

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2024-CP-26-03798

JENNIFER SPIVEY FOLEY, as Personal )  
Representative of the Estate of SCOTT )  
RYAN SPIVEY, )

Plaintiff, )

v. )

CHARLES WELDON BOYD, and )  
KENNETH WILLIAMS, )

Defendants. )

**Defendants’ Reply and  
Memorandum in Opposition to  
Plaintiff’s Motion to Compel  
Production by SLED**

**Defendants by and through their undersigned attorneys respectfully submit this memorandum in opposition of Plaintiff’s motion to compel directed to the South Carolina Law Enforcement Division (SLED).**

**I. Introduction**

Plaintiff asks this Court to order a non-party law-enforcement agency to produce “any and all” materials and “raw data” SLED extracted from Defendants’ devices during a criminal investigation. That request is not a narrowly tailored civil discovery demand; it is an attempt to obtain wholesale forensic discovery from a third party without the safeguards that govern party discovery, without reliable privilege screening, and—given the acknowledged media circus surrounding this case—with a substantial risk that private and privileged information will be disseminated outside this litigation. The risk of improper dissemination is not hypothetical; it is admitted by Plaintiff.

The motion should be summarily denied. At minimum, any relief should be limited by a stringent Rule 26, South Carolina Rules of Civil Procedure (SCRCP) protective order,

a privilege/log process, and a targeted production protocol limited to relevant, nonprivileged categories.

## II. Relevant Background

1. In October of 2024, Plaintiff served SLED with a subpoena seeking a “complete copy” of SLED file materials in SLED File No. 33-23-0112.
2. Notably, Plaintiff’s counsel did not include any request in the subpoena for the “raw data” files that are the subject of this motion. In other words, Plaintiff’s counsel is seeking in this motion seeking to compel information that Plaintiff had not subpoenaed.
3. Defendants executed limited consent-to-search forms that authorized SLED to search devices in connection with the criminal investigation for information created on or after September 09, 2023, while expressly excluding categories of previously created and also attorney communications (and attorney-directed communications) from the lab’s output.
4. SLED never sought any warrant or authorization from the Court to extract or have access to information beyond that which Defendants provided limited consent and authorization. Put most simply SLED did not obtain a warrant or Court authorization to seize or search beyond the limits of Defendants’ consent.
5. Plaintiff now seeks an order compelling SLED to produce “any and all materials and data” collected from Defendants’ devices, including raw forensic downloads that SLED acknowledges contain data beyond what was authorized to be provided to investigating officers.
6. Much of this case has been improperly tried in the media by Plaintiff, her counsel and persons with whom they have aligned themselves. Plaintiff’s Personal Representative has testified that she turned all information she received over to podcasters and /or reporters. Those circumstances and demonstrated acts independently justify heightened protections against dissemination of discovery materials and against compelled production of unfiltered device data.
7. In violation of Rule 11, SCRCP, Plaintiff’s counsel failed to consult with Defendants’ counsel at all prior to filing this motion and logically failed to explore whether any less invasive and less prejudicial means could be had in order to resolve the issues prior to filing this motion.
8. Plaintiff’s counsel issued its subpoena in October of 2024, but only recently filed this motion on January 28, 2026 and requested a prompt hearing upon less than the ten (10) day requirement set forth in [Rule 6\(d\), SCRCP](#). Defendants were not

made aware of this motion until January 29, 2026 when Plaintiff's counsel forwarded the motion to the Court.

### III. Applicable Standards

#### A. Rule 11, South Carolina Rules of Civil Procedure (SCRPC)

Rule 11, SCRPC, provides expressly in relevant part:

All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held. There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11, SCRPC

#### B. Scope, proportionality, and protective relief under Rule 26

Discovery must be limited to relevant, nonprivileged information and must be proportional to the needs of the case. The Court may enter protective orders to prevent annoyance, embarrassment, oppression, undue burden, or invasion of privacy, and may prescribe conditions for discovery to ensure appropriate handling of sensitive information. [Rule 26, SCRPC](#).

South Carolina trial courts have broad discretion in discovery matters; discovery rulings are reviewed for abuse of discretion, reinforcing the Court's authority to deny

overbroad compulsion requests and to structure appropriate safeguards when limited discovery is warranted. *Belk of Spartanburg, S.C., Inc. v. Thompson*: [Belk of Spartanburg, S.C., Inc. v. Thompson, 337 S.C. 109, 522 S.E.2d 357 \(Ct. App. 1999\)](#).

Courts have broad authority to restrict dissemination of information obtained in discovery upon a showing of good cause, and such restrictions do not offend the First Amendment where properly limited to discovery materials. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984) ([Seattle Times Co. v. Rhinehart, 467 U.S. 20 \(1984\)](#)).

Further, any common-law access interest in judicial records is not absolute and is subject to the Court's supervisory authority to prevent improper use. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) ([Nixon v. Warner Communications, Inc., 435 U.S. 589 \(1978\)](#)).

Where pervasive publicity threatens fair proceedings, trial courts have an affirmative duty to adopt measures to protect the fairness of the adjudicative process. *Sheppard v. Maxwell*, 384 U.S. 333 (1966) ([Sheppard v. Maxwell, 384 U.S. 333 \(1966\)](#)). Consistent with that concern, attorney extrajudicial statements are restricted where they create a substantial likelihood of material prejudice. **Rule 3.6, SCACR** ([Rule 3.6, Rule 407, SCACR](#)); see also *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) ([Gentile v. State Bar of Nevada, 501 U.S. 1030 \(1991\)](#)).

### C. Non-party subpoenas; quashal/modification; privilege

Non-party subpoenas are subject to quashal or modification where they require disclosure of privileged matter or impose undue burden, and the Court may condition any third-party production on reasonable safeguards. [Rule 45, SCRCF](#).

#### **D. Privilege and confidentiality protections**

South Carolina recognizes the attorney-client privilege as a cornerstone doctrine grounded in public policy. The privilege belongs to the client and protects confidential attorney-client communications. *State v. Doster*: [State v. Doster, 276 S.C. 647, 284 S.E.2d 218 \(1981\)](#); *Drayton v. Industrial Life & Health Insurance Co.*: [Drayton v. Indus. Life & Health Ins. Co., 205 S.C. 98, 31 S.E.2d 148 \(1944\)](#).

South Carolina courts also recognize additional confidentiality-based protections (including qualified privileges) reflecting the same public-policy concern that disclosure can cause irreparable harm. *Hartsock v. Goodyear Dunlop Tires N. Am., Ltd.*: [Hartsock v. Goodyear Dunlop Tires N. Am., Ltd., 422 S.C. 643, 813 S.E.2d 696 \(2018\)](#).

#### **E. Public access, sealing, and the distinction between discovery and court records**

To the extent Plaintiff attempts to leverage civil discovery as a vehicle for broader public dissemination, South Carolina appellate decisions recognize a presumption of public access to court records—but require specific on-the-record findings and narrow tailoring when restricting access, which underscores the need to treat sensitive information through appropriate procedural mechanisms (e.g., protective order, sealing motions when materials become court records). *Ex parte Capital U-Drive-It, Inc.*: [Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 \(2006\)](#); *Davis v. Jennings*: [Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 \(1991\)](#).

Relatedly, where proceedings or records are restricted, South Carolina authority requires a developed record and specific findings to justify restrictions and to ensure any

limitation is narrowly tailored. Ex parte The Island Packet: [Ex parte The Island Packet, 308 S.C. 198, 417 S.E.2d 575 \(1992\)](#).

Rule-based sealing requirements are now addressed expressly in [Rule 41.1, SCRCP](#).

#### **IV. Argument**

##### **A. The motion should be summarily denied because Plaintiff's counsel failed to comply with the mandates of Rule 11, SCRCP**

Plaintiff's motion is procedurally and substantively defective. Plaintiff served its subpoena in October of 2024 but waited until January 28, 2026 to file the motion, then requested an expedited hearing on less than the default notice contemplated in the SCRCP. See Rule 6(d), SCRCP. Defendants' counsel was not made aware of the motion until January 29, 2026 when Plaintiff's counsel forwarded the motion to the Court and requested "a quick Webex hearing so that we can get this important information".

Plaintiff's compressed-hearing tactic is exactly the kind of gamesmanship the rules are designed to present. Rule 6(d), SCRCP; *Jackson v. Speed*, 326 S.C. 289, 486 E.E.2d 750 (1997). The relevant provisions of Rule 11, SCRCP, mandate that Plaintiff's counsel was obligated to consult with opposing counsel prior to the filing of this motion. He did not! Furthermore, the provisions of Rule 11 mandate that had prior consultation been unsuccessful that Plaintiff's counsel had an affirmative duty to include "an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held." Plaintiff's counsel simply failed to comply with any

of the mandated requirements. Therefore, this motion should be summarily dismissed as procedurally defective.

**B. The motion should be denied because it seeks an overbroad, unfiltered forensic production that is not tailored to relevance or proportionality and seeks production of the data to individuals who have demonstrated misuse of discovery.**

Plaintiff does not seek discrete categories of communications, time windows, custodians, or search terms; Plaintiff seeks “any and all” raw data extracted from personal devices. That is the antithesis of proportional civil discovery. See [Rule 26, SCRPC](#). Raw device extractions necessarily include vast quantities of irrelevant personal information, including intimate data, financial information, medical information, photos, trade secret communications, third-party communications, and unrelated communications spanning long time horizons. Compelling a non-party to produce such unfiltered data imposes undue burden and creates undue risk of privacy invasion—grounds for denial or protective limitations under [Rule 26, SCRPC](#) and modification/quashal principles under [Rule 45, SCRPC](#).

Even Plaintiff’s own framing concedes the “raw data” contains information beyond the limitations described in the consent forms. That admission underscores the overbreadth and the inability to confine the request to what is probative and relevant to the civil claims and defenses in this case. The Court should treat this motion for what it is: an attempt to acquire content for use outside the litigation.

Additionally, the Court’s broad discretion in discovery supports denying “all data” compulsion where the moving party has not acted with diligence and where narrowing

alternatives are available. See [Belk of Spartanburg, S.C., Inc. v. Thompson, 337 S.C. 109, 522 S.E.2d 357 \(Ct. App. 1999\)](#).

**C. Compelling SLED to produce raw device data creates an acute risk of disclosure of privileged attorney-client communications, requiring denial or stringent safeguards.**

The risk of improper dissemination is not hypothetical; it is admitted by Plaintiff. Plaintiff testified that she provided information she received in discovery to podcasters and/or reporters. Against that record, Plaintiff now asks for the most sensitive category of “discovery” imaginable: raw device-level extractions containing commingled private content and privileged communications. The Court should treat this for what it is: an attempt to acquire content for use outside the litigation.

The consent forms expressly recognized communications with attorneys and attorney-directed communications as excluded categories. That recognition is consistent with the strong protection for attorney-client privilege under South Carolina law. See **State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981)** ([State v. Doster, 276 S.C. 647, 284 S.E.2d 218 \(1981\)](#)); **Drayton v. Indus. Life & Health Ins. Co., 205 S.C. 98, 31 S.E.2d 148 (1944)** ([Drayton v. Indus. Life & Health Ins. Co., 205 S.C. 98, 31 S.E.2d 148 \(1944\)](#)).

A compelled “everything first, sort later” production is inconsistent with meaningful privilege protection because it increases the risk of inadvertent disclosure and dissemination of privileged communications. This is particularly acute where the production target is a law-enforcement forensic extraction that contains commingled privileged, private, and irrelevant materials, and where Plaintiff seeks direct access. South Carolina courts’ recognition of confidentiality-based privileges reflects the principle that

certain categories of information require heightened protection and careful balancing. See [Hartsock v. Goodyear Dunlop Tires N. Am., Ltd.](#), 422 S.C. 643, 813 S.E.2d 696 (2018). Accordingly, the Court should deny the request as drafted or, at minimum, require a neutral privilege screening protocol and log process as a condition to any production. See [Rule 26, SCRPC](#); [Rule 45, SCRPC](#).

Moreover, privilege protects communications—not merely the label “legal advice.” And even where underlying facts are discoverable, that does not authorize compelled production of unfiltered communication repositories. [Upjohn Co. v. United States](#), 449 U.S. 383 (1981) ([Upjohn Co. v. United States](#), 449 U.S. 383 (1981)).

Ordering SLED to dump “everything” is effectively ordering Defendants’ privileged communications to be produced first and sorted later—an approach inconsistent with privilege protections and likely to cause irreparable harm.

**D. Plaintiff’s admitted dissemination to podcasters establishes “good cause” to deny the request or impose a strict Rule 26 protective order limiting dissemination and requiring secure handling by persons other than Plaintiff and her attorneys.**

This case has been significantly litigated in the media and not presented fairly and accurately at that. Plaintiff’s Personal Representative has testified she provided case and all discovery information to podcasters. Plaintiff counsel, Attorney Tinsley, has demonstrated willingness to try portions of this case in the media by his comments and disclosure of video recorded depositions. These facts strongly support “good cause” for robust restrictions on dissemination and handling of discovery materials that contain privileged and confidential information and information wholly irrelevant to this case. The

Supreme Court has recognized that protective orders limiting dissemination of information obtained through civil discovery are permissible when supported by good cause and confined to discovery materials. **Seattle Times Co. v. Rhinehart** ([Seattle Times Co. v. Rhinehart](#), 467 U.S. 20 (1984)).

While South Carolina recognizes a presumption of public access to court records, it also requires specific findings and careful balancing when secrecy or privacy interests are implicated—principles that support a controlled approach to sensitive information rather than a broad forensic production. See [Ex parte Capital U-Drive-It, Inc.](#), 369 S.C. 1, 630 S.E.2d 464 (2006); [Davis v. Jennings](#), 304 S.C. 502, 405 S.E.2d 601 (1991). While discovery is broader than admissible evidence, relevance is still the controlling gate. The rules of evidence underscore the foundational relevance requirement and the Court’s power to exclude information when its probative value is substantially outweighed by unfair prejudice and confusion. [Rule 401, SCRE](#); [Rule 402, SCRE](#); [Rule 403, SCRE](#).

And if Plaintiff’s approach implicitly seeks to transform discovery into public content, the Court should be particularly attentive to record management and—if any discovery material is later filed—compliance with [Rule 41.1, SCRC](#)P and the requirement for narrow tailoring and specific findings. See [Ex parte The Island Packet](#), 308 S.C. 198, 417 S.E.2d 575 (1992).

Plaintiff seeks exactly the opposite. Plaintiff seeks compelled production of the most sensitive dataset in the matter—raw device downloads—in circumstances where Plaintiff has already demonstrated willingness to disseminate information outside litigation channels. If anything warrants protection and a denial, Plaintiff’s current motion does.

**E. The Court should not convert civil discovery into a public-disclosure mechanism for nonpublic investigative materials or private device contents.**

Plaintiff's motion effectively seeks to convert SLED's forensic extraction—created for a criminal investigation and containing extensive private, irrelevant, and potentially privileged material—into a civil discovery repository to be produced wholesale. Even accepting the general presumption of access to court records, that presumption does not justify compelling a non-party to produce unfiltered device images as ordinary civil discovery; instead, it underscores the Court's obligation to supervise how sensitive materials enter (or do not enter) the record and to require a particularized showing for secrecy or restriction if later filed. See [Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 \(2006\)](#); [Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 \(1991\)](#); [Rule 41.1, SCRPC](#).

To the extent Plaintiff's motion implicitly treats SLED's raw downloads as a quasi-public record or something that should be produced wholesale because the case is high-profile, that is not the function of discovery. Courts retain supervisory authority over records and may deny access to prevent improper use; any access right is not absolute. **Nixon v. Warner Communications, Inc.** ([Nixon v. Warner Communications, Inc., 435 U.S. 589 \(1978\)](#)). And where pervasive publicity threatens fair proceedings, the Court has a duty to take measures to protect fairness. **Sheppard v. Maxwell** ([Sheppard v. Maxwell, 384 U.S. 333 \(1966\)](#)).

**F. Even if some production is warranted, Plaintiff's requested remedy is not warranted: any order must be narrowly tailored and incorporate protocols to protect privilege, privacy, and confidentiality.**

If the Court is inclined to order SLED to produce anything beyond what has already been produced, Defendants respectfully request the Court deny the motion as drafted and instead require a protocol that includes, at minimum:

- A **Rule 26** protective order that:
  - Limits use to this litigation;
  - Restricts access to a neutral expert that, at Plaintiff's expense, can filter the data with specific inquiries related only to this pending action and maintain strict confidentiality with respect to all other data;
  - Requires that all information garnered from the search be restricted to "attorneys' eyes only";
  - Prohibits dissemination to media/podcasters/third parties;
  - Requires secure storage and controlled transmission; and
  - Requires return/destruction at the conclusion of the case.

See [Rule 26, SCRCF](#).

- A **privilege-screening process** performed by an agreed neutral (or structured privilege team) prior to any production to Plaintiff, with an accompanying log process as appropriate in third-party practice.

See [Rule 45, SCRCF](#); and the public-policy strength of attorney-client privilege recognized in [State v. Doster, 276 S.C. 647, 284 S.E.2d 218 \(1981\)](#) and [Drayton v. Indus. Life & Health Ins. Co., 205 S.C. 98, 31 S.E.2d 148 \(1944\)](#).

- Limitation to **narrow, demonstrably relevant categories** and **time windows** (e.g., communications with particular numbers/contacts and a defined date range) to satisfy proportionality and minimize invasion of privacy.

See [Rule 26, SCRC](#).

- If any extracted materials are later filed with the Court, compliance with procedures governing sealing and access to court records, including the requirement of specific findings and narrow tailoring.

See [Rule 41.1, SCRC](#); [Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 \(2006\)](#); [Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 \(1991\)](#); [Ex parte The Island Packet, 308 S.C. 198, 417 S.E.2d 575 \(1992\)](#).

These safeguards are particularly warranted because the motion seeks the most sensitive dataset in the matter—raw forensic device data—and the record described by Defendants reflects a substantial risk of improper dissemination. Further, these safeguards are particularly warranted because Plaintiff and her attorney affirmatively assert an intention or practice of public dissemination.

## V. Requested Relief

For the foregoing reasons, Defendants respectfully request that the Court enter an order:

1. **Denying Plaintiff's Motion to Compel in its entirety.**
2. **Finding Plaintiff's Motion procedurally defective** for failure to comply with consultation and affirmation requirements. [Rule 11\(a\), SCRC](#).
3. **Enforcing proper notice requirements** and rejecting Plaintiff's attempt to compress the hearing schedule without a valid basis. [Rule 6\(d\), SCRC](#); [Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 \(1997\)](#).

4. **Alternatively**, if any production is ordered, entering a stringent protective order and non-party production protocol as set forth above, including neutral filtering by an expert, at Plaintiff's expense, privilege screening, and strict attorneys'-eyes-only restrictions. [Rule 26\(c\), SCRC](#); [Rule 45, SCRC](#); [Seattle Times Co. v. Rhinehart](#), 467 U.S. 20 (1984).
5. **Awarding Defendants their reasonable fees and expenses** incurred in responding to this Motion, and granting such other relief as the Court deems just and proper. [Rule 11\(a\), SCRC](#). To the extent Plaintiff seeks sanctions or fee-shifting under discovery rules, the Court should likewise apply the abuse-of-discretion guardrails and deny sanctions where a party's position is justified. [Dunn v. Dunn](#), 298 S.C. 499, 381 S.E.2d 734 (1989).

Respectfully submitted this 1st day of February 2025.

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