

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CASE NO.: 2017-CP-08-2672

THE ESTATE OF SARA LYNN COLUCCI
BY AND THROUGH PERSONAL
REPRESENTATIVE BARBARA MOORE,

Plaintiff,

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGEMENT AND EXPEDITED
DAMAGES TRIAL**

v.

MICHAEL F.A. COLUCCI,

Defendant.

COMES NOW the Plaintiff, The Estate of Sara Lynn Colucci, by and through undersigned counsel, and respectfully moves this Honorable Court, pursuant to SCRCP 56, to grant summary judgement in favor of Plaintiff, to grant an expedited trial for damages, and for such other and further relief as this Court deems just and proper. In support of this Motion, Plaintiff states as follows:

INTRODUCTION

1. This motion pertains to a wrongful death and survival action brought by the Estate of Sara Lynn Colucci, by and through her Personal Representative, Barbara Moore, against Michael Colucci. Plaintiff seeks a determination of Defendant's liability for Sara Lynn's death on May 20, 2015, and, ultimately, a jury's determination of the damages that death caused. This case exists because a young mother is dead and her mother has now spent more than a decade waiting for someone to determine, in any forum, what happened to her daughter. Michael Colucci, the only individual who was with Sara Lynn at the time she died, has repeatedly failed to provide a consistent account of the events and has now invoked his right and privilege under the Fifth Amendment of the United States against self-incrimination in answers any questions relating to

events, conditions, and details surrounding Sara's death on May 20, 2015. *Exhibit A; July 15, 2026, Deposition of Michael Colucci.*

2. This civil action, filed December 5, 2017, remains unresolved more than eight years later: it has been repeatedly, and appropriately, held in abeyance pending resolution of the criminal case. Defendant's silence at his civil deposition can no longer be excused as a temporary accommodation to an active prosecution. There is no active prosecution, yet Defendant nonetheless elected not to cooperate with the civil proceedings. The underlying criminal indictment, No. 2016-GS-08-2603, was dismissed without prejudice by the Honorable Judge Roger Young on June 17, 2025, immediately before the scheduled retrial, and no new indictment has issued since. This Court has already considered and rejected Defendant's own contention that the possibility of re-indictment justifies further delay of this civil action. See Order Denying Def.'s Mot. to Stay (Apr. 22, 2026).

3. Defendant was noticed for deposition in this civil matter on July 24, 2025. 2025-07-24 NOD. He did not appear for his first scheduled deposition on October 28, 2025, resulting in this Court's January 28, 2026, Order sanctioning him \$1,283.00 pursuant to SCRCP 37(d). Form 4 Order, Jan. 28, 2026. Eventually, he was deposed on July 15, 2026. At that deposition, Defendant invoked his privilege against self-incrimination under the Fifth Amendment to the United States Constitution in response to substantially every question asked of him relating to the events, conditions, and details of Sara Colucci's death on May 20, 2015.

4. Defendant was entitled to invoke his Fifth Amendment privilege; however, he was not entitled, having done so, to treat the resulting silence as a shield against the ordinary operation of Rule 56, SCRCP. This Motion asks the Court to hold that, on the record now before it, Defendant's liability for Sara Lynn's death is established as a matter of law, that damages remain properly reserved for a jury, and that this case be advanced to trial. This Motion addresses only the First

Cause of Action (wrongful death and survival); the Second Cause of Action, seeking a declaratory judgment as to the disposition of settlement proceeds from *Colucci v. Northwood Academy*, No. 2014-CP-10-4680, is not before the Court on this Motion and has been resolved.

PLAINTIFF IS ENTITLED TO ADVERSE INFERENCES

5. Unlike in a criminal trial, where the privilege against self-incrimination forecloses any comment on a defendant's silence, a civil litigant's invocation of the Fifth Amendment privilege may be met with the adverse inference that a truthful answer would have been unfavorable to him. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). South Carolina has adopted this rule. *Griffith v. Griffith*, 332 S.C. 630, 506 S.E.2d 526 (Ct. App. 1998). Mr. Colucci was entitled to invoke the privilege at his deposition, and Plaintiff does not suggest otherwise, but the accommodation the law makes for that privilege is not a license to withhold facts within a party's own personal knowledge and then contend, on the strength of his own silence, that a genuine factual dispute exists.

6. Notwithstanding Mr. Colucci's invocation of the Fifth Amendment, the preponderance of the evidence overwhelmingly establishes his liability to Plaintiff for the death of Sara Colucci. Unlike *Griffith*, which was decided by the family court as factfinder after a full merits hearing, this Motion asks the Court to apply that invocation coupled with the independent evidence establishing Mr. Colucci's liability to the Estate before trial. Plaintiff accordingly does not rest on the inference alone, but on the independent evidence set out in Section III below, which the inference corroborates rather than replaces.

7. Judgement sought under Rule 56, SCRCP shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material issue and that the moving party is entitled to a judgment as a matter of law. See *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892

S.E.2d 297, 301 (2023) clarifying that “the “mere scintilla” standard does not apply under Rule 56(c). Rather, the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.”

8. A general denial in a pleading is not evidence and cannot, standing alone, defeat a properly supported motion. Defendant has now been asked, under oath, to identify any fact supporting an alternative explanation for his wife’s death. This includes, but is not limited to, how the physical evidence might be consistent with an accident or suicide, why his account of the same afternoon changed with each person he told it to, and how the fresh injuries on his own body that day came to be there. He has offered nothing responsive to any of it. Where a party with unique personal knowledge of the operative facts declines, across the entirety of a deposition, to offer any competing account, the adverse inference is permitted.

9. Throughout the deposition Mr. Colucci hindered the fact-finding process by refusing to answer the simplest of questions such as his date of birth, what color tie he was wearing, or whether he and Sara Colucci were civilly married on September 25, 2012. While such questions might not be critical to uncovering whether Plaintiff is entitled to civil damages, Colucci similarly refused to cooperate when tasked with answering more substantive questions relating to the events, conditions, and details of May 20, 2015. Mr. Colucci would not answer whether he believes that compressing a person’s neck is a forcible harmful contact or whether he bears any responsibility for Sara’s death. Mr. Colucci obviously has answers and opinions to these questions, but with a culpable state of mind he is seeking to undermine the civil justice process by refusing to answer. For these reasons, Plaintiff is seeking adverse inferences to questions asked of Mr. Colucci during his deposition made *Exhibit A* hereto, specifically, but not limited to, the following:

- a. Q: You texted Mr. Whitfield that you were obtaining a 50- to \$70,000 line of credit and referred to “a very difficult time for my children and myself.” Is that an accurate description of your finances in May and June of 2015? (Colucci Dep. 9:14-18).
- b. Q: Mr. Colucci, did you have any life insurance policy on Sara’s life? (Colucci Dep. 10:15-16).
- c. Q: From 2014 to May of 2015, Mr. Colucci, would you agree that there was significant tension and stress in your marriage with Sara? (Colucci Dep. 13:24-14:2).
- d. Q: Did Sara call 9-1-1 during arguments with you in your home in the months before her death? (Colucci Dep. 15:1-3).
- e. Q: In the days before May 20, 2015, were you aware that Sara intended to leave you and file for divorce? (Colucci Dep. 15:8-10).
- f. Q: Were you ever physically violent with Sara’s father before her death? (Colucci Dep. 15: 15-16).
- g. Q: Were you and Sara using cocaine in the days before and on the day of Sara’s death, May 20th, 2015? (Colucci Dep. 16:13-15).
- h. Q: Do you disagree with the statement of a neighbor of yours at 177 Woodbrook, Bob O’Leary, who characterized your behavior with Sara as aggressive in the spring of 2015? (Colucci Dep. 17:8-11).
- i. Q: Did you remove the hose from her neck? Did you lay her down? And at what angle, Mr. Colucci? (Colucci Dep. 23:11-13).
- j. Q: Did you perform CPR or mouth to mouth to Sara? And if so, for how long, sir? (Colucci Dep. 23:18-19).
- k. Q: At the scene, sir, you had blood coming from your mouth. You told a deputy “it was from me doing CPR.” Is that your testimony today? (Colucci Dep. 23:24-24:1).
- l. Q: On the day of the incident, May 20th, 2015, did you decline to give a recorded interview to law enforcement? (Colucci Dep. 24:14-16).

- m. Q: Did you retain an attorney for the matter involving Sara Colucci's death on the day of her death, May 20th, 2015? (Colucci Dep. 24:21-23).
- n. Q: Sir, you understand that Dr. Lee Marie Tormos performed Sara's autopsy and found the cause of death to be asphyxia by neck compression? (Colucci Dep. 26:13-15).
- o. Q: And that autopsy performed by Dr. Tormos describes multiple separate parallel furrows on the front of Sara's neck, 5 inches long, about 5/8ths inch apart, crossing the midline over the hyoid bone, oriented horizontally: were you aware of that, sir? (Colucci Dep. 26:20-25).
- p. Q: The furrow was essentially horizontally, not angled sharply, upward towards a suspension point, as one would suspect in a hanging. Can you explain how a person hangs themselves on a fence post and leaves a horizontal mark? (Colucci Dep. 27:5-9).
- q. Q: In light of your prior statements, sir, that you had never taken your eyes off of Sara and the findings from the autopsy which found a fracture of Sara's superior horn of the right thyroid cartilage with hemorrhage, do you have any explanation for those internal neck injuries, sir? (Colucci Dep. 27:14-19).
- r. Q: Mr. Colucci, the autopsy documents abrasions and contusions on Sara's arms, elbow, both knees and right foot. How did Sara get those injuries that afternoon? (Colucci Dep. 28:15-18).
- s. Q: A clump of Sara's hair was found wrapped around the garden hose at 2206 North Main Street, and her DNA matched the hair on the hose according to SLED's DNA analysis. How does hair become wrapped around a hose if she simply slipped a loop over her own head, sir? (Colucci Dep. 29:2-8).
- t. Q: Mr. Colucci, Sara had dirt and mud on the back of her left hand, her ring finger and both palms; her left little fingernail was missing. A broken acrylic fingernail was found on the floor of the vehicle that you all arrived to the property location in. Are you able to testify today as to any of those conditions that I've just described? (Colucci Dep. 29:13-20).
- u. Q: At the scene, sir, SLED documented two recent abrasions on the knuckles of your left hand, with skin still moist and attached, a swollen right lower lip, and

abrasions on both your biceps and the inside of your left arm. How did you get those injuries on May 20th, 2015? (Colucci Dep. 29:25-30:5).

- v. Q: Sir, did you tell Barbara Moore that something happened to Sara in the car on you all's way to 2206 North Main Street, Summerville, on May 20th, 2015? (Colucci Dep. 30:16-19).
- w. Q: Did you later tell Barbara Moore, sir, that you weren't sure if Sara tripped and fell into the hose? (Colucci Dep. 31:6-8).
- x. Q: When Barbara pressed you on how you could have never taken your eyes off of Sara at 2206 North Main Street in Summerville, yet not see her with a hose around her neck, did you raise your voice and say, "Well, that's what happened?" Is that your testimony, sir? (Colucci Dep. 31:21-32:1).
- y. Q: Would you agree, sir, that multiple people who knew and were close with Sara, neighbors, friends, and her mother, did not believe that Sara was suicidal? (Colucci Dep. 35:14-17).
- z. Q: Mr. Colucci, would you agree that placing your hands or a ligature on Sara's neck would put her in reasonable fear of bodily harm? (Colucci Dep. 38:14-16).
- aa. Q: Would you agree, sir, that compressing a person's neck is a forcible, harmful contact? (Colucci Dep. 39:6-7).
- bb. Q: Sir, do you contend that you bear no responsibility, civil or otherwise, for Sara's death? (Colucci Dep. 40:3-5).

10. The South Carolina Court of Appeals in *Griffith v. Griffith* confirmed that an adverse inference drawn from a party's invocation of the Fifth Amendment, when combined with additional evidence, can establish liability as a matter of law by a preponderance of the evidence. So too here: Mr. Colucci's invocation of the privilege, together with the independent evidence set forth above, forecloses any genuine issue of material fact as to his liability for Sara Colucci's death.

THE INDEPENDENT EVIDENCE ESTABLISHES DEFENDANT'S LIABILITY

11. Even before any adverse inference is drawn, the record independently establishes by a preponderance of the evidence that Defendant caused Sara's death. The autopsy of Sara Colucci

performed by Dr. Tormos documents parallel ligature furrows on her neck five inches long and five-eighths of an inch apart, crossing the midline horizontally rather than at the upward angle one would expect from a hanging, together with a fracture of the superior horn of the right thyroid cartilage with hemorrhage. *Exhibit B; 5/21/2015 Autopsy Sara Colucci by MUSC Dr. Lee Marie Tormos*. A clump of Sara's hair, DNA-matched to her, was found wrapped around the same garden hose. *Exhibit C; Berkeley County Sheriff's Office Crime Scene Report* and *Exhibit D; SLED 09/09/2016 DNA Analysis*. Sara had dirt, mud, and a missing fingernail on her hand, and a broken acrylic fingernail was recovered from the vehicle in which the parties arrived. *Id.* Defendant, for his part, had fresh abrasions on his knuckles with the skin still moist and attached, a swollen lower lip, and abrasions on both arms, all documented by SLED the same day. *Id.*

12. That physical picture sits alongside a financial motive, an unraveling marriage Defendant does not dispute knowing about, and at least three materially different accounts Defendant gave of the same afternoon. No single item is offered as conclusive standing alone. But together, they are more than sufficient independent evidence of civil liability for Sara's death, and the adverse inference set out above corroborates rather than substitutes for that evidence.

13. Plaintiff anticipates that Defendant will point to the medical examiner's classification of the manner of death as "Undetermined," and to a February 2023 statement in which Barbara Moore recounted that Sara, roughly two weeks before her death, said that "if it wasn't for the kids, she would have hung herself in the garage." Neither defeats summary judgment. A medical examiner's manner-of-death classification is an administrative determination, not a finding binding on this Court, and it says nothing about who caused Sara's injuries; it is entirely consistent with a homicide the medical examiner could not independently confirm from the autopsy alone. And a single, secondhand, two-week-old expression of situational despair not connected to the mechanism of

death actually found at the scene and offered by Plaintiff's own personal representative does not create a genuine dispute about what happened on May 20, 2015, particularly measured against the physical evidence above and Defendant's own refusal, under oath, to offer any competing account. See *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) clarifying that "the "mere scintilla" standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine."

**PLAINTIFF IS ENTITLED TO AN EXPEDITED
JURY TRIAL AS TO DAMAGES**

14. Plaintiff respectfully requests an expedited jury trial as to damages, which Rule 42(b), SCRCF and this record support. The application of the above adverse inferences and corroborating evidence leaves no doubt as to Defendant's civil liability. With liability set, the only thing left for determination is damages, which should be decided by a jury. See Rule 42(b), SCRCF; *Fortune v. Gibson*, 304 S.C. 279, 403 S.E.2d 674 (Ct. App. 1991) (separate trial on damages proper where liability and damages present sufficiently distinct issues that trying them separately will not work an injustice). This litigation has been going on for nearly a decade. Plaintiff deserves to have her claims valued by a jury and therefore seeks as expedited jury trial as to damages. Plaintiff deserves some semblance of justice in her lifetime.

[Signature on following page]

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