

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

RENEE S. BEACH, PHILLIP BEACH,
ROBIN BEACH, SAVANNAH TUTEN,
AND SETH TUTEN,

Plaintiffs,

v.

GREGORY M. PARKER, GREGORY
M. PARKER, INC. d/b/a PARKER'S
CORPORATION, BLAKE GRECO,
JASON D'CRUZ, VICKY WARD,
MAX FRATODDI, HENRY ROSADO,
AND PRIVATE INVESTIGATION
SERVICES GROUP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-25-00392

**PARKER'S DEFENDANTS'
RESPONSE IN OPPOSITION TO
PLAINTIFFS' COUNSEL'S
LETTER OF JULY 10, 2024**

Defendants Gregory M. Parker, Gregory M. Parker, Inc. d/b/a Parker's Corporation, Blake Greco, and Jason D'Cruz (collectively, "**Parker's Defendants**"), by and through their undersigned attorneys, respectfully submit this Response in Opposition to Plaintiffs' Counsel's Letter of July 10, 2024.¹

Plaintiffs' counsel's letter is premised upon flawed allegations. Plaintiffs' counsel aver they "do not believe there are any documents in [their] possession that fall within the Supreme Court's order" of June 27, 2023. (Exhibit A, Pl. Ltr. of July 10, 2024, p. 1.) There are two categories of documents at issue here: (1) documents found to be privileged by Judge Price, and

¹ As the Court is aware, Plaintiffs sent a letter to the Court rather than file a Notice. To the extent the Parker's Defendants are required to comply with Rule 11 of the South Carolina Rules of Civil Procedure and the requirement to attempt in good faith to resolve this matter, undersigned counsel notes the obligation to consult rests on Plaintiffs' counsel as the moving/responding party, and Plaintiffs' counsel did not consult with undersigned counsel prior to submitting their letter. Given this, undersigned counsel certifies that consultation would serve no useful purpose here with respect to the submission of this Response in Opposition.

(2) documents for which Judge Price did not conduct a complete review and provide a privilege ruling, despite the Supreme Court's directive to do so in its October 5, 2022, Order granting the Parker Defendant's Mandamus Petition. (Exhibit B, Sup. Ct. Order of Oct. 5, 2022.) When advised that Judge Price had not conducted a complete review and made findings with respect to hundreds of documents over which the Parker's Defendants had asserted privilege (Exhibit C, Parker's Defs. Memo. Supp. Petition to Enforce Mandamus), the Supreme Court deemed all documents not so reviewed to be privileged, (Exhibit D, Sup. Ct. Order of June 27, 2023).

Regarding the first category of documents, Plaintiffs' counsel suggests "the only documents that could potentially be privileged which are still in [their] possession would be those documents Judge Price reviewed and found were privileged. These potentially privileged documents are not within the Supreme Court's order." (Exhibit A, Pl. Ltr. of July 10, 2024, p. 1.) However, this assertion is completely belied by the Supreme Court's Order of June 27, 2023, which expressly states:

[W]e direct [Plaintiffs] to comply with the provisions of Rule 16(b)(5)(B), SCRCP, which requires information subject to a privilege to be promptly returned, sequestered, or destroyed. [Plaintiffs] shall *not* retain any copies or summaries of the information *found by Judge Price to be privileged or any information not reviewed by Judge Price*, may not use or disclose any of this information in any manner, and must take reasonable steps to retrieve any of this information disclosed prior to the date of this order.

(Exhibit D, Sup. Ct. Order of June 27, 2023, p. 2 (emphasis added).) Plaintiffs then argue their motion to reconsider immunizes them from the Supreme Court Order, by suggesting the documents are therefore "not subject to the Supreme Court's order." (Exhibit A, Pl. Ltr. of July 10, 2024, p. 1.) However, a motion to reconsider filed in the circuit court does not absolve Plaintiffs of compliance with the Supreme Court's Order; if Plaintiffs desired such relief, then Plaintiffs should have filed a motion to stay or hold the issue in abeyance with the Supreme Court until such

time as the circuit court ruled upon Plaintiffs' motion to reconsider. Plaintiffs did not seek any such relief. Therefore, Plaintiffs' counsel have no valid reason justifying their continued possession of the first category of documents at issue, i.e., those documents found to be privileged by Judge Price.

The second category of documents are those for which Judge Price did not fully review and did not provide a privilege ruling. It is clear Judge Price did *not* review all of the documents over which the Parker's Defendants asserted privilege as the Supreme Court required, because he did *not* provide rulings on all of the documents on the Parker's Defendants' privilege log. The Supreme Court has so held, and Plaintiffs' attempts to undo this holding by means of an Affidavit submitted by former Judge Price dated over a year after the Supreme Court's Order and over two months after the issue regarding the return of the documents was discussed with this Court completely fails.

The Parker's Defendants set forth Judge Price's failure to review and rule on all documents within their Motion to Reconsider, filed on June 2, 2023. (Exhibit E, Parker's Defs. Mot. Reconsider.) The Parker's Defendants expressly noted on the very first page of their Motion to Reconsider that Judge Price "failed to rule on all of the documents contained within the Parker's Defendants' privilege log." (Exhibit E, Parker's Defs. Mot. Reconsider, p. 1.) The Parker's Defendants then requested Judge Price to conduct a fulsome review "expeditiously." (Exhibit E, Parker's Defs. Mot. Reconsider, pp. 9–10.) As stated above, the Parker's Defendants' Motion to Reconsider was denied without a hearing, which occurred on June 8, 2023.

After the Parker's Defendants' Motion to Reconsider was denied without a hearing on June 8, 2023, and after it was clear that Judge Price was not going to review and make a ruling on all documents over which we had asserted privilege, the Parker's Defendants sought relief from the

Supreme Court, explaining in detail how Judge Price failed to review and rule on all documents on the Parker's Defendants' privilege log. (Exhibit D, Parker's Memo. Supp. Petition to Enforce, pp. 19–21.) Importantly, Plaintiffs responded in opposition to this request before the Supreme Court, and expressly argued there that Judge Price “reviewed all the documents.” (Exhibit E, Pl. Return to Petition, p. 15.) The Supreme Court clearly rejected Plaintiffs' argument as it held:

In light of [Plaintiffs'] agreement at the hearing before Judge Price to limit the documents requested that they will use, we hold the remaining documents in [the Parker's Defendants'] privilege log, ***which were not reviewed by Judge Price***, are subject to privilege. Accordingly, we direct [Plaintiffs] to comply with the provisions of Rule 16(b)(5)(B), SCRCp, which requires information subject to a privilege to be promptly returned, sequestered, or destroyed. [Plaintiffs] shall ***not*** retain any copies or summaries of the information found by Judge Price to be privileged or ***any information not reviewed by Judge Price***, may not use or disclose any of this information in any manner, and must take reasonable steps to retrieve any of this information disclosed prior to the date of this order.

(Exhibit B, Sup. Ct. Order of June 27, 2023, p. 2 (emphasis added).) Plaintiffs' counsel are aware or should be aware they did not prevail on this appeal to the Supreme Court, because they requested costs as the prevailing party, and the Supreme Court denied their request. (Exhibit G, Sup. Ct. Order of Aug. 25, 2023.) Plaintiffs' counsel now rely on factual arguments previously rejected by the Supreme Court, supplemented by an affidavit obtained from former Judge Price directly by Plaintiffs without notice to the Parker's Defendants after he left the bench.

However, assuming former Judge Price's Affidavit is admissible, it does not help the Plaintiffs. The Supreme Court clearly ordered Judge Price to conduct a privilege review and make detailed findings with respect to all documents over which the Parker's Defendants claimed privilege. Assuming without conceding that Judge Price is correct that he looked at each and every document, Judge Price did not do as the Supreme Court Ordered and as the Parker's Defendants have consistently requested that he do, as he did not make detailed findings as to each and every

document—and indeed, Judge Price’s Affidavit does not assert that he made detailed rulings as to each and every document and the record is clear he did not. The privilege review ordered by the Supreme Court required a privilege determination and ruling as to each and every document reviewed, as demonstrated by the Supreme Court’s holding: “We grant [the Parker’s Defendants’] request for a writ of mandamus and order Judge Price to review the privilege log submitted to him and make a final determination, *with specific findings as to each document*, as to whether any of the requested information is subject to a privilege.” (Exhibit B, Sup. Ct. of Oct. 5, 2022, p. 2 (emphasis added).) It cannot be disputed that Judge Price failed to conduct the required privilege review as to all documents over which the Parker’s Defendants asserted privilege, because he did not issue a privilege determination and ruling as to hundreds of documents. Simply put, a cursory review of each document without making detailed findings as to whether that document is privileged is not a “review” within the meaning of the Supreme Court’s Order of October 5, 2022. The Supreme Court did not state *if* Judge Price did not review certain documents, then they would be deemed privileged. No such conditional statement is found within the Supreme Court Order. Rather, the Supreme Corps made it very clear that there were “remaining documents . . . which were not reviewed by Judge Price.” (Exhibit D, Sup. Ct. Order of June 27, 2023, p. 2.)

Based on the foregoing, Plaintiffs’ counsel are wrong on both fronts. Both categories of documents are subject to the Supreme Court’s Order and Plaintiffs should be required to promptly return or destroy them.

Two final points should be addressed. First, despite the Supreme Court’s clear finding otherwise, Plaintiffs argue “there was no such agreement” regarding limiting the documents they desired to use in this litigation. (Exhibit A, Pl. Ltr. of July 10, 2024, p. 3.) However, this is belied by Plaintiffs’ counsel’s exchange with Judge Price at the sealed hearing when Plaintiffs’ counsel

arrived with pre-selected packets of documents. The following exchange demonstrates that Plaintiffs' counsel were *not* interested in ensuring that all potentially privileged documents improperly obtained by them were to be reviewed by Judge Price as previously directed by the Supreme Court:

THE COURT: Mr. Vaux, just for – we're just trying to continue with some of the housekeeping matters and we've been going through some of this stuff. You have given over five different packets of information that you and Mr. Tinsley think are discoverable and that are of interest to your case, but the question then is: All the information that is in there, in those two email chains, okay. The Laurens Group invoices, the contract between Push Digital and Greg Parker, and the texts between Christiana. We know that there's more documents out there than these just five packets, correct?

MR. VAUX: Yes, sir.

THE COURT: All right. They want to know are y'all claiming that those discoverable as well or are y'all planning on returning those back to them? And we are only going to focus on these five packets.

MR. VAUX: Your Honor, these five packets are what are of interest to us --

THE COURT: Okay.

MR. VAUX: -- for the lawsuit. As for the rest of it, we were just trying to streamline this process.

THE COURT: I understand. Well, I'm maybe can order that y'all can return the remaining balance of the outstanding discovery.

MR. VAUX: We stand by our previous arguments and by the Court's ruling but *we're not interested in the rest of it*.

(Exhibit A, Pl. Ltr. of July 10, 2024, Ex. H, Tr. of Feb. 16, 2023 Hearing, p. 5, l. 2 – p. 6, l. 3 (emphasis added).) This exchange demonstrates that Plaintiffs urged Judge Price to only review their documents by agreeing they did not intend to use any documents other than those in their pre-selected sets. Therefore, Plaintiffs waived any argument as to the privileged nature of all remaining

documents that were not fully reviewed by Judge Price as directed by the Supreme Court, but which were (and still are) unlawfully possessed by them.

Second, Plaintiffs' counsel state they do not possess "a copy of the Bates labeled documents in the privilege log," and therefore they cannot "determine how the various versions of the documents relate to the [Parker's] Defendants' claims." (Exhibit A, Pl. Ltr. of July 10, 2024, pp. 3–4.) Plaintiffs' counsel's argument here has no merit, because, as has been set forth in multiple pleadings, Plaintiffs' counsel should never have possessed these documents from the outset and their continued possession of them is unlawful.² The Parker's Defendants respectfully request this Court to instruct Plaintiffs' counsel to return all documents within their possession related to the Laurens Group Files and the Inquiry Agency Files, and once the Court rules on Plaintiffs' motion to reconsider, the Parker's Defendants will be in a position to provide Bates labeled documents to Plaintiffs that are ordered by the Court to be produced.

Based on the foregoing, Plaintiffs' counsel's excuses as to why they cannot or should not be required comply with this Court's Order of July 3, 2024 and the Supreme Court's Order of June 27, 2023 are without merit. The Parker's Defendants respectfully request the Court to compel

² As a brief background, in an Order dated April 6, 2022, Judge Price required all discovery responsive to subpoenas issued by Plaintiffs' counsel be submitted for an *in camera* review. However, following a hearing on Friday, April 29, 2022, at 4:44 PM, Judge Price's law clerk e-mailed all counsel and indicated Judge Price was planning on reversing its April 6, 2022 Order by ordering the disclosure of all responsive documents without a privilege log. Even though Judge Price had yet to issue such an Order, Plaintiffs' counsel did not wait for an Order from the Court before seeking to immediately obtain and review privileged materials. Instead, immediately after receiving the law clerk's e-mail on Friday, April 29, 2022, Plaintiffs' counsel forwarded the law clerk's e-mail to counsel for the Laurens Group, without copying counsel for the Parker's Defendants. Plaintiffs' counsel improper actions were successful, because they thereafter received some of the subpoenaed privileged documents on Sunday, May 1, 2022—prior to an Order from Judge Price and despite the clear language in the April 6, 2022 Order, which provided the Parker's Defendants ten (10) days to object and the applicable time for an appeal. A more fulsome recitation of the facts is attached as Exhibit H.

Plaintiffs' counsel to return all documents within their possession related to the Laurens Group Files and the Inquiry Agency Files and to otherwise fully comply in all respects with the Supreme Court's June 27, 2023 Order, with the understanding the Parker's Defendants will abide by any Court Order following the hearing on Plaintiffs' motion to reconsider regarding the production of Bates-labeled versions of the documents deemed not privileged, if any.

Respectfully submitted,

s/Mark C. Moore

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July 25, 2024
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