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 **THE PARKER'S DEFENDANTS' MOTION TO DISQUALIFY ATTORNEY MARK TINSLEY**

Defendants Gregory M. Parker ("**Mr. Parker**"), Gregory M. Parker, Inc., d/b/a Parker's Corporation ("**Parker's Corporation**"), Blake Greco ("**Mr. Greco**"), and Jason D'Cruz ("**Mr. D'Cruz**") (collectively, the "**Parker's Defendants**"), by and through their undersigned attorneys, respectfully request that the Court disqualify Plaintiffs' counsel Mark Tinsley ("**Mr. Tinsley**" or "**Plaintiffs' counsel**"). By and through his improper actions, as detailed herein, Mr. Tinsley has disqualified himself from being an attorney representing any party in this action, specifically based on his (1) contravention of the advocate-witness rule, (2) improper communication with a represented third party (i.e. the no-contact rule),[1] and (3) improper and unlawful receipt and review of privileged documents. This motion is based on Rules 3.7, 4.1, 4.2, 4.3, 4.4, and 8.4, South

[1] As detailed more fully herein, Mr. Tinsley is a necessary witness in this case given his contacting two witnesses and at least one defendant—and at least one of these interactions was with a person who was represented by counsel at that time. Thus, Mr. Tinsley has violated not only the advocate-witness rule, but the no-contact rule as well, both of which implicate him as a witness in this case. Nevertheless, they are two separate and independent grounds for Mr. Tinsley's disqualification.

Carolina Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules.

I. BACKGROUND

This case fundamentally purports to arise from the publication of a mediation video created by Plaintiffs and photographs used by Plaintiffs in the mediation ("**Mediation Video and Photographs**") of the underlying civil action: *Renee S. Beach, as Personal Representative of the Estate of Mallory Beach v. Gregory M. Parker, Inc et al.*, Case No. 2019-CP-25-00111 ("**Civil Action**"). Defendant Vicky Ward ("**Ms. Ward**"), a nationally-known reporter, was working on a documentary about the murders of Maggie and Paul Murdaugh—the late wife and son, respectively, of Richard Alexander "Alex" Murdaugh, a defendant in the Civil Action. On November 24, 2021, Ms. Ward allegedly published a trailer for the documentary that Plaintiffs allege contains six different sections from the Mediation Video. (Compl. ¶ 9). Six days later, on November 30, 2021, Mrs. Beach, the Plaintiff in the Civil Action, filed a Motion for a Rule to Show Cause ("**RTSC**") arguing the Parker's Corporation and its representatives should be held in contempt and sanctioned for violating the confidentiality requirements of Rule 8(a) of the South Carolina Alternative Dispute Resolution Rules. Of note, the Plaintiff in the Civil Action is represented by the same counsel, Mr. Tinsley, as the Plaintiffs in the instant action. The RTSC was apparently based entirely on Ms. Ward's alleged trailer for her documentary and allegations that Ms. Ward had included six different sections of the Mediation Video and multiple photographs of Mallory Beach's body. Plaintiff's RTSC relied solely upon unsupported allegations put forth by Mr. Tinsley that Ms. Ward had confirmed she had the Mediation Video and she had purchased the so-called "Beach case file" from Mr. Parker and the law firm representing him.

On December 7, 2021, Parker's Corporation filed a response to the RTSC in the Civil Action and denied making the alleged disclosure. The RTSC was set for a hearing on December

10, 2021. Parker's Corporation looked forward to that hearing as it planned to demonstrate at the hearing that Plaintiff's counsel had no evidence to support his baseless allegations. However, the hearing on December 10, 2021 was not held and Mr. Tinsley was permitted to withdraw the RTSC. The most reasonable inference from the withdrawal of the RTSC is that Mr. Tinsley had no evidence to support the motion and instead had used it in yet another attempt to smear Parker's Corporation in the press.

After withdrawing the RTSC in the Civil Action, Plaintiffs filed the Complaint in this action on December 3, 2021. Mr. Tinsley first issued a subpoena to Inquiry Agency, LLC ("**Inquiry Agency**") on January 14, 2022. Sara Capelli ("**Ms. Capelli**") is the sole member and registered agent for Inquiry Agency, and her name is listed on this January 14, 2022 subpoena. Then, on February 1, 2022, Mr. Tinsley issued another subpoena to Inquiry Agency and one to Ms. Capelli as well. The following day, on February 2, 2022, Plaintiffs issued three subpoenas, one each to Laurens Group, PUSH Digital, LLC, and Wesley Donehue. All of these subpoenas sought privileged documents. Further, they were issued before Plaintiffs had even served the Complaint on Mr. Parker, the Parker's Corporation, and Mr. Greco. Moreover, none of the Parker's Defendants was copied on the subpoenas. The obvious intent behind these surreptitious actions by Mr. Tinsley was to obtain documents he knew he was not legally allowed to obtain.

The Parker's Defendants filed a Joint Motion to Quash Subpoenas and for a Protective Order ("**Motion to Quash**") and Plaintiffs filed a Rule to Show Cause as to why Ms. Capelli and Inquiry Agency should not be held in contempt for failing to comply with their respective subpoenas, which requested privileged documents. The Motion to Quash was based on a number of assertions, but most prominently the attorney-client and attorney work product privileges. A

hearing was held on the motions on March 16, 2022—and as detailed herein, the hearing, the issues discussed therein, and its aftermath clearly demonstrate why Mr. Tinsley must be disqualified.

A. <u>Mr. Tinsley's role as an essential witness based on his communications with Defendant Vicky Ward</u>

During the hearing on the Motion to Quash, Mr. Tinsley relayed alleged conversations he supposedly had with co-defendant Vicky Ward ("**Ms. Ward**"). Mr. Tinsley stated:

> In September, I believe, I got a call from a Dateline producer . . . [T]his producer told me that a woman by the name of Vicky Ward, a reporter from New York, had purchased the Beach file. I didn't know what she meant. It didn't make any sense to me. And so a couple of days later, I picked up the phone and I called Vicky Ward. I didn't get an answer. I hang on my cell phone, and, coincidentally, the receptionist tells me Vicky Ward is on the phone, and I said, I understand you bought the file. Because I'm thinking, there are lots of documents filed in the Beach case, why on earth would anybody buy these public documents. And she tells me that she got the documents from the law firm of Baker Hostetler [sic], which is the law firm that Mr. D'Cruz works for.
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> . . .
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> Miss Ward told me, among other things, that Parker's had an agenda. I said, I have an agenda too. My agenda is to hold these people accountable. She said, well, they're dirty, they're slimy. I don't have anything to do with them other than I bought their documents. And I'm coming to South Carolina and I want you to sit for my sizzle reel, which apparently is a trailer that they put together to be able to sell a project like a documentary to, in this case, Discovery Channel. I said I would agree to meet with her. I met with her in Beaufort to Taylor [sic] Vaux's office shortly thereafter to find out what she had. Now, what she had was, the first time I learned, she had a copy of my mediation video. She also had copies of the lawyer notes from the depositions, which would include things like when the officer was being deposed we would go off the record for the officer's phone number. She has those notes. I didn't take any of those notes. I don't have any of those notes.

(Ex. A, Tr. of March 16, 2022 Hearing, at 5:10–6:7, 6:18–7:14). It should be noted that Ms. Ward adamantly disputes Mr. Tinsley's version of the facts and denies that she received the mediation video or any of the other information from the Parker's Defendants. (Answer of Defendant Vicky

Ward; Motion to Dismiss of Defendant Vicky Ward; Ex. B, FITSNews Articles). In fact, she claims that Mr. Tinsley ***gave his express permission for her to use the mediation video in her documentary***. (Answer of Defendant Vicky Ward, ¶¶ 33, 38). Should this case survive dismissal and proceed to trial, the jury will have to assess the credibility of Ms. Ward versus Mr. Tinsley as to these facts. Perhaps most important for purposes of this motion to disqualify, this phone call occurred solely between Ms. Ward and Mr. Tinsley. Therefore, Mr. Tinsley is the sole witness that supports the statements he claims were made.

B. Mr. Tinsley's unlawful communications and contact with witness Sara Capelli, a person known by him to be represented by counsel

During that same hearing, Mr. Tinsley also relayed conversations he had with (1) Sandy Senn ("**Ms. Senn**"), counsel for the Laurens Group, PUSH Digital, LLC, and Wesley Donehue ("**Mr. Donehue**"),[2] and (2) Sara Capelli ("**Ms. Capelli**"), an investigator who Mr. Tinsley knew was engaged on behalf of the Parker's Defendants. (Ex. A, Tr. of March 16, 2022 Hearing, at 11:11–12:20).

Additionally, new evidence was discovered pursuant to valid subpoenas issued by the Parker's Defendants to Ms. Capelli and Inquiry Agency. On July 5, 2022, Ms. Capelli, via her counsel, provided responsive materials. These materials included various improper text messages and phone calls between Ms. Capelli and Mr. Tinsley, which Mr. Tinsley knew to be in violation

[2] As set forth more fully herein, the full details of Mr. Tinsley's interactions with Mr. Donehue are unknown, but are the subject of ongoing discovery requests. Mr. Tinsley has objected to each of these discovery requests and moved to quash multiple subpoenas. However, it should be noted that at the emergency hearing on May 9, 2022, Mr. Tinsley indicated he and Mr. Donehue communicated over the weekend of April 30, 2022 to discuss the unauthorized transfer of privileged files to Mr. Tinsley. It is currently unknown if this contact with Mr. Donehue was authorized by Mr. Donehue's counsel, Ms. Senn. However, it is highly likely that Mr. Tinsley committed an unlawful contact not just with Ms. Capelli, but Mr. Donehue as well.

of the South Carolina Rules of Professional Conduct. These unethical communications are attached as **Exhibit C** and pertinent portions will be discussed below.

C. Mr. Tinsley's pursuit, receipt, and review of privileged material

After the March 16, 2022 hearing on the Parker's Defendants' Motion to Quash, the Court issued a one-paragraph order on March 28, 2022 denying the Parker's Defendants' Motion to Quash and ordered the subpoenaed third-parties to produce the information to Plaintiffs within thirty days. (Ex. D, March 28, 2022 Order). On March 30, 2022, the Parker's Defendants filed a Motion for Reconsideration, and the Court held a telephone conference on April 1, 2022. In an order filed on April 6, 2022, the Court ordered all discovery be sent to it for an *in camera* review. (Ex. E, April 6, 2022 Order). Further, the April 6, 2022 Order stated that after the trial court determined all issues related to relevance and privilege, the Parker's Defendants would have ten (10) business days to respond with objections on the record and also have the applicable time by which to file an appeal in accordance with the South Carolina Rules of Civil Procedure. (Ex. E, April 6, 2022 Order).

After a hearing on April 29, 2022, during which the Court provided no indication it was considering ordering the production of the subpoenaed documents without following the process for ensuring protection of privileged documents set forth in its own April 6, 2022 Order, Judge Price's law clerk e-mailed all counsel on April 29, 2022 , stating all available documents should be produced to Plaintiffs within fifteen days without a privilege log and that any objections by the Parker's Defendants will be taken up pretrial. (Ex. F, Law Clerk E-mail of April 29, 2022). As noted herein, as a result of the still-pending Petition for Writ of Mandamus in the South Carolina Supreme Court filed by the Parker's Defendants on May 20, 2022, it is now clear this email sent by Judge Price's law clerk occurred without the Court making a determination as to the privileged nature of the documents. (Ex. G, Supreme Court Order and Response Letter).

Mr. Tinsley did not wait for an Order from the Court before seeking to immediately obtain and review privileged materials.[3] On Friday, April 29, 2022, Mr. Tinsley forwarded the law clerk's e-mail immediately to Ms. Senn, counsel for the Laurens Group, PUSH Digital, LLC, and Mr. Donehue. (Ex. H, Plaintiffs' Counsel E-mail of May 3, 2022). Two days later, on Sunday, May 1, 2022, Mr. Tinsley received from Mr. Donehue what he requested: the entire Parker's Defendants' file from the Laurens Group, PUSH Digital, LLC, and Mr. Donehue. (Ex. H, Plaintiffs' Counsel E-mail of May 3, 2022). Notably, according to Ms. Senn, Mr. Tinsley not only forwarded the e-mail "from the law clerk," but then "reached out" again to her at some point after forwarding the e-mail. (Ex. I, Ms. Senn E-mail of May 9, 2022).[4] Moreover, in the May 9, 2022 hearing—which was scheduled in response to the Parker's Defendants' Emergency Motion for Protective Order filed in order to prohibit the review and dissemination of the documents Mr. Tinsley received—Mr. Tinsley informed the Court he had not only received the entire file, but *reviewed* the entire file comprised of approximately 6,000 pages of privileged documents, over that weekend and prior to the issuance of the Court's Form 4 Order on May 6, 2022. (Ex. J, Tr. of May 9, 2022 Hearing, at 8:14).

As noted at the May 9, 2022 hearing, the Court's Form 4 Order of May 6, 2022 was inconsistent with the Court's detailed Order of April 6, 2022—and the Court's Form 4 Order has no support in the law. The Parker's Defendants therefore filed a Petition for Writ of Mandamus

[3] Mr. Tinsley knew or should have known the law clerk's April 29, 2002 email did not amount to an official court order. Rules 54 and 58 of the South Carolina Rules of Civil Procedure require an entry before an order is considered officially rendered. Further, Rule 203 of the South Carolina Appellate Court Rules only allows for an appeal "after receipt of written notice ***of entry of the order or judgment***." Rule 203, SCACR (emphasis added).

[4] Mr. Tinsley failed to mention this second contact in his e-mail to counsel for the Parker's Defendants. (Ex. H, Plaintiffs' Counsel E-mail of May 3, 2022).

regarding that Order. As a result of this Petition, the Supreme Court issued an order dated September 15, 2022, to which this Court responded on September 20, 2022, indicating a privilege determination has not yet been made. (Ex. G, Supreme Court Order and Response Letter).

D. The Pending Motion to Compel

Upon learning of these multiple grounds justifying disqualification of Mr. Tinsley, the Parker's Defendants issued subpoenas on May 24, 2022 to Mr. Tinsley and his law firm, which seek, in part, to obtain further information that may corroborate these grounds for disqualification. On June 3, 2022, Mr. Tinsley submitted written objections. On June 7, 2022, the Parker's Defendants requested further explanation from Mr. Tinsley by June 10, 2022. When Mr. Tinsley failed to respond by the requested deadline, the Parker's Defendants filed a Motion to Compel Production of Subpoenaed Material on June 15, 2022. This Motion to Compel was supplemented with additional evidence and argument via a Supplemental Brief filed on July 13, 2022. The Parker's Defendants submit the granting of their Motion to Compel and Supplemental Brief would provide additional information that is relevant to the instant Motion to Disqualify. The Parker's Defendants contend the evidence already before this Court is sufficient to disqualify Mr. Tinsley. However, in the alternative, should this clear evidence not be sufficient at this time for the Court to rule, this Court should grant the Parker's Defendants' Motion to Compel which, in part, will likely provide additional evidence to support disqualification.

II. LEGAL STANDARD

"A motion to disqualify counsel is subject to the Court's supervisory authority to ensure fairness in all judicial proceedings." *Meyer v. Anderson*, No. 2:19-cv-640-DCN, 2020 WL 4437851, at *2 (D.S.C. Aug. 3, 2020).

A. Witness-advocate rule

Rule 3.7 of the South Carolina Rules of Professional Conduct provides:

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
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> (1) the testimony relates to an uncontested issue;
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> (2) the testimony relates to the nature and value of legal services rendered in the case; or
>
> (3) disqualification of the lawyer would work substantial hardship on the client.

Rule 3.7, RPC, Rule 407, SCAR. The Comment to Rule 3.7 describes the rationale behind the advocate witness rule: "Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client." Rule 3.7 cmt. [1], RPC, Rule 407, SCACR. "The fundamental justification for the rule is to preserve the integrity of the judicial system and the adversary process by ensuring the objective, professional representation of parties before the court." *Rizzuto v. De Blasio*, No. 17-cv-7381ILGST, 2019 WL 1433067, at *8 (E.D.N.Y. Mar. 29, 2019) (citing *Murray v. Metro. Life Ins. Co.*, 583 F.3d 173, 178 (2d Cir. 2009)).

B. No-contact rule

Rule 4.2 of the South Carolina Rules of Professional Conduct provides: "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Rule 4.2, RPC, Rule 407, SCACR. This Rule exists for a number of critical reasons: (1) the "proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer against possible overreaching by other lawyers who are participating in the matter," (2) "interference by those

lawyers with the client lawyer relationship," and (3) "the uncounselled [sic] disclosure of information relating to the representation." Rule 4.2 cmt. [1], RPC, Rule 407, SCACR. Further, consent is no defense, as the Rule "applies even though [the] represented person initiates or consents to the communication." Rule 4.2 cmt. [3], RPC, Rule 407, SCACR. "A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule." *Id.*

C. Prohibition on the inducement of disclosure of privileged information and subsequent review

Rule 1.6 of the South Carolina Rules of Professional Conduct covers the confidentiality of information, including information subject to the attorney-client and attorney work product privileges. It states a lawyer "shall not reveal information relating to the representation of a client," unless an exception has been met, such as to comply with a court order. Rule 1.6(a) & (b)(7), RCP, Rule 407, SCACR.

Rule 8.4 holds that it is professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct, [or to] knowingly assist or induce another to do so." Rule 8.4, RCP, Rule 407, SCACR. Further, a "pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." Rule 8.4 cmt. [2], RCP, Rule 407, SCACR.

III. ARGUMENT

A. Mr. Tinsley should be disqualified pursuant to Rule 3.7 of the Rules of Professional Conduct, the witness-advocate rule, because he is a necessary witness and none of the Rule's exceptions applies.

Rule 3.7 of the South Carolina Rules of Professional Conduct, referred to as the "witness-advocate rule," prohibits a lawyer from acting as an advocate in a trial in which the lawyer is likely to be called as a necessary witness except under certain circumstances. Rule 3.7(a), RPC, Rule

407, SCACR. This rule provides that a lawyer may act as an advocate and witness in the same trial only when "(1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client." *Id.* "When counsel for a party to a cause finds that he is required to be a material witness for his client he should immediately so advise his client and retire as counsel in the case." *Edmiston v. Wilson*, 146 W.Va. 511, 531, 120 S.E.2d 491 (W. Va. 1961) (internal citation omitted) (applying West Virginia's Rule 3.7).[5]

If the attorney fails to excuse himself as required by Rule 3.7, the opposing party should object as the Court has the inherent authority to disqualify counsel. *Meyer*, 2020 WL 4437851, at *2. Comment 2 to Rule 3.7 provides, in pertinent part:

> The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate witness should be taken as proof or as an analysis of the proof.

Rule 3.7 cmt. [2], RPC, Rule 407, SCACR. This rule recognizes that "[t]he roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively." *Collins v. Entm't, Inc. v. White*, 363 S.C. 546, 564, 611 S.E.2d 262, 271 (Ct. App. 2005). The concerns implicating the rule are

> (1) the lawyer will appear to vouch for his own credibility, (2) the lawyer's testimony will put opposing counsel in a difficult position when he has to vigorously cross-examine his lawyer-adversary and seek to impeach his credibility, and (3) there may be an implication that the testifying attorney may be distorting the truth as a result of bias in favor of his client.

[5] The West Virginia and South Carolina's Rule 3.7 of the state Professional Rules of Conduct are essentially identical.

Lember Law, LLC v. eGeneration Mtkg., Inc., 2020 WL 2813177, at *20 (D. Conn. May 29, 2020) (citations omitted).

Further, "[w]here an attorney has observed or participated in events giving rise to facts disputed at trial, a jury may misinterpret his questions or summation as testimony conveying his own version of those events." *Nelson v. Hartford Ins. Co. of Midwest*, No. CV11-162-M-DWM, 2012 WL 761965, at *4 (D. Mont. Mar. 8, 2012) (quoting *Northern Mont. Hosp. v. Contl. Casualty Co.*, CV 91–078–GF (D. Mont. May 14, 1993)). "Such misinterpretation could prove extremely prejudicial to the adverse party, since as an unsworn witness he [the attorney] would not be subject to cross-examination or explicit impeachment." *Id.*

"South Carolina courts have relied upon two factors in determining whether an attorney is or will be a 'necessary witness': whether 'the attorney's testimony is relevant to disputed, material questions of fact' and whether 'there is no other evidence available to prove those facts.'" *Meyer v. Anderson*, No. 2:19-cv-00640-DCN, 2020 WL 4437851, at *3 (D.S.C. Aug. 3, 2020) (quoting *Brooks v. S.C. Comm'n on Indigent Def.*, 419 S.C. 319, 326, 797 S.E.2d 402, 405 (Ct. App. 2017)). "These requirements strike a reasonable balance between the potential for abuse and those instances where the attorney's testimony may be truly necessary." *Id.* (quoting *Brooks*). However, the attorney need not be "the only witness to these events." *Brooks*, 419 S.C. at 327, 797 S.E.2d at 406. Rather, an attorney can be disqualified under Rule 3.7 if "no other witness would be able to provide evidence regarding the full [circumstances]" and other "material information." *Id.* Moreover, "doubts are to be resolved in favor of disqualification." *Lember Law*, 2020 WL 2813177, at *19.

Mr. Tinsley is a necessary witness because his testimony is material and relevant to the issues being litigated in this action. Moreover, he is the ***only witness*** that could testify to the

alleged statements made by Ms. Ward to him. There is no other support for them. In their Complaint, Plaintiffs allege claims for civil conspiracy and the intentional infliction of emotional distress based upon the alleged dissemination of the Mediation Video and Photographs. Based upon the statements he made at the hearing on March 16, 2022, it is clear Mr. Tinsley is involved in this case as a witness. Mr. Tinsley's statements at the hearing were based on his recollection as a witness and not simply his comments on evidence as a lawyer. Again, he is the ***only witness*** that supports the version of events alleged.

Mr. Tinsley stated he had spoken to co-defendant Ms. Ward on the phone and she allegedly told him she had obtained the Mediation Video and Photographs and other documents from the BakerHostetler law firm where Mr. D'Cruz is employed. (Ex. A, Tr. of March 16, 2022 Hearing, at 6:5–7). He also informed the Court Ms. Ward told him the Parker's Defendants have "an agenda." (Ex. A, Tr. of March 16, 2022 Hearing, at 6:18–20). In their Complaint, Plaintiffs specifically allege that Defendant "Vicky Ward acknowledged that Parker and his law firm, referencing Defendant D'Cruz's law firm Baker Hostetler [sic], 'had an agenda' and that she had 'nothing to do with them other than having their stuff.'" (Compl. ¶ 14). These allegations obviously arise from what Mr. Tinsley states occurred during a phone call that he had with Ms. Ward. No one other than Ms. Ward, who is a co-defendant, was on that phone call. Further, how Ms. Ward received the video is the principal contested issue in this case. Therefore, Mr. Tinsley's testimony as to their conversation is not only relevant to specific allegations in the Complaint and material to questions of fact, but it is necessary testimony. There is no other witness who would be able to provide the full circumstances and other material information surrounding these allegations.

Mr. Tinsley is a necessary witness and therefore cannot also act as Plaintiffs' counsel in this action. Here, the equities plainly weigh in favor of disqualifying Mr. Tinsley as counsel for the Plaintiffs. Additionally, as set forth below, Mr. Tinsley also communicated with an investigator engaged on behalf of the Parker Defendants, which renders him a fact witness in this case for a second time. Allowing Mr. Tinsley to serve as Plaintiffs' counsel in this case would compromise the integrity of the tribunal. Mr. Tinsley is counsel for Plaintiffs and he cannot effectively represent them while also testifying at trial. There is a real danger that the finder of fact would be unable to discern when he is acting as an attorney and when he is acting as a witness.

Rule 3.7 provides three exceptions to disqualification. However, none of these exceptions applies here. The first two exceptions clearly do not apply, because the testimony does not relate to an uncontested issue or the nature and value of legal services rendered. In fact, the issue alleged is very much contested, not only by the Parker's Defendants, but the alleged speaker, Ms. Ward herself. Moreover, the third exception, where disqualification will lead to a substantial hardship on the client, is also inapplicable here.

The substantial hardship exception to Rule 3.7 is construed narrowly. *Fine Hous., Inc. v. Sloan*, 431 S.C. 499, 510, 848 S.E.2d 581, 586 (Ct. App. 2020), *reh'g denied* (Oct. 26, 2020). "To find substantial hardship,' courts have required something beyond the normal incidents of changing counsel, such as the loss of extensive knowledge of a case based upon a long-term relationship between the client and counsel and substantial discovery conducted in the actual litigation." *Brown v. Daniel*, 180 F.R.D. 298, 302 (D.S.C. 1998) (citing *Lumbard v. Maglia*, 621 F. Supp. 1529, 1540 (S.D.N.Y. 1985)). "'[E]xpense and possible delay inherent in any disqualification of counsel,' without more, do not qualify as substantial hardship." *Fine Housing*, 431 S.C. at 510, 848 S.E.2d at, 586 (quoting *Brown*, 180 F.R.D. at 302). Here, there is no

substantial hardship. To be sure, Mr. Tinsley has knowledge of this case. However, the pending action is exclusively based on the alleged disclosure of the Mediation Video and Photographs after the mediation of the underlying Civil Action. (Compl. ¶¶ 13, 15). There is no extensive knowledge that cannot be gained by simply reviewing the Plaintiffs' Complaint. Further, little discovery has occurred in this case, the most notable being the improper inducement, receipt, and review of the privileged documents at issue in this pending motion. Thus, the substantial hardship exception is not applicable in this case.

"Parties have a well-recognized and entirely reasonable interest in securing counsel of their choice." *Murray v. Metropolitan Life Ins. Co*, 583 F.3d 173, 180 (2d Cir. 2009). However, "[t]he ethical rules strike a balance between the competing interests of a client's right to choose counsel and the inconsistency of an advocate giving testimony." *Optyl Eyewear Fashion Int'l Corp. v. Style Companies, Ltd.*, 760 F.2d 1045, 1050 (9th Cir. 1985). The clients' interest in securing counsel of their choice must be weighed against the interest in protecting the integrity of the process and the other interests of the parties. While Mr. Tinsley may be Plaintiffs' first choice, there is no risk that Plaintiffs cannot be competently represented by other attorneys of Plaintiffs' choice. The disqualification of Mr. Tinsley does not constitute the sort of "substantial hardship" that can be grounds for denying an otherwise proper motion to disqualify under Rule 3.7. Accordingly, the court should disqualify Mr. Tinsley from representing Plaintiffs in this action.

B. Mr. Tinsley should also be disqualified because he communicated with a person represented by counsel in violation of Rule 4.2 of the Rules of Professional Conduct.

Rule 4.2 of the Rules of Professional Conduct, commonly referred to as the "no contact rule," prohibits a lawyer from communicating with a person represented by counsel. Rule 4.2, RPC, Rule 407, SCACR. In representing a client, a lawyer is prohibited from communicating

about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Mr. Tinsley's violation of Rule 4.2 provides an independent ground for disqualification. "The appropriate remedy for this violation of the Rules of Professional Responsibility is to disqualify counsel from any further representation in the matters covered by this lawsuit." *Zachair, Ltd. v. Driggs*, 965 F. Supp. 741 (D. Md. 1997) (disqualifying attorney for violations of Rule 4.2); *see also McCallum v. CSZ Transp., Inc*., 149 F.R.D. 104 (M.D.N.C. May 4, 1993) (holding when an attorney violates ethical standards, it is proper for the opposing party to file a motion to disqualify counsel).

As background, Mr. Tinsley first signed a subpoena to Inquiry Agency on January 14, 2022. Ms. Capelli is the sole member and registered agent for Inquiry Agency, and her name is listed on this January 14, 2022 subpoena. It appears the subpoena was served shortly thereafter and prior to serving the Complaint on all of the Parker's Defendants, who were also conveniently not provided copied of these subpoenas. During a hearing before the Court on March 16, 2022, Mr. Tinsley stated:

> [Ms.] Senn tells me, the person I really want, [is] the PI who was doing lots of this work -- because Mr. Parker wanted three things; he wanted video of Paul Murdaugh drinking, partying, and talking about killing that girl, and I assume that's Mallory Beach, and he wanted to prove that Buster Murdaugh was gay. And so they hired Sara Capelli. . . . So we served Sara Capelli.
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> Almost immediately, Sara Capelli sends me a friend request on Facebook ***and calls me***, and she has the most extreme case of diarrhea of the mouth of any person I've ever talked to. She begins to explain all the details of what Parker's was hired to do -- I mean, what Parker's hired her to do, what they hired the two PIs, Max and Henry, to do, and that their intent was to paint a picture that, because Buster Murdaugh was gay, he must have been involved in the murder of Steven Smith. And because they had this narrative that they were pushing out that the Murdaughs were terrible people, and they may very well be terrible people, but because they are terrible

> people, then a jury ought not find against him in the boat crash. That is what I'm told that Mr. Parker wanted the information related to Buster Murdaugh for, as well as the information related to Paul's drinking, partying, talking about killing that girl.

(Ex. A, Tr. of March 16, 2022 Hearing, at 11:11–25, 12:1–20 (emphasis added)).

However, based upon the communications recently received as a result of the Parker's Defendants' subpoena to Ms. Capelli, it was Mr. Tinsley who initiated contact with Ms. Capelli, first via phone call and then via text message the following day. Below is a summary of the initial communications between Mr. Tinsley and Ms. Capelli.

January 20, 2022		Mr. Tinsley initiated contact with Ms. Capelli via phone call, which lasts 16 minutes.
January 21, 2022		Mr. Tinsley initiated contact with Ms. Capelli via text. The conversation is as follows:
	9:47 AM	**Mr. Tinsley:** "I hope the fact that we are Facebook friends means you're gonna help me"[6]
	9:53 AM	**Ms. Capelli:** "May I ask who this is?"
	9:53 AM	**Mr. Tinsley:** "Mark Tinsley"
	9:54 AM	**Ms. Capelli:** "Well, I am certainly on the side of truth!"
	9:57 AM	**Mr. Tinsley:** "You certainly can be"
	9:58 AM	**Ms. Capelli:** "About board plane. Talk soon."
	10:00 AM	**Mr. Tinsley:** "Sounds good"
	10:07 AM	**Ms. Capelli:** "Some light reading on plane."
		Sends a .pdf file via text titled "Discoverability of Private Investigator Surveillance in South Car"

[6] This text message as with all others within this Motion are copied verbatim without inserting "[sic]" after slang, misspelled words, or improper punctuation. Where appropriate, footnotes are used to assist in interpreting the messages.

10:08 AM **Mr. Tinsley:** "Looks like you're leaning towards the wrong side now"

Although the Parker's Defendants currently cannot verify whether Mr. Tinsley asked if Ms. Capelli was represented during the phone call on January 20, 2022, Mr. Tinsley's initial text messages reveal he never asked whether Ms. Capelli was represented—and his later conduct demonstrates he did not care whether she was, in fact, represented.

However, it is abundantly clear Mr. Tinsley was aware Ms. Capelli was represented by counsel by at least **January 31, 2022**, because on that date, Cheryl Shoun of Nexsen Pruet ("**Ms. Shoun**") sent a letter to Mr. Tinsley informing him that Nexsen Pruet was representing Inquiry Agency, and that Inquiry Agency objected to the subpoena he issued. As indicated in Ms. Shoun's letter, this first subpoena to Inquiry Agency was procedurally invalid and appeared to have been captioned incorrectly. That same day, Mr. Tinsley contacted Ms. Shoun and informed her he would fix the identified issues. Mr. Tinsley then signed two new subpoenas on February 1, 2022, one for Ms. Capelli and another one for Inquiry Agency, and his paralegal provided copies of those subpoenas to Ms. Shoun via an e-mail on February 2, 2022, on which Mr. Tinsley is copied. On February 9, 2022, Ms. Shoun sent a second letter on behalf of both Ms. Capelli and Inquiry Agency objecting to the two new subpoenas and reminding Mr. Tinsley of Nexsen Pruet's representation of Inquiry Agency, with its sole member being Ms. Capelli. Accordingly, what this timeline shows is that Mr. Tinsley absolutely had actual knowledge of Ms. Capelli's status as a represented individual by at least January 31, 2022.

Despite this knowledge, Mr. Tinsley continued communicating with Ms. Capelli after Ms. Shoun's two letters, as revealed by the next portion of the timeline:

February 26, 2022

1:06 PM **Ms. Capelli:** "Can we talk off the record?"

1:08 PM **Ms. Capelli:** "Well come Monday I'll be pro se."

1:22 PM **Mr. Tinsley:** "Come Monday we definitely can. I won't let Parker do anything to you."

1:24 PM **Ms. Capelli:** "I had independent counsel and then over night they had to back out. So I had to have some type of counsel. But this is just too much for this PI."[7]

1:25 PM **Ms. Capelli:** "Monday it is. What time works best for us to talk?"

1:42 PM **Ms. Capelli:** "I am not afraid of P.G. I am afraid of how attorneys will know me and define me."

5:32 PM **Mr. Tinsley:** "As soon as you fire the Parkers lawyers"

5:32 PM **Mr. Tinsley:** "I can't talk to you while you're represented"

6:23 PM **Ms. Capelli:** "Understood"

The impact of these communications cannot be understated. Mr. Tinsley offers a guarantee to protect Ms. Capelli from Defendant Gregory M. Parker when he states he "won't let Parker do anything to you." Further, Mr. Tinsley agrees to communicate with Ms. Capelli, a potential witness, "off the record."

It can be inferred that Mr. Tinsley hoped his professional conduct violations would be hidden by his agreeing to such an "off the record" conversation, because:

1) He believed the discussions would be kept from the evidentiary record, as he is continuing to try to do with his motion to quash a subpoena issued to him by the

[7] Admittedly, Ms. Capelli mentions having lost independent counsel, but noticeably, she does not state that she has terminated Nexsen Pruet's representation of her. Further, Mr. Tinsley does not ask for any clarification and based upon the context of his following text messages, he clearly believes she is still represented by Nexsen Pruet, which in fact she was at the time.

Parker's Defendants, despite the high likelihood such information would be discoverable and not subject to any sort of privilege, ***and/or***

2) He believed the discussions would be kept from Ms. Capelli's counsel.

Not to be deterred, Mr. Tinsley's communications with Ms. Capelli continued:

February 27, 2022

5:12 PM	**Mr. Tinsley:** "As soon as to tell Cheryl [i.e. Ms. Shoun, counsel for Ms. Capelli] she's not representing you I am happy to come meet you. Or talk on the phone if you prefer"[8]
5:13 PM	**Mr. Tinsley:** "It's doesn't have to be fancy. An email to her will suffice."
5:18 PM	**Ms. Capelli:** "Meet me…in CHS"
. . .	
5:23 PM	**Mr. Tinsley:** "I tend to be direct so I'd quite Trump and just sat 'sorry you're fired'" [9]
5:23 PM	**Mr. Tinsley:** "Quote"
. . .	
5:24 PM	**Ms. Capelli:** "Are you bloodying the waters."
5:24 PM	**Ms. Capelli:** "baiting me"
5:25 PM	**Ms. Capelli:** "Because I've never been a paranoid PI until you."
5:25 PM	**Mr. Tinsley:** "Trying to get you to see the light."

[8] It is clear from the context that the beginning of this text message meant to use the word "you" rather than "to," such that it would read, "As soon as [you] tell Cheryl . . . ."

[9] It is clear from the context there are a couple misspelled words, such that this message should read, "I tend to be direct so I'd [quote] Trump and just [say] 'sorry you're fired.'"

5:26 PM **Mr. Tinsley:** "But I have no interest in causing you any problems"

5:26 PM **Mr. Tinsley:** "I'm after Parker. Wes Donahue have you up to me"[10]

5:26 PM **Mr. Tinsley:** "Gave"

5:27 PM **Mr. Tinsley:** "After I served him"

The first two communications are bad enough—but this third one is damning. The Parker's Defendants submit that Mr. Tinsley's violations of the Rules of Professional Conduct are abundantly clear, as further explained by the Affidavit of Professor Nathan Crystal, attached as Exhibit I. Rule 4.2 (commonly referred to as the "no contact" rule) "applies even though [the] represented person initiates or consents to the communication," and holds that a "lawyer ***must immediately terminate communication*** with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule." Rule 4.2 cmt. [3], RPC, Rule 407, SCACR (emphasis added). Instead, in this portion of the communications timeline, Mr. Tinsley is the one initiating the communication and initiates the communication with full awareness that Ms. Capelli is represented by counsel, because he is instructing her on how to fire her counsel. Comment 1 of Rule 4.2 demonstrates the rule

> contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client lawyer relationship and the uncounselled [sic] disclosure of information relating to the representation.

[10] Similarly, this message should read, "I'm after Parker. Wes [Donehue] [gave] you up to me," as seen by the following text, "Gave." Further, as another example of potential less-than-fulsome candor to the Court, Mr. Tinsley informed the Court at the March 16, 2022, hearing that counsel for Mr. Donehue provided him with the name of Ms. Capelli, but here Mr. Tinsley indicates that Mr. Donehue himself provided her name. Thus, this message further supports compelling production of Mr. Tinsley's communications not only with Ms. Capelli, but with Mr. Donehue as well.

Ms. Capelli is the type of person in need of protection, specifically from the overreaching of Mr. Tinsley, because she describes herself as being "paranoid" due to Mr. Tinsley's misconduct.

A similar case, albeit one in which criminal misconduct occurred in addition to professional misconduct, is informative. In the case of *In re Walker*, 393 S.C. 305, 713 S.E.2d 264 (2011), an attorney represented a husband in a domestic matter in which the husband's represented wife was the opposing party. The attorney went with the husband to the wife's home and convinced the wife, outside the presence of and without knowledge of her counsel, to fire her counsel and enter into an agreement with the husband. *Id.* at 309, 713 S.E.2d at 265. Ultimately, the attorney entered into an "Agreement for Discipline by Consent," in which he admitted to violating Rule 4.2 for this inappropriate communication with the wife. *Id.* at 310–11, 713 S.E.2d at 266–67. In the same way, Mr. Tinsley has violated Rule 4.2 for instructing Ms. Capelli to fire her counsel. And it is not a stretch to suggest he was encouraging and inducing Ms. Capelli to fire her counsel through his prior offer to protect her. At minimum, Mr. Tinsley should have never even initiated this portion of the communication.

As an aside, despite clear knowledge that Ms. Capelli is a represented third party, Mr. Tinsley informed the Court on March 16, 2022, that "Cheryl Shoun, who claimed at the time -- who is also with Nexsen Pruet -- claimed to be representing Sara Capelli. That never was true, but she represented in an email that she was representing Sara Capelli." (Ex. A, Tr. of March 16, 2022 Hearing, at 18:3–7). This representation is belied by the fact that Mr. Tinsley communicated on multiple occasions with Ms. Capelli regarding firing Ms. Shoun. If Mr. Tinsley did not believe Ms. Shoun was actually representing Ms. Capelli, he would have no need to instruct Ms. Capelli on how to fire her. Thus, not only has Mr. Tinsley misrepresented to the Court on who initiated

contact between him and Ms. Capelli, but he also misrepresented to the Court Ms. Capelli's status as a represented third party.

Further, Professor Crystal opines that Mr. Tinsley's statement that he "won't let Parker do anything to you" constitutes a violation of Rules 4.1 and 8.4(c) as well, because he had no reasonable basis for making this representation. (Ex. K, Professor Crystal Affidavit, pp. 3–4).

Still, Mr. Tinsley's improper conduct continued:

February 27, 2022

5:32 PM	**Ms. Capelli:** "Are we meeting face to face or?"
5:33 PM	**Mr. Tinsley:** "Sure I'll meet you. Send me a copy of the email firing Cheryl and tell me where."
5:34 PM	**Mr. Tinsley:** "I can make tomorrow work"
5:35 PM	**Mr. Tinsley:** "I think you know enough. Maybe more than you realize."
. . .	
5:37 PM	**Mr. Tinsley:** "Let's meet. If you think you need counsel after then fine. I honestly don't think you do."
5:37 PM	**Ms. Capelli:** "Provided I don't get shot or hit by Bambi tonight. Let's say 2pm. Location TBD"
5:38 PM	**Mr. Tinsley:** "Ok"

The same violations of Rule 4.2 are present here. Moreover, Mr. Tinsley initiated and arranged a time to meet with Ms. Capelli, and offered legal advice that she did not need legal representation. As set forth in Professor Crystal's affidavit, even if Mr. Tinsley thought that Ms. Capelli would be firing Ms. Shoun and thought she would become unrepresented, Mr. Tinsley "still could not ethically give legal advice to her because Rule 4.3 prohibits a lawyer from giving legal advice to

an unrepresented person other than the advice to obtain counsel." (Ex. K, Professor Crystal Affidavit, p. 2). Thus, Mr. Tinsley violated Rule 4.3 as well as Rule 4.2.

On February 28, 2022, Ms. Capelli informed Nexsen Pruet at 12:45 PM she was terminating representation and securing separate counsel. She also provided the name of said counsel, who is the same attorney representing her as of this filing. Nexsen Pruet acknowledged the termination four minutes later at 12:49 PM via e-mail. Prior to that termination, however, and before he apparently learned of the termination and simultaneous hiring of new counsel, Mr. Tinsley initiated communication again with Ms. Capelli:

February 28, 2022

8:08 AM **Mr. Tinsley:** "I'm set to come. I just need the email."

Not having received a response, Mr. Tinsley initiated contact again on February 28, 2022:

10:47 AM **Mr. Tinsley:** "Have you changed your mind?"

11:02 AM **Ms. Capelli:** "I have sent the email. And I am waiting for response."

11:08 AM **Mr. Tinsley:** "Ok. My guess is she won't respond. All you really needed to say was they are no longer representing you, if they ever actually were. I need to leave my office around 12 to get there by 2, so let me know. You can forward the email to me at mark@goodingandgooding.com"

As set forth in Professor Crystal's affidavit, Mr. Tinsley "pressured [Ms. Capelli] to fire her counsel and prevent Ms. Capelli from obtaining legal advice," which constitutes a violation of Rule 4.4 in addition to Rule 4.2. (Ex. K, Professor Crystal Affidavit, p. 3).

The communications continued into the evening:

7:18 PM **Ms. Capelli:** "I'm not the fall girl. I hope…lol. Your pretty crafty though."

7:19 PM **Mr. Tinsley:** "I try to be crafty but I'm not after you"

. . .

7:21 PM **Ms. Capelli:** "Plus, you did communicate to me while still with counsel"

Sends bullseye emoji and heart emoji: "🎯❤️"

7:22 PM **Ms. Capelli:** "I think we have reached a truce!"

7:22 PM **Mr. Tinsley:** "Ha. Trust me I'm not worried about my communications"

In early March 2022, Mr. Tinsley initiated contact again, which leads to a string of communications showing he also inquired into specifics of Ms. Capelli's privileged and confidential work:

March 2, 2022

10:26 AM **Mr. Tinsley:** "Your motion"
Sends screenshot of law clerk's e-mail stating the motions regarding the subpoenas will be scheduled for the week of March 14, 2022.

. . .

11:07 AM **Ms. Capelli:** "I cannot wait for this to come out. You're going to be so dissatisfied. I was."

11: 09 AM **Mr. Tinsley:** "Dissatisfied about what? What you videoed?

11:09 AM **Ms. Capelli:** "Exactly what did I video"

11:09 AM **Ms. Capelli:** "Again I was disappointed"

After over twelve hours pass, Ms. Capelli texts Mr. Tinsley again in the early morning.

March 3, 2022

1:18 AM **Ms. Capelli:** "Please file a motion to compel before the 15th on my ass and define the discovery evidence or that is rumored to be thrown out if too

broad. I need this to stop. I can't take new cases, I have no income, literally I did not sign up for this. I never even knew where Hampton was and I sure as hell did not know the Murdaugh name. On top of all this I didn't even know the corrupt PI's names until your subpoena. I was hired to ID Locate and Document Paul. I am not in this 3 year ago crap. I did not even live here yet."

. . .

1:28 AM **Ms. Capelli:** "I have nothing. Literally all I did was locate Paul."

. . .

2:34 AM **Ms. Capelli:** "Listen to this on your way into work."
Sends audio file titled "AUDIO_7902.m4a"

8:33 AM **Ms. Capelli:** "This is not an interview of a bad, corrupt PI willing to cover up illegal activity. She is happy working in the field…"

Rather than immediately terminating any of these March communications or confirming whether counsel represented Ms. Capelli, Mr. Tinsley inquired into and accepted communications and audio messages regarding the subject matter of the case. He specifically requested information on why she was disappointed and whether it was about what Ms. Capelli videoed, i.e. her privileged and confidential work. Further, he accepted a phone call from Ms. Capelli on March 15, 2022, which lasted seven minutes. It certainly does not take seven minutes to confirm whether counsel represents a person and then terminate the communication. The circumstantial evidence strongly supports the two talked substantively about the subject matter during those seven minutes. Moreover, Mr. Tinsley's statement that he was "not worried about [his] communications" demonstrates a "blatant and intentional disregard for the ethics rules." (Ex. K, Professor Crystal Affidavit, p. 4).

The facts regarding Mr. Tinsley's interactions with Ms. Capelli do not raise some esoteric argument regarding a possible violation of an ethics rule. Rather, they present a clear violation of Rule 4.2 among other Rules of Professional Conduct. Accordingly, Mr. Tinsley should be disqualified from further representation of Plaintiffs in this case.

C. Mr. Tinsley should be disqualified pursuant to Rule 8.4 of the Rules of Professional Conduct, because he has committed misconduct in the pursuit, receipt, and review of privileged documents.

There is a third independent ground for disqualifying Mr. Tinsley. He committed professional misconduct in inducing Ms. Senn and her clients to release privileged information prior to a Court Order being issued. Further, Mr. Tinsley compounded this misconduct by reviewing thousands of pages of documents he knew were still subject to a claim of privilege.

Numerous courts have disqualified counsel on this basis alone in similar situations. *See, e.g.*, *United States v. Quest Diagnostics Inc.*, 734 F.3d 154, 166–68 (2d Cir. 2013) (affirming the district court's disqualification of counsel, because counsel was "in a position to use privileged information" in such a manner "to give present or subsequent clients an unfair, and unethical, advantage"); *Harleysville Ins. Co. v. Holding Funeral Home, Inc.*, No. 1:15CV00057, 2017 WL 4368617, at *14 (W.D. Va. Oct. 2, 2017) (disqualifying counsel where they reviewed privileged materials for which they believed that privilege had been waived, rather than alert the court); *U.S. ex rel. Hartpence v. Kinetic Concepts, Inc.*, No. CV 08-1885-GHK AGRX, 2013 WL 2278122, at *2 (C.D. Cal. May 20, 2013) (disqualifying counsel where counsel "should have known" documents were privileged and should have sought guidance from the court in advance, but transferred them instead to the U.S. Attorney's Office and "repeatedly used them in the pleadings"); *U.S. ex rel. Frazier v. IASIS Healthcare Corp.*, No. 2:05-CV-766-RCJ, 2012 WL 130332, at *4, *15 (D. Ariz. Jan. 10, 2012) (disqualifying counsel for failure to disclose privileged documents, despite counsel declaration that she had instructed client not to give the firm privileged

documents, and "never read or relied on" documents she believed might be privileged); *Richards v. Jain*, 168 F. Supp. 2d 1195, 1201 (W.D. Wash. 2001) (holding plaintiffs' access to privileged documents for eleven months and failure to notify defense of their possession of such materials warranted disqualification, even where the counsel's review and knowledge of the documents was not extensive); *Walker v. GEICO Indem. Co.*, No. 615CV1002ORL41KRS, 2017 WL 1174234, at *12 (M.D. Fla. Mar. 30, 2017) (disqualifying counsel where "highly impactful" privileged information, albeit disclosed inadvertently, had been "extensively reviewed, discussed, and disseminated," noting that "what is required for disqualification is a showing that there is a 'possibility' that an unfair informational advantage was obtained").

The documents at issue here are clearly privileged, because they detail case strategy and reveal attorney-work product, which the Court will observe as it conducts its privilege determination. By contacting Ms. Senn and/or her clients not once, but twice, rather than obtaining guidance from the Court on whether and when a formal order would be issued, Mr. Tinsley committed an unprofessional overreach. His receipt and review of an extensive amount of privileged material unfairly prejudices the Parker's Defendants, not only in the case at bar, but in the underlying Civil Action. Although the Parker's Defendants have moved for a Stay of the Court's Order regarding these particular subpoenaed documents, Mr. Tinsley can use all of these documents in his representations of the Plaintiff in the other, underlying Civil Action. This bell cannot simply be un-rung either. The receipt and review of privileged information irreparably taints the case and Plaintiffs' counsel. *See In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 175 (4th Cir. 2019), *as amended* (Oct. 31, 2019) (admonishing the lower court for "fail[ing] to recognize that an adverse party's review of privileged materials seriously injures the privilege holder," and holding the harm was "plainly irreparable" because the "review of those privileged

materials cannot be undone"). Based on the foregoing, Mr. Tinsley should be immediately disqualified for acting any further as counsel for Plaintiffs for the remainder of this litigation.

IV. CONCLUSION

Mr. Tinsley has acted in ways that disqualify him from continuing as a lawyer advocate in this case in multiple ways. First, he acted essentially as an independent investigator on behalf of Plaintiffs, thereby turning himself into an indispensable witness through his interactions with Ms. Ward and Ms. Capelli, a potential witness. Second, he inappropriately communicated with Ms. Capelli, a person he knew was represented. Lastly, he induced the disclosure of confidential and privileged information, and double-downed on the unscrupulous behavior by reviewing thousands of pages of potentially privileged documents *before* any court had determined whether any of the documents in question were privileged. Each of these transgressions (some of which amount to ethical violations, as discussed above and in earlier pleadings) viewed in isolation constitutes a ground for disqualification. Together, they leave no other remedy but disqualification.

Mr. Tinsley is the one who chose to take on the risk of disqualification with his disregard for his specific role in this lawsuit, his general status as a licensed attorney, and his own ethical obligations. Therefore, based upon the foregoing "pattern of repeated offenses" and violations of the professional standards of ethics, see Rule 8.4 cmt. [2], RCP, Rule 407, SCACR, this Court should grant the Parker's Defendants' Motion to Disqualify Mr. Tinsley from participating as a counsel in this action.

Respectfully submitted,

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Columbia, South Carolina