

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 TO COMPEL
PRODUCTION OF ELECTRONIC
DEVICES FOR EXAMINATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rules 34 and 37, SCRCPC, and all other applicable law, for an order that compels Defendant John C. Monarch to provide his 2013 MacBook Pro and other electronic devices, identified in his discovery responses filed herewith, for examination by the Plaintiff. 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. After 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, but his counsel advises that he kept the 2013 MacBook Pro.

4. This data transfer would not have transferred to either of his new identified devices evidence of deletion or wiping of data, but such evidence may still be on the 2013 MacBook Pro.
5. Plaintiff's counsel have attempted but have not yet been successful in arranging examination of the devices the Defendant has identified; hence, this motion, so that this matter be resolved by the court if it remains unresolved between counsel.
6. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
7. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004).
8. The discovery sought is proper and is material to the issues in this case.
9. The court should order production for examination accordingly.
10. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRPC, the undersigned certifies that counsel for the Plaintiff communicated with Defendants' counsel in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

HARRISON, RADEKER & SMITH, P.A.

Post Office Box 50143

Columbia, South Carolina 29250

(803) 779-2211

drew@harrisonfirm.com (email)

David L. Moore Jr.

S.C. Bar No. 1509

TURNER PADGET GRAHAM & LANEY, P.A.

E-mail: dmoore@turnerpadget.com

Post Office Box 1509

Greenville, South Carolina 29602

Telephone: (864) 552-4600

Fax: (864) 552-462

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

December 9, 2020