

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-23-04432

Richard A. Gorman,
Plaintiff,

vs.

John C. Monarch,
Defendant.

**MOTION FOR SANCTIONS FOR
DESTRUCTION OF EVIDENCE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 37, SCRPC, and all other applicable law, for an order that issues sanctions against Defendant John C. Monarch for his destruction of evidence, such evidence being electronic data and an electronic communication device, an iPhone 5. Sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence.

Incorporated into this motion are the following documents:

- a. Plaintiff's discovery requests filed in connection with previous motions in this case;
- b. Defendant Monarch's previous discovery responses filed in connection with previous motions in this case;
- c. The affidavit of Christopher J. Watkins, filed with this motion;
- d. Defendant Monarch's December 2020 responses to Plaintiff's supplemental discovery requests, filed with this motion;
- e. A December 20, 2013, letter from a lawyer for the Plaintiff to Defendant Monarch requesting the preservation of documents and data, including the electronic data that Defendant Monarch ultimately destroyed; and

- f. A Facebook message conversation between Defendant Monarch and “Ilya Putin” (now believed, based on information Defendant Monarch provided in 2020, to be named Ilya Shpetrik) in which the Defendant discusses the online attacks on the Plaintiff and which tends to indicate his knowledge of and involvement in the same.

The grounds for this motion are as follows:

1. This case began over six years ago. As the record shows, since near this case’s beginning, Plaintiff has sought to examine electronic devices that the Defendant used or may have used in communicating about him and/or in engaging in or arranging the blackmail communications and defamatory internet postings involved in this case.
2. Defendant Monarch has maintained that he had no involvement with these blackmail communications and defamatory internet postings.
3. Even before this case began, though, in December of 2013, counsel for the Plaintiff wrote to Defendant Monarch notifying him of the need for him to keep all documents relating to the Plaintiff or this matter, including the electronic data the Defendant ultimately destroyed.
4. After years of delay, some wrangling about discovery, and an agreed revision of Plaintiff’s discovery requests in this regard, Defendant Monarch served discovery responses in late September of this year in which he, for the first time, identified two such electronic devices, a 2013 MacBook Pro and an iPhone 5, from which he had the data transferred or removed. He got rid of the iPhone 5 altogether, but his counsel advises he kept the 2013 MacBook Pro, albeit with its data wholly removed.
5. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data.

6. Defendant Monarch knew better than to destroy this data and get rid of his phone. He has an extensive background in computer technology, and he knew that he was destroying data that he had been warned to keep and which the Plaintiff had been seeking in discovery in this case for years at the time Defendant Monarch destroyed it.
7. It is likely that the data lost by Defendant Monarch's actions would have pointed to his involvement in the blackmail and defamation subject of this case, including, but not limited to, for the following reasons:
 - a. The data destruction itself under the circumstances present here;
 - b. Defendant Monarch's messages in 2013 with the person then identified as Ilya Putin, which indicate that they were both already familiar with the attacks on the Plaintiff before the message conversation began (Defendant Monarch has previously indicated that this Ilya acted alone, without his involvement); and
 - c. The fact, as shown by earlier filings in this case, that Defendant Monarch is much more familiar with the cryptocurrency bitcoin (in which the blackmail payment involved here was demanded) than he testified he was in a deposition in a Pennsylvania case when asked about the events of this case.
8. The Plaintiff notes that sanctions are sought against the Defendant, not his lawyers. As far as Plaintiff is aware, Defendant's counsel of record had no role in the destruction of the evidence and likely only learned of it after it had already been done.
9. To be sure, the Plaintiff will be entitled to adverse inference charges as a result of Defendant Monarch's spoliation. But that does not address the fact that Defendant Monarch willfully and knowing destroyed evidence he knew was sought in discovery requests in this case.

10. It is right, proper, and fitting for this court to sanction Defendant Monarch. As permitted under Rule 37, SCRCF, this court should sanction him by adjudging that the evidence he destroyed would have revealed his involvement in creating, directing, or arranging the blackmail communications and defamatory internet postings involved in this case.

11. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCF, the undersigned certifies that consultation with opposing counsel in an effort to resolve the matter subject of this motion would not have served a useful purpose.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
December 9, 2020