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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy and R. Ferrell Cothran, Jr., Circuit Court Judges

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Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants/Petitioners.

REPLY TO RETURN TO PETITION FOR WRIT OF SUPERSEDEAS

MCANGUS GOUDELOCK AND COURIE

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Attorneys for Appellants/Petitioners

Appellants/Petitioners Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Defendants below (jointly "Defendants") hereby reply to Respondent's Return in Opposition to Appellants' Petition for Writ of Supersedeas. By mischaracterizing Defendants' Petition as an impermissible interlocutory appeal of a discovery order, Plaintiff completely ignores South Carolina Appellate Court Rule 241, which undisputedly provides for a petition for writ of supersedeas. Plaintiff also fails to respond in any way to the arguments raised and case law cited by Defendants regarding the necessity of staying discovery while a decision denying a demand for arbitration is pending on appeal, in light of the extreme prejudice to the moving party and the tremendous waste of judicial and party resources associated with proceeding to plenary discovery while such an appeal is pending. Put simply, not a single argument raised or case cited by Plaintiff responds to the arguments and case law raised in the Petition. Plaintiff's discussion of general standards and rules concerning finality and appealability, as well as his arguments regarding the purported "law of the case" are misplaced and irrelevant to the Petition before this Court. As a result, Plaintiff's Return is and should be treated as a non-response and Defendants' Petition should be granted.

1. Plaintiff applies incorrect standards to Defendants' Petition.

Only for the sake of completeness, Defendants briefly address the two arguments Plaintiff raises, neither of which has any merit or bearing on Defendants' Petition. First, Plaintiff appears to assume, incorrectly, that Defendants' Petition is an attempt to appeal a discovery order. On one hand, Plaintiff characterizes Defendants' Petition as an appeal, arguing that "Judge McCoy's order is interlocutory and not immediately appealable," and, simultaneously argues, that "Defendants have not appealed the order." It is unclear what argument Plaintiff is attempting to articulate, but

what is clear is that he fails to address even cursorily the substance and/or applicability of Rule 241, SCACR, which is the basis for Defendants' Petition. Rule 241 provides a mechanism to seek "an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal," the effect of which "is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal ..." Rule 241(c)(1), SCACR. Here, the "matter decided" in Judge McCoy's Form 4 Orders denying Defendants' motion to stay discovery pending the outcome of their appeal, which was confirmed only recently, (Exhs. QQ-2 & QQ-3),[1] is whether Plaintiff is entitled to continue to litigate this case before the circuit court, including through overly broad and irrelevant party and nonparty discovery, while the very issue of what forum should decide this dispute—including the scope and pace of discovery—is pending before this Court. Indeed, as Defendants explain in their Petition, notwithstanding Judge McCoy's Form 4 Orders (which render it impossible to ascertain her reasoning), applicable authority strongly counsels that discovery was and should be stayed automatically by Rules 205 and 241, SCACR.

Plaintiff incorrectly asserts that "this Court has repeatedly rejected Defendants' argument regarding the trial court's jurisdiction under these circumstances," relying on *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 852 S.E.2d 744 (Ct. App. 2020). In fact, in *Sanders*, after determining the dispute was not subject to arbitration, this Court decided the remaining limited issue raised by the appellant, *i.e.*, whether the circuit court had "*subject matter jurisdiction* to enter the order compelling discovery after they had filed their Notice of Appeal." 432 S.C. at 334, 852 S.E.2d at 747 (emphasis added). There is no indication in *Sanders* that the moving party either argued that discovery was automatically stayed during the appeal or, more importantly, petitioned this Court for a stay. Instead, the moving party only challenged the circuit court's subject matter

[1] Unless otherwise noted, the Exhibits referenced herein are to the Exhibits to the Petition.

jurisdiction to order discovery. Thus, this Court did not discuss, let alone decide, the issues presented here by Defendants' Petition because, as this Court has explained, "Appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991). As a result, while *Sanders* stands for the unremarkable proposition that a circuit court has jurisdiction to hear and try tort cases, that fact is irrelevant to whether discovery is automatically stayed, and if not, whether discovery should be stayed during an appeal of a denial of a motion to compel arbitration, in light of all of the considerations pointed out by this Court and others in this circuit in the case law cited by Defendants' in their Petition and below.

Plaintiff further argues that no appeal from the discovery orders below is warranted unless Defendants demonstrate "exceptional circumstances" as was found in *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 380, 692 S.E.2d 920 (2010). His reliance on *Oncology & Hematology Assocs.* is misplaced for at least two reasons. First, *Oncology & Hematology Assocs.* only concerns the standard applicable to appeals of discovery by writ of certiorari, not the standards applicable to Rule 241.[2] Defendants did not appeal Judge McCoy's initial Form 4 order compelling production of information and documents in response to his first set of discovery requests, as they agree some limited discovery would be available in arbitration under the JAMS Rules. (*See* Exh. F, pp. 19-20).[3] Second, the standard for

[2] It is also worth noting that the court found that exceptional circumstances existed warranting vacating the ALC's order compelling responses to discovery because the discovery requests were part of a scorched-earth and irrelevant discovery campaign. *Oncology & Hematology Assocs.*, 387 S.C. at 387-388, 692 S.E.2d at 924-925. That is also true here.

[3] However, Plaintiff's completely unfounded assertion that all of the party and nonparty discovery that he seeks here (including 31 sets of requests propounded after his first set of discovery requests) would be permissible in arbitration is incorrect. Indeed, Courts routinely point out that discovery is far more limited in arbitration than in civil litigation. *E.g.*, *Lummus Co. v. Commonwealth Oil Refining Co.*, 273 F.2d 613 (1st Cir. 1959) (a plaintiff's "right to discovery must be far more

obtaining supersedeas relief is set forth in Rule 241, SCACR, which does not require a demonstration of "exceptional circumstances," but rather, as is the case here, that the matters to be stayed are matters that were decided in the order being appealed.[4]

Plaintiff goes so far as to assert that Defendants' properly filed Petition under Rule 241 is nothing more than an "attempted end-run around the inability to seek appellate review." Again, Plaintiff entirely fails to address either the process or substance of Rule 241, SCACR, as well as the compelling reasons that further proceedings before a lower court should be stayed while an appeal of a denial of a motion to compel arbitration is pending. Plaintiff does not even assert or argue, nor could he plausibly, that continued litigation before the circuit court is not a matter affected by the appeal. *See*, *e.g.*, *Lummus*, 273 F.2d at 613 ("a court order of discovery would be affirmatively inimical to appellee's obligation to arbitrate, if this court determines it to have such obligation"); *Combined Energies v. CCI, Inc.*, 495 F. Supp. 2d 142, 143-144 (D. Me. 2007) ("To assume ongoing jurisdiction over discovery," while an appeal of a denial of a motion to compel arbitration was pending, "would be inconsistent with the bedrock principle that once a case is appealed, jurisdiction rests with the court of appeals, not in both the court of appeals and the district court"); *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504, 505 (7th Cir. 1997) ("Whether the case should be litigated in the [lower] court is not an issue collateral to the question presented by an appeal under § 16(a)(1)(A)"; instead, "it is the mirror image of the

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restricted" in an arbitral forum than it would be in federal district court). Plaintiff has not even attempted to proffer any actual authority to the contrary.

[4] Neither of the cases cited by Plaintiff concerning the "appealability of stays" addresses a Rule 241 petition or a stay of proceedings during a pending appeal. Instead, *Carolina Water Serv. v. Lexington County Joint Mun. Water & Sewer Comm'n*, involved a stay of matters "pending the resolution of a related case before the South Carolina Administrative Law Court." 373 S.C. 96, 97, 644 S.E.2d 681, 682 (2007). *Edwards v. SunCom*, involved a stay of proceedings during which the provider was required "to petition the FCC to seek a declaratory ruling" on the key issue. 369 S.C. 91, 92, 631 S.E.2d 529, 530 (2006). Thus, both cases are inapposite.

question presented on appeal. Continuation of the proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals"); *Falcone Bros. P'ship v. Bear Stearns & Co.*, 699 F. Supp. 32, 35 (S.D. N.Y. 1988) ("The law in this circuit … is that discovery on the subject matter of a dispute to be arbitrated should be denied in the absence of extraordinary circumstances").

Plaintiff erroneously and without any supporting authority asserts that Defendants will not be harmed by his continued pursuit of discovery before the circuit court. That position is both illogical and has been flatly rejected by numerous courts. For example, as the Seventh Circuit succinctly explained in *Bradford-Scott*, "[a]rbitration clauses reflect the parties' preference for non-judicial dispute resolution, which may be faster and cheaper. These benefits are eroded, and may be lost or even turned into net losses, if it is necessary to proceed in both judicial and arbitral forums, or to do this sequentially. The worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to court to have the award enforced …. Combining the costs of litigation and arbitration is what lies in store if a district court continues with the case while an appeal under § 16(a) is pending. Cases of this kind are therefore poor candidates for exceptions to the principle that a notice of appeal divests the district court of power to proceed with the aspects of the case that have been transferred to the court of appeals." 128 F.3d at 506; *see also* Petition, pp. 13-17 (collecting cases).

2. Whether or not Plaintiff's discovery requests are "proper" is not a relevant consideration under Rule 241, SCACR.

Plaintiff's second irrelevant (and also erroneous) argument is that his multiple rounds of discovery, party and nonparty, are "proper," which somehow justifies continuing to litigate this matter before the circuit court while the denial of Defendants' motion to compel arbitration is

pending before this Court. Setting aside the fact that Judge Young admonished Plaintiff for subjecting Defendants to repeated, piecemeal sets of discovery and that no court has addressed let alone ruled that any of Plaintiff's specific discovery requests to Defendants are appropriate (the vast majority are not), the general propriety—or lack thereof—of specific discovery requests simply is not a relevant inquiry under Rule 241, SCACR.

In any event, although the issue of whether the discovery served by Plaintiff is "reasonable" and proper (neither is true) is irrelevant to this Court's resolution of the pending Petition, it is worth pointing out that Plaintiff's Response to Defendants' Petition both mischaracterizes and undercounts the unduly burdensome, irrelevant, and piecemeal rounds of discovery he has served on Defendants and nonparties. Plaintiff does not and cannot contest that he has served multiple of rounds of discovery in piecemeal fashion on Defendants.[5] Instead, he attempts to minimize his relentless discovery campaign (*see* Petition pp. 6-8) by compiling an aggregated "count" and a list of the discovery requests he has served in this case. In addition to the fact that Plaintiff's Exhibit 6 and his "count totals" do not include the initial discovery requests served on Defendants, his Exhibit 6 omits some of his subsequent discovery requests.[6] Similarly, his suggestion that the

[5] Contrary to Plaintiff's assertions, many of those requests seek wholly irrelevant information, seemingly designed only to harass. For example, Plaintiff's Second Request for Production to the Individual Defendants seeks all W-2s, all 1099s and all paystubs issued to the Individual Defendants by the Corporate Defendants from January 1, 2018 to the present. (Exh. O). Plaintiff's Third Request for Production to the Individual Defendants seeks "[a] complete copy of all homeowner's insurance policies, including the declarations page(s), which has or may have liability insurance coverage for the Defendant and/or relating to the Plaintiff's claims." (Exh. Q).

[6] For example, and these are only a few examples of Plaintiff's multiple mischaracterizations of the discovery he has served on Defendants during the pendency of the appeal, on the first page of his Exhibit 6, Plaintiff lists various INDIVIDUAL REQUESTS FOR ADMISSION which he represents includes all of the requests for admission he has served on Defendants. However, he omits two Requests for Admission directed to two of the Individual Defendants, Meissner and LeCroy. Plaintiff's May 7, 2021 Requests for Admission, (Exh. V), contains two Requests to Meissner and one to LeCroy, that are not included in Plaintiff's Exhibit 6. Similarly, on page 3 of Plaintiff's Exhibit 6, he lists various INDIVIDUAL INTERROGATORIES which he represents

eleven nonparties he served with burdensome and inappropriate document subpoenas are willing to voluntarily comply with those subpoenas is disingenuous. For example, at least Amazon and Apple objected to the subpoenas in whole on the basis that they were unduly burdensome and otherwise inappropriate for several additional reasons. (Exhs. TT and UU, hereto). Plaintiff's response to the Petition suggests that Google is the only other nonparty to have even responded to Plaintiff's subpoenas, and it is not even clear that Google ever actually produced any information to Plaintiff in connection with the subpoena.

Finally, Plaintiff incorrectly suggests that Defendants have failed to comply with Judge McCoy's Form 4 order compelling responses to his initial discovery requests. Defendants have produced over 5,500 pages of documents and related videos to Plaintiff, and continue to review additional materials for relevance and privilege, which production was delayed, in part, by Plaintiff's refusal to agree to a reasonable confidentiality order absent intervention from the court.

includes all of the interrogatories he has served on the Individual Defendants. However, while Nos. 2 and 3 under that category were served on Defendant Conover, Plaintiff's Exhibit 6 omits an additional interrogatory served on Defendants Meissner and LeCroy. (Exh. X Supp. hereto).

CONCLUSION

For the reasons stated in their Petition and set forth above, Defendants respectfully request that this Court issue a writ of supersedeas staying all further proceedings before the circuit court, including discovery. In addition, Defendants request that this Court award other appropriate relief, such as attorneys' fees and costs related to filing of this Petition, that this Court deems appropriate.

January 27, 2022

MCANGUS GOUDELOCK & COURIE, LLC

By:_____

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Attorneys for Appellants/Petitioners

EXHIBIT

X Supp

EDWARDS FIRM, LLC

755 JOHNNIE DODDS BLVD, SUITE #100
MOUNT PLEASANT, SOUTH CAROLINA 29464

AARON E. EDWARDS, ESQ. aaron@edwardsfirmllc.com

May 11, 2021

Via US Mail
Helen Hiser, Esq.
J.D. Smith, Jr., Esq.
Danielle Payne, Esq.
735 Johnnie Dodds Blvd., STE 200
Mt. Pleasant, SC 29464

In re: Abruzzo v. Bravo Media Productions, LLC, et al.
Case No: 2020-CP-10-00472

Counsel:

Enclosed for service you will find Plaintiff's 2nd Set of Interrogatories to Defendants Craig Conover, Chelsea Meissner, and Madison LeCroy.

Sincerely,

Aaron E. Edwards

STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**PLAINTIFF'S 2nd SET OF INTERROGATORIES**
	)	
BRAVO MEDIA PRODUCTIONS, LLC HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	

TO: DEFENDANT CRAIG CONOVER

PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby requests, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure that you serve upon said counsel within thirty (30) days, **verified** answers to the following Interrogatories, which shall be deemed continuing in nature from the time of service until the time of the trial of this matter, so that information sought which may come to the knowledge of said party or his/her representative or attorney after the answers to these Interrogatories have been submitted shall be transmitted to the undersigned.

INSTRUCTIONS

NOTE: The following instructions are considered part and parcel to the interrogatories herein. By answering these interrogatories, the answering party affirms that they have read and complied with these instructions in good faith and to the best of their ability.

NOTE: The instructions as stated herein are supported by South Carolina statutory and common law, the South Carolina Rules of Civil Procedure, and learned treatises relied upon by the South Carolina courts as persuasive and instructive authority.

1. **Duty to Answer Under Oath:** Defendant has a duty to answer each interrogatory separately and fully, in writing, and under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the party making them, and the objections signed by the attorney making them. Rule33(a) SCRCP.

2. **Objections**: Any objection made to an interrogatory below must be specific and supported by a detailed explanation as to why the interrogatory is improper. Nonspecific, boilerplate objections are insufficient. The mere statement that an interrogatory is "vague," "overly broad," "unduly burdensome," "oppressive," "harassing" and/or "irrelevant," is standing alone meaningless and meritless. An objection followed by "notwithstanding the above" followed by an answer is inadequate, preserves nothing, and leaves uncertainty as to whether the question has been actually and fully answered. The objection must show specifically how, despite the broad and liberal construction afforded the discovery rules, the interrogatory being objected to is not relevant or is overly broad, unduly burdensome, or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. It is not proper to object merely because answering interrogatories may require expending considerable time, effort or expense.

3. **Claims of Privilege**:

a. **Privilege Log**: If you withhold information otherwise discoverable on grounds that the information is privileged or subject to protection as trial preparation material, you shall make the claim expressly and shall describe the nature of the information, communications, or things not produced or disclosed in a manner that will enable the requesting party to assess the applicability of the privilege or protection. An answer stating that all discoverable information has been produced is insufficient. An answer that fails to mention that information has been withheld or fails to describe the nature of the information that has been withheld is insufficient. Failure to list this information on a privilege log results in waiver of privilege. Rule 26(b)(5) SCRCP.

4. **Facts not specifically known**: Whenever a date, amount, or other computation or figure is requested, the exact date, amount, or other computation or figure is to be given unless it is not known; and, in that case, the approximate date, amount, or other computation or figure should be given or the best estimate thereof, and the answer should state that the date, amount, or other computation provided is an estimate or approximation.

5. **Facts upon information and belief**: Where facts are set forth in the answers or portions thereof and are supplied upon information and belief rather than your direct personal

knowledge, you should state and specifically identify each source of information and belief. Should you be unable to answer any interrogatory or portion thereof by either actual knowledge or upon information and belief, you should so state.

6. **Form of Answer**:

a. Each interrogatory shall be construed independently and not be referenced to any other interrogatory herein for purposes of limitation.

b. Treat each number and lettered item in each interrogatory as a separate interrogatory requiring a separate response. If you object to or are unable to answer one time, please so state and respond to all other items.

c. Whenever a full and complete answer to any interrogatory or subpart is contained in a document identified as answering a specific numbered interrogatory or subpart, the document or copy thereof may be supplied in lieu of a written answer.

7. **Failure to Answer**: An evasive or incomplete answer is treated as a failure to answer. The failure of a party to answer an interrogatory is not excused on the ground that the interrogatory is objectionable unless the party failing or refusing to answer has applied for a protective order. Rule 37(a), Rule 37(d) and Rule 26(c) SCRCP.

INTERROGATORIES

1. Identify all producers, writers, directors, editors, production managers, camera operators, script writers, and/or other employees and/or agents of the corporate Defendants involved with your participation in Southern Charm, season 6.

2. Of those identified in response to Interrogatory 1 above, identify the person or persons involved with your discussions regarding Plaintiff Abruzzo as depicted in Southern Charm, season 6, episode 3.

Aaron E. Edwards
Edwards Firm, LLC
755 Johnnie Dodds Boulevard, Ste. #100
Mt. Pleasant, South Carolina 29464
(843) 375-2008 (phone)
ATTORNEY FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: May 11, 2021

STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
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Plaintiff,	)	
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BRAVO MEDIA PRODUCTIONS, LLC HAYMAKER MEDIA, INC., NBC UNIVERSAL MEDIA, LLC, COMCAST CORPORATION, CRAIG CONOVER, CHELSEA MEISSNER, AND MADISON LECROY,	)	
	)	
Defendants	)	
	)	

TO: DEFENDANT CHELSEA MEISSNER

PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, hereby requests, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure that you serve upon said counsel within thirty (30) days, **verified** answers to the following Interrogatories, which shall be deemed continuing in nature from the time of service until the time of the trial of this matter, so that information sought which may come to the knowledge of said party or his/her representative or attorney after the answers to these Interrogatories have been submitted shall be transmitted to the undersigned.

INSTRUCTIONS

NOTE: The following instructions are considered part and parcel to the interrogatories herein. By answering these interrogatories, the answering party affirms that they have read and complied with these instructions in good faith and to the best of their ability.

NOTE: The instructions as stated herein are supported by South Carolina statutory and common law, the South Carolina Rules of Civil Procedure, and learned treatises relied upon by the South Carolina courts as persuasive and instructive authority.

1. **Duty to Answer Under Oath:** Defendant has a duty to answer each interrogatory separately and fully, in writing, and under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the party making them, and the objections signed by the attorney making them. Rule33(a) SCRCP.

2. **Objections**: Any objection made to an interrogatory below must be specific and supported by a detailed explanation as to why the interrogatory is improper. Nonspecific, boilerplate objections are insufficient. The mere statement that an interrogatory is "vague," "overly broad," "unduly burdensome," "oppressive," "harassing" and/or "irrelevant," is standing alone meaningless and meritless. An objection followed by "notwithstanding the above" followed by an answer is inadequate, preserves nothing, and leaves uncertainty as to whether the question has been actually and fully answered. The objection must show specifically how, despite the broad and liberal construction afforded the discovery rules, the interrogatory being objected to is not relevant or is overly broad, unduly burdensome, or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. It is not proper to object merely because answering interrogatories may require expending considerable time, effort or expense.

3. **Claims of Privilege**:

a. **Privilege Log**: If you withhold information otherwise discoverable on grounds that the information is privileged or subject to protection as trial preparation material, you shall make the claim expressly and shall describe the nature of the information, communications, or things not produced or disclosed in a manner that will enable the requesting party to assess the applicability of the privilege or protection. An answer stating that all discoverable information has been produced is insufficient. An answer that fails to mention that information has been withheld or fails to describe the nature of the information that has been withheld is insufficient. Failure to list this information on a privilege log results in waiver of privilege. Rule 26(b)(5) SCRCP.

4. **Facts not specifically known**: Whenever a date, amount, or other computation or figure is requested, the exact date, amount, or other computation or figure is to be given unless it is not known; and, in that case, the approximate date, amount, or other computation or figure should be given or the best estimate thereof, and the answer should state that the date, amount, or other computation provided is an estimate or approximation.

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1. Identify all producers, writers, directors, editors, production managers, camera operators, script writers, and/or other employees and/or agents of the corporate Defendants involved with your participation in Southern Charm, season 6.

2. Of those identified in response to Interrogatory 1 above, identify the person or persons involved with your discussions regarding Plaintiff Abruzzo as depicted in Southern Charm, season 6, episode 3.

3. Of those identified in response to Interrogatory 1 above, identify the person or persons involved with your discussions regarding Plaintiff Abruzzo as depicted in Southern Charm, season 6, episode 7.

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Aaron E. Edwards
Edwards Firm, LLC
755 Johnnie Dodds Boulevard, Ste. #100
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(843) 375-2008 (phone)
ATTORNEY FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: May 11, 2021

STATE OF SOUTH CAROLINA	)	**COURT OF COMMON PLEAS**
	)	**NINTH JUDICIALCIRCUIT**
CHARLESTON COUNTY	)	**CASE NO. 2020-CP-10-00472**
	)	
JOSEPH ABRUZZO,	)	
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	)	
Defendants	)	

TO: DEFENDANT MADISON LECROY

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b. Treat each number and lettered item in each interrogatory as a separate interrogatory requiring a separate response. If you object to or are unable to answer one time, please so state and respond to all other items.

c. Whenever a full and complete answer to any interrogatory or subpart is contained in a document identified as answering a specific numbered interrogatory or subpart, the document or copy thereof may be supplied in lieu of a written answer.

7. **Failure to Answer**: An evasive or incomplete answer is treated as a failure to answer. The failure of a party to answer an interrogatory is not excused on the ground that the interrogatory is objectionable unless the party failing or refusing to answer has applied for a protective order. Rule 37(a), Rule 37(d) and Rule 26(c) SCRCP.

INTERROGATORIES

1. Identify all producers, writers, directors, editors, production managers, camera operators, script writers, and/or other employees and/or agents of the corporate Defendants involved with your participation in Southern Charm, season 6.

2. Of those identified in response to Interrogatory 1 above, identify the person or persons involved with your discussions regarding Plaintiff Abruzzo as depicted in Southern Charm, season 6, episode 7.

Aaron E. Edwards
Edwards Firm, LLC
755 Johnnie Dodds Boulevard, Ste. #100
Mt. Pleasant, South Carolina 29464
(843) 375-2008 (phone)
ATTORNEY FOR PLAINTIFF

Mt. Pleasant, South Carolina
Dated: May 11, 2021

EXHIBIT

TT

SUPERIOR COURT FOR THE STATE OF WASHINGTON
KING COUNTY

JOSEPH ABRUZZO, Plaintiff, vs. BRAVO MEDIA PRODUCTIONS, LLC, *et al.*, Defendants.	Proceedings in the Common Pleas Court in the County of Charleston, State of South Carolina Case No.: 2020-CP-10-00472 **AMAZON'S OBJECTIONS TO SUBPOENA** DWT REF NO.: SUB1007584

Pursuant to Washington Superior Court Civil Rule 45, nonparty Amazon.com Services LLC ("Amazon") makes the following objections to the subpoena (the "subpoena") from Plaintiff, Joseph Abruzzo ("Plaintiff"), in the above-referenced matter. To the extent that a meet and confer regarding any of these objections is necessary, please contact undersigned counsel.

I. GENERAL OBJECTIONS

1. **Improper Service.** Amazon objects to the subpoena because it was sent by U.S. mail, and was not personally served as required by Washington law. *See* Washington Civil Rule 45(b)(1). Failure to properly serve the subpoena renders it null and void**.**

2. **Improper Place of Compliance.** Amazon objects to the subpoena as improper because the demanded place of production (Mount Pleasant, South Carolina) is not in King County, Washington, where Amazon resides and regularly transacts business in person. *See*

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Washington Civil Rule 45(e)(2). The subpoena fails to comply with Washington law regarding place of compliance, rendering it void and unenforceable.

3. **Improper Subpoena.** Amazon objects to the subpoena as null and void because the subpoena was issued in a manner that does not comply with Washington's enactment of the Uniform Interstate Depositions and Discovery Act, Revised Code of Washington ("RCW") 5.51, *et seq.,* which has been adopted by at least 43 states—*including South Carolina*—as well as the District of Columbia and the U.S. Virgin Islands. The subpoena was issued by the Common Pleas Court in the County of Charleston, State of South Carolina, which lacks jurisdiction to directly issue a nonparty subpoena to a Washington company, and with no right to compel compliance in Washington. Further, the subpoena fails to comply with Washington law requiring, among other things, that foreign subpoenas be presented to and issued by a clerk of Washington Courts. *See* RCW 5.51.020; *cf. Yelp v. Hadeed Carpet Cleaning Inc.,* 289 Va. 426 (2015) (enforcement of a subpoena seeking out-of-state discovery generally requires use of the procedures that have been enacted in the foreign state, such as those set forth in the UIDDA); *Quinn v. The Eighth Judicial Dist. Court of the State of Nev., et al.,* 410 P.3d 984, 990 (Nev. 2018) ("district court had no authority to enforce out-of-state subpoenas issued to out-of-state nonparty witnesses or to compel those witnesses to appear in Nevada for deposition in a civil action"); *Colo. Mills, LLC v. SunOpta Grains & Foods, Inc.,* 269 P.3d 731, 732 (Colo. 2012) ("Colorado courts, as a matter of state sovereignty, have no authority to enforce civil subpoenas against out-of-state nonparties"); *Syngenta Crop Prot., Inc. v. Monsanto Co.,* 908 So. 2d 121, 129 (Miss. 2005) (A Mississippi court "cannot subpoena a nonresident nonparty to appear and/or produce in Mississippi documents which are located outside the State of Mississippi, even if that nonresident nonparty is subject in another context to the personal jurisdiction of the court").

4. **Imposing Obligations Not Recognized by Washington Law.** Amazon objects to the subpoena to the extent it seeks to impose obligations not recognized by the Washington

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Civil Rules and Revised Code of Washington, including without limitation, requiring a nonparty to appear or produce documents without receipt of a valid, properly-served subpoena.

5. **Failure to Provide Notice.** Amazon objects to the subpoena as failing to show that any prior notice has been provided to other parties to the litigation, let alone the five days advance notice required by Washington Civil Rule 45(b)(2). Failure to comply with this requirement, despite seeking sensitive information, renders the subpoena improper and ineffective.

6. **Unreasonable Time for Compliance.** Amazon objects to the demanded time of compliance, May 7, 2021 – only *seven business days* after Amazon received the subpoena. This short turn-around time is particularly unreasonable in light of the volume and sensitivity of the information sought.

7. **Failure to Reduce Burden on Nonparty.** Amazon objects to the subpoena for failing to take reasonable efforts to reduce the burden on nonparty Amazon. *See* Washington Civil Rule 45(c). In particular, Amazon objects to the subpoena to the extent certain information sought is in the possession, custody, or control of the parties to the litigation or other non-parties. *See e.g., Rembrandt Patent Innovations v. Apple, Inc*., 2015 WL 4393581, at *2 (W.D. Tex. July 15, 2015) (holding subpoena issued to non-party is unduly burdensome "until and unless Plaintiffs can establish they are unable to obtain the requested information from the Defendant"); *In re Allergan*, 2016 WL 5922717, at *9 (C.D. Cal. Sept. 23, 2016) ("'Courts are particularly reluctant to require a non-party to provide discovery that can be produced by a party'" (citation omitted)); *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007) ("There is simply no reason to burden nonparties when the documents sought are in possession of the party defendant."); *Moon v. SCP Pool Corp*. 232 F.R.D. 633, 638 (C.D. Cal. 2005) ("[T]hese requests all pertain to defendant, who is a party, and, thus, plaintiffs can more easily and inexpensively obtain the documents from defendant, rather than from [the] nonparty") (citing *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980))); *Haworth, Inc. v. Herman Miller, Inc.*, 998 F.2d 975, 978 (Fed. Cir. 1993)

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(affirming denial of motion to compel production from nonparty, holding "the district court could properly require [defendant] to seek discovery from its party opponent before burdening the nonparty [] with [an] ancillary proceeding"). Obtaining records from a party also allows the parties to the litigation to directly address any confidentiality and privacy issues.

8. **Unreasonable Demand for Appearance.** To the extent the subpoena purports to command Amazon to appear on May 7, 2021 at 10:00 a.m. in Mount Pleasant, South Carolina simply to produce documents, Amazon objects to the demand as unreasonable, unduly burdensome, and disruptive of nonparty Amazon's business. In this case, any appearance requested appears to be limited to the production of documents sought. Under such circumstances an appearance is unnecessary and imposes an undue burden on nonparty Amazon where less burdensome means, such as the production of a narrow set of authenticated documents, are available.

9. **Overbroad and Unduly Burdensome.** Amazon objects to the subpoena as overbroad and unduly burdensome. *See* Washington Civil Rule 26(b)(1). In particular, the subpoena seeks "*[a]ll documents* reflecting the downloads, streams, purchases, or otherwise identifying the number of persons who viewed episodes three (3), six (6), and seven (7) of season six (6) of the television show 'Southern Charm' through any streaming service owned, operated, or otherwise within your control" -- without making any effort to reasonably narrow such broad and burdensome demands (emphasis added).

10. **Vague and Ambiguous.** Amazon objects the use of vague and ambiguous terms and phrases, including but not limited to, "reflecting," "downloads," "streams," "purchases," "otherwise identifying," "persons," "viewed," "episodes three (3), six (6), and seven (7) of season (6) of the television show 'Southern Charm,'" "any streaming service," and "otherwise within your control," without providing clarifying definitions, additional identifying information, or additional information to identify exactly what is sought.

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11. **Failure to Limit Time Period.** Amazon objects to the failure to limit the time period for the information sought as unduly burdensome, and seeking documents not kept or maintained in the ordinary course of business.

12. **No Showing of Relevance.** Amazon objects to the subpoena to the extent it seeks confidential information without making a showing of relevance as to any issue in the litigation involving the parties, or any showing that appropriate notice and authorization has been obtained to access such data.

13. **Privacy.** Amazon objects to this subpoena on the grounds of privacy because it seeks sensitive information, including identifying customer information, without making any showing that appropriate notice or authorization has been obtained to seek such information, or that there is a need for such information that would override state or federal consumer privacy rights.

14. **Violation of the First Amendment.** Amazon objects to the subpoena to the extent that it seeks expressive content protected by the First Amendment to the United States Constitution. The subpoena appears to demand documents which would include customer purchase histories, which could include expressive content, such as books, music, and other media protected by the First Amendment. *See Amazon.com LLC v. L*ay, 758 F. Supp. 1154, 1167 (W.D. Wash. 2010) ("The First Amendment protects a buyer from having the expressive content of her purchase of books, music, and audiovisual materials disclosed to the government. Citizens are entitled to receive information and ideas through books, films, and other expressive materials anonymously"); U.S.C.A. Const. Amend. 1; *see also Doe v. 2TheMart.com Inc.*, 140 F. Supp.2d 1088, 1091-1092 (2001) (a subpoena issued by a court, "even when issued at the request of a private party in a civil lawsuit, constitutes state action and is subject to constitutional limitations").

15. **Contrary to the Video Protection Act.** Amazon objects to the subpoena to the extent it seeks video, movie, or other media titles that are protected from disclosure by the Video Privacy Protection Act, 18 U.S.C.A. § 2710 *et. seq.* ("VPPA"). The subpoena appears to

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demand documents which would include customer purchase histories, which could include video-related content such as video and audiovisual titles. The VPPA "protects personally identifiable information that identifies a specific person and ties that person to particular videos that the person watched." *In re Hulu Litig.*, No. C 11-03764 LB, 2014 WL 1724344, at *8 (N.D. Cal. Apr. 28, 2014). "Under the VPPA, Amazon qualifies as a 'video tape service provider.'" *Amazon.com LLC v. Lay*, 758 F. Supp.2d 1154, 1170 (W.D. Wash. 2010) (citing 18 U.S.C. § 2710(a)(4)). As a video tape service provider, "Amazon may not disclose records regarding its customer's video or audiovisual purchases, except in limited circumstances." *Id.*; 18 U.S.C.A. § 2710(b).

16. **Not Within Amazon's Possession, Custody or Control.** Amazon objects to the subpoena to the extent it purports to require Amazon to provide testimony and search for and produce documents not within its possession, custody or control.

17. **Improper Request for Confidential, Proprietary or Trade Secret Information.** Amazon objects to the subpoena to the extent it seeks the disclosure of information or documents containing confidential, proprietary, or trade secret information. Amazon objects to the production of any such information absent entry of an appropriate protective order. Amazon expressly reserves all rights with respect to any protective order entered in the case pertaining to the production of information or documents containing any confidential, proprietary, or trade secret information.

18. **Electronically Stored Information.** Amazon objects to the subpoena to the extent it seeks production of electronically stored information from sources not reasonably accessible (*e.g.*, legacy systems, backup media, temporary or ambient data), in light of the burdens or costs required to locate, restore, review, and produce whatever responsive information may be found.

19. **Privileged Information.** Amazon objects to the subpoena to the extent it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, or any other applicable privilege. To the extent that there is any disclosure of such

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protected or privileged information, such disclosure is inadvertent and is not intended to waive any privilege or protection.

DATED this 7th day of May, 2021

DAVIS WRIGHT TREMAINE LLP
Attorneys for Amazon.com Services, LLC

By */s/ Ramie O. Snodgrass*

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CERTIFICATE OF SERVICE

I hereby certify that May 7, 2021, I caused the foregoing document to be served by electronic mail to the following:

Edwards Firm, LLC
c/o Aaron E. Edwards
aaron@edwardsfirmllc.com

DATED this 7th day of May, 2021

DAVIS WRIGHT TREMAINE LLP
Attorneys for Amazon.com Services, LLC

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EXHIBIT

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WALKER STEVENS CANNOM LLP

May 6, 2021

Via E-mail

Aaron E. Edwards
Edwards Firm, LLC
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Suite 110
Mount Pleasant, SC 29464
aaron@edwardsfirmllc.com

Re: ***Abruzzo v. Bravo Media Productions, LLC, et al.*** **Case No. 2020-CP-10-00472**
Charleston County Court of Common Pleas, SC

Dear Mr. Edwards,

We represent Apple Inc. ("Apple") in connection with the subpoena issued by the Common Pleas Court in the County of Charleston, South Carolina in the above-referenced matter and received by Apple on or about May 3, 2021 (the "Subpoena"). Apple writes to preserve its objections to the Subpoena. Apple objects to the Subpoena for at least the following reasons.

First, Apple objects to the Subpoena as failing to provide a reasonable time for compliance. *See* South Carolina Rule of Civil Procedure (hereinafter "SCRCP") 45(c)(3)(A)(1). Apple received the Subpoena on or about May 3, 2021, and the Subpoena purports to require compliance by May 7, 2021. Apple is continuing to investigate this matter and will provide additional information as it becomes available and subject to the objections provided herein.

Second, Apple objects to the Subpoena as failing to take reasonable steps to avoid imposing undue burden and expense on non-party Apple. SCRCP 45(c)(1). For example, the Subpoena is unduly burdensome because the information sought is in the possession, custody, or control of a party or parties to the litigation. Indeed, courts regularly quash subpoenas that ask a non-party to search for and produce documents that are available from a party to the litigation. *See, e.g. Virginia Dep't of Corrections v.* Jordan, 921 F.3d 180, 189 (4th Cir. 2019) ("the requesting party should be able to explain why it cannot obtain the same information, or comparable information that would also satisfy its needs, from one of the parties to the litigation"); *see also Chevron Corp. v. Donziger*, Case No. 13-MC-80038 CRB (NC), 2013 WL 1402727, at *6 (N.D. Cal. Apr. 5 2013). Indeed, seeking discovery from a non-party when it is equally available from a party to the litigation imposes undue burden on the non-party. *Virginia*

Dep't of Corrections, 921 F.3d at 189; *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007) ("There is simply no reason to burden nonparties when the documents sought are in the possession of the party defendant."). Here, the Subpoena seeks "[a] ll documents reflecting the downloads, streams, purchases, or otherwise identifying the number of persons who viewed episodes three (3) six (6), and seven (7) of season six (6) of the television show 'Southern Charm' through any streaming service owned, operated, or otherwise within your control." But Plaintiff has not made any showing that it is unable to obtain this information from one or more of the Defendants in the litigation. For this reason alone, the subpoena is improper.

Third, Apple further objects to the Subpoena as unduly burdensome because the request is not narrowly or reasonably tailored — particularly with respect to the demand for "[a]ll documents" regarding "any streaming service owned, operated or otherwise within your control." *See Virginia Dep't of Corr.*, 921 F.3d at 193; *see also In re Subpoena to Apple Inc.*, Case No. 5:14-cv-80139-LHK-PSG, 2014 WL 2798863, at *2 (N.D. Cal. June 19, 2014) (courts limit discovery if it is obtainable from some other source that is more convenient, less burdensome, or less expensive or if the burden or expense of the proposed discovery outweighs its likely benefit). Further, the demand for this information does not appear proportional to the needs of this case. The Subpoena provides no information on how the requested information is relevant to the litigation and the production of information here would require extensive review. This burden to Apple clearly outweighs any benefit of the requested information.

Fourth, Apple objects to the Request in the Subpoena as vague and ambiguous. For example, the phrases "otherwise identifying the number of persons who viewed" and "through any streaming service owned, operated, or otherwise within your control" are unclear and would require the subjective judgment of Apple or its attorneys.

Fifth, Apple objects to the Subpoena because it seeks confidential information of Apple and of other parties or third parties. To the extent Apple produces any documents or information in response to the Subpoena, such production would require the entry of, and would be subject to, an appropriate protective order limiting the use and disclosure of such information.

Finally, Apple objects to the Subpoena to the extent that it seeks information protected by the attorney-client privilege or work product doctrine. Apple will not produce privileged information and any such production is inadvertent.

Apple submits these responses and objections without taking any position as to whether any responsive materials exist. Apple also submits these responses and objections on the basis of information now known to Apple and without waiving any additional objections Apple may have to the Subpoena, all of which are expressly reserved. Apple reserves the right to modify or amend these responses and objections at any time. Apple further reserves all objections or

other questions as to the competency, relevance, materiality, privilege, or admissibility as evidence in any subsequent proceeding in or at trial of this or any other action, for any purpose whatsoever, of any information identified herein or provided in response to the Subpoena.

Notwithstanding these objections, Apple remains willing to meet and confer with you regarding the Subpoena and the scope of the information sought. Please contact me at your convenience to discuss.

Sincerely,

Hannah Cannom

RECEIVED
Jan 27 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy and R. Ferrell Cothran, Jr., Circuit Court Judges

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Appeal No. 2020-001095

Joseph Abruzzo,..... Respondent,

v.

Bravo Media Productions LLC; Haymaker Media, Inc.; NBCUniversal Media, LLC; Comcast Corporation; Craig Conover; Chelsea Meissner; and Madison LeCroy,..... Appellants.

PROOF OF SERVICE

I certify that I have served Appellants/Petitioners' **Reply to Return to Petition for Writ of Supersedeas** on Joseph Abruzzo, by emailing it and placing a copy of it in the U.S. Mail to his attorney of record, as follows:

Aaron E. Edwards, Esq.
Edwards Law Firm
755 Johnnie Dodds Blvd., Suite 100
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aaron@edwardsfirmllc.com

January 27, 2022

/s/Helen F. Hiser
Helen F. Hiser
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Attorneys for Appellants/Petitioners

Reply To
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helen.hiser@mgclaw.com

RECEIVED
Jan 27 2022
SC Court of Appeals

January 27, 2022

Via S.C. Courts E-Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Joseph Abruzzo v. Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy
Civil Action No.: 2020CP1000472 (Charleston)
Carrier Claim No.: 170003678
MGC File No.: 21162.20001
Appeal No.: 2020-001095

Dear Ms. Kitchings:

Enclosed please find Appellants' Reply to Return to Petition for Writ of Supersedeas, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email and U.S. Mail.

Pursuant to the Supreme Court's August 25, 2021 Order No. 2021-08-25-03 regarding Reduced Number of Copies Required in Appellate Matters, we are sending an unbound copy of the original of the Reply via U.S. Mail. If the Court needs additional copies, please let us know.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Aaron E. Edwards, Esq. (via Email & U.S. Mail)