22	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	06/04/2018	2018CP4001416 Courtnee M Harrison vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227-4295	
23	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	06/04/2018	2018CP4001416 Keely Elliott vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227-4295	
24	10/01/2018	9:30 AM	0:15	Motion/Consolidate	Joseph Paul Smith- DEF	06/04/2018	2018CP4001416 Keely Elliott - plaintiff, et al vs Joseph Paul Smith	Motor Veh Accid 320	C. Carter Elliott Jr. (843) 546-0650	James Harold Goldin (803) 227-4295	
25	10/01/2018	9:30 AM	0:15	Motion/Summary Judgment	Palmetto Health- PLT	06/04/2018	2018CP4001714 Palmetto Health vs Lucius Simmons	Debt Collection 110	S. Nelson Weston Jr. (803) 771-4400		
26	10/01/2018	9:30 AM	0:30	Motion/Summary Judgment		06/05/2018	2017CP4004924 Michael D Hughes - plaintiff, et al vs Richland County defendant, et al	Wrongful Death 360	Steven Dean Murdaugh (842) 549-9544	Karl Stephen Brenner (803) 771-5500 William H. Davidson II (803) 806-8222 Office Of The City Attorney (803) 731-4242 Dana M. Thye (803) 337-4242	
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28	10/01/2018	9:30 AM	0:15	Motion/Summary Judgment	Richland County School District Two- DEF	06/05/2018	2017CP4004995 Rachael Sroupe - plaintiff, et al vs Richland County School District Two	Motor Veh Accid 320	Eddie L. Lane (803) 400-1181	Jasmine Rogers Dean (803) 254-4035 Sheneka Shante Lodenquis (803) 254-4035	

Rather than file a second Motion to Compel, the undersigned waited for the October 1 hearing and asked that both sets of discovery be heard during the October 1 hearing with Judge Benajmin. Judge Benjamin effectively consolidated both sets of Defendant's discovery requests (May 8 and August 14) into the August 10 Motion to Compel. This was not objected to by Plaintiff. Specifically, the following exchanges occurred during the hearing with Judge Benjamin on October 1, 2018 wherein both the May 8 and August 14 discovery requests were referenced in relation to the Motion to Compel hearing:

9 What we have not yet received in this case is
10 a response to the supplemental interrogatories from
11 August.

12 In the second motion that will be heard here
13 today, there is an assertion that is made to the
14 Court by the attorney for the Plaintiff that
15 states: Discovery in this case is expected to
16 reveal witnesses to the events giving rise to the
17 subject motor vehicle collision who believe that
18 the Defendant was speeding, the Defendant was not
19 paying attention to the roadway at the time of the
20 subject collision, and/or that the Defendant
21 unlawfully attempted to pass a vehicle immediately
22 in front of her at the time she unlawfully caused
23 the Plaintiff to strike the Defendant's vehicle.

24 That clause is contained in the motion and
25 memorandum filed by the Plaintiff for the second

1 motion here today.

2 Obviously, that is information that affects

3 the case, and given that every witness and every

4 eyewitness has said the exact opposite of that, we

5 naturally asked to identify these people: Who have

6 you represented to the Court is an eyewitness that

7 can say those things?

8 That has not been answered. That -- in the

9 initial discovery responses, they listed the same

10 witnesses that we have listed: The eyewitness, the

11 Plaintiff, the Defendant, the police officer who

12 came along after, and then the medical providers.

13 And then the supplemental discovery has not been

14 answered to state who was represented to the Court

15 in the filings that was an eyewitness that was

16 going to say the Defendant was speeding, swerving,

17 and was in oncoming traffic at the time of the

18 collision.

19 So it is our position that we are entitled to

20 an answer to that question specifically. And then

The undersigned clearly sets out that the Motion to Compel should be considered as to both the May 8 and August 14 discovery requests. The rationale is that the May 8 Interrogatories specifically called for *all* witnesses. The failure to answer necessitated the August 10 Motion to Compel. The August 14 Supplemental Interrogatories more specifically spelled out the later referenced “unidentified” witnesses. Following this recitation, Judge Benjamin granted the Motion to Compel related for both set of discovery—including the “unidentified” witnesses:

24 THE COURT: All right. The motion to compel
25 will be granted. If you can get him the remaining

1 records within 20 days. I think the
2 supplemental -- you have got -- well, you don't
3 know what you have, you just got it. But within 20
4 days the supplemental responses?

5 MR. BAYNE: Your Honor, the only one that we
6 know for sure has not been answered is the
7 supplemental request for the identification of the
8 witnesses that have been represented to have seen
9 this accident.

10 THE COURT: All right. Okay, thank you.

11 MR. JEFFERIES: And we will provide that, Your
12 Honor, certainly.

Despite assertions in this underlying Motion by Plaintiff's counsel, at the Judge Benjamin hearing on October 1, Plaintiff's counsel consented to the Motion to Compel related to both the May 8 Interrogatories and the August 14 Supplemental Interrogatories. Specifically, Plaintiff's counsel stated "[a]nd we will provide that. Your Honor, certainly" (lines 11-12 above) directly in response to the undersigned stating "...the only one that we know for sure has not been answered is the supplemental request for the identification of the witnesses that have been represented to have seen this accident." (lines 5-9 above). Following the hearing, Judge Benjamin issued a Form 4 on October 3, 2018 consistent with her ruling above. Plaintiff's counsel refused to comply with her October 1, 2018 Ruling and October 3, 2018 Order which required production of the witnesses sought in the May 8 Interrogatories and August 14 Supplemental Interrogatories. Following this refusal, Judge Benjamin issued a Rule to Show Cause on October 30, 2018 for

Plaintiff's failure to comply with the October 1 Ruling and October 3 Order to name the witnesses sought in the May 8 Interrogatories and August 14 Supplemental Interrogatories.

It should be noted that Plaintiff's counsel correctly points out that the undersigned mistakenly noted the August 10 Motion to Compel was filed as a result of the August 14 Supplemental Interrogatories. This is obviously not possible given the difference in date. This was in error. The correct statement is: "the Motion to Compel was *held* as a result of the lack of responses both the May 8 Interrogatories and the August 14 Supplemental Interrogatories." Of course, this is a distinction without a difference and is merely an attempt by Plaintiff's counsel at deflection. As noted above, Judge Benjamin, on October 1, held the hearing on the Motion to Compel and ordered responses to both the May 8 and August 14 Interrogatories as a result of the August 10 Motion to Compel (and Plaintiff's counsel agreed).

Plaintiff hangs his hat on one date discrepancy related to one Motion and ignores that the August 10 Motion to Compel *also* related to the May 8 request for *all* witnesses. Plaintiff's counsel also omits the subsequent March 8, 2019 Motion to Compel filed directly related to both the May 8 Interrogatories and August 14 Supplemental Interrogatories.

Plaintiff's inaccurate argument that Judge Benjamin did not conduct a Motion to Compel Hearing related to the identity of witnesses is demonstrably false with even a cursory review of the Judge Benjamin hearing transcript. To have been present at the hearing and agree to the production of the information sought in response to the August 10 Motion to Compel and now deny ever having done so is completely baffling. However to consent at the October 1 Motion to Compel hearing to producing all witnesses and then to accuse the undersigned of misrepresenting that fact to this court (and others) is beyond the pale. Additional sanctions are warranted for Plaintiff's continued misrepresentations to this court.

III. Plaintiff's Counsel Fabricated and/or Materially Altered Twitter Posts by the Undersigned and Then Offered Them to This Court as Evidence

The final argument Plaintiff's counsel advances appears to be surrounding three tweets posted by the undersigned. Plaintiff's counsel cropped and/or edited and submitted only portions of tweets to this court in some misguided attempt at proving an unclear point about this case.

The first tweet referenced by Plaintiff's counsel is presented as "public disparage[ment] of plaintiff attorneys generally." The edited portion of this tweet is contained as Exhibit J in Plaintiff's second Motion for Sanctions.



Exhibit J

The full tweet, with all context, is located here:



At the time this tweet was posted, two attorneys were also “tagged” in the photo: Robert F. Goings¹⁴ and Joseph P. Bias¹⁵. Additionally, the full context of this tweet shows it to be playful

¹⁴ Mr. Goings is a venerated member of the Bar and a well-respected Plaintiff’s lawyer located in Columbia, South

banter between the undersigned and two plaintiff's counsel related to settlement values in unrelated cases. The tweet portrays a well-known television character known as "Dr. Evil"¹⁶. Dr. Evil is well known for making comically large monetary demands¹⁷—like the obviously satirical

Carolina. In 2011, Mr. Goings was selected among a distinguished group by the South Carolina Lawyers Weekly Magazine as an "Emerging Legal Leader" in the State of South Carolina. Following this award, the acclaimed South Carolina trial attorney, Joel W. Collins, Jr. was quoted as saying, "I can truthfully say I have never encountered a lawyer with a greater aptitude and capacity for the practice of law. Robert Goings has every skill and trait needed to be an outstanding courtroom lawyer. In fact, he already is."

In 2012, Mr. Goings was elected by his colleagues to serve as a member of the S.C. Bar's House of Delegates for the Fifth Judicial Circuit. The House of Delegates acts as the legislative arm of the South Carolina Bar Association and convenes to establish policy and directives of the Bar. As of 2016, he was reelected as a member of the S.C. Bar's House of Delegates.

In 2016, Mr. Goings was selected to receive the "Compleat Lawyer" Award from the University of South Carolina School of Law. The Compleat Lawyer Award is the law school's highest honor and most prestigious award given to a lawyer who has displayed exemplary achievements in their careers and communities. The Compleat Lawyer Award is chosen by a committee comprising the Chief Justice of the South Carolina Supreme Court, the Chief Judge of the South Carolina Court of Appeals, the President of the South Carolina Bar, the Dean of the South Carolina School of Law." See <https://www.goingslawfirm.com/about/robert-f-goings/> (accessed November 18, 2019).

¹⁵ Mr. Bias is the General Counsel/Special Advisor to the President at Midlands Technical College. After graduating law school and becoming a member of the South Carolina Bar, Mr. Bias clerked for the Honorable Alison R. Lee in Columbia. Following his clerkship, Mr. Bias became an Assistant Public Defender for the Richland County Public Defender's Office. From there, Mr. Bias practiced insurance defense for 7 years.

Mr. Bias is the volunteer attorney coach for the award winning Richland Northeast Mock Trial team. Additionally, Mr. Bias is a former Co-Chair for the South Carolina Bar Young Lawyer's Division Protecting Our Youth Committee and a member of the Palmetto Health Foundation "Kemopalooza" Committee. Mr. Bias was recognized as the Law-Related Education Lawyer of the Year by the South Carolina Bar in 2017 and with South Carolina Lawyer Weekly's "Leadership in the Law" honor for 2018. He was recently named one of The State Newspaper's "Top 20 Under 40" professionals in the Midlands area. He is the 2019 South Carolina Bar Young Lawyer of the Year. See <https://www.linkedin.com/in/joseph-bias-5361b6158/> (accessed November 18, 2019).

¹⁶ For the court's reference, Dr. Evil (Douglas "Dougie" Powers) is a fictional character played by Mike Myers in the Austin Powers film series. He is the antagonist of the movies, and Austin Powers' nemesis. He is a parody of James Bond villains, primarily Ernst Stavro Blofeld (as played by Donald Pleasence in *You Only Live Twice*). Dr. Evil routinely hatches schemes to terrorize and take over the world, and is usually accompanied by Number 2, an eye-patch wearing goon who fronts his evil corporation Virtucon Industries, his cat Mr. Bigglesworth and his sidekick Mini-Me, a dwarf clone of himself. See https://en.wikipedia.org/wiki/Dr._Evil (accessed November 18, 2019).

¹⁷ For the court's reference, Dr. Evil seems to have a problem in general with understanding money, especially regarding the modern American economy and inflation. In the first film, he intends to hold the world ransom for one million dollars, but doesn't understand that isn't as large a sum of money as it was in the 1960s, because of inflation, and the demand causes the U.N. to burst out laughing. In the second film, Dr. Evil goes back to 1969 and plans to hold the world ransom for \$100 billion, and when he tells the amount to the President, he receives a similar reaction as in the first film when the President and his cabinet laugh at him (due to him demanding an amount of money that did not exist at that time). In the second film, Dr. Evil says, "Why make trillions when we can make ... BILLIONS?" not knowing that trillions are larger than billions. In the third movie, he demands "1 billion, gagillion, faffillion,

“one billion dollar” demand referenced in the comments to the tweet (e.g. “Robert once asked me for ‘ONE BILLION DOLLARS.’ Top that demand.”). It appears Plaintiff’s counsel has either never seen the Austin Powers trilogy or is willfully obtuse to the context of the tweet posted by the undersigned. The real answer is “neither.” This court knows that because Plaintiff’s counsel intentionally cropped and edited the tweet to remove all context and information surrounding it in an effort to bolster his misguided argument.

The second tweet Plaintiff’s counsel complains of involves a dog with a bonfire and a generalized complaint that “Mr. Bayne has publicly disparaged the mediation process on social media.” See Plaintiff’s Motion for Sanctions p. 16. This tweet was attached as Exhibit J to Plaintiff’s Motion. The tweet features an adorable Corgi¹⁸ sitting on a boat dock near a bonfire on the lake. Plaintiff attempts to argue that this tweet, posted on July 5, 2019, is in some form or fashion related to the mediation in this underlying case (which was conducted on June 21, 2019—more than two weeks earlier). This picture, as was correctly pointed out during the hearing with Judge Hood, is a “meme.” A meme is commonly defined as an “activity, concept, catchphrase, or piece of media that spreads, often as mimicry or for humorous purposes, from person to person via the Internet.” See https://en.wikipedia.org/wiki/Internet_meme (accessed November 18, 2019). It should be evident to any rational person that posting a meme of a Corgi on a dock near a bonfire more than two weeks after a mediation is not “public disparage[ment] of the mediation process.” Yet, this is the argument Plaintiff’s counsel chooses to advance.

The third, and final, tweet complained of by Plaintiff’s counsel is perhaps the most

shabolubalu million illion yillion ... yen.” This time his demand is met with simple confusion from the world leaders. See https://en.wikipedia.org/wiki/Dr._Evil (accessed November 18, 2019).

¹⁸ For the court’s reference, the Corgi in question appears to be a “Welsh Corgi”. Two separate breeds of “Welsh Corgi” are recognized: the Pembroke Welsh Corgi and the Cardigan Welsh Corgi. Historically, the Pembroke has been attributed to the influx of dogs alongside Flemish weavers from around the 10th century, while the Cardigan is attributed to the dogs brought with Norse settlers, in particular a common ancestor of the Swedish Vallhund. See https://en.wikipedia.org/wiki/Welsh_Corgi (accessed November 18, 2019).

outrageous argument of the three. Plaintiff's counsel again crops and edits a tweet which was included on page 17 of Plaintiff's Motion as Exhibit J. This tweet is a photo of a character named "Inigo Montoya"¹⁹ from the movie "The Princess Bride." Plaintiff's counsel claims to this court that this tweet was "about killing opposing counsel":

Mr. Bayne has posted on the Internet about killing opposing counsel. **Exhibit J.**



¹⁹ For the court's reference, Inigo Montoya is a fictional character in William Goldman's 1973 novel *The Princess Bride*. In Rob Reiner's 1987 film adaptation, he was portrayed by Mandy Patinkin. In *The Princess Bride*, Inigo Montoya is portrayed as a Spanish fencer and henchman to the Sicilian criminal Vizzini. Inigo's father Domingo was a great sword crafter killed by Count Rugen. Eleven-year-old Inigo witnessed the crime. Eventually, Inigo finally confronts his father's killer with the words he had waited half his life to say: "Hello. My name is Inigo Montoya. You killed my father. Prepare to die." See https://en.wikipedia.org/wiki/Inigo_Montoya (accessed November 18, 2019).

However, as noted above, Plaintiff's counsel *intentionally* and *willfully* **edited** the post to make this claim. The full tweet actually shows that this tweet was part of playful banter between the undersigned and Robert F. Goings (mentioned herein above):



The full context shows that this tweet was actually *sent* to Robert F. Goings. It further shows that Mr. Goings *responded* to the tweet. The undersigned and Mr. Goings have tried multiple cases

with each other and are good friends. Plaintiff's counsel, of course, knows the context of this tweet because he located it, downloaded it, and selectively edited it. Plaintiff's counsel—when claiming that this tweet was “about killing opposing counsel”—knew that assertion was willfully and intentionally false. Plaintiff's counsel further misled this court by both handing the edited and cropped tweet up as a court's exhibit at the sanctions hearing and by making it an exhibit and relying upon it in his underlying Motion for Sanctions.

This type of willful, intentional behavior—altering and editing evidence and exhibits and misleading the court about them—should not be tolerated by any court in this state or country. It certainly should not be tolerated when Plaintiff's counsel has already been sanctioned for willfully misleading multiple judges in this very same case. Further, to accuse the undersigned of posting “about killing opposing counsel” through use of an edited, cropped tweet is abhorrent. Additional severe sanctions are warranted for Plaintiff's continued misrepresentations to this court.

IV. Conclusion

It is now abundantly clear that Plaintiff's Counsel Lane Jefferies—including his co-counsel who agreed to be listed on the signature block for this motion, Roy Willey and Eric Poulin—have very little respect for this court or its rulings. Mr. Jefferies was already sanctioned by this court for his repeated discovery abuses, lack of candor and misrepresentations to numerous judges, and an ADR violation. Mr. Jefferies, Mr. Willey, and Mr. Poulin's response to this Order was to file *another* Motion for Sanctions against the undersigned. However, they did not just file a motion—they filed a motion which again contains numerous, repeated, willful misrepresentations to this court. They filed a motion which relies upon edited, cropped, and/or fabricated evidence. And they filed a motion which contains assertions about Judges Couch and

Benjamin that are demonstrably false upon even a cursory review of the record. At this point, this court's sanction of dismissal of the Complaint and an award of costs in the amount of \$23,277.14 was clearly insufficient. The message intended to be sent by the imposition of sanctions was clearly not received. This court should seek to fashion another sanction in response to the two new filings which contain numerous, repeated, and willful misrepresentations to this court. The undersigned believes any new sanction should be assessed against each of Mr. Jefferies, Mr. Willey, and Mr. Poulin.

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/Brett H. Bayne

BRETT H. BAYNE (SC Bar No. 100018)

brett.bayne@mgclaw.com

Post Office Box 12519

1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211

Telephone: (803) 779-2300

Facsimile: (803) 748-0526

ATTORNEY FOR KAREN ROBINSON

November 21, 2019

Exhibit A

Brett Bayne

From: Donna Mills <scheduling@akimlawfirm.com>
Sent: Friday, July 5, 2019 4:04 PM
To: Brett Bayne; rharrell@murphygrantland.com
Cc: TeamJefferies
Subject: Jones, Harland v. Karen Robinson
Attachments: Plaintiff's 3rd Response to Defendant's 1st Roggs (signed).pdf; CL - Plaintiff's 3rd Response to Defendant's 1st Roggs (signed).pdf

Counsel -

Please see the attached letter concerning the above-referenced case. Hard copies will be placed in the mail today.

Best -

Donna F. Mills
Litigation Paralegal
Anastopoulos Law Firm LLC
32 Ann Street | Charleston, SC 29403
Tel: 843-614-8888 | Fax: 843-853-2291
www.akimlawfirm.com | dmills@akimlawfirm.com
Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville | Myrtle Beach | Raleigh, NC
By Appointment Only: Wilmington, NC

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Exhibit B

Brett Bayne

From: Brett Bayne
Sent: Friday, July 5, 2019 4:08 PM
To: 'Donna Mills'; rharrell@murphygrantland.com
Cc: TeamJefferies; Andy Delaney
Subject: RE: Jones, Harland v. Karen Robinson

Who is Lettie Jackson? What is her address? Where is the response to Rogg 2 asking for a summary of facts for the two new witnesses?

From: Donna Mills <scheduling@akimlawfirm.com>
Sent: Friday, July 5, 2019 4:04 PM
To: Brett Bayne <brett.bayne@mgclaw.com>; rharrell@murphygrantland.com
Cc: TeamJefferies <teamjefferies@googlegroups.com>
Subject: Jones, Harland v. Karen Robinson

Counsel -

Please see the attached letter concerning the above-referenced case. Hard copies will be placed in the mail today.

Best -

Donna F. Mills
 Litigation Paralegal
Anastopoulos Law Firm LLC
 32 Ann Street | Charleston, SC 29403
 Tel: 843-614-8888 | Fax: 843-853-2291
www.akimlawfirm.com | dmills@akimlawfirm.com
 Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville | Myrtle Beach | Raleigh, NC
 By Appointment Only: Wilmington, NC

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
 HARLAND JONES,	)	 Civil Action No. 2018-CP-40-01518
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF BRETT H. BAYNE
	)	
KAREN ROBINSON,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE ME, the undersigned, Brett H. Bayne, who, after being duly sworn, deposes and states:

1. I am adult of sound mind and body and over the age of 18.
2. I reside in Richland County, South Carolina.
3. I am attorney of record for Defendant, Karen Robinson in the above-referenced matter.
4. This Affidavit is an accounting of all costs interest attorney's fees, recoverable monies, administrative costs, filing costs, and/or other court costs incurred from November 8, 2019—the date Plaintiff filed his Motion for Sanctions and Motion to Alter or Amend—through March 2, 2020—the date Plaintiff's Motion to Alter or Amend was Denied.
5. During this time, and in accordance with the Court's March 2, 2020 Order, Defendant incurred attorney's fees in the amount of \$6,412.00.
6. These fees reflect an hourly rate of \$125.00 for Attorney Brett Bayne and \$135.00 for Attorney Andy Delaney and Sterling Davis.
7. During this time, Defendant incurred filing fees, court costs, and other

litigation costs in the amount of \$99.10.

8. Based on the foregoing, Defendant is entitled to a total recovery of an additional \$6,511.11 for a total of \$29,788.24 in the form of a Judgment to be entered against Plaintiff and/or Plaintiff's counsel in accordance with the Court's March 2, 2020 Order.

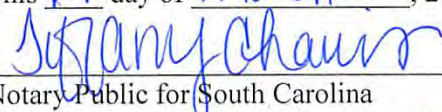
FURTHER, AFFIANT SAYETH NAUGHT



Brett H. Bayne

SWORN TO AND SUBSCRIBED BEFORE ME

This 17 day of March, 2019.



Notary Public for South Carolina

My Commission Expires: April 9, 2028

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-40-01518

Harland Jones, ...Appellant

v.

Karen Robinson, ...Respondent.

NOTICE OF APPEAL

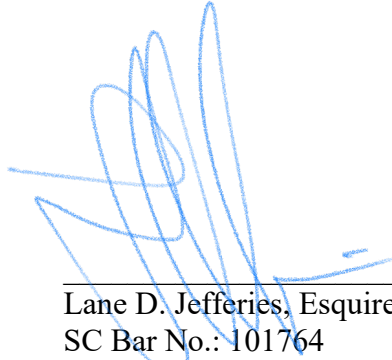
Harland Jones appeals the following four orders of the Honorable Robert E. Hood:

1. The October 31, 2019 **Order Granting Defendant's Motion for Sanctions;**
2. The March 2, 2020 **Amended Order Granting Defendant's Motion for Sanctions;**
3. The March 18, 2020 **Order/Electronic Form 4;** and
4. The March 23, 2020 **Order Per the Amended Order Granting Defendant's Motion for Sanctions.**

Appellant received notice of the final Orders on March 2, 18, and 23 respectively.

[SIGNATURE ON FOLLOWING PAGE]

April 1, 2020



Lane D. Jefferies, Esquire
SC Bar No.: 101764
Eric M. Poulin, Esquire
SC Bar No.: 100209
Roy T. Willey, IV, Esquire
SC Bar No.: 101010
Gus A. Anastopoulos
SC Bar No.: 103713
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888
Attorneys for Appellant

Counsel of Record for Respondent:

Brett H. Bayne, Esquire
SC Bar No.: 100018
Sterling G. Davies, Esquire
SC Bar No.: 5840
Michael M. Trask, Esquire
SC Bar No.: 103120
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211
(803) 779-2300
Attorneys for Karen Robinson

Rogers E. Harrell, III, Esquire
SC Bar No.: 101532
Murphy & Grantland, PA
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100 ex: 1241
Attorney Progressive Insurance Company

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STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	COURT OF COMMON PLEAS
	)	2018-CP-40-1518
Harland Jones,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Karen Robinson,	)	
	)	
Defendant.	)	

October 1, 2018
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

LANE D. JEFFERIES, ESQ.
Attorney for the Plaintiff

BRETT H. BAYNE, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

OCTOBER 1, 2018

(WHEREUPON, the hearing began at 2:30
p.m.)

THE COURT: Harland Jones v. Karen Robinson.
Madam Court Reporter, this is case
2018-CP-40-1518, Harland Jones v. Karen Robinson.

Mr. Bayne, I will be glad to hear from you.
This is your motion?

MR. BAYNE: The motion to compel is my motion,
Your Honor. The second motion is the Plaintiff's
motion.

THE COURT: All right. Yes, sir?

MR. BAYNE: Thank you, Your Honor. Brett
Bayne, on behalf of the Defendants in this case.

Your Honor, we have a motion to compel that
has been filed in this case. Discovery requests,
interrogatories, requests for production were sent
to the Plaintiff on May 8th, 2018. A Rule 11
letter was subsequently sent on July 25th, 2018.

Part of the background going through this
case, this is an automobile accident, an automobile
and bike accident. The Plaintiff was on a bicycle
on Old Bluff Road and was struck by a car.

The testimony so far to date in this case has
been that the Plaintiff veered off into ongoing

1 traffic and was struck by a vehicle as he turned
2 left across an SUV that was coming in the opposite
3 direction.

4 As I stated, we served discovery requests on
5 May 8, 2018. On July 24th, 2018, we received a
6 letter from Plaintiff's counsel asking to set
7 mediation in the case, indicating that if we did
8 not respond in a timely manner, they would seek
9 sanctions for failure to set a mediation.

10 Our response at that time was, We don't have
11 discovery yet, we need that before we discuss any
12 date.

13 On August 29th, 2018, we received another
14 letter denoting -- it was actually a letter, a
15 Rule 11 letter for our discovery, of which no
16 motion to compel has been filed to date because all
17 discovery has been answered from our end -- from
18 the Plaintiff's counsel, and I thought some of the
19 language in there was interesting for our motion.
20 It states: Discovery rights allow a litigator to
21 effectively prepare for trial. Discovery isn't for
22 the trial to become a guessing game or bring
23 surprise for either party. And when a party does
24 not follow the mandates of discovery rules,
25 prejudice must be presumed.

1 So the Plaintiff has acknowledged that the
2 Defense has been prejudiced at this point in the
3 case by failure to receive their discovery
4 responses.

5 We notified them again on August 30th of 2018
6 that we had not yet received discovery responses
7 and we were waiting on those in the matter.

8 September 5th of 2018 we received a second
9 request for mediation with a Rule 11 consultation
10 to seek sanctions for failure to set mediation,
11 again still had not received discovery at that
12 point.

13 We notified them that same day that, We will
14 set mediation when we receive discovery.

15 On September 26th, we received a third and
16 final request to schedule mediation within ten days
17 or a threat to sanction for failure to schedule
18 mediation. Again, at that time still had not
19 received discovery responses.

20 We received a -- the motion in this case was
21 filed back in June of 2018 seeking the responses
22 from discovery and any applicable sanction that may
23 be awarded as a result of that.

24 We have also sent a subsequent supplemental
25 set of interrogatories in August of 2018 with one

1 additional question on it.

2 So on Friday we received the bulk of the
3 discovery responses. There are -- the Plaintiff
4 has north of \$200,000 in medical bills all from
5 Palmetto Health Richland and a few other places.
6 At this point, given the volume of those, it had to
7 be sent -- you had to download a link. We have not
8 yet been able to review those.

9 What we have not yet received in this case is
10 a response to the supplemental interrogatories from
11 August.

12 In the second motion that will be heard here
13 today, there is an assertion that is made to the
14 Court by the attorney for the Plaintiff that
15 states: Discovery in this case is expected to
16 reveal witnesses to the events giving rise to the
17 subject motor vehicle collision who believe that
18 the Defendant was speeding, the Defendant was not
19 paying attention to the roadway at the time of the
20 subject collision, and/or that the Defendant
21 unlawfully attempted to pass a vehicle immediately
22 in front of her at the time she unlawfully caused
23 the Plaintiff to strike the Defendant's vehicle.

24 That clause is contained in the motion and
25 memorandum filed by the Plaintiff for the second

1 motion here today.

2 Obviously, that is information that affects
3 the case, and given that every witness and every
4 eyewitness has said the exact opposite of that, we
5 naturally asked to identify these people: Who have
6 you represented to the Court is an eyewitness that
7 can say those things?

8 That has not been answered. That -- in the
9 initial discovery responses, they listed the same
10 witnesses that we have listed: The eyewitness, the
11 Plaintiff, the Defendant, the police officer who
12 came along after, and then the medical providers.
13 And then the supplemental discovery has not been
14 answered to state who was represented to the Court
15 in the filings that was an eyewitness that was
16 going to say the Defendant was speeding, swerving,
17 and was in oncoming traffic at the time of the
18 collision.

19 So it is our position that we are entitled to
20 an answer to that question specifically. And then
21 we reserve the right, once we have had a chance to
22 review the thousands of pages of records we did
23 receive on Friday, to come back and address the
24 additional deficiency for the discovery.

25 THE COURT: Yes, sir?

1 MR. JEFFERIES: Thank you, Your Honor. Lane
2 Jefferies, for the Plaintiff.

3 We agree largely with what Mr. Bayne has to
4 say. There was a delay getting these responses
5 out. Part of that is absolutely my fault in terms
6 of getting them addressed in a timely manner.

7 One of the things that slowed this down beyond
8 usual, as Mr. Bayne just said, it is thousands of
9 pages of medical records, \$235,000 worth of medical
10 care. And getting those from these providers
11 proved more difficult than it often is and proved
12 more time consuming. What we got was some
13 disorganized stuff that we had to go through and
14 make sense of. So it did take us a while to get it
15 to Mr. Bayne. Obviously, I don't feel good about
16 that. I wish it wouldn't have happened just the
17 way it happened. He has it now.

18 I'm not real sure what our request for -- to
19 set a date for mediation really has to do with a
20 motion to compel discovery. All we are -- just so
21 Court knows, all we are trying to do there is --
22 you know, mediation, under the rules, has to be
23 conducted within 300 days. As you get closer to
24 that, it is harder to find the time a mediator can
25 do it and the insurance adjuster and Defense

1 counsel and the Plaintiff's counsel, to get
2 everybody in the same room. So we try to set that
3 as early as possible so everybody can get it on
4 their calendar. We are not asking to conduct
5 mediation before depositions are done, before
6 discovery is done. We are just asking to set it.
7 We can't think of a reason why we can't set a date
8 for mediation even before discovery is done under
9 the reasonable assumption that it will get done.
10 The same way, you know, I don't wait until my son
11 graduates from high school before I start saving
12 for college. I figure that is going to happen down
13 the road and I ought to plan for it. So that is
14 all we are trying to do there, let's just put a
15 date on the calendar, get the dates out, and we
16 will be ready by the time we get there.

17 So, again, Your Honor, I apologize for the
18 delay. If Mr. Bayne had to file a motion that he
19 otherwise wouldn't have had to file, I am glad to
20 write him a check for the filing fee for the
21 motion. I think that might be appropriate. I wish
22 he hadn't had to file it, but the delay was our
23 fault. It is a lot of records.

24 THE COURT: All right. The motion to compel
25 will be granted. If you can get him the remaining

1 records within 20 days. I think the
2 supplemental -- you have got -- well, you don't
3 know what you have, you just got it. But within 20
4 days the supplemental responses?

5 MR. BAYNE: Your Honor, the only one that we
6 know for sure has not been answered is the
7 supplemental request for the identification of the
8 witnesses that have been represented to have seen
9 this accident.

10 THE COURT: All right. Okay, thank you.

11 MR. JEFFRIES: And we will provide that, Your
12 Honor, certainly.

13 THE COURT: Okay, thank you. And then you
14 have motion to dismiss?

15 MR. JEFFRIES: Yes, Your Honor. The motion to
16 dismiss is related to a counterclaim, a purported
17 counterclaim.

18 So the accident took place in June of 2016,
19 June 7th, I believe, of 2016. We filed suit in
20 2018. We served this Defendant in April, I believe
21 April 17th of 2018.

22 On May 8th the Defendant answers, and then on
23 May 22nd the Defendant files an amended answer and
24 asserts a counterclaim under the Frivolous Civil
25 Proceedings Sanctions Act.

1 So we move to dismiss really for two reasons:
2 One is procedural, one is substantive.

3 The procedure one is this. The Frivolous
4 Civil Proceedings Sanction Act doesn't give rise to
5 an independent cause of action. There is nothing
6 magical about a counterclaim, it is just a cause of
7 action made by a Defendant versus a Plaintiff. It
8 still has to be a cognizable cause of action in
9 South Carolina.

10 There is no -- and where a cause of action
11 comes from, common law or statute. There is no
12 common law cause of action for Frivolous Civil
13 Proceedings Sanction Act, so that is not it. So
14 the only way that it can be a counterclaim is if
15 the act itself provides for a counterclaim. The
16 act doesn't. It is really specific about what a
17 party needs to do if they want sanctions under that
18 act. They have to find really two ways.

19 One is, at the conclusion of the trial,
20 assuming the Plaintiff loses or summary judgment or
21 directed verdict, at that conclusion, then Defense
22 can make a motion. And they have to make that
23 motion within ten days while the trial judge still
24 has jurisdiction. Our court has been very, very
25 clear on this. In re Beard laid that out very

1 specifically. Ten days while that trial judge
2 still has jurisdiction, then there can be a motion
3 for sanctions under the act. So that is one way.

4 So obviously that is not the route Defense
5 counsel is taking because the trial is not over,
6 there is no directed verdict, there is no motion
7 for summary judgment, let alone summary judgment.

8 The other way is based just on signatures on
9 pleadings. At any point the Defense counsel can
10 make a motion. The Court can make a motion sua
11 sponte if the Court so desires to sanction the
12 Plaintiff for signing pleadings that weren't read
13 or were so obviously frivolous that no reasonable
14 attorney would sign such a pleading. So that is
15 the only route that they can go right now.

16 But the act is clear on that, that it is by a
17 motion. It is not a counterclaim. It doesn't go
18 to the jury, it is decided by the judge. It is
19 very specific. And, Your Honor, this statute is
20 definitely in derogation of the common law. There
21 is no common law cause of action here. So the
22 statute is strictly construed. Mr. Bayne needs to
23 file a motion and point to the pleading that we
24 signed that is frivolous. And then we get to
25 consider the substance.

1 So that is a procedural point. It is not a
2 counterclaim. It is supposed be a motion. So it
3 should be dismissed on that basis alone. He can
4 bring his motion if he likes.

5 The second piece of it is, it is substantively
6 not worthy of being granted. Even if Mr. Bayne had
7 made the motion, this is a case where everyone
8 agrees, a motorist struck a bicyclist. Terrible
9 injuries. \$235,000 worth of injuries.

10 There is a dispute as to how it happened. The
11 Defendant tells one story. The Defendant says
12 bicyclist, Mr. Jones, turned suddenly and without
13 warning -- that is what the Defendant says,
14 suddenly and without warning -- right in front of
15 me, there was nothing I could do, I hit him.

16 The Plaintiff, Mr. Jones, tells a different
17 story. I did not turn in front of the Defendant,
18 whether suddenly or not.

19 And then the Defendant's own witness tells a
20 third story that contradicts both to some degree.
21 The Defendant's own witnesses, Ms. Murray, says: I
22 observed -- and I'm reading from her deposition
23 transcript, that Defense counsel noticed and
24 videotaped -- that is when I observed Mr. Harland
25 riding a bicycle. Harland Jones. We were in the

1 same lane of traffic, so I was immediately behind
2 him. And we probably -- I probably traveled behind
3 him maybe three, four minutes before he put up a
4 hand signal. And once he put up the hand signal,
5 shortly thereafter, maybe say a few seconds, maybe,
6 he made a left turn. He turned left. And that is
7 when the accident occurred.

8 And the testimony goes on like this. The
9 witness is very, very clear in her mind that Mr.
10 Jones signaled for a left turn before he was hit.

11 And elsewhere what we find, why this is not
12 frivolous, as we look through this action, we
13 deposed the Defendant. And what we learned from
14 the Defendant, she says she is only going 40 miles
15 an hour when she hits Mr. Jones, but she concedes
16 that she doesn't know how she is going 40 miles an
17 hour because she never looked at the speedometer.

18 Your Honor, I would say -- I brought this just
19 to illustrate that the damages suggest maybe she
20 was going a little faster. This is a Nissan
21 vehicle. And look at the hood and the windshield
22 and the roof all smashed in by the impact of Mr.
23 Jones' body. So that is what the Defendant says.

24 She also says she wasn't wearing her glasses.
25 She agrees in her transcript, I was not wearing my

1 glasses. She also agrees she is required by law to
2 wear corrective lenses while she is driving a car.
3 It is right on the back of her driver's license.
4 Perhaps that is the reason she didn't see the hand
5 signal, she wasn't wearing her glasses. She says
6 the cyclist turned left in front of her without
7 warning. The cyclist says, No, I didn't. Her own
8 witness says, Oh, well, he made a turn, but it
9 wasn't without warning, he put up a signal.

10 She says he was going so fast that she
11 couldn't -- that he turned so fast that she could
12 not react in time to avoid him. And then later on
13 she says, Well, actually he was way over by the
14 white line on the far side of the road, so he would
15 have had to cross his lane and all the way in front
16 of her lane.

17 The point of all this, Your Honor, is not that
18 we are right. We could be wrong. Every day
19 Plaintiffs' attorneys and Defense attorneys go to
20 court and try cases, and one of them, 50 percent of
21 them, find out that they are wrong. That is the
22 way it goes. But there is nothing -- there is no
23 bit of evidence that -- Defense counsel hasn't
24 asserted any evidence at this stage -- there is no
25 bit of evidence at all that we are so wrong as to

1 be frivolous in bringing this action. It is just
2 one of those he said/she said disputes. An
3 independent witness favors us to some degree. So
4 it is not frivolous. Even if Mr. Bayne had brought
5 a motion, it is simply not frivolous. It is
6 disputed facts.

7 And beyond that, Your Honor, he didn't bring
8 the motion. He made a counterclaim that absolutely
9 there is no provision in the law and in the rules,
10 he can't point to it anywhere that says you can
11 bring a counterclaim. It is not an independent
12 cause of action.

13 The last thing I would point out, Your Honor,
14 is this is actually part of a little bit of a
15 pattern. I don't know whether when the Defense
16 attorneys got together down at Sea Island there was
17 a talk on this or what, but ever since then, we
18 have seen these -- we have seen motions and we have
19 seen counterclaims, purported counterclaims, for
20 frivolous proceedings whenever the police report
21 doesn't favor the Plaintiff. Any time the police
22 report doesn't favor the Plaintiff, we have seen on
23 other side, poof, Well, this is frivolous.

24 I have got to tell you, I would love a rule
25 that says it is frivolous to go against what the

1 police report says, because 90 percent of the time
2 they favor my client. That would be great. I
3 would love to be able to say, Defense, you can't
4 even raise those defenses because the police report
5 says you are frivolous. But that is not the rule.
6 The rule is that a police report is inadmissible,
7 you have to hear the facts. And there is nothing
8 on the face of this thing that says it is
9 frivolous.

10 That counterclaim doesn't exist under South
11 Carolina law. It should go away. If Mr. Bayne
12 brings a motion, that motion should absolutely be
13 denied.

14 THE COURT: All right. Mr. Bayne, isn't there
15 a procedure after -- according to the statute?

16 MR. BAYNE: Yes, Your Honor, there is. And
17 just by brief background, Ms. Robinson, once this
18 case has reached a defense verdict, which is where
19 this is heading, the Plaintiffs file a lawsuit
20 against Mr. Jones and against the Anastopoulo law
21 firm. She has expressed that. So this
22 counterclaim is simply attempting to preserve that
23 right to make sure we don't do anything to
24 eventually waive it down the line.

25 My view on it is it can be dismissed without

1 prejudice to preserve her right to file that
2 lawsuit when the time comes, which is what she
3 plans to do six months, eight months, ten months
4 down the line as soon as we reach a resolution in
5 this case. That is, in other words, sitting here
6 trying to protect her interest to make sure that
7 she doesn't waive anything, to make sure that there
8 is no statute of limitations that runs, to make
9 sure the court above us doesn't decide to change
10 their mind and say, No, you should have filed it
11 and preserved it, anything like that. So we're
12 not -- we don't plan to -- I guess my view on it is
13 we are not going to assert this to a jury and the
14 counterclaim on this, I think it should be
15 preserved for her, however that is done. And so
16 that is why it is filed, is to make sure, at her
17 request, that we preserve those rights.

18 THE COURT: All right. But his position is
19 that there is not a separate cause of action for
20 that claim.

21 MR. BAYNE: Right. And on his reading of the
22 cases, I don't disagree with his assessment based
23 on what he is presenting here. My concern is
24 making sure that that is preserved for her. So if
25 it is dismissed, if it is dismissed without

1 prejudice and a note that she has preserved the
2 right to pursue that pending resolution of the
3 underlying suit -- obviously she still will have to
4 meet the merits of the claim at the time that that
5 comes up. The concern is making sure that she
6 doesn't waive any rights she has to accrue that
7 claim and then pursue it down the line.

8 THE COURT: She will have to meet the merits
9 of that claim and then you'll have to have a
10 Defense verdict on this claim in order to --

11 MR. BAYNE: Yes, Your Honor, and that is --

12 THE COURT: -- be able to proceed.

13 MR. BAYNE: Yes, Your Honor. We will take
14 care of that part and then let her go down the road
15 there.

16 THE COURT: Yes, sir, anything in reply?

17 MR. JEFFERIES: We don't necessarily have any
18 objection except just to clarify, which is, first,
19 the statute doesn't require any preservation on
20 their part, it is built into the statute, she has
21 ten days after the case ends to go ahead and make
22 this motion.

23 THE COURT: Yes, I would think that you could
24 not -- and I understand, he is just saying just in
25 case. My interpretation would be that he would --

1 she would not even be in a position -- it is almost
2 like the wrongful arrest claims. You can't file
3 it -- you can't file it until you get something, a
4 disposition on the criminal case.

5 MR. BAYNE: Yes, Your Honor.

6 THE COURT: In favor of the Plaintiff that
7 wants to file. So I would assume that this would
8 be similar because her -- I'm not even sure if she
9 would, based on the statute, have any -- the Court
10 has any jurisdiction or she would have any, I don't
11 want to say standing, at this point to file it
12 until you win and get a Defense verdict.

13 MR. BAYNE: And I agree, Your Honor. Like I
14 said, my concern was making sure that we did
15 everything possible to preserve any issue that can
16 come up down the line for her, because that has
17 been what she wants to do. And so we are making
18 sure that we are protected in that regard going
19 forward. And as long as that right is preserved,
20 however the Court wants to dispose of that issue is
21 fine with us.

22 THE COURT: I will -- what I will do is I will
23 grant the motion without prejudice with leave to --
24 if he is successful, to refile, even though the
25 statute does provide that you do so, within ten

1 days you have to make that motion.

2 MR. BAYNE: Thank you, Judge.

3 MR. JEFFCOAT: And to be clear, Your Honor,
4 Your Honor is not creating any new right to file,
5 you are just preserving whatever right they happen
6 to have under the statute?

7 THE COURT: Yes.

8 MR. JEFFRIES: Which we would have to
9 determine later. I have no objection to that.
10 Your Honor, I'm with you. Thank you.

11 THE COURT: All right. You will get me an
12 order?

13 MR. JEFFRIES: I will get you a proposed
14 order.

15 MR. BAYNE: Thank you, Judge.

16 THE COURT: All right, thank you.

17 MR. JEFFERIES: Thank you very much.

18 THE COURT: And on the motion to compel, do
19 you all need an order or a Form 4?

20 MR. BAYNE: A Form 4 is fine. As of right now
21 there is just one question.

22 THE COURT: Okay.

23 MR. BAYNE: Thank you, Judge.

24 THE COURT: Thank you.

25 (WHEREUPON, the hearing adjourned at

2:52 p.m.)

(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 1st day of October, 2018.

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

November 6, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

MR. BAYNE: [13] 3/8 3/12 10/4 17/15 18/20 19/10 19/12 20/4 20/12 21/1 21/14 21/19 21/22 MR. JEFFCOAT: [1] 21/2 MR. JEFFERIES: [4] 7/25 10/10 19/16 21/16 MR. JEFFRIES: [3] 10/14 21/7 21/12 THE COURT: [20] 3/3 3/11 7/24 9/23 10/9 10/12 17/13 18/17 19/7 19/11 19/15 19/22 20/5 20/21 21/6 21/10 21/15 21/17 21/21 21/23	address [1] 7/23 addressed [1] 8/6 adjourned [1] 21/25 adjuster [1] 8/25 affects [1] 7/2 after [3] 7/12 17/15 19/21 again [4] 5/5 5/11 5/18 9/17 against [3] 16/25 17/20 17/20 agree [2] 8/3 20/13 agrees [3] 13/8 14/25 15/1 ahead [1] 19/21 all [17] 3/12 4/16 6/4 8/20 8/21 9/14 9/24 10/10 14/22 15/15 15/17 15/25 17/14 18/18 21/11 21/16 21/19 allow [1] 4/20 almost [1] 20/1 alone [2] 12/7 13/3 along [1] 7/12 also [3] 5/24 14/24 15/1 am [2] 9/19 23/16 amended [1] 10/23 Anastopoulos [1] 17/20 and/or [1] 6/20 another [1] 4/13 answer [2] 7/20 10/23 answered [4] 4/17 7/8 7/14 10/6 answers [1] 10/22 any [14] 4/11 5/22 12/9 15/24 16/21 19/6 19/17 19/19 20/9 20/10 20/10 20/15 21/4 23/17 anything [4] 17/23 18/7 18/11 19/16 anywhere [1] 16/10 apologize [1] 9/17 appeal [1] 23/13 applicable [1] 5/22 appropriate [1] 9/21 April [2] 10/20 10/21 April 17th [1] 10/21 are [16] 6/3 7/19 8/20 8/21 9/4 9/5 9/6 9/14 15/18 15/21 15/25 17/5 18/13 20/17 20/18 21/5 arrest [1] 20/2 as [15] 4/1 4/4 5/23 8/8 8/23 9/3 9/3 13/10 14/12 15/25 18/4 18/4 20/19 20/19 21/20 asked [1] 7/5 asking [3] 4/6 9/4 9/6 assert [1] 18/13 asserted [1] 15/24 assertion [1] 6/13 asserts [1] 10/24 assessment [1] 18/22 assume [1] 20/7 assuming [1] 11/20 assumption [1] 9/9 attempted [1] 6/21 attempting [1] 17/22 attention [1] 6/19 attorney [4] 1/18 1/20 6/14 12/14 attorneys [3] 15/19 15/19 16/16 August [4] 4/13 5/5 5/25 6/11 August 29th [1] 4/13 August 30th [1] 5/5 automobile [2] 3/21 3/21 avoid [1] 15/12 awarded [1] 5/23 away [1] 17/11	because [7] 4/16 12/5 14/17 17/1 17/4 20/8 20/16 become [1] 4/22 been [12] 3/16 3/25 4/16 4/17 5/2 6/8 7/8 7/13 10/6 10/8 11/24 20/17 before [7] 4/11 9/5 9/5 9/8 9/11 14/3 14/10 began [1] 3/2 behalf [1] 3/14 behind [2] 14/1 14/2 being [1] 13/6 believe [3] 6/17 10/19 10/20 BENJAMIN [1] 1/14 beyond [2] 8/7 16/7 bicycle [2] 3/22 13/25 bicyclist [2] 13/8 13/12 bike [1] 3/22 bills [1] 6/4 bit [3] 15/23 15/25 16/14 Bluff [1] 3/23 body [1] 14/23 both [1] 13/20 BRETT [2] 1/19 3/13 brief [1] 17/17 bring [4] 4/22 13/4 16/7 16/11 bringing [1] 16/1 brings [1] 17/12 brought [2] 14/18 16/4 built [1] 19/20 bulk [1] 6/2
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